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Highlights

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Highlights

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Presidential Documents

Title 3—

The President

Executive Order 12137 of May 16, 1979

The Peace Corps

By virtue of the authority vested in me by the Peace Corps Act, as amended (22 U.S.C. 2501–2523) and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

1–1. *Peace Corps.*

1–101. The Peace Corps, which was established as an agency in the Department of State pursuant to Executive Order No. 10924 of March 1, 1961 (26 FR 1789), which was continued in existence in that Department under the Peace Corps Act (the "Act") pursuant to Section 102 of Executive Order No. 11041 of August 6, 1962 (27 FR 7859), and which was transferred to and continued as a component of ACTION by Executive Order No. 11603 of June 30, 1971 (36 FR 12675), shall be an agency within ACTION pursuant to the provisions of this Order.

1–102. All references to the "Director" in Part 1–1 of this Order shall refer to the Director of the Peace Corps for whom provision is made in Section 4(a) of the Act (22 U.S.C. 2503).

1–103. Exclusive of the functions otherwise delegated by or reserved to the President by this Order, and subject to the provisions of this Order, there are hereby delegated to the Director all functions conferred upon the President by the Act and by Section 2(b) of Reorganization Plan No. 1 of 1971.

1–104. The function of determining the portion of living allowances constituting basic compensation, conferred upon the President by Section 201(a) of Public Law 87–293 (26 U.S.C. 912(3)), is hereby delegated to the Director and shall be performed in consultation with the Secretary of the Treasury.

1–105. The functions of prescribing regulations and making determinations (relating to appointment of Peace Corps employees in the Foreign Service System), conferred upon the President by Section 5 of Public Law 89–135 (79 Stat. 551), are hereby delegated to the Director.

1–106. The functions of prescribing conditions, conferred upon the President by the second sentence of Section 5(e), as amended (22 U.S.C. 2504(e)), and the third proviso of Section 6 of the Act (22 U.S.C. 2505) (relating to providing health care in Government facilities) and hereinabove delegated to the Director, shall be exercised in consultation with the head of the United States Government agency responsible for the facility.

1–107. The reports required by Section 11 of the Act, as amended (22 U.S.C. 2510), shall be prepared by the Director and submitted to the Congress through the President.

1–108. Subject to applicable provisions of law, all funds appropriated or otherwise made available to the President for carrying out the provisions of the Act shall be deemed to be allocated without any further action of the President to the Director or to such subordinate officer as the Director may designate. The Director or such officer may allocate or transfer, as appropriate, any of such funds to any United States Government agency or part thereof for obligation or expenditures thereby consistent with applicable law.

1–109. Nothing in this Order shall be deemed to impair or limit the powers or functions vested in the Secretary of State by the Act.

1–110. The negotiation, conclusion, and termination of international agreements pursuant to the Act shall be under the direction of the Secretary of State.

1–111. Any substantial change in policies in effect on the date of this Order for the utilization of the Foreign Service Act of 1946, as amended, pursuant to Section 7 of the Act (22 U.S.C. 2506), shall be coordinated with the Secretary of State.

1–112. The Director shall consult and coordinate with the Director of ACTION to assure that the functions delegated to the Director by this Order are carried out consistently with the functions conferred upon the Director of ACTION by the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 *et seq.*), ("Volunteer Service Act"), Reorganization Plan No. 1 of 1971 and this Order.

1–2. *The Peace Corps Advisory Council.*

1–201. In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), there is hereby established the Peace Corps Advisory Council.

1–202. The President shall appoint not more than 30 individuals to serve on the Council and shall designate one member as Chairperson. Members shall serve at the pleasure of the President.

1–203. The Council shall advise the President and the Director of the Peace Corps on initiatives needed to promote the purposes of the Peace Corps Act.

1–204. The Council shall submit annually to the President, through the Director of the Peace Corps, a report on its recommendations and activities.

1–205. The Council may request any agency of the United States Government to furnish it with such information as may be useful for the fulfillment of the Council's functions under this Order. Such agencies will, to the extent permitted by law, honor the Council's request.

1–206. The members of the Council shall receive no compensation for service on the Council. Each member of the Council may receive travel expenses, including per diem in lieu of subsistence (5 U.S.C. 5702 and 5703).

1–207. The functions of the President under the Federal Advisory Committee Act which are applicable to the Council, except that of reporting annually to the Congress, shall be performed by the Director of the Peace Corps in accordance with guidelines and procedures established by the Administrator of General Services.

1–208. In accord with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), the Council shall terminate on December 31, 1980, unless extended.

1–3. *Reservation of Functions to the President.*

1–301. There are hereby excluded from the delegations made by Section 1–1 of this Order the following powers and functions of the President:

(a) All authority conferred by Sections 4(b), 4(c)(2), 4(c)(3), 10(d), and 18 of the Act (22 U.S.C. 2503(b), (C)(2), (C)(3), 2509(d), and 2517).

(b) The authority conferred by Section 4(a) of the Act (22 U.S.C. 2503(a)) to appoint the Director and the Deputy Director of the Peace Corps.

(c) The authority conferred on the President by Section 5(f)(1)(B) of the Act (22 U.S.C. 2504(f)(1)(B)).

(d) The authority conferred by Section 10(f) of the Act (22 U.S.C. 2509(f)) to direct any agency of the United States Government to provide services, facilities, and commodities to officers carrying out functions under the Act.

(e) The authority conferred by Section 19 of the Act (22 U.S.C. 2518) to adopt and alter an official seal or emblem of the Peace Corps.

1–4. *Incidental Provisions.*

1–401. Persons appointed, employed, or assigned under Section 7(a) of the Act (22 U.S.C. 2506(a)) shall not, unless otherwise agreed by the agency in which such benefits may be exercised, be entitled to the benefits provided by Section 528 of the Foreign Service Act of 1946 (22 U.S.C. 928) in cases in which their service under the appointment, employment, or assignment exceeds thirty months.

1–402. Pursuant to Section 10(d) of the Act (22 U.S.C. 2509(d)), it is hereby determined to be in furtherance of the purposes of the Act that functions authorized thereby may be performed without regard to the applicable laws specified in Section 1 and 2 of Executive Order No. 11223 of May 12, 1965, and with or without consideration as specified in Section 3 of that Order, but subject to the limitations set forth in that Order.

1–403. As used in this Order, the words "Volunteers," "functions," "United States," and "United States Government agency" shall have the same meanings, respectively, as they have under the Act.

1–5. *National Voluntary Action Program.*

1–501. The National Voluntary Action Program to encourage and stimulate more widespread and effective voluntary action for solving public domestic problems, established in the Executive Branch of the Government by Section 1 of Executive Order No. 11470 of May 26, 1969, is continued in ACTION. That program shall supplement corresponding action by private and other non-Federal organizations such as the National Center for Voluntary Action. As used in this Order, the term "voluntary action" means the contribution or application of non-governmental resources of all kinds (time, money, goods, services, and skills) by private and other organizations of all types (profit and nonprofit, national and local, occupational, and altruistic) and by individual citizens.

1–6. *Director of ACTION.*

1–601. In addition to the functions vested in the Director of ACTION by the Domestic Volunteer Service Act of 1973 (42 U.S.C., Section 4951 *et seq.*), Reorganization Plan No. 1 of 1971, and Section 1–401 of this Order, the Director of ACTION shall:

(a) Encourage local, national and international voluntary activities directed toward the solution or mitigation of community problems.

(b) Provide for the development and operation of a clearinghouse for information on Government programs designed to foster voluntary action.

(c) Initiate proposals for the greater and more effective application of voluntary action in connection with Federal programs, and coordinate, as consistent with law, Federal activities involving such action.

(d) Make grants of seed money, as authorized by law, for stimulating the development or deployment of innovative voluntary action programs directed toward community problems.

1–602. The head of each Federal department and agency, or a designated representative, when so requested by the Director of ACTION or the Director of the Peace Corps, shall, to the extent permitted by law and funds available, furnish information and assistance, and participate in all ways appropriate to carry out the objectives of this Order, the Domestic Volunteer Service Act of 1973 and Reorganization Plan No. 1 of 1971.

1–603. The head of each Federal department or agency shall, when so requested by the Director of ACTION, designate a senior official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning voluntary action.

1–604. The head of each Federal department or agency, or a designated representative, shall keep the Director of ACTION informed of proposed budgets, plans, and programs of that department or agency affecting voluntary action programs.

1–605. Under the direction of the President and subject to the responsibilities of the Secretary of State, the Director of ACTION shall be responsible for the general direction of those ACTION functions, which jointly serve ACTION domestic volunteer components and the Peace Corps, and for advising the Director of the Peace Corps to ensure that the functions delegated under this Order to the Director of the Peace Corps are carried out.

1–7. *General Provisions.*

1–701. Except to the extent that they may be inconsistent with this Order, all determinations, authorizations, regulations, rulings, certifications, orders, directives, contracts, agreements, and other actions made, issued or entered into with respect to any function affected by this Order and not revoked, superseded, or otherwise made inapplicable before the effective date of this Order shall continue in full force and effect until amended, modified, or terminated by appropriate authority.

1–702. Except as otherwise expressly provided herein, nothing in this Order shall be construed as subjecting any department, establishment, or other instrumentality of the Executive Branch of the Federal Government or the head thereof, or any function vested by law in or assigned pursuant to law to any such agency or head, to the authority of any other agency or head or as abrogating, modifying, or restricting any such function in any manner.

1–703. So much of the personnel, property, records, and unexpended balances or appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions assigned to the Director of the Peace Corps or to the Director of ACTION by this Order as the Director of the Office of Management and Budget shall determine, shall be transferred to the Director of the Peace Corps or the Director of ACTION at such time or times as the Director of the Office of Management and Budget shall direct.

1–704. To the extent permitted by law, such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the provisions of this Order shall be carried out by such agencies as the Director of the Office of Management and Budget shall specify.

1–705. The authority conferred by Sections 1–703 and 1–704 of this Order shall supplement, not limit, the provisions of Section 1–108 of this Order.

1–706. Executive Order Nos. 11041, 11250, 11470 and 11603 are hereby superseded.

1–707. This Order shall become effective May 16, 1979.

Jimmy Carter

THE WHITE HOUSE,
May 16, 1979.

[FR Doc. 79–15859
Filed 5–17–79; 10:55 am]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim emergency rule.

SUMMARY: These interim regulations amend Part 245 to implement certain provisions of Pub. L. 95–166, enacted on November 10, 1977. Section 9 of Pub. L. 95–166 amends Section 11(a) of the National School Lunch Act, in an effort by Congress to reduce program paperwork. This interim regulation contains the optional provision: (1) that in schools where a high percentage of children are eligible to receive meals free or at a reduced price the annual certification of children eligible to receive meals free or at a reduced price may be reduced to a minimum of once every two years; and (2) that in schools where all children are provided free meals (a) the annual certification of children eligible to receive meals free or at a reduced price may be reduced to a minimum of once every three years, and (b) that if this option is chosen, the number of meals served to children eligible for free or reduced price meals during the second and third years will be the number of meals served in the first year.

EFFECTIVE DATE: May 18, 1979. To be assured of consideration by the Department in the formulation of final regulations, comments on these interim regulations must be postmarked not later than January 15, 1980.

ADDRESS: Comments should be sent to: Margaret O'K. Glavin, Director, School Programs Division, USDA, FNS, Washington, D.C. 20250, (202) 447–8130.

SUPPLEMENTARY INFORMATION:

Intent of Congress

In an effort by Congress to reduce the burden of paperwork placed upon parents, cooperating State agencies and local School Food Authorities, Section 9 of Pub. L. 95–166 states: "In the case of any school which determines that at least 80 percent of the children in attendance during a school year (hereinafter in this sentence referred to as the 'first school year') are eligible for free lunches or reduced price lunches, special-assistance payments shall be paid to the State educational agency with respect to that school, if that school so requests for the school year following the first school year, on the basis of the number of free lunches or reduced-price lunches, as the case may be, that are served by that school during the school year for which the request is made, to those children who were determined to be so eligible in the first school year and the number of free lunches and reduced price lunches served during that year to other children determined for that year to be eligible for such lunches," (hereinafter referred to as provision 1). "In the case of any school that (1) elects to serve all children in that school free lunches under the school lunch program during any period of three successive school years and (2) pays, from sources other than Federal funds, for the costs of serving such lunches which are in excess of the value of assistance received under this Act with respect to the number of lunches served during that period, special-assistance payments shall be paid to the State educational agency with respect to that school during that period on the basis of the number of lunches determined under the succeeding sentence. For purposes of making special-assistance payments in accordance with the preceding sentence, the number of lunches served by a school to children eligible for free lunches and reduced price lunches during each school year of the three-school-year period shall be deemed to be the number of lunches served by that school to children eligible for free lunches and reduced price lunches during the first school year of such period, unless that school elects, for purposes of computing the amount of such payments, to determine on a more frequent basis the number of children eligible for free and reduced price lunches who are served lunches during such period," (hereinafter referred to as provision 2).

Regulatory Interpretation of Provision 1

Provision 1 is interpreted to mean that the annual certification of children eligible to receive free meals and reduced price meals may be reduced to a minimum of once every two years in a qualified school; that is, one in which an average of 80 percent or more of the attending children are eligible to receive free meals and reduced price meals.

Such a school must demonstrate to the satisfaction of the School Food Authority that the percentage of children eligible to receive free meals and reduced price meals is at least 80 percent of the number of children in attendance. This regulation requires that the calculation be based on data available in the month of March of the previous school year, or on other available data. Use of data obtained in March coincides with the collection of the required October–March estimates of needy children and gives schools the advantage of using data obtained a month identified as a peak participation month.

A School Food Authority of a qualifed school must also agree to annually provide public notification in the form of a parental letter and application form to parents of children in such schools not certified in the first year as eligible for free or reduced price meals, and to all children newly enrolled. This is to assure that such children and their families are apprised of program benefits, civil rights and application procedures. Children determined eligible to receive reduced price meals in the first year could possibly be eligible for free meals in the second school year due to the annual adjustment of the family-size and income criteria. School Food Authorities of qualifed schools are encouraged to include children eligible to receive reduced price meals in the first year in the public notification procedures in the second year to assure that the parents of these children are aware of these additional program benefits.

Such schools must continue to take daily counts of the number of children

receiving free and reduced prices meals for claims purposes.

Regulatory Interpretation of Provision 2

In School Food Authorities of schools which have elected to serve all children free meals, provision 2 allows such schools to reduce the certification freqeuncy for children eligible for federally reimburse free meals and reduced price meals to once every three years. School Food Authorities of schools which elect to avail themselves of this liberalized method of certification must: (1) pay for all free meals served to children who are not eligible to receive federally reimbursed free meals and (2) pay for the differential between the per meal special-assistance payment and the per meal cost of each free meal served to a child who is only eligible to receive federally reimbursed reduced price meals. These payments must be made with funds from other than Federal sources.

School Food Authorities of schools using this provision will be required to send out parental letters and applications only at the beginning of the three year period.

Such schools will be required to determine on a daily basis during the first year of the three year period the actual number of meals served to all attending children, by type—free, reduced and paid, as they are currently required to do. However, in the second and third years of implementation, monthly claims for meals served by type (free, reduced and paid) would equal the total number of meals served by type in the corresponding month of the first year.

For example, School A has an enrollment of 500 children. Upon receiving the free and reduced price meal applications, School A determines that 100 children are eligible to receive free meals and an additional 100 children are eligible to receive reduced price meals. The remaining 300 children are not eligible for free and reduced price meals. Since the school serves all attending children free meals, it elects to utilize the more liberalized method of certification beginning with the 1979–80 school year. In the 1979–80 school year School A must determine on a daily basis the number of meals served to children who qualify for free meals and the number of meals served to children who qualify for reduced price meals as well as the number of meals served to the remaining children. The number of meals served must be reported by category of free, reduced price and paid for claiming purposes. Therefore, the first school year the school participating in this process will act as it always has—with the school counting, by type, meals on a daily basis and claiming them monthly.

In September of the 1980–81 school year, School A would submit a 1980 September claim for the same number of free, reduced price and paid meals as it claimed in September of 1979. Meal counts for free, reduced price and paid meals for each month of operations in school year 1979–80 may be submitted by School A as the basis for its monthly claims for the corresponding month of school years 1980–81 and 1981–82.

Participating Schools

A School Food Authority of any school meeting the basic eligibility criteria shall approve such a school for participation in either provision 1 or 2 if the school so requests or elects. The School Food Authority will continue to be required to submit a Free and Reduced Price Meal Policy in line with existing regulations. The policy must list all such schools participating in either provision 1 or 2. The School Food Authority is responsible for maintaining documentation of the basic eligibility of each school for either of the provisions, and, upon request, must make this documentation available to the State agency for monitoring purposes.

Any school wishing to participate in either provision may do so if it meets the basic eligibility criteria.

In no event may a school deny a child a free or reduced price meal in succeeding years because of ineligibility in the first school year.

Comment Period

Due to the optional nature of this rule, and the Department's determination that the public interest will not be adversely affected by such action, these regulations have been prepared in interim format and are effective upon publication. This determination was made by Acting FNS Administrator Robert Greenstein. Comments are invited from the general public and are especially encouraged from State agency and School Food Authority personnel.

Commenters should identify the provision(s) contained in these interim regulations addressed in their remarks. Such remarks will be especially helpful to the Department in the development of a final amendment to the regulation.

All written submissions recieved pursuant hereto will be made available for public inspection at the School Programs Division, Room 4300B Auditor's Building, Food and Nutrition Service, USDA, Washington, D.C. during regular business hours (8:30 am to 5:00 pm) (7 CFR 1.27(b)).

Accordingly, Part 245 is amended as follows:

In 245.6, new paragraphs (e) and (f) are added to read as follows:

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

* * * * *

(e) A School Food Authority with a school with an average of 80 percent, or more, of the attending children eligible to receive free meals or reduced price meals during the month of March of the first school year shall, upon request of the school, authorize the school to certify eligibility for such children for free and reduced price meals for an additional school year. A School Food Authority of a school meeting the basic requirements which wishes to carry out such extension must ensure that public notification is provided to all children enrolled in the subject school not certified in the first year as eligible for free or reduced price meals and to all children newly enrolled in the school at the beginning of each school year, in accordance with § 245.5(a) and as otherwise specified in these regulations. The School Food Authority of such a school is encouraged to include children eligible to receive reduced price meals in the first year in the public notification procedures in the second year to assure that the parents of these children are aware of additional program benefits. In no event may a child be denied a free or reduced price meal because of the child's ineligibility for such benefits in the first year. The names of schools participating under this provision shall be submitted to the State agency by a School Food Authority as a part of the Free and Reduced Price Policy Statement. The School Food Authority is responsible for maintaining documentation of the basic eligibility of a school for this provision and upon request make it available to the State agency.

(f) A School Food Authority with a school that elects to serve all children in that school free meals under the National School Lunch Program and pays for the meals for nonneedy children from sources other than Federal funds: (1) Shall authorize, upon request, such a school to certify children for free and reduced price meals for a three year period based on eligibility during the first year; (2) shall provide public notification only at the beginning of the three year period in such a school; (3) may claim the same number of free and reduced price meals served in such a school in the first year to eligible

children in both the second and third years. Each such School Food Authority shall continue to provide monthly claims and shall calculate the number of meals to be reported by category (free, reduced price and paid) during the second and third years based upon the number of meals served in such a school by category during the corresponding month of the first year and shall develop a procedure to determine the number of meals served by category (free, reduced price and paid) on a daily basis during the first year. The names of schools participating under this provision shall be submitted to the State agency by each School Food Authority as a part of its Free and Reduced Price Meal Policy Statement. The School Food Authority is responsible for maintaining documentation on the basic eligibility of a school under this provision and, upon request, shall make it available to the State agency.

Note—The Food and Nutrition Service has prepared an impact analysis pursuant to the Secretary's direction (43 FR 50988) implementing E.O. 12044; a copy thereof is available from Margaret O'K. Glavin, Director, School Programs Division, USDA–FNS, Washington, D.C. 20250.

(Sec. 9, P.L. 95–166; 91 Stat. 1336 (42 U.S.C. 1759a).)

Dated: May 15, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-15513 Filed 5-17-79; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Stabilization and Conservation Service

7 CFR Part 781

Disclosure of Foreign Investment in Agricultural Land

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule is adopted by the Agricultural Stabilization and Conservation Service to revise the regulations published in the Federal Register on February 6, 1979, concerning disclosure of foreign investment in United States agricultural land. Such revision is needed to obtain the reporting of information, but no more than is necessary, to effectuate the intent of Congress as expressed in the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501 *et seq.*). It is anticipated that, as a result of this action, entities which might have otherwise been required to file a report with the Department will be relieved of the obligation to do so.

DATES: Effective date: May 18, 1979.

FOR FURTHER IMFORMATION CONTACT: George M. Nelson, Jr., Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447–4541.

SUPPLEMENTARY INFORMATION: The revision also clarifies the definitions of "any interest" and "significant interest or substantial control" as used in the regulations concerning Disclosure of Foreign Investment in Agricultural Land. More specifically, since the use of the words "all interests" in the definition of "any interest" in agricultural land (§ 781.2(c)) could be viewed as including leaseholds of less than 10 years, it is essential that the definition be reworded in order to make clear the intent to exclude leases of such duration. In addition, an interpretation has been added after § 781.2(c) to make clear that interests solely in mineral rights are not considered an interest in agricultural land and, therefore, need not be reported. An interpretation has also been added after § 781.2(g) in order to clarify the fact that a report must be filed if the aggregate of the foreign individuals, foreign governments, and the actual or defined foreign legal entities holding an interest in a U.S. legal entity totals five percent or more.

Similarly, the definition of "significant interest or substantial control" in § 781.2(l) has been restated in order to make clear that the reporting entity referred to in the definition is the entity in which the five percent foreign interest is held, rather than the foreign persons holding such interest. In addition to the foregoing, § 781.4(a)(2) has been rewritten in order to eliminate confusion as to what constitutes a reporting violation. Also, in § 781.2(b) the word "value" has been deleted in order to make it clear that the mere production of agricultural items exceeding $1,000 in value, during a one-year period, for personal or household use, does not trigger a reporting obligation but that there must be disposition of the items producing $1,000 in annual gross sales.

Public comment on the regulations requiring disclosure of foreign investment in U.S. agricultural land was requested at the time the regulations were published. The period for submission of comments expired March 8, 1979. The revisions articulated in this publication were developed both on the basis of comments received during the comment period and on the basis of independent Departmental efforts. Essentially, six substantive changes are made in the earlier rule. Each change will be stated and the pertinent rationale for the change will be discussed.

Easements

Several comments were received from major oil companies suggesting that both mineral interests in agricultural land as well as easements or rights of way necessary to effectively exploit such interest were neither covered by the Act nor the type of interest the Department should require to be reported. This perception is essentially correct. As a result, an interpretation has been formulated stating that mineral interests are not interests in agricultural land and, therefore, not reportable. In this amendment, § 781.2(c) is revised accordingly to exempt from the reporting requirement all surface or subsurface easements and rights of way used for some purpose unrelated to agricultural production.

Sections 2(a)(8) and 2(b)(7) of the Act require that a report concerning U.S. agricultural land filed by the reporting entity contain information with respect to the "agricultural purposes" for which the land is being used or for which the foreign person intends to use such land. From this it appears that information is to be reported with respect to interest in land dedicated to use for some agricultural rather than some non-agricultural purpose, such as access, which affects only a small amount of land. Moreover, in the reports required to be prepared for Congress and the President, the information submitted to the Department is to be analyzed to determine the effects of foreign ownership on family farms and rural communities. It appears that easements or rights of way across agricultural land would have only a modicum, if any, effect on family farms and rural communities and, therefore, information on such would prove of little use in the preparation of the analytical report.

Indirect Ownership

Section 781.2(l) of the final rule states that foreign persons hold significant interest or substantial control in a legal entity for the purpose of obligating such entity to report, if such persons hold five percent or more interest in such legal entity "which holds, directly or indirectly, any interest in United States agricultural land." Pursuant to this provision, it appears that indirect land holdings must be reported. That is, if "foreign persons" hold five percent or more interest in U.S. corporation A, which itself holds an interest in

corporation B holding U.S. agricultural land, then corporation A must file a report concerning the land. However, section 9(3)(C)(ii) of the Act utilizes "direct and indirect" only in reference to the relationship between a legal entity and the "foreign persons" holding an interest in such. The fact that the entity in which the ownership interest is held may indirectly hold agricultural land, because it holds an interest in another entity holding such land directly, does not obligate the former to report. In fact, any such obligation could result in a duplication of reporting concerning the same tract of land if both corporation A and corporation B in the aforementioned example were defined to be "foreign persons". In an effort to eliminate any possible confusion relating to this point, § 781.2(1) is amended to provide that indirect land holdings need not be reported.

Name of Business Entity

Both section 2(c) of the statute and § 781.3(f) of the final rule provide, among other things, that if a U.S. business entity holding agricultural land is defined to be a "foreign person" by virtue of five percent or more foreign ownership, then such entity must reveal the legal name and address of certain foreign individuals or governments holding a certain interest in it. If such interest is held in such U.S. business entity by a foreign business entity rather than certain foreign individuals or governments, then such U.S. entity need only reveal the *nature* of the foreign business entity, the country in which it is organized, and its principal place of business. A similar provision also exists with respect to reports submitted pursuant to § 781.3(g) of the final rule. Furthermore, if the ASCS Form-153 is submitted pursuant to § 781.3 (b) or (c) by an entity other than an individual, it also appears that the name of such entity need not be stated.

It is unlikely that the Department's knowledge of the nature of the entity alone would prove useful. Moreover, it seems that Congress actually contemplated the collection of information more precise than simply whether the entity concerned is a corporation, partnership, joint venture, trust, or some other legal configuration, and this is evidenced by the fact that in the same sentence in which the general term "nature" appears, the U.S. business entity is required to disclose the exact principal place of business of, in each respective case, its own business or of the foreign business entity. In short this means the specific address. In keeping with such precision and in order to effectuate the full intent of the Act, § 781.3(b), (c), (f) and § 781.3(g) are revised to require the *name* as well as the nature of the foreign business entity.

Tracing Actual Ownership

Section 781.3(g) of the final rule, as amended, essentially provides that any "foreign person", other than an individual or government, whose name is disclosed by a "report submitted in satisfaction of [§ 781.3(f)] or this subsection" may also be required, upon request, to submit a report containing certain information. In essence, § 781.3(f) provides, among other things, that if a U.S. business entity, defined to be a "foreign person" because "foreign persons" hold five percent or more interest in it, holds any interest in U.S. agricultural land, then such entity must file a report concerning the land and also reveal the identity of certain "foreign persons," whether actual or by definition, holding certain interests in it. Once the identity of such "foreign persons" has been revealed, then § 781.3(g), of the final rule mentioned above, provides that (1) such "foreign persons" may themselves be required to submit a report containing certain information relating to who holds an interest in them, and (2) any entity revealed under paragraph (g) may be required to submit a report disclosing the identity of any entity holding an interest in it. The result of the second requirement is to permit the tracing of ownership back to a point beyond which there are no other individual holders.

Section 2(f) is the portion of the Act which corresponds to § 781.3(g) of the final rule. Section 2(f) states in part:

> With respect to any person, other than an individual or a government, whose legal name is contained in any report submitted under subsection (e) of this section, the Secretary may require such person to submit to the Secretary a report [containing the identity of the entities holding any interest in it].

The report submitted under subsection (e) which is mentioned in the quoted language is identical to that submitted under paragraph (f) which is referred to in § 781.3(g) of the final rule. A close reading of the statute, however, reveals the Congress apparently did not intend to permit the Secretary to trace ownership beyond the third tier. Had this not been the case, section 2(f) of the Act would have included, after referring to reports submitted under paragraph (e), the expression, "or this subsection". The absence of such language appears to limit tracing to the third tier.

In view of the fact that one of the objectives of the Act is to uncover foreign ownership of U.S. agricultural land, tracing to the third tier is more than adequate. In fact, this objective can probably be accomplished in most cases without extensive tracing. Therefore, § 781.3(g) of the final rule is revised to exclude the terms "or this subsection".

Entities Revealed by Those With Reporting Obligations

Pursuant to § 781.3 (f) of the final rule, any foreign person, other than an individual or government, required to submit a report under § 781.3(b), (c), (d), or (e) must also reveal information about "foreign persons" holding any interest in it. Section 781.3(g) then requires that any person whose identity has been revealed under paragraph (f) disclose, upon request, information concerning the identity of any entity holding any interest in such person.

In an effort to alleviate the burden imposed upon business entities with numerous interest holders to obtain information which would permit such entities to determine whether or not each such interest holder is a "foreign" or non-foreign person, both § 781.3(f)(1) and § 781.3(g)(1) have been revised to provide that only information concerning "foreign persons" holding five percent or more interest must be revealed under § 781.3(f)(1), automatically; under § 781.3(g)(1), upon request. However, the Secretary retains the authority to request information concerning all interest holders not revealed pursuant to § 781.3(f)(1) and § 781.3(g)(1).

At this point it should be noted that the five percent figure used in § 781.2(1) of the final rule to define "significant interest or substantial control", relates to the cumulative interest which triggers the reporting responsibility under § 781.3 (b), (c), (d), or (e), of any "foreign person" holding agricultural land. The five percent figure used in § 781.3 (f) and (g) refers to the entities which a "foreign person" required to file a report under § 781.3 (b), (c), (d) or (e) must reveal or, the entities which a person whose identity has been disclosed pursuant to § 781.3(f) must reveal. The two senses in which the five percent figure has been used should be kept conceptually distinct.

Reporting of the Second Tier

Pursuant to § 781.3(f) of the final rule, a U.S. business entity, defined to be a "foreign person" as a result of five percent or more foreign ownership, must reveal automatically certain information about each "foreign person" holding a certain interest in it and, upon request, must reveal certain information

concerning all others holding any interest in it. Once the identify of a person has been disclosed pursuant to § 781.3(f), § 781.3(g) provides that such persons may be requested to submit a report containing certain information about "any person" holding any interest in such person. Since the use of the words "any person" signifies "foreign" persons as well as non-foreign persons, the Secretary may request information about a non-foreign person pursuant to § 781.3(g), despite the fact that at the first tier the Secretary never requested information about non-foreign persons in connection with the § 781.3(f) report. In order to make § 781.3 (f) and (g) more harmonious, § 781.3(g) has been revised to provide that any "foreign person" whose name is listed on a report submitted in satisfaction of § 781.3(f), may be required, if requested, to reveal certain information about "foreign persons" holding five percent or more interest in the "foreign person" whose name is so listed. In addition, a "foreign person" whose name is listed on the report submitted in satisfaction of § 781.3(f), may also be required, if requested, to reveal certain information about "foreign persons" holding less than five percent interest in it. Under § 781.3(g)(2), however, a "foreign person" whose name is listed on a report submitted in satisfaction of § 781.3(f), may not be required to reveal information about non-foreigners holding any interest in it, unless a report containing the same type of information was previously required to be filed pursuant to § 781.3(f)(2).

The provisions contained in the regulations requiring disclosure of foreign investment in U.S. agricultural land became effective on February 2, 1979. Pursuant to such provisions, reports pertaining to U.S. agricultural land held by foreign persons prior to the effective date of the rule must be filed with the Secretary by August 1, 1979; reports pertaining to U.S. agricultural land acquired or transferred after the effective date of the rule must be filed within 90 days after such transaction. Therefore, reports concerning such acquisitions or transfers must be filed conceivably as early as the first part of May 1979.

In view of the fact that the revisions contained herein will affect reporting entities holding U.S. agricultural land, it is imperative that such be made effective as soon as possible. If this is not done, entities concerned with filing timely reports in order to avoid the prescribed penalty may very well utilize the standards provided in the earlier rule for determining whether they must report, when application of the provisions of the rule as revised herein may remove or alter such reporting obligation. If these revisions are not made effective until 30 days after publication, it is quite possible that the reporting deadline for the first reports may then be imminent or past. Therefore, I find that good cause exists for not delaying the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Accordingly, 7 CFR, Chapter VII, Subchapter C—Special Programs, Part 781, is revised to read as follows:

PART 781—DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

Sec.

Authority: Sec. 1–10, 92 Stat. 1266 (7 U.S.C. 3501 *et seq.)*

§ 781.1 Applicability.

The purpose of these regulations is to set forth the requirements designed to implement the Agricultural Foreign Investment Disclosure Act of 1978. The regulations specify when a foreign person who acquires, disposes of or holds an interest in United States agricultural land shall disclose such transactions and holdings to the Secretary of Agriculture. In particular, the regulations establish a system for the collection of information by ASCS pertaining to foreign investment in United States agricultural land. The information collected will be utilized in the preparation of periodic reports to Congress and the President by ESCS concerning the effect of such holdings upon family farms and rural communities.

§ 781.2 Definitions.

In determining the meaning of the provisions of this Part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) *AFIDA.* Agricultural Foreign Investment Disclosure Act of 1978.

(b) *Agricultural Land.* Land in the United States which is currently used for, or if idle and its last use within the past five years was for, agricultural, forestry, or timber production, except land not exceeding one acre in the aggregate from which the agricultural, forestry or timber products are less than $1,000 in annual gross sales and such products are produced for the personal or household use of the person or persons holding an interest in such land.

(c) *Any Interest.* All interests acquired, transferred or held in agricultural lands by a foreign person, except:

(1) leaseholds of less than 10 years;

(2) contingent future interests;

(3) noncontingent future interests which do not become possessory upon the termination of the present possessory estate; and

(4) surface or subsurface easements and rights of way used for a purpose unrelated to agricultural production.

Interpretation

An interest solely in mineral rights is not considered an interest in agricultural land and, therefore, is not required to be reported.

(d) *County.* A political subdivision of a state identified as a county or parish. In Alaska, an area so designated by the State ASC Committee.

(e) *Foreign Government.* Any government other than the United States Government, the government of a state, or a political subdivision of a state.

(f) *Foreign Individual.* Means foreign person as defined in paragraph (f)(1) of this section.

(g) *Foreign Person.* The term "foreign person" means:

(1) Any individual;

(i) who is not a citizen or national of the United States;

(ii) who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or

(iii) who is not lawfully admitted to the United States for permanent residence, or paroled into the United States under the Immigration and Nationality Act;

(2) Any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside of all the States;

(3) Any foreign government;

(4) Any person, other than an individual or a government;

(i) which is created or organized under the laws of any State; and

(ii) in which, a significant interest or substantial control is directly or indirectly held;

(A) by any individual referred to in paragraph (g)(1) of this section;

(B) by a person referred to in paragraph (g)(2) of this section;

(C) by any foreign government referred to in paragraph (g)(3) of this section; or

(D) by any combination of such individuals, persons, or governments.

Interpretation

As used in § 781.4(f)(4)(ii)(d) the word "combination" refers to an aggregate figure and does not require a coalition which intends to accomplish a common objective.

(h) *Person.* The term person includes any individual, corporation, company association, foreign partnership, society, joint stock company, trust, estate, or any other legal entity.

(i) *Secretary.* The term means the Secretary of Agriculture.

(j) *Security Interest.* A mortgage or other debt securing instrument.

(k) *State.* The term means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands or any other territory or possession of the United States.

(l) *Significant interest or substantial control.* Means five percent or more interest in a legal entity for the purpose of obligating such legal entity to report.

§ 781.3 Reporting requirements.

(a) All reports required to be filed pursuant to this part shall be filed with the ASCS county office in the county where the land with respect to which such report must be filed is located or where the ASCS county office administering programs carried out on such land is located.

(b) Any foreign person holding any interest, other than security interest, in U.S. agricultural land on the day before February 2, 1979, must submit, on or before August 1, 1979, a report Form ASCS–153 containing the following information:

(1) The legal name and the address of such foreign person;

(2) In any case in which such foreign person is an individual, the citizenship of such foreign person;

(3) In any case in which such foreign person is not an individual or a government, the nature and name of the legal entity holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) The type of interest in agricultural land which is held by such foreign person;

(5) The legal description and acreage of such agricultural land;

(6) The purchase price paid for, or any other consideration given for such interest;

(7) The agricultural purposes for which such foreign person;

(i) is using such agricultural and on the date on which such report is submitted; and

(ii) intends, as of such date, to use such agricultural land.

(8) When applicable, the name, address and relationship of the representative of the foreign person who is completing the ASCS–153 form for the foreign person; and

(9) How the tract of land was acquired or transferred, the relationship of the foreign person to the previous owner, producer, manager, tenant or sharecropper, and the rental agreement.

(c) Any foreign person acquiring or transferring any interest, other than a security interest in U.S. agricultural land on or after February 2, 1979, must submit, not later than 90 days after the date of such acquisition or transfer, a report Form ASCS–153 containing the following information:

(1) The legal name and the address of such foreign person;

(2) In any case in which such foreign person is an individual, the citizenship of such foreign person;

(3) In any case in which such foreign person is not an individual or a government, the nature and name of the legal entity holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) The type of interest held by a foreign person who acquired or transferred an interest in agricultural land;

(5) The legal description and acreage of such agricultural land;

(6) The purchase price paid for, or any other consideration given for, such interest;

(7) In any case in which such foreign person transfers such interest, the legal name and the address of the person to whom such interest is transferred; and

(i) in any case in which such transferee is an individual, the citizenship of such transferee; and

(ii) in any case in which such transferee is not an individual, or a government, the nature of the legal entity holding the interest, the country in which such transferee is created or organized, and the principal place of business;

(8) The agricultural purposes for which such foreign person intends, on the date on which such report is submitted, to use such agricultural land;

(9) When applicable, the name, address and relationship of the representative of the foreign person who is completing the ASCS–153 form for the foreign person; and

(10) How the tract of land was acquired or transferred, the relationship of the foreign person to the previous owner, producer, manager, tenant or sharecropper, and the rental agreement.

(d) Any person, except a foreign person required to submit a report under paragraph (b) of this section, who, on or after February 2, 1979, holds or acquires any interest, other than a security interest, in United States agricultural land at a time when such person is not a foreign person and who subsequently beomes a foreign person, must submit, not later 90 days after the date on which such person becomes a foreign person, a report Form ASCS–153 containing the information required to be submitted under paragraph (b) of this section.

(e) Any foreign person, except a person required to submit a report under paragraph (b) of this section, who, on or after February 2, 1979, holds or acquires any interest, other than a security interest, in United States agricultural land at a time when such land is not agricultural land and such land subsequently becomes agricultural land must submit, not later than 90 days after the date on which such land becomes agricultural, a report Form ASCS–153 containing the information required to be submitted under paragraph (b) of this section.

(f)(1) Any foreign person, other than an individual or government, required to submit a report under paragraphs (b), (c), (d), or (e) of this section, must submit a report containing the following information:

(i) the legal name and the address of each foreign individual or government holding five percent or more interest in such foreign person;

(ii) in any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) in any case in which the holder of five percent or more interest in such foreign person is not an individual or a government, the nature and name of the foreign person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(2) In addition, any such foreign person required to submit a report under paragraph (f)(1) of this section may also be required, upon request, to submit a report containing:

(i) The legal name and the address of each individual or government whose legal name and address did not appear

on the report required to be submitted under paragraph (f)(1) of this section, if such individual or government holds any interest in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or government, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(g) Any foreign person, other than an individual or a government, whose legal name is contained on any report submitted in satisfaction of paragraph (f) of this section may also be required, upon request, to:

(1) Submit a report containing:

(i) The legal name and the address of each foreign individual or government holding five percent or more interest in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest in such foreign person is not an individual or a government, the nature and name of the foreign person holding the five percent or more interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(2) Submit a report containing:

(i) The legal name and address of each individual or government whose legal name and address did not appear on the report required to be submitted under paragraph (g)(1) of this section if such individual or government holds any interest in such foreign person and, except in the case of a request which involves a foreign person, a report was required to be sumitted pursuant to paragraph (f)(2) of this section, disclosing information relating to non-foreign interest holders;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or government and, except in a situation where the information is requested from a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this section disclosing information relating to non-foreign interest holders, the nature and name of the legal entity holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

§ 781.4 Penalty determinations.

(a) Violation of the reporting obligation will consist of:

(1) Failure to submit any report required to be submitted pursuant to § 781.3, or

(2) Knowing submission of a report which:

(i) Does not contain all the information required to be in such report, or

(ii) Contains misleading or false information.

(b) Determinations of violation of such reporting obligations will be made on the basis of evidence submitted to a Board periodically appointed by the Secretary to make such determinations. Upon a determination of violation the Board will also make a preliminary determination of the fair market value of the interest in the agricultural land with respect to which such violation has occurred. Following each such determination of a reporting violation, the Board will transmit to the Secretary a recommendation as to the amount of the civil fine for failure to comply with the reporting obligation. After consideration by the Secretary of the recommendation transmitted by the Board, the foreign person failing to comply with the reporting obligation shall be subject to a civil fine imposed by the Secretary, the amount of which shall not exceed 25 percent of the fair market value of the interest in the agricultural land with respect to which such violation has occurred, redetermined by the Board as of the date of the assessment of such penalty.

This rule has been determined significant under the USDA criteria implementing Executive Order 12044, "Improving Government Regulations". An approved supplement to the Final Impact Statement is available by contacting the Office of the Director of Economics, Policy Analysis and Budget, Room 102 Administration Building, USDA, Washington, D.C. 20250.

Reporting and recordkeeping requirements contained in these regulations are subject to approval by OMB and not effective until such approval is obtained.

Signed at Washington, D.C., on May 11, 1979.

Bob Bergland,

Secretary of Agriculture.

[FR Doc. 79-15373 Filed 5-17-79; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 199]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period May 20–26, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: May 20, 1979.

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

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on May 15, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is easier.

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

regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.499 Lemon Regulation 199.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period May 20, 1979, through May 26, 1979, is established at 295,000 cartons.

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

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

Dated: May 16, 1979.

D.S. Kuryloski,

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

[FR Doc. 79-15862 Filed 5-17-79; 11:39 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 82

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

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final Rule.

SUMMARY: The purpose of this amendment is to release a portion of Orange County and a portion of Los Angeles County in California, and portions of Clark County in Nevada, from the areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the areas released from quarantine. No areas in the State of Nevada remain under quarantine.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Mixson, USDA, APHIS, VS, Federal Building, Room 748, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment releases a portion of Orange County and a portion of Los Angeles County in California, and portions of Clark County in Nevada, from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the areas released.

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

§ 82.3 [Amended]

In § 82.3(a)(1), relating to the State of California, paragraph (i) relating to Orange County, paragraph (ii) relating to Los Angeles County, and paragraph (a)(3) relating to the State of Nevada are deleted.

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

The amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease. It should be made effective immediately in order to permit affected persons to move poultry, mynah, psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles, interstate from such areas without unnecessary restrictions. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

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

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

Done at Washington, D.C., this 15th day of May 1979.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79-15510 Filed 5-17-79; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 92

Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations which relate to the maintenance and operation of approved quarantine facilities for the importation of birds, and provides for the execution of an agreement between the operator of each approved quarantine facility and the Department which will strengthen the standards and handling procedures at such facilities.

This action is necessary to provide greater security for birds held in approved quarantine facilities, to update and improve standards and handling procedures now in effect, and to prevent the spread of disease from such facilities.

The intended effect of this action is to provide greater security for the poultry of the United States by improving security and physical facilities and handling procedures at approved quarantine facilities for the importation of birds thereby insuring that exotic Newcastle disease will not be introduced into the United States through such facilities.

EFFECTIVE DATE: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: E. C. Sharman, Senior Staff Veterinarian, Import-Export Staff, APHIS, VS, Room 821, Federal Building, Hyattsville, MD 20782, 301–436–8530.

SUPPLEMENTARY INFORMATION: On March 17, 1972, there was published in the **Federal Register** (37 FR 5649), a notice of declaration of emergency because of the existence of exotic Newcastle disease in the United States. In 1972, the Department expended $56 million to eradicate exotic Newcastle disease in California.

At the present time, exotic Newcastle disease appears to be reaching epidemic proportions worldwide, and there has been a significant increase in the number of imported birds which have been diagnosed as having exotic Newcastle disease while in approved quarantine facilities.

Several outbreaks of the disease have recently occurred in California, Arizona,

Nevada, and Florida. Evidence exists which supports the proposition that exotic Newcastle disease has been disseminated into the United States from lots of birds which have been in privately owned approved quarantine facilities, and that owners of such facilities or their employees may have carried the disease from birds in approved quarantine facilities to birds in the United States.

In view of the aforementioned situation, the Animal and Plant Health Inspection Service, which is responsible for protecting the poultry of the United States from the introduction and dissemination of any communicable disease of poultry, determined that standards for approval and handling procedures for privately owned bird quarantine facilities might be inadequate to provide the protection required for the poultry of the United States, on March 30, 1979, the Animal and Plant Health Inspection Service published in the **Federal Register** (44 FR 18958–18959) and amendment to the regulations (92.11(f)(iv)) which prohibited, until further notice, the importation of certain birds into the United States except through USDA quarantine facilities where controls exerted are considered sufficient to insure against the introduction and dissemination of exotic Newcastle disease.

The intent of this action was to provide the Department time to review the operational and handling procedures for approved quarantine facilities in order to determine what may be needed to prevent the entry and spread of exotic Newcastle disease into the United States through these facilities.

Late in March of this year, Veterinary Services supervisory personnel associated with the operation of approved quarantine facilities in each State where such facilities are located were assembled in Hyattsville, Maryland, for an indepth review of all aspects of the standards for approved quarantine facilities. This group made suggestions for changes and improvements they deemed necessary and appropriate for improving the security and operating procedures at all approved quarantine facilities.

On April 2, 1979, a meeting was held by Veterinary Services with representatives of the bird importing industry in Washington, D. C., at which time this group provided the Department with a list of suggested items which they believed would insure security and improve operating and handling procedures at approved quarantine facilities for the importation of birds.

After due consideration of all of the suggestions made by these groups an agreement has been prepared for execution between the operator of each approved quarantine facility and the Department which incorporates additional security requirements and operational procedures at approved quarantine facilities which the Department believes will help prevent the introduction and spread of exotic Newcastle disease into the United States through these facilities.

The provisions of this agreement fall into two general categories: (1) Physical security of the approved quarantine facility with limited access to prevent removal of birds, and (2) Disease security to prevent transmission of exotic Newcastle disease from the approved quarantine facility.

(1) Security aspects of the agreement include:

(a) Electronic or guard monitoring systems to prevent removal of birds and a T.V. monitoring and communication systems between the quarantine area and the clean area.

(b) Installation of tamperproof hasps, hinges and windows of a type which will prevent removal of birds from the facility.

(c) Use of seals on all entrances and exits to the facility as deemed necessary by the Service to provide additional security of birds quarantined.

(d) Disclosure of personnel employed at the facility and restricted access to the facility by non-Service personnel to times when Service personnel are present. Restricting access to the facility to the times when Service personnel are present should provide better monitoring of the birds while in quarantine and should help prevent thefts from the quarantine facilities.

(e) The placing of waste material in leakproof bags with disposition to be made under the direction and supervision of Service personnel only.

(f) Handling of employees who violate standards of approval and handling procedures for birds including notice of alleged violations, informal conference, suspension and discharge. Since each bird imported into the approved quarantine facility has the potential to introduce exotic Newcastle disease into the United States, it is important that the persons employed to handle such birds at such facilities be of the highest character. If employees do not comply with the regulations to import birds, they represent a threat to introduce disease into the United States and therefore action must be taken to remove this threat.

(2) Disease security aspects of the agreement to prevent disease transmission include:

(a) Importer must decide disposition of birds refused entry within 48 hours following notification of infection or exposure of a lot, and birds refused entry must be removed within 4 working days following official notification. Such decision for disposition must be made in a short time frame because as long as diseased birds are in the United States they represent an unwarranted risk to the poultry of the United States. The time periods established should provide a reasonable time for the importer to arrange for the disposition and removal of such birds and still be effectively monitored by the Department.

(b) Separate restrooms for clean and quarantine area to avoid unnecessary traffic into and out of the quarantine area.

(c) The placing of a hood with a viewing window over the necropsy table to reduce possible exposure of employees performing autopsy on birds.

(d) The feeding of chlortetracycline to reduce the risk of infected service employees and other persons having contact with birds.

(e) Signed statements by employees to the effect that such personnel agree to refrain from having contact with birds and poultry for a period of 7 days from their most recent contact with birds in the approved quarantine facility. This should reduce possible transmission of disease between birds and poultry not in quarantine, and those birds in quarantine.

These amendments remove the suspension against the importation of certain birds into the United States except through USDA quarantine facilities. However, a review of all approved quarantine facilities will be made by the Department to insure compliance with the requirements of the agreement. Import permits for the importation of birds will only be issued to importers using facilities whose operators have entered into the agreement and are in compliance with the provisions therein.

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended in the following respects:

§ 92.2 [Amended]

1. In § 92.2, paragraph (b), the first semicolon is replaced by a period and the proviso is deleted.

2. In § 92.11(f) the second sentence is amended and a new subparagraph (F)(8) is added to read as follows:

§ 92.11 Quarantine requirements.

* * * * *

(f) * * * To qualify for designation as an approved quarantine facility and to retain such approval, the facility and its maintenance and operation must meet the minimum requirements of subparagraphs (1) through (8) of this paragraph (f). * * *

(8) The operator of the approved quarantine facility for the importation of birds into the United States agrees to enter into and abide by the provisions of the following agreement:

Cooperative Agreement
Between———— and United States Department of Agriculture Animal and Plant Health Inspection Service Veterinary Services

This Agreement, made and entered into by and between ————, hereinafter referred to as the Cooperator, and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, hereinafter referred to as the Service.

Whereas, the Service is authorized pursuant to section 2 of the Act of February 2, 1903, as amended, section 11 of the Act of May 29, 1884, as amended, and section 4 of the Act of July 2, 1962 (21 U.S.C. 111, 114a, and 134c, respectively) to regulate the introduction of animals into the United States in order to prevent the introduction of communicable livestock and poultry diseases into the United States; and

Whereas, the Cooperator represents parties interested in the importation of certain birds from countries presently under restrictions for such importation; and

Whereas, the Cooperator is equipped with quarantine facilities approved in accordance with Part 92, Title 9, Code of Federal Regulations, for use in importing birds; and

Whereas, it is the intention of the parties hereto that such cooperation shall be for their mutual benefit and the benefit of the people of the United States.

Now Therefore, for and in consideration of the promises and mutual covenants herein contained, the parties hereto do hereby mutually agree with each other as follows:

A. *The Cooperator Agrees:*

1. To operate the approved quarantine facility in accordance with all Federal Laws and regulations.

2. To provide a current list of designated personnel employed by the Cooperator who will be used to handle and care for birds during a quarantine period. The list will include the legal names, current residential addresses, and social security numbers of the designated personnel. The list will be furnished to the port veterinarian at the time an application for an import permit to import birds into the quarantine facility is submitted to the Service. The list will be updated for any changes in or additions to the designated personnel in advance of such personnel working in the quarantine facility.

3. To furnish to the Service a signed statement from each of the designated personnel employed by the Cooperator which provides that such personnel agree that for a period of seven days from their most recent contact with birds in the approved quarantine facility, such personnel will refrain from having contact with other birds and poultry. Such condition shall not be applicable from the date that the birds are released from quarantine.

4. To not permit any designated personnel which the Service determines to be unfit to be employed at a quarantine facility upon written notice from the Service. Such determination shall be based upon such employee's committing or aiding and abetting in the commission of any violation of Title 9, Code of Federal Regulations, Part 92. The Cooperator further agrees to suspend any designated employee from working at a quarantine facility when the Service has reason to believe that such employee has violated any provision of Title 9, Code of Federal Regulations, Part 92, and the Deputy Administrator has determined that the actions of such employee constitutes a severe threat to introduce or disseminate a communicable disease of poultry into the United States. Such action shall be made upon receipt of notice from the Service requiring such action by the Cooperator.

5. To allow the unannounced entry into the quarantine facility of Service personnel or other persons authorized by the Service for the purpose of inspecting birds in quarantine, the operations at the quarantine facility and to ascertain compliance with the Standards for approved quarantine facilities and handling procedures for importation of birds contained in Title 9, Code of Federal Regulations, § 92.11(f).

6. To provide permanent restrooms in both the clean and the quarantine areas of the approved quarantine facility.

7. To provide a T.V. monitoring system or a window or windows sufficient to provide a full view of the quarantine area excluding the clothes changing area.

8. To install a communication system between the clean and quarantine areas of the approved quarantine facility. Such communication system shall not interfere with the maintenance of the biological security of the quarantine area.

9. To secure all windows and any openings in the quarantine facility in a manner satisfactory to the Department which will insure the biological security of the quarantine facility and prevent the unauthorized removal of birds.

10. To install tamperproof hasps and to install hinges on doors from which the pins cannot be removed.

11. To install a hood with a viewing window over the necropsy table.

12. To bag waste material in leakproof bags. Such material shall be handled in a manner that spoilage is kept to a minimum and control of pests is maintained. Such material shall be disposed of by incineration or by public sewer or other method authorized by the Deputy Administrator to prevent the spread of disease. The disposition of such material shall only be under the direction and supervision of the Service.

13. To feed chlortetracycline to psittacine birds, upon their arrival in the facility, in accordance with the guidelines of the U.S. Public Health Service to reduce the risk of infecting Service employees, as well as other individuals having contact with the birds. If non-psittacine species are quarantined in the same facility with psittacine species, they will all be fed the chlortetracycline-medicated feed.

14. To install an electronic security system which is coordinated through or with the local police so that monitoring of the quarantine facility is maintained whenever Service personnel are not at the facility or, in lieu of such electronic monitoring system to arrange for continuous guarding of the facility with personnel from a bonded, security company. Provided that, if exotic Newcastle disease is diagnosed in any of the birds in the quarantine facility, continuous guarding of the facility with personnel from a bonded security company shall be maintained by the Cooperator. The electronic security system if installed shall be of the "silent type" and shall be triggered to ring at the monitoring site and not at the facility. The electronic system shall be approved by Underwriter's Laboratories.

Written instructions shall be provided to the monitoring agency which shall require that upon activation of the alarm, the police and a representative of the Service designated by the Service shall be notified by the monitoring agency. Such instructions, as well as any changes in such instructions, shall be filed in writing with the Deputy Administrator, Veterinary Services. The Cooperator shall notify the Service whenever a break in security occurs or is suspected of occurring.

15. To not have non-Service personnel in the quarantine area when birds are in the quarantine facility unless Service personnel are present.

16. To have seals of the Service placed on all entrances and exits of the facility when determined necessary by the Service and to take all necessary steps to insure that such seals are only broken in the presence of Service personnel.

17. To decide what the disposition of a lot of birds will be within 48 hours following official notification that such a lot is infected or exposed to velogenic viscerotropic Newcastle disease. Final disposition of the infected or exposed lot is to be accomplished within 4 working days following official notification. Disposition of the birds will be under the supervision of the Service.

18. To furnish a telephone number or numbers to the Service at which the Cooperator can be reached on a daily basis or furnish the same for an agent or representative that can act and make decisions on the Cooperator's behalf.

B. *The Service Agrees:*

1. To issue or validate permits on a timely basis depending upon the availability of personnel.

2. To inform the Cooperator when a diagnosis of VVND has been made in any facility.

3. To promptly inform the Embassy or Consulate of the foreign country to which lots

of birds, refused entry into the United States due to a diagnosis of VVND, are to be shipped.

4. To notify in writing the Cooperator of any designated employee which the Service believes should be suspended from work at the approved guarantive facility and the basis for such action. Similar notice shall be afforded to the designated employee. Subsequent to such suspension, the designated employee shall have the right to request an immediate review of such action by the Deputy Administrator, Veterinary Services, including presenting his views to the Deputy Administrator in an informal conference. If the Deputy Administrator makes a final determination that grounds existed to suspend such employee, he shall notify the Cooperator and the suspended employee of his decision and such employee shall be discharged by the Cooperator.

5. Prior to any final determination being made by the Service concerning the discharge of any designated personnel employed by the Cooperator, the Service will inform, in writing, the Cooperator and the designated personnel of the basis for such action. If such person contests such action he or she shall be permitted to present his or her views to the Deputy Administrator, Veterinary Services, provided such request is made within 30 days of the receipt of the aforementioned written notice. If a final determination is made by the Deputy Administrator that such personnel should be discharged, he shall notify such personnel and the Cooperator of such determination.

C. *It is Mutually Agreed and Understood:*

1. That a maximum capacity will be established for each approved quarantine lot. This will be based upon the capacity of the approved quarantine facility to handle the birds. The number of birds on the permits will not exceed this capacity.

2. If the seals refered to in A.16 are broken by other than Service personnel, it will be considered a breach in security and an immediate accounting of all birds in the facility shall be made by the Service. If any birds are determined to be missing from the facility, the quarantine period will be extended for at least an additional 30-day period.

3. That this agreement shall become effective upon date of final signature and shall continue indefinitely. This agreement may be amended by agreement of the parties in writing. It may be terminated by either party upon 30 days' notice to the other party.

Name and Address _____
Date _____
Signature _____
Cooperator

United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services.
Date _____
Signature _____
Area Veterinarian in Charge Area _____

(Section 2, 32 Stat. 792, as amended, Section 11, 58 Stat. 734, as amended, and sec. 4, 76 Stat. 130, (21 U.S.C. 111, 114a, and 134c).

This emergency final rule supplements and strengthens the standards for approved quarantine facilities and handling procedures for importation of birds through approved quarantine facilities in order to prevent the introduction and dissemination of diseases of poultry into the United States. The importation of birds through such facilities was suspended March 27, 1979, because of outbreaks of exotic Newcastle disease among birds in the United States. It is essential that the suspension of importation of birds except through USDA quarantine facilities be revoked and that the importation of birds be resumed in a manner that provides protection of poultry of the United States from the introduction and spread of diseases of poultry as soon as possible. Therefore, in order to remove the suspension and permit approved quarantine facility operators to commence their business operations which had been suspended and to permit importers to import birds through such facilities in as short as time possible, these regulations must be placed into effect on an emergency basis.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impractable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.** Further, this final rule has been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Dr. G. V. Peacock, Director, National Program Planning Staffs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for public comment and preparation of an impact analysis statement at this time.

These amendments are scheduled for immediate review under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Written comments concerning these amendments are presently being sought as part of this review and must be received on or before July 17, 1979. Comments must be sent to Deputy Administrator, USDA, APHIS, VS, Room 821, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. All comments made pursuant to this document will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 821, Hyattsville, Maryland, during regular hours of business (8:00 a.m. to 4:30 p.m., Monday to Friday, except holidays). The review will include preparation of an impact analysis statement which will be available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8695.

This final rule will be scheduled for review under provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 15th day of May 1979.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79-15634 Filed 5-17-79; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

Licensing and Regulatory Policy and Procedures for Environmental Protection; Uranium Fuel Cycle Impacts for Spent Fuel Reprocessing and Radioactive Waste Management; Extension of Interim Fuel Cycle Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of the interim fuel cycle rule.

SUMMARY: The Commission promulgated March 14, 1977 (42 FR 13803) an interim rule identifying the environmental reports and environmental impact values for the uranium fuel cycle which are to be included in environmental impact statements for individual light water nuclear power reactors. The interim rule was made effective for 18 months with the possibility of extension for good cause. The Commission has made three extensions for the period of effectiveness of the interim rule. The most recent extension enlarged this period to May 15, 1979. The Commission now finds good cause to enlarge this period until May 30, 1979.

DATE: The interim rule published at 42 FR 13803, March 14, 1977 (10 CFR 51.20(e)) is extended until May 30, 1979.

FOR FURTHER INFORMATION CONTACT: Leo Slaggie, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 202–634–3224.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Nuclear

Regulatory Commission has extended through May 30, 1979 the effectiveness of the interim fuel cycle 10 CFR 51.20(e) ("table S–3," as revised). The Commission finds this extension desirable to avoid disruption in licensing procedures.

Background

The status of the Commission's interim fuel cycle rule and the course of the final rulemaking up to the submission of the Hearing Board's report on the extensive evidentiary record were reviewed in the notice of September 18, 1978 (43 FR 41373), which extended the interim rule through March 14, 1979. Additional extensions have proved necessary, most recently because the Commission needed additional time to complete the formal adoption of the statement of consideration drafted to accompany the rule (44 FR 26060).

Although a majority of the Commissioners have agreed to include in the final rule a table of impacts which differs relatively slightly from table S–3 of the interim rule, the Commission has not yet agreed upon and formally adopted the Statement of Consideration. There being no substantive objection to the content of the proposed final rule, which is unlikely to differ in operative significance from the present interim rule, the Commission sees no reason why the interim rule should not be kept effective pending formal adoption of the final rule. To avoid licensing disruption the Commission therefore finds good cause again to extend the period of effectiveness of the interim rule, this time through May 30, 1979.

Dated at Washington, D.C. this 14th day of May 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79–15462 Filed 5–17–79; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

Interpretive Rulings; Loans Originating at Other Than Banking Offices

AGENCY: Comptroller of the Currency.

ACTION: Rescission of Interpretive Ruling.

SUMMARY: Pursuant to an order of the U.S. District Court for the District of Columbia, the Comptroller is rescinding Interpretive Ruling 7.7380, a ruling relating to loans which are originated at other than banking offices, pending further appellate proceedings.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. L. Robert Griffin, Attorney, Comptroller of the Currency, Washington, D.C 20219, (202) 447–1893.

SUPPLEMENTARY INFORMATION: On March 29, 1979, Judge June L. Green of the United States District Court for the District of Columbia entered summary judgment against the Comptroller in an action entitled *Independent Bankers Association of America* v. *Heimann*, Civil Action No. 78–0811 (D.D.C.). The action had been brought to challenge the legality of the Comptroller's Interpretive Ruling 7.7380 (12 CFR 7.7380). No national bank was a party to the *IBAA* lawsuit. Judge Green determined that the Interpretive Ruling was contrary to the National Bank Act and ordered that the Comptroller rescind Interpretive Ruling 7.7380; that he notify national banks immediately of the rescission; and that he be enjoined from further implementation of the Ruling.

Inasmuch as the Comptroller has been directed to rescind the Interpretive Ruling and has been enjoined from further implementation of it, the Comptroller is rescinding the Interpretive Ruling pending further appellate proceedings. National Banks engaged in or considering activities which previously would have come within the terms of the Interpretive Ruling must rely upon the advice of their own legal counsel.

The Comptroller has requested the Department of Justice to appeal Judge Green's decision. Pending the outcome of appellate proceedings, the Comptroller will not approve the incorporation of national bank subsidiaries for the purpose of engaging in activities which previously would have come within the terms of the Interpretive Ruling.

Because the rescission of Interpretive Ruling 7.7380 has been ordered by a court, and in accordance with the existing procedures of the Department of the Treasury regarding issuing regulations, the Comptroller has determined that public procedures and delayed effectiveness are not required or appropriate.

Statement of Rescission

§ 7.7380 [Rescinded]

For the reasons stated above, the Comptroller rescinds 12 CFR 7.7380.

Dated: May 15, 1979.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 79–15561 Filed 5–17–79; 8:45 am]

BILLING CODE 4810–33–M

CIVIL AERONAUTICS BOARD

[14 CFR Part 291]

Domestic Cargo Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Correction.

SUMMARY: A final rule amending Section 291.32 of 14 CFR Part 291, Domestic Cargo Transportation, was inadvertently published twice in the same issue of the **Federal Register** (44 FR 26852 and 26853, May 8, 1979). As a record keeping matter, we are making the version on 44 FR 26852 (FR Doc. 79–14251) the amendment and canceling the other (FR Doc. 79–14313).

FOR FURTHER INFORMATION CONTACT: Craig Lindsay, Federal Register Liaison Officer, Civil Aeronautics Board, Washington, D.C. 20428; 202–673–5421.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79–15640 Filed 5–17–79; 8:45 am]

BILLING CODE 6320–01–M

METRIC BOARD

15 CFR Part 502

Standards of Conduct for U.S. Metric Board Employees

AGENCY: United States Metric Board.

ACTION: Final Rule.

SUMMARY: The United States Metric Board adopts Regulations which Govern the Standards of Conduct required of its Employees.

EFFECTIVE DATE: April 5, 1979.

FOR FURTHER INFORMATION CONTACT: John Milo Bryant, Office of General Counsel, 1815 North Lynn Street—Suite 600, Arlington, Virginia 22209, (703) 235–1933.

SUPPLEMENTARY INFORMATION: The United States Metric Board, at its April 5, 1979 meeting, considered and voted on the Regulations Governing Standards of Conduct for United States Metric Board Employees, which would amend Title 15, Chapter 5, by adding Part 502.

Final Rule

Accordingly, under the authority of 5 U.S.C. 552(g) the United States Metric Board hereby adopts the Regulations

Governing Standards of Conduct for United States Metric Board Employees (15 CFR Part 502) which reads, as follows:

PART 502—EMPLOYEE STANDARDS OF CONDUCT

Authority: 5 U.S.C. 552(g).

Subpart A—General Provisions

§ 502.101 Purpose.

In order to assure that the business of the United States Metric Board (hereinafter referred to as the Board) is conducted effectively, objectively, and without improper influence or the appearance thereof, all Board employees must observe the highest standards of conduct. Board employees must avoid any real or apparent conflict between their private interests and their public duties. This regulation establishes reasonable and fair safeguards for the prevention of employee conflicts of interest in order to assure public confidence in the integrity of the Board's actions.

§ 502.102 Responsibilities.

(a) Each Board employee shall be responsible for observing the specific provisions of these regulations and the statutes referenced herein.

(b) Although each employee is accountable for his or her own conduct, supervisors are responsible to a large degree for ensuring that the standards set forth in this regulation are observed by employees under their supervision. Supervisors must become familiar with the Board's regulations and ensure that all employees under their supervision are made aware of the provisions of these regulations. Supervisors shall take suitable action, including disciplinary action when necessary, when violations occur.

§ 502.103 Interpretation and advisory service.

The General Counsel will serve as Counselor for the purpose of providing interpretation and advisory assistance to the Board and its staff on matters pertaining to Standards of Conduct.

Subpart B—Proscribed Actions

§ 502.201 General.

An employee shall avoid any action which might result in or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person, company, or organization;

(c) Impeding efficiency or economy;

(d) Compromising independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Otherwise affecting adversely the confidence of the public in the integrity of the Government.

Subpart C—Gifts, Entertainment, and Favors

§ 502.301 Accepting gifts and expenses from outside sources.

(a) Except as provided in paragraph (b) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, travel, or any other thing of monetary value from a person or organization who:

(1) Conducts operations or activities that are coordinated by the Board;

(2) Has, or is seeking to obtain, contractual or other business or financial relations with the Board;

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's duties.

(b) The following are exceptions to the restrictions set forth in paragraph (a) of this section:

(1) Acceptance of food and refreshments of nominal value on an infrequent occasion in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where other arrangements are not possible.

(2) Acceptance of modest entertainment, such as a meal or a refreshment, in connection with attendance at widely attended gatherings sponsored by industrial, technical, consumer, or professional organizations; provided that the sponsor is not a private individual or firm.

(3) Acceptance of gifts, favors, or entertainment, where there is an obvious family or personal relationship between the employee, or between his spouse, children, or parents, and the donor, and where the circumstances make it clear that it is that relationship, rather than the business of the persons concerned, which is the motivating factor for the gift, favor, or entertainment.

(4) Purchase of articles at advantageous rates where such rates are offered to Government employees as a class.

(5) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(6) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal value.

(7) Acceptance of incidental, short-distance transportation in kind from a private organization, provided it is furnished in connection with the performance of the employee's official duties when other transportation is not otherwise available or convenient.

(c) An employee shall not accept an honorarium, transportation expenses, or per diem from a private source when the employee is on official duty, under Board orders, and the travel or per diem expenses are payable by the Board. However, the Board may accept gifts, including reimbursement for employee travel expenses, pursuant to § 502.304 of this Subpart.

(d) A gift or gratuity the receipt of which is prohibited under this subpart shall be returned to the donor. If return is not possible, the gift or gratuity shall be turned over to a public or charitable institution and a report of such action, and the reasons why return was not feasible, shall be made to the General Counsel. When possible, the donor also shall be informed of this action.

§ 502.302 Gifts to official superiors.

An employee shall not solicit a contribution from another employee for a gift to an official superior, or make a donation as a gift to an official superior. An employee in a superior official position shall not accept a gift or contribution from employees receiving less salary than himself or herself. However, this paragraph does not prohibit a gift of nominal value or a donation in a nominal amount made on the special occasion, such as marriage, illness, or retirement.

§ 502.203 Acceptance of awards.

(a) This subpart does not preclude an employee from accepting an award or recognition of achievement from a charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, provided that such acceptance does not create or appear to create a conflict of interest for the employee.

(b) An employee shall not accept a gift, present, decoration or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in accordance with 5 U.S.C. 7342.

§ 502.304 Board authority to accept gifts and voluntary and uncompensated services.

Section 8(a) of the Metric Conversion Act of 1975 (15 U.S.C. 205g) gives the Board the authority to accept gifts and voluntary and uncompensated services, notwithstanding the provisions of Section 3679 of the Revised Statutes (31 U.S.C. 665(b)). The authority of the Board to accept gifts does not authorize employees to accept gifts in their individual names. However, the Executive Director of the Board may accept such gifts and services on behalf of the Board in accordance with Board directives.

Subpart D—Outside Employment and Other Activity

§ 502.401 General.

(a) An employee shall not engage in any outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her government employment whether or not in violation of any specific provision of a statute. As used in this Part, the term "outside employment or other outside activity" refers to any work, service, or other activity performed by an employee other than in the performance of his or her official duties. It includes such activities as writing and editing, teaching, lecturing, consulting services, self-employment, and other work or services with or without compensation. Incompatible outside activities include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in any circumstances in which acceptance may result in, or create the appearance of a conflict of interest;

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform his or her Board duties and responsibilities in an acceptable manner;

(3) Outside employment which might give the impression that the employee's outside activities are official acts of the Board or represent official points of view;

(4) Outside employment that takes the employee's time and attention during official work hours;

(5) Outside employment in an organization whose business activities are subject to Board coordination unless:

(i) The Board coordinated activities of the organization are an insignificant part of its total operations;

(ii) The outside employment is in non-coordinated activities of the organization.

§ 502.402 Outside employment.

An employee who engages in any kind of outside paid employment on a substantially regular basis shall submit to his immediate supervisor a memorandum describing the employment and stating approximately how many hours per week he is so employed. The immediate supervisor shall forward the memorandum through the General Counsel and the Executive Director for inclusion in the Employee's Official Personnel Folder.

§ 502.403 Compensation from private sources for official services.

An employee shall not receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government except as provided in § 502.303 of Subpart C.

§ 502.404 Outside professional or consultative work.

(a) Employees may engage in outside professional or consultative work only after meeting the following conditions:

(1) The work is not to be rendered to organizations, institutions, or State or local governments with which the official duties of the employee are directly related, and/or work creates a conflict or apparent conflict of interest.

(2) The work is not to be rendered for compensation to help organizations, institutions, or State or local governments in the preparation of offers to develop standards, grant applications, contract proposals, program reports, or other materials which are intended to become the subject of dealings with the Board.

(b) All requests to perform consultative services, either compensated or uncompensated, for organizations, institutions, or government units which have or will be awarded contracts or grants in the near future from the Board must be carefully appraised to avoid any conflict or apparent conflict of interest.

(c) Employees shall give advance notice of all outside professional or consultative work by memorandum to their immediate supervisor who shall forward it, through the General Counsel, to the Executive Director for approval.

(d) For the purpose of this section, "professional and consultative work" is work performed in such occupations as those listed in Chapter 300, Appendix A of the Federal Personnel Manual.

§ 502.405 Outside writing and editing.

Employees are encouraged to engage in outside writing and editing, whether or not done for compensation. Such outside writing and editing may be a subject related or unrelated to an employee's official duties. Certain conditions must be met in either case, as set forth below:

(a) The following conditions shall apply to all outside writing and editing whether related or unrelated to the employee's official duties:

(1) Government-financed time or supplies shall not be used by an employee in connection with the activity;

(2) Board support must not be expressed or implied in the material itself or in advertising or promotional material, including book jackets and covers:

(b) In addition to observing the conditions described in paragraph (a) of this section, an employee should omit use of his or her official title or affiliation with the Board with respect to any writing and editing activities unrelated to the employee's official duties or, alternatively, use his or her official title and affiliation with a disclaimer, as described in paragraph (c) of this section.

(c) A disclaimer shall be used in all publications in which an employee uses his or her official title or affiliation with the Board unless the Executive Director, upon request, determines that the nature of the publication is such that a disclaimer is not necessary. The disclaimer shall read as follows: "This (article, book etc.) was (written, edited) by (employee's name) in his/her private capacity. It is not intended nor should it be inferred that opinions expressed herein represent the official position of the United States Metric Board."

(d) An employee shall not use Board information which is exempt from disclosure by the terms of the Freedom of Information Act in outside writing activities unless, upon written request, the Executive Director determines that the exemption will be waived and the information may be publicly disclosed.

(e) Employees shall give advance notice of all outside writing and editing by memorandum to their immediate supervisor who shall forward it, through the General Counsel, to the Executive Director for approval.

§ 502.406 Teaching and lecturing activities.

(a) Employees are encouraged to engage in teaching and lecturing activities which are not part of their official duties under the following conditions:

(1) Government-financed time and materials shall not be used in connection with such activity;

(2) Government travel or per diem funds shall not be used for these purposes;

(3) Such teaching or lecturing is not dependent on specific information which would not otherwise be available to the public under the Freedom of Information Act, unless upon written request, the Executive Director determines that the information may be publicly disclosed;

(4) Teaching or lecturing may not be for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management that depends on information obtained as a result of Government employment, except when that information has been made available to the general public or will be made available on request.

(b) Employees shall give advance notice of all outside teaching and lecturing activities by memorandum to their immediate supervisor who shall forward it through the General Counsel, to the Executive Director for approval.

§ 502.407 Membership in organizations and professional societies.

(a) Employees may be members of professional, educational, public service, consumer, civic, or similar organizations and be elected or appointed to office in such an organization.

(b) Employees shall avoid any real or apparent conflict of interest in connection with such membership. For example, they must not:

(1) Directly or indirectly commit the Board on any matter;

(2) Permit their name(s) to be attached to documents, the distribution of which would be likely to embarrass the Board;

(3) Serve as representatives of such organizations in dealing with the Government;

(4) Bring any claim or proceeding before a Federal agency or against the Federal Government in a court of law on behalf of the organization;

(5) Offer their views as the official views of the Board unless the Board has officially stated its views on a particular matter through an official Board vote.

(c) In undertaking any office or function beyond ordinary membership in a professional association, a Board employee must obtain advance approval from the Executive Director in any situation in which the responsibilities as an officer would create a real or apparent conflict of interest with the responsibilities as a Board employee.

§ 502.408 Union activities.

Notwithstanding the provisions of § 502.407, employees may participate in union activities to the extent permitted by applicable statutes, Executive Orders, regulations, and labor-management agreements.

Subpart E—Financial Interests

§ 502.501 Disqualification because of private financial interests.

(a) Unless authorized to do so as provided hereafter in this Section, no employee shall participate personally and substantially as a Government employee in a particular matter in which to his or her knowledge he or she has a financial interest (18 U.S.C. 208).

(1) For the purposes of this section—

(i) An employee participates personally and substantially in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise;

(ii) A particular matter is a judicial or other proceeding, application, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter; and

(iii) A financial interest is the interest of the employee, or his or her spouse, minor child, partner, organization in which he or she is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment.

(b) An employee who has a financial interest (other than a financial interest exempted under paragraph (c) of this section) in a particular matter which is within the scope of his or her official duties shall make a full disclosure of that interest to the Executive Director in writing. An employee shall not participate in such a matter unless and until he or she receives a written determination by the Executive Director pursuant to Section 208 of Title 18, United States Code, that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of the employee. If the Executive Director does not make such a determination he or she shall direct such remedial action

as may be appropriate under the provisions of § 502.902.

(c) The financial interests described in this paragraph are hereby exempted, pursuant to the provisions of Section 208 of Title 18, United States Code, from the restrictions of paragraph (a) of this section and of section 208 of Title 18 as being too remote or inconsequential to affect the integrity of an employee's services in a matter:

(1) Stocks, bonds, policies, properties, or interests in a mutual fund, investment company, trust, bank, or insurance company, as to which the employee has no managerial control or directorship. In the case of a mutual fund or investment company, this exemption applies only where the assets of the fund or company are diversified; it does not apply where the fund or company advertises that it specializes in a particular industry or commodity.

(2) Interest in an investment club: *Provided,* That the fair value of the interest involved does not exceed $5,000, and that the interest does not exceed one-fourth of the total assets of the investment club.

§ 502.502 Additional prohibitions.

(a) In addition to the disqualification described in § 502.501, an employee is subject to the following major prohibitions.

(1) An employee may not, except in the discharge of official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

(2) An employee may not, after Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he or she participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) An employee may not, for 1 year after Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of the employee's official responsibility during the last year of Government service (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which he or she participated personally and substantially. See paragraph (a)(2) of this section.)

(4) An employee may not receive any salary, or supplementation of his or her Government salary, from a private source as compensation for his or her services to the Government (18 U.S.C. 209).

§ 502.503 Miscellaneous statutory provisions.

Each employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as an employee of the Board and of the Government. In particular, attention of employees is directed to the following statutory provisions:

(a) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(b) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(c) The prohibition against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(d) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(e) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783) and (2) the disclosure of confidential information (18 U.S.C. 1905).

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)). (See § 502.704)

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (5 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against multilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654). (See § 502.703)

(n)The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285) (See § 502.703)

(o) The prohibition against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart F—Statements of Employment and Financial Interest

§ 502.601 Employees required to submit employment and financial interests statement.

(a) Employees in the following named positions shall submit statements of employment and financial interest to the Executive Director.

(1) The Director, Office of Research, Coordination and Planning;

(2) The Director, Office of Public Information;

(3) The General Counsel;

(4) The Administrative Officer;

(5) Employees classified at GS–14 or above under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions which the Executive Director may determine have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in possible conflicts-of-interest situation and carry out the purpose of law, Executive Order, and Board regulations.

(b) The Executive Director shall submit a statement of employment and financial interests to the Chairman of the Board.

(c) Members of the Board are not required to file a statement of employment and financial interests.

§ 502.602 Employee's complaint on filing requirement.

An employee may complain and obtain review through the Board's grievance procedures if he or she believes that his or her position has been improperly included under § 502.601 as one requiring the submission of a statement of employment and financial interests.

§ 502.603 Time submission of employees' statements.

(a) An employee required to submit a statement of employment and financial interests under this Subpart shall submit that statement not later than:

(1) Thirty days after the effective date of this Subpart if employed on or before that effective date; or

(2) Thirty days after entrance on duty.

§ 502.604 Supplementary statement.

Changes in, or additions to, the information contained in an employee's

statement of employment and financial interests shall be reported in a supplementary statement as of May 15 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of 18 U.S.C. 208 or Subpart E of this Part.

§ 502.605 Interests of employees' relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood or in-law relations who are residents of the employee's household.

§ 502.606 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his or her behalf.

§ 502.607 Confidentiality of employees' statements.

The Board shall hold each statement of employment and financial interests, and each supplementary statement, in confidence in accordance with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). Employees authorized to review and retain the statements are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of Subpart E.

§ 502.608 Effect of employee statement on other requirements.

The requirements of this Subpart are in addition to the requirements concerning administrative approval for certain activities as specified in Subpart E of this Part. Also, the requirements of this Subpart are in addition to and not in substitution for or in derogation of, any other requirement imposed by law, order or regulation. The submission of a statement or employment and financial interests or supplementary statement by an employee does not permit the employee to participate in a matter which is otherwise prohibited by law or regulation.

Subpart G—Conduct on the Job

§ 502.701 General.

An employee's conduct on the job is, in all respects, of concern to the Federal Government. Courtesy, consideration, and promptness in dealing with others must be shown in carrying out official responsibilities. In addition, specific rules and regulations have been set which must be observed as discussed below.

§ 502.702 Support of Board programs.

(a) When a Board program is based on law or Executive Order, every employee has an obligation to make it function as efficiently and economically as possible and to support it as long as it is a part of recognized public policy.

(b) An employee shall not, either directly or indirectly, use appropriated funds to influence a Member of Congress to favor or oppose legislation. However, an employee is not prohibited from:

(1) Testifying as a representative of the Board on pending legislative proposals before Congressional Committees on request; or

(2) Assisting Congressional Committees in drafting bills or reports on request, when it is clear that the employee is serving solely as a technical expert under the direction of committee leadership.

§ 502.703 Use of government funds.

Several laws carry penalties for misuse of Government funds. These apply to:

(a) Improper use of official transportation forms (18 U.S.C 508);

(b) Improper use of payroll and other vouchers and documents on which Government payments are based (18 U.S.C. 285);

(c) Taking or failing to account for funds with which an employee is entrusted in his or her official position (18 US.C. 643); and

(d) Taking Government funds, property or records for personal use (18 U.S.C. 641).

§ 502.704 Use of government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property, entrusted or issued to him or her. For example:

(a) Only official documents and materials may be processed on Government reproduction facilities.

(b) Government automobiles may be used only on official business and may not be used for personal use or for travel to or from an employee's place of residence.

(c) Government telephones may not be used to make personal long distance calls.

§ 502.705 Conduct in Federal buildings.

(a) An employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

(b) General Services Administration regulations "Conduct on Federal Property" are applicable to Board employees inasmuch as Board buildings and space are under the control of GSA. These regulations prohibit, among other things, gambling and consumption of intoxicating beverages on the premises.

Subpart H—Financial Responsibility

§ 502.801 General.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State or local taxes. For purposes of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as Federal, State or local taxes, and "in a timely manner" means in a manner which the Board determines does not, under the circumstances, reflect adversely on the Government as his or her employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Board to determine the validity or amount of the disputed debt.

Subpart I—Disciplinary and Remedial Action

§ 502.901 Disciplinary action.

(a) Violation of these regulations may be cause for disciplinary action which may be in addition to any penalty prescribed by law. Disciplinary action shall be administered in accordance with the Board's Directive on Adverse Actions.

(b) The type of disciplinary actions to be taken shall be determined in relation to the specific violation. No standard

table of penalties has been established for application in the Board. Those responsible for recommending and for taking disciplinary action must apply judgment in each case, taking into account the general objectives of meeting any requirements of law, deterring similar offenses by the employee and other employees and maintaining high standards of employee conduct and public confidence. Some types of disciplinary actions to be considered are:

(1) Oral admonishment:
(2) Written reprimand;
(3) Reassignment;
(4) Demotion;
(5) Suspension;
(6) Separation.

§ 502.902 Remedial action for conflicts of interest.

Where a statement of employment and financial interest of an employee or Special Government employee shows a real or potential conflict of interest with the employee's official responsibilities, consideration should be given to reconciling the conflict through remedial action. The following are examples of such actions which may be appropriate:

(a) Divestment by the employee or special Government employee of his or her conflicting interest;

(b) Disqualification of the employee for a particular assignment;

(c) Changes in the employee's assigned duties.

Subpart J—Provisions Relating to Special Government Employees

§ 502.1001 Applicability.

The requirements of this Subpart apply to employees designated by law (18 U.S.C. 202) as "special Government employees". The term includes employees who are retained, designated, appointed, or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

§ 502.1002 Use of Government employment.

A special Government employee shall not use his or her Board employment for a purpose that is, or gives the appearance for being, motivated by the desire for private gain for himself or herself or for another person, particularly one with whom he or she has family, business, or financial ties.

§ 502.1003 Use of inside information.

A special Government employee shall not use inside information obtained as a result of his or her Government employment for private gain for himself or herself or another person either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

§ 502.1004 Other activities.

A special Government employee may teach, lecture, write, or engage in other non-Board activities in a manner not inconsistent with Subpart D of this Part.

§ 502.1005 Gifts, entertainment, and favors.

A special Government employee, while so employed or in connection with his or her employment shall not receive or solicit from a person having business with the Board anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 506.1006 Additional prohibitions.

(a) A special Government employee is subject to the following additional prohibitions.

(1) He or she may not, except in the discharge of his official duties—

(i) Represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he or she has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205), or

(ii) Represent anyone else in a matter pending before the Board unless he or she served there no more than 60 days during the previous 365 (18 U.S.C. 203 and 205). A special Government employee is bound by this restraint despite the fact that the matter is not one in which he or she has ever participated personally and substantially.

(2) He or she may not, after Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) He or she may not, for 1 year after Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his or her official responsibility during the last year of Government service (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which the employee participated personally and substantially. See paragraph (a)(2) of this section.)

§ 502.1007 Statement of financial interests required.

(a) Each special Government employee shall submit a statement of employment and financial interests which reports:

(1) All other employment; and

(2) The financial interests which relate whether directly or indirectly to his or her duties and responsibilities.

(b) A statement of employment and financial interest required to be submitted under this section shall be submitted not later than the time of employment of a special Government employee by the Board. Each special Government employee shall submit a supplemental statement whenever there is a significant change in financial interests as reported in the prior statement.

(c) The statement of employment and financial interests shall be submitted directly to the Executive Director.

(d) The Executive Director may waive the requirement for the submission of a statement of employment and financial interests in the case of a special Government employee if the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Board.

Subpart K—Provision Relating to Members

§ 502.1101 Applicability.

(a) The Metric Conversion Act of 1975 provides that members of the Board are not employees of the United States (15 U.S.C. 205h). However, public officials must maintain high standards of conduct to assure the proper performance of Government business and to maintain confidence by citizens in their Government. Therefore, members shall avoid any action, whether or not specifically prohibited, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(b) On days of actual employment, members will adhere to provisions of Subpart J relating to special Government employees except members are not required to submit statements of employment and financial interests.

(c) Members shall strictly observe the requirements of § 502.501 and shall not participate in any matter in which he or she has a private financial interest.

Dated at Arlington, Virginia this 14th day of May 1979.

For United States Metric Board.

Malcolm E. O'Hagan,

Executive Director.

[FR Doc. 79-15566 Filed 5-17-79; 8:45 am]

BILLING CODE 6820-94-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 153

[T.D. 79-149]

Perchlorethylene From France; Antidumping

AGENCY: U.S. Treasury Department.

ACTION: Finding of Dumping.

SUMMARY: This notice is to inform the public that separate investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in determinations that perchlorethylene from France is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping dumping duties.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C 20299 (202-566-5492).

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the Act"), gives the Secretary of the Treasury responsibility for determining whether imported merchandise is being sold at less than fair value. Pursuant to this authority, the Secretary has determined that perchlorethylene from France is being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)). (Published in the **Federal Register** of February 2, 1979 (44 FR 6822)).

Section 201(a) of the Act (19 U.S.C. 160(a)) gives the United States International Trade Commission responsibility for determining whether, by reason of such sales at less than a fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on April 30, 1979, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of perchlorethylene from France that is being sold at less than fair value within the meaning of the Act. Notice of this determination was published in the **Federal Register** of May 4, 1979 (44 FR 26217).

On behalf of the Secretary of the Treasury, I hereby make public these determinations which constitute a finding of dumping with respect to perchlorethylene from France.

For purposes of this notice, the term "perchlorethylene" refers to perchlorethylene, including technical grade perchlorethylene, provided for in item number 429.3400, Tariff Schedules of the United States Annotated.

§ 153.46 [Amended]

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	Treasury Decision
Perchlorethylene	France	79-149

(Sec. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173))

Robert H. Mundheim,

General Counsel of the Treasury.

[FR Doc. 79-15631 Filed 5-17-79; 8:45 am]

BILLING CODE 4810-22-M

19 CFR Part 153

[T.D. 79-150]

Perchlorethylene From Belgium; Antidumping

AGENCY: U.S. Treasury Department.

ACTION: Finding of Dumping.

SUMMARY: This notice is to inform the public that separate investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in determinations that perchlorethylene from Belgium is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Leon McNeill, Operations Officer, Duty Assessment Divison, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the Act"), gives the Secretary of the Treasury responsibility for determining whether imported merchandise is being sold at less than fair value. Pursuant to this authority, the Secretary has determined that perchlorethylene from Belgium is being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)). (Published in the **Federal Register** of February 2, 1979 (44 FR 6821)).

Section 201(a) of the Act (19 U.S.C. 160(a)) gives the United States International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on April 30, 1979, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of perchlorethylene from Belgium that is being sold at less than fair value within the meaning of the Act. Notice of this determination was published in the **Federal Register** of May 4, 1979 (44 FR 26217).

On behalf of the Secretary of the Treasury, I hereby make public these determinations which constitute a finding of dumping with respect to perchlorethylene from Belgium.

For purposes of this notice, the term "perchlorethylene" refers to perchlorethylene, including technical grade perchlorethylene, provided for in item number 429.3400, Tariff Schedules of the United States Annotated.

§ 153.46 [Amended]

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	Treasury Decision
Perchlorethylene	Belgium	79-150

(Sec. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173))

Robert H. Mundheim,

General Counsel of the Treasury.

May 14, 1979.

[FR Doc. 79-15635 Filed 5-17-79; 8:45 am]

BILLING CODE 4810-22-M

19 CFR Part 153

[T.D. 79-151]

Perchlorethylene From Italy; Antidumping

AGENCY: U.S. Treasury Department.

ACTION: Finding of Dumping.

SUMMARY: This notice is to inform the public that separate investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in determinations that perchlorethylene from Italy is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: David Chapman, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the Act"), gives the Secretary of the Treasury responsibility for determining whether imported merchandise is being sold at less than fair value. Pursuant to this authority, the Secretary has determined that perchlorethylene from Italy is being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C 160(a)). (Published in the **Federal Register** of February 2, 1979 (44 FR 6823)).

Section 201(a) of the Act (19 U.S.C. 160(a)) gives the United States International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on April 30, 1979, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of perchlorethylene from Italy that is being sold at less than fair value within the meaning of the Act. Notice of this determination was published in the **Federal Register** of May 4, 1979 (44 FR 26217).

On behalf of the Secretary of the Treasury, I hereby make public these determinations which constitute a finding of dumping with respect to perchlorethylene from Italy.

For purposes of this notice, the term "perchlorethylene" refers to perchlorethylene, including technical grade perchlorethylene, provided for in item number 429.3400, Tariff Schedules of the United States Annotated.

§ 153.46 [Amended]

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	Treasury Decision
Perchlorethylene	Italy	79-151

(Sec. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173)).

Robert H. Mundheim,

General Counsel of the Treasury.

May 14, 1979.

[FR Doc. 79-15636 Filed 5-17-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance (1950-); Reduction of Spouse's Benefits Due to Receipt of Government Pension

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These regulations state how the Social Security Administration will implement the law to reduce the social security dependents benefits payable to the spouse of a former worker who is retired, disabled, or deceased if the spouse is eligible for a government pension. This reduction is required by the Social Security Act as amended by the Social Security Amendments of 1977. The reduction provision will generally assure that persons entitled to social security benefits in their own right and those entitled to a government pension receive equal treatment when applying for social security benefits. However, the statute also provides for protection of benefits to certain soon-to-retire individuals who could qualify under prior law.

EFFECTIVE DATE: These rules shall be effective upon publication in the **Federal Register**. However, in accordance with the law which these rules reflect, the reduction provision is effective beginning December 1977.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-6785.

SUPPLEMENTARY INFORMATION: On August 4, 1978, these rules were published in the **Federal Register** (43 FR 34455) as interim regulations.

Background

In March 1977, the Supreme Court in the decision in *Califano* v. *Goldfarb* ruled that the requirement that a man must prove dependency on his retired, disabled, or deceased wife to be eligible for spouse's benefits was unconstitutional since it treated spouses of women under a stricter standard than spouses of men. A wife did not have to prove dependency on her husband to be eligible for social security benefits. As a result of the Court's decision, many men became eligible for social security benefits even though they were not dependent on their spouses and even though they receive pensions from Federal, State, and local governments.

The eligibility of these individuals created sizeable, additional costs for the social security trust funds. In addition, it seemed inequitable for men and women who retired from a government agency to receive a government pension plus a full social security spouse's benefit, because a worker who retires from employment covered by social security can receive only a worker's social security benefit plus the difference, if any, between that benefit and a spouse's

social security benefit. Because of concern that the prior statute gave an unfair advantage to some government workers who are entitled to spouse's benefits, Congress enacted this reduction (or offset) provision.

The Reduction Provision

Under the Social Security Act, as amended by Pub. L. 95–216, we must reduce the social security benefits to which a person is entitled as a spouse or former spouse, if that person is also eligible for a government pension based on work not covered by social security. We will reduce the social security benefits by the amount of the government pension. The reduction provision applies to a spouse's or a divorced spouse's benefits (i.e., benefits as a wife, mother, widow, husband, father, or widower) of a person who retires with a government pension, but only where that person files for benefits after November 1977, and only to benefits for months after November 1977. Also, the reduction does not apply to certain persons.

People Who Are Not Affected by the Reduction Provision

The reduction does not apply to a retired government worker who is also entitled to social security benefits based on his or her own work. This person's social security benefits and the benefits of family members are not affected in any way by the person's eligibility for a government pension.

The reduction also does not apply to a person whose government employment was covered by social security. This person will receive a worker's social security benefit plus the difference, if any, between this benefit and a spouse's benefit for which the person is entitled.

Congress realized that this reduction provision could cause a hardship to certain persons already drawing government pensions or expecting to receive government pensions in the near future. Many of these people made retirement plans based on receiving full spouse's benefits under social security. Thus, Congress provided an exception for people now receiving a government pension and those who will be eligible within the 5 year period beginning December 1977. For the exception to apply, the government worker must be eligible for a government pension before December 1982, but may be entitled to a social security spouse's benefit at any time either before, during, or after 1982. The worker who meets this exception will be paid the spouse's benefit in addition to a government pension. Furthermore, the exception applies only if the person meets the social security eligibility requirements for a spouse that were in effect in January 1977. This means that the person must meet the January 1977 requirements regardless of when the person will be entitled to a spouse's benefit. Under the law in effect in January 1977, a woman was deemed dependent on her husband, but a man had to prove he was dependent on his wife for a least one-half his support to be eligible as a spouse. Further under the January 1977 requirements, a divorced spouse must have been married to the former worker for at least 20 years, instead of 10 years, as at present. Unless these 1977 requirements are met, the offset would apply.

The Final Rules

Section 404.402 is being amended to explain when this reduction of a spouse's benefit is applied in relation to the other reduction provisions of the Social Security Act.

Section 404.408a is being added to the regulations to provide for this reduction. This section also explains when this reduction does not apply. We have also made a number of changes for the sake of clarity and added a sentence to paragraph (a) of this section. This sentence explains that once the reduction applies, a spouse's monthly social security benefit will always be reduced because of a government pension, even if the spouse later returns to work for a government agency, and that work is covered by social security.

Comments on Interim Regulations

In the interim regulations, we allowed 45 days for interested persons to submit comments. All of the approximately 30 comments we received are from employees of Federal, State, or local governments, or from organizations representing government employees. In general, those commenting believe that the regulations are unfair to government employees. In some instances, the commenters indicated a need to make the regulations clearer.

We explain the reduction provision more clearly in these final regulations in areas where there were questions. However, we cannot change or eliminate the reduction required by section 334 of Public Law 95–216 (the Social Security Amendments of 1977).

(Sections 202, 205, 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 49 Stat. 647; 42 U.S.C. 402, 405, and 1302).

(Catalog of Federal Domestic Assistance Program Nos. 13.803 Social Security Retirement Insurance; 13.805 Social Security-Survivors Insurance.)

Dated: April 11, 1979.

Stanford G. Ross,

Commissioner of Social Security.

Approved: May 10, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

Part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.402 is amended by adding paragraph (b)(3), and by adding new paragraphs (d)(2) and (d)(3) and redesignating the present paragraphs (d)(2) through (d)(6) as (d)(4) through (d)(8).

404.402 Interrelationship of deductions, reductions. adjustments, and nonpayment of benefits.

* * * * *

(b) * * *

(3) Reduction of the benefit of a spouse who is receiving a Government pension (see § 404.408a) is made after the withholding of payments as listed in paragraph (d)(1) of this section and after reduction because of receipt of workmen's compensation (paragraph (b)(2) of this section).

* * * * *

(d) * * *

(2) Current reductions under § 404.408;

(3) Current reductions under § 404.408a;

* * * * *

2. Section 404.408a is added as follows:

§ 404.408a Reduction where spouse is receiving a Government pension.

(a) *When reduction is required.* Your monthly social security benefits as a wife, husband, widow, widower, mother, or father will be reduced each month (to zero, if necessary) by the amount of any monthly pension you are receiving from a Federal, State, or local government agency for which you were employed in work not covered by social security on the last day of such employment. Your monthly social security benefit as a spouse will always be reduced because of your Government pension even if you afterwards return to work for a government agency and that work is covered by social security. If the pension is not paid monthly or is paid in a lump-sum, the Social Security Administration will allocate it proportionately as if it were paid monthly.

(b) *Exceptions.* The reduction does not apply to:

(1) If you are receiving or will be eligible to receive a Government pension for one or more months in the

period December 1977 through November 1982 and meet the requirements for social security benefits that were applied in January 1977, even though you don't claim benefits, and you don't actually meet the requirements for receiving benefits until a later month. You are considered eligible for a Government pension for any month in which you meet all the requirements for payment except that you are working or have not applied;

(2) If you are receiving a Government pension based on employment for an interstate instrumentality.

(c) *Amount and priority of reduction.* Your benefit as a spouse will be reduced, if necessary, for age and for simultaneous entitlement to other social security benefits before it is reduced because you are receiving a Government pension. In addition this reduction follows the order of priority, as stated in § 404.402(b).

(d) *When effective.* This reduction was put into the Social Security Act by the Social Security Amendments of 1977. It only applies to applications for benefits filed in or after December 1977 and only to benefits for December 1977 and later.

[FR Doc. 79-15621 Filed 5-17-79; 8:45 am]

BILLING CODE 4110-07-M

Food and Drug Administration

21 CFR Part 14

Public Hearing Before a Public Advisory Committee Ophthalmic Panel

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) announces the termination of the Panel on Review of Ophthalmic Drugs and amends the regulations to delete it from the list of standing advisory committees. The Panel was terminated because it had completed its work.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: John T. McElroy, Bureau of Drugs (HFD-513), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: The Panel's functions were to review the data and information submitted as part of the over-the-counter (OTC) drug review under § 330.10 (21 CFR 330.10) on OTC products containing ophthalmic active ingredients for human use. The Panel has submitted its conclusions and recommendations on the safety, effectiveness, and labeling of these products to the Commissioner of Food and Drugs. The conclusions and recommendations will be published in a future issue of the **Federal Register.**

Accordingly, the purpose of the Panel has been served, and the Panel is no longer needed. On April 16, 1979, the charter for the Panel expired.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 14 is amended in § 14.100 *List of standing advisory committees* by deleting paragraph (c)(20)(i)(*f*) *Ophthalmic Panel* and marking it reserved.

Effective date. Because this is a technical conforming amendment to Part 14, the Commissioner finds that there is good cause for the rule to be effective immediately upon publication in the **Federal Register**, May 18, 1979.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: May 11, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-15482 Filed 5-17-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 402

[T.D. 7622]

Definition of Domestic Building and Loan Association and Deletion of Temporary Regulations on Procedure and Administration

Correction

In FR Doc. 79-15274 appearing at page 28660 in the issue for Wednesday, May 16, 1979; on page 28663, first column, the line reading *"(f) Special rules.* [Reserved]" should be moved above "Part 402 . . .".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 89

Senior Community Service Employment Program; Revision of Regulations

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: Final Rule.

SUMMARY: The Department is revising income criteria for eligibility in the Senior Community Service Employment Program in accordance with Section 507 of Title V of the Older Americans Act of 1965 (42 U.S.C. 3056e), as amended by the Comprehensive Older Americans Act Amendments of 1978 (Pub. L. 95-478).

DATES: These changes are effective May 18, 1979.

ADDRESSES: Comments may be addressed to: Chief, Older Worker Work Group, Employment and Training Administration, U.S. Department of Labor, Room 6122, 601 D Street, NW, Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Paul A. Mayrand, telephone (202) 376-6232.

SUPPLEMENTAL INFORMATION: Regulations covering the Senior Community Service Employment Program are being revised generally as a result of amendments to the authorizing legislation. Those proposed revised regulations are being published separately in the **Federal Register** for review and comment and will not be effective until published as final rules. The revision of the income criteria falls within the exception to rulemaking provisions of the Administrative Procedures Act which involve "a matter relating to * * * public property, loans, grants, benefits, or contracts." (5 U.S.C. 553(a)(2)). Further, the Department finds that it is in the public interest to publish this change in final form so that the additional individuals who will become eligible may have an opportunity to be served. This finding constitutes a waiver of the Department's regulation at 29 CFR Part 2.7. Nevertheless, in keeping with the spirit of 29 CFR 2.7, comments may be submitted during the 30-day period following publication. Comments should be sent to the address given above.

This document was prepared under the direction of Paul A. Mayrand, Chief, Older Worker Work Group, Office of National Programs.

(Sec. 502(b)(2) of the Older Americans Act of 1965 (42 U.S.C. 3056), as amended by the Comprehensive Older Americans Amendments Act of 1978 (Pub. L. 95-478)).

Accordingly, 29 CFR, Subtitle A, is amended as follows:

PART 89—SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

§ 89.19 [Amended]

1. At the end of paragraph (b)(3)(i), the words "economically disadvantaged as defined in § 89.3" are changed to "members of a family which receives regular cash welfare payments or whose annual income in relation to family size does not exceed 125 per centum of the poverty level determined in accordance with criteria established and updated by the U.S. Office of Management and Budget."

2. In § 89.19, paragraph (b)(3)(ii)(B) is amended by adding a comma and the words "$125 per centum of" immediately following the figure "$500."

Signed at Washington, D.C., this 11th day of May 1979.

Ray Marshall,

Secretary of Labor.

[FR Doc. 79-15618 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-30-M

Wage and Hour Division

29 CFR Part 575

Waiver of Child Labor Provisions for Agricultural Employment of 10- and 11-Year-Old Minors in Hand Harvesting of Short Season Crops; Provisions Governing Application for and Granting of a Waiver; Restrictions on Use of Pesticides and other Chemicals

Note.—This document originally appeared in the Federal Register for Wednesday, May 16, 1979. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Department of Labor. (See OFR notice 41 FR 32914, August 6, 1976.)

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rules.

SUMMARY: Current regulations provide for the issuance of waivers permitting the employment of 10- and 11-year-old minors in the hand harvesting of short season crops upon the representation by the employer applying for a waiver, that, among other specified conditions, the minimum entry times for the use of certain pesticides and other chemicals listed therein for use on certain crops have been followed. The Secretary of Labor has undertaken a continuing study of the effect of the level and type of pesticides and other chemicals used on the health and well-being of 10- and 11-year-old minors to whom a waiver would apply. This document reflects current findings in this study upon which it has been determined that the pesticide or chemical, Anilazine (Dyrene), used on strawberries or potatoes, may be added to the lists in § 575.5(d) (2) and (3) with minimum entry times of 10 days and 2 days, respectively, for 10- and 11-year-old hand harvesters. This document also adds the pesticide or chemical, Ziram, to the list in § 575.5(d)(5)(i) of those being reviewed, use of which would require supporting data to establish minimum entry times for 10- and 11-year-old hand harvesters.

EFFECTIVE DATE: May 16, 1979.

FOR FURTHER IMFORMATION CONTACT: Lucille C. Pinkett, Chief, Branch of Child Labor, Room S3022, New Department of Labor Building, 200 Constitution Avenue N.W., Washington, D.C. 20210, 202-523-8412.

SUPPLEMENTARY INFORMATION: Section 13(c)(4) of the Fair Labor Standards Act, as amended, provides for the issuance of waivers permitting the employment of 10- and 11-year-old minors in the hand harvesting of short season crops upon the submission by the employer applying for a waiver that, among other required objective data, the "level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of" minors employed under the waiver.

The Secretary has undertaken a continuing study of the use and effect of pesticides and other chemicals used on short season crops in order to establish minimum entry times for specified pesticides and chemicals for use on specified crops. On the basis of the scientific evidence disclosed, the Secretary of Labor has adopted minimum entry times for 10- and 11-year-old hand harvesters of strawberries and potatoes. This document reflects current findings in this study upon which it has been determined that the pesticide or chemical, Anilazine (Dyrene), used on strawberries or potatoes, may be added to the lists in § 575.5(d) (2) and (3) with minimum entry times of 10 days and 2 days, respectively, for 10- and 11-year-old hand harvesters.

This scientific evidence also disclosed that the pesticide or chemical, Ziram, can be oxidized in the environment to Thiram, a compound that has been show to have mutagenic and teratogenic effects as well as adverse effects on male and female reproductive systems. It should be noted that the pesticide or chemical, Thiram, is already included on the list of chemicals and pesticides in § 575.5(d)(5)(i) of those being reviewed, use of which requires supporting data to establish minimum entry times. In addition, current data suggest that Ziram itself may be a teratogen and weak mutagen and cause adverse effects on male and female reproductive systems. Thus, it is not possible at this time to establish a minimum entry time for this pesticide or chemical which would protect 10- and 11-year-old hand harvesters from adverse effects. Therefore, this document also adds the pesticide or chemical, Ziram, to the list in § 575.5(d)(5)(i) of those being reviewed, use of which would require supporting data to establish minimum entry times for 10- and 11-year-old hand harvesters.

As any change in § 575.5(d)(2) will affect the proposed use of pesticides and chemicals by an employer or group of employers applying for a waiver for the permissible employment of 10- and 11-year-old hand harvesters of strawberries, which harvest begins around June 1, it is necessary that interested persons be informed of this release of restriction before submitting an application with respect to the 1979 strawberry harvest. Therefore, I find that notice and public procedure on these regulations are impractical, and contrary to the public interest. For these same reasons these regulations shall be effective upon publication in the Federal Register.

These regulations have been developed under the direction and control of Donald Elisburg, Assistant Secretary for Employment Standards, New Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

§ 575.5 [Amended]

Accordingly, § 575.5(d) is amended as follows:

Section 575.5(d)(2) is amended by adding at the end of the list in the column designated "Pesticide" the word "Anilazine (Dyrene)" and in the column designated "Minimum entry time for 10- and 11-year-olds (days)" the figure "10".

Section 575.5(d)(3) is amended by adding at the end of the list in the column designated "Pesticide" the word "Anilazine (Dyrene)" and in the column designated "Minimum entry time for 10- and 11-year-olds (days)" the figure "2".

Section 575.5(d)(5)(i) is amended by adding at the end of the list therein the word "Ziram."

Signed at Washington, D.C. this 14th day of May 1979.

Donald Elisbury,

Assistant Secretary, Employment Standards.

[FR Doc. 79-15459 Filed 5-15-79; 9:47 am]

BILLING CODE 4510-27-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 208

Flood Control Regulations; Marshall Ford Dam and Reservoir, Colorado River, Tex.

Correction

In FR Doc. 79-12849 appearing on page 24551 in the issue of April 26, 1979 make the following correction.

On page 24552, in the third column, the first line of § 208.19(a)(4)(ii)(C) should have read: "(C) Elevation 685-691 Seasonal".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E1767/R208; FRL 1229-15]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Linuron

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide linuron on asparagus at 3 parts per million (ppm). The regulation was requested by the Interregional Research Project No. 4. This rule establishes a new maximum permissible level for residues of linuron on asparagus.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC (202/755-4851).

SUPPLEMENTARY INFORMATION: On March 28, 1979, the EPA published a notice of proposed rulemaking in the **Federal Register** (44 FR 18535) in response to a pesticide petition (PP 6E1767) submitted to the Agency by the Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of California, Illinois, Indiana, and Michigan. This petition proposed that 40 CFR 180.184 be amended by increasing the established tolerance for residues of the hericide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) in or on the raw agricultural commodity asparagus from 0.25 ppm to 3 ppm. No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.184 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before June 18, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". 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.

Effective on May 18, 1979, Part 180, Subpart C, § 180.184 is amended by increasing the established tolerance for residues of linuron on asparagus from 0.25 ppm to 3 ppm as set forth below.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)])

Dated: May 11, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Part 180, Subpart C, § 180.184 is revised by editorially reformatting the section into an alphabetized columnar listing to include asparagus at 3 ppm, as follows:

§ 180.184 Linuron; tolerances for residues.

Tolerances are established for residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) in or on the following raw agricultural commodities:

Commodity:	Parts per million
Asparagus	3
Barley, forage	0.5
Barley, grain	0.25
Barley, hay	0.5
Barley, straw	0.5
Carrots	1
Cattle, fat	1
Cattle, mbyp	1
Cattle, meat	1
Celery	0.5
Corn, field, fodder	1
Corn, field, forage	1
Corn, fresh (inc. sweet K+CWHR)	0.25
Corn, grain (inc. pop)	0.25
Corn, pop, fodder	1
Corn, pop, forage	1
Corn, sweet, fodder	1
Corn, sweet, forage	1
Cottonseed	0.25
Goats, fat	1
Goats, mbyp	1
Goats, meat	1
Hogs, fat	1
Hogs, mbyp	1
Hogs, meat	1
Horses, fat	1
Horses, mbyp	1
Horses, meat	1
Oats, forage	0.5
Oats, grain	0.25
Oats, hay	0.5
Oats, straw	0.5
Parsnips (with or without tops)	0.5
Parsnips, tops	0.5
Potatoes	1
Rye, forage	0.5
Rye, grain	0.25
Rye, hay	0.5
Rye, straw	0.5
Sheep, fat	1
Sheep, mbyp	1
Sheep, meat	1
Sorghum, fodder	1
Sorghum, forage	1
Sorghum, grain (milo)	0.25
Soybeans, (dry or succulent)	1
Soybeans, forage	1
Soybeans, hay	1
Wheat, forage	0.5
Wheat, grain	0.25
Wheat, hay	0.5
Wheat, straw	0.5

[FR Doc. 79-15659 Filed 5-17-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 180

[PP 8E2125/R210 FRL 1229-6]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; O,O-Dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-ylmethyl] phosphorodithioate

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide *O,O*-dimethyl *S*-[(4-oxo-1,2,3-benzotriazin-3(4*H*)-ylmethyl] phosphorodithioate on pistachio nuts at 0.3 part per million (ppm). The regulation was requested by the Interregional Research Project No. 4. This rule establishes a maximum permissible level for residues of the subject insecticide on pistachio nuts.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia Critchlow, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC (202/755–4851).

SUPPLEMENTARY INFORMATION: On April 19, 1979, the EPA published a notice of proposed rulemaking in the **Federal Register** (44 FR 23265) in response to a pesticide petition (PP 8E2125) submitted to the Agency by the Interregional Research Project No. 4 (IR–4), New Jersey State Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of California. This petition proposed that 40 CFR 180.154 be amended by the establishment of a tolerance for residues of the insecticide *O,O*-dimethyl *S*-[(4-oxo-1,2,3-benzotriazin-3(4*H*)-ylmethyl] phosphorodithioate in or on the raw agricultural commodity pistachio nuts at 0.3 ppm. No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking. As provided in the Administrative Procedure Act (5 U.S.C. 553(d)(3)), the comment period was shortened to less than 30 days because of the necessity to expeditiously provide a means for control of the navel orange worm (which the subject insecticide is effective against) attacking pistachio trees.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.154 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before June 18, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M–3708, (A–110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". 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.

Effective on May 18, 1979, Part 180, Subpart C, § 180.154 is amended by adding a tolerance for residues of the subject insecticide on pistachio nuts at 0.3 ppm as set forth below.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)])

Dated: May 10, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Part 180, Subpart C, § 180.154 is amended by alphabetically inserting pistachio nuts at 0.3 ppm in the table to read as follows:

§ 180.154 O,O,-Dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-ylmethyl] phosphorodithioate; tolerances for residues.

* * * * *

Commodity:	Parts per million
* * * * *	
Nuts, pistachio	0.3
* * * * *	

[FR Doc. 79–15660 Filed 5–17–79; 8:45 am]

BILLING CODE 6560–01–M

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40 CFR Part 180

[PP 8E2074/R209; FRL 1229–7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide *O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate on rutabagas at 0.75 part per million (ppm). The regulation was requested by the Interregional Research Project No. 4. This rule establishes a maximum permissible level for residues of the subject insecticide on rutabagas.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia Critchlow, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC (202/755–4851).

SUPPLEMENTARY INFORMATION: On March 30, 1979, the EPA published a notice of proposed rulemaking in the **Federal Register** (44 FR 19001) in response to a pesticide petition (PP 8E2074) submitted to the Agency by the Interregional Research Project No. 4 (IR–4), New Jersey State Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of Massachusetts. This petition proposed that 40 CFR 180.153 be amended by the establishmnent of a tolerance for combined residues of the insecticide *O,O*–Diethyl *O*–(2–isopropyl–6–methyl–4–pyrimidinyl) phosphorothioate in or on the raw agricultural commodity rutabagas at 0.75 part per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.153 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before June 18, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M–3708 (A–110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". 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.

Effective on May 18, 1979, Part 180, Subpart C, section 180.153, is amended by adding a tolerance for residues of the subject insecticide on rutabagas at 0.75 ppm as set forth below.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)].

Dated: May 14, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Part 180, Subpart C, § 180.153 is amended by alphabetically inserting the tolerance of 0.75 ppm on rutabagas to read as follows:

§ 180.153 O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate, tolerances for residues.

* * * * *

Commodity:	Parts per million
* * * * *	
Rutabagas	0.75
* * * * *	

[FR Doc. 79-15661 Filed 5-17-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 228

[FRL 1204-3]

Final Designation of Disposal Sites for Ocean Dumping

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates as EPA approved Ocean Dumping Sites the existing sewage sludge dump site located in the New York Bight Apex and an alternate ocean dumping site in the New York Bight for the dumping of sewage sludge in the event that the existing site cannot safely accommodate any more sewage sludge.

DATES: These site designations shall become effective on May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. T. A. Wastler, Chief, Marine Protection Branch (WH-548), EPA Washington, DC 20460. 202/245-3051.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq., (hereafter "the Act") gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by publication in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.).

The proposed designation of two ocean dumping sites in the New York Bight for the dumping of sewage sludge was published in the **Federal Register** on November 30, 1978. The period for public comment expired on January 30, 1979.

A Final Environmental Impact Statement (FEIS) entitled "Environmental Impact Statement on the Ocean Dumping of Sewage Sludge in the New York Bight" was prepared in accordance with EPA policy which provides for the voluntary preparation of EIS's for certain specific regulatory actions. A notice of availability of the FEIS was published in the **Federal Register** on October 16, 1978. The public comment period expired on November 17, 1978.

A number of comments were received on the FEIS, and one comment was received on the proposed site designation. Comments from the New Jersey Department of Environmental Protection, the National Wildlife Federation, the Nassau County Department of Health, and others supported the continuing use of the existing site and the designation of an alternate site for use in the event that the existing site cannot safely accommodate any more sewage sludge. Nassau County pointed out that the FEIS neglected to reference their yearly reports on monitoring of the impact of ocean sludge disposal on nearshore waters and sediment quality offshore Nassau County. The reports were in fact used in the preparation of the FEIS, and Nassau County was notified of this fact.

The New Jersey Department of the Public Advocate, in commenting on both the FEIS and the proposed site designation, requested clarification on the relationship among the FEIS mentioned above, the Proposed Rulemaking on the existing and alternate sites, and the EIS being prepared on the industrial wastes (106-mile) site. The Public Advocate was informed that the FEIS on sewage sludge dumping in the New York Bight is being utilized to provide part of the documentation for formal designation of the existing and alternate sewage sludge sites. The EIS presently being prepared on the industrial wastes site will evaluate the feasibility of dumping sewage sludge at that site as well as industrial wastes and will be used in a similar manner to provide documentation for the formal designation of that site. The designation of either the existing or alternate site will not limit the evaluation of the feasibility of the use of the 106-mile site for the disposal of sewage sludge or its use as appropriate subsequent to designation. The Public Advocate was also informed that, in any specific permit action, the permitting authority has to decide which site to use for dumping a particular waste and may choose, on a case-by-case basis, which of the available designated sites shall be used.

The use of both dump sites is for sewage sludge only, and the period of use expires December 31, 1981. Management authority for both sites is delegated to the Regional Administrator of EPA Region II.

Although this proposed site designation may have substantial local impacts in the vicinity of the dump sites and to those who use them, we have determined that this proposed rule is not a "significant" regulatory action within the meaning of Executive Order 12044, Improving Government Regulations (March 23, 1978).

The proposed site designations are hereby promulgated without change, as set forth below.

(33 U.S.C. Sections 1412 and 1418)

Dated: May 11, 1979.

Douglas M. Costle,

Administrator.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended by adding to § 228.12(b) two sewage sludge dump sites for Region II as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(4) Sewage Sludge Site—Region II.

Location: Latitude—40°22'30"N to 40°25'00"N;

Longitude: 73°41'30"W to 73° 45' 00"W.

Size: 22.7 square kilometers (6.6 square nautical miles).

Depth: 27 meters (90 feet).

Primary Use: Sewage sludge.

Period of Use: Until December 31, 1981.

Restriction: Disposal shall be limited to sewage sludge generated by those permitees holding ocean dumping permits which were in force on January 1, 1979. Disposal of other wastes at this site is not permitted until adequate

studies of the probable impacts of those wastes on the site have been completed.

(5) Alternate Sewage Sludge Site—Region II.

Location: Latitude—40°10'30"N to 40°13'30"N;

Longitude: 72°40'30"W to 72°43'30"W.

Size: 31 square kilometers (9 square nautical miles).

Depth: 55 meters (180 feet).

Primary Use: Sewage sludge.

Period of Use: Until December 31, 1981.

Restriction: Disposal of sewage sludge at this site shall take place only upon a finding by EPA that the existing site cannot safely accommodate any more sewage sludge without endangering public health or degrading coastal water quality. Disposal of other wastes at this site is not permitted until adequate studies of the probable impacts of those wastes on the site have been completed.

[FR Doc. 79-15646 Filed 5-17-79; 8:45 am]

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 57

Health Professions Student Loans

AGENCY: Public Health Service, HEW.

ACTION: Final regulations.

SUMMARY: These regulations set forth requirements for health professions schools to be eligible to participate in the Health Professions Student Loan Program and for individuals to receive repayment of their eligible loans for service in designated health manpower shortage areas under the Public Health Service Act, as amended by Pub. L. 94-484, Pub L. 95-83 and Pub. L. 95-623.

EFFECTIVE DATE: These regulations are effective May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Alice Swift, Associate Director for Planning, Evaluation, and Legislation, Division of Manpower Training Support, Bureau of Health Manpower, Health Resources Administration 3700 East-West Highway, Center Building, Room 9-50, Hyattsville, Md. 20782 (telephone 301-436-6383).

SUPPLEMENTARY INFORMATION: In the Federal Register of November 13, 1978 (43 FR 52487), the Assistant Secretary for Health, Department of Health, Education, and Welfare, revised Subpart C of 42 CFR Part 57, entitled "Health Professions Student Loans," to implement the amendments made by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484) and by the Health Planning and Health Services Research and Statistics Extension Act of 1977 (Pub. L. 95-83) to the authority for student loans in Title VII of the Public Health Service Act.

Section 740 of the Public Health Service Act ("the Act") (42 U.S.C. 294m) authorizes the Secretary of Health, Education, and Welfare ("the Secretary") to enter into an agreement for the establishment and operation of a student loan fund with any public or other nonprofit school of medicine, osteopathy, dentistry, pharmacy, podiatry, optometry, or veterinary medicine which is located in a State and is accredited as provided in section 721(b)(1)(B) of the Act. Each school must meet the statutory requirements in this section regarding maintenance and use of the fund. Section 741 of the Act (42 U.S.C. 294n) sets forth the provisions under which loans may be made to students from a loan fund (established under an agreement with a school under section 740).

The regulations, as so revised, reflect the statutory provisions respecting the amount of the loan, the annual interest rate, repayment by the student, and repayment by the Secretary when the borrower practices in a health manpower shortage area designated under section 332(b) of the Act.

Due to the need to implement requirements for the allocation of funds for the 1978-79 school year, those regulations were issued as interim-final regulations, without benefit of proposed rulemaking procedures. Notwithstanding the omission of these rulemaking procedures, interested persons were invited to submit comments not later than January 12, 1979. Following the close of the comment period, the regulations were to be revised as warranted by public comments received. The Department received 181 comments from students, school officials, professional and student organizations, health organizations, and families of medical students. The comments and the Department's response to the comments are discussed below. For clarity, the comments and responses are arranged according to the section numbers and titles of the interim-final regulations to which they pertain.

§ 57.202 Definitions.

One respondent suggested that the definition of "full-time student" be revised to include students who are pursuing degrees in clinical engineering.

The Department cannot accept this proposal because the statutory section establishing eligibility for health professions student loans, section 741(b) of the Act, does not include clinical engineerng as a degree which may be pursued under a loan.

§ 57.206(a) Eligibility of health professions student loan recipients.

The majority of the repondents commented on the provision for determining "exceptional financial need" of medical or osteopathic students graduating after June 30, 1979, a requirement of Pub. L. 94-484. The former regulation governing health professions student loans permitted the school to determine the financial need of the applicant, with no provision for exception financial need. The interim-final regulation provided that to be of exceptional financial need a student must have *no* financial resources to meet the costs of attendance at the school. Most of the comments objected that this requirement was overly restrictive. In response to the concerns expressed in these comments, the Department has modified this requirement in the final regulation to permit a student to have resources equal to the lesser of $5,000 or 50 percent of the cost of education at his or her school.

Many of the comments suggested that the Department retain the former provision, which permitted the school to determine the financial need of a student for a health professions student loan.

Since the statute requires that the criteria for determining the financial need of medical or osteopathic students who will graduate after June 30, 1979, be more restrictive than the criteria for determining financial need of other applicants, the Department did not adopt this suggestion. The legislative history of this provision directs the Department to restrict support for students of exceptional financial need to those whose financial need is greatest. Consequently, the former provision on the determination of financial need for all health professions student loan recipients did not meet the legislative intent in regard to medical or osteopathic students.

Some respondents proposed that the Department adopt the criteria for determining exceptional financial need which are applied under the Supplementary Educational Opportunity Grant Program authorized in section 413c(a)(2)(C) of the Higher Education Act, as amended. The regulations implementing this program define a student as being in exceptional financial need if "his expected family

contribution * * * does not exceed 50 percent of his cost of education at the institution in which he is enrolled or accepted for enrollment" (45 CFR 176.9(C)(1)). It was also suggested that the provision should require the establishment of a funding order by ranking student applicants according to greatest financial need up to an eligibility cut-off point based on the percentage of the cost of education at his or her school which the student's resources constitutes.

Other respondents objected to the definition of exceptional financial need because only the resources of the student were considered, and not the cost of attending the school.

Two respondents proposed that the regulations determine whether a student is of exceptional financial need on the basis of his or her need for the maximum amount available by statute under the Health Professions Student Loan Program—the cost of tuition at his or her school and $2,500.

As pointed out above, the Department has revised the definition of exceptional financial need. The modified provision differs from that of the Supplementary Educational Opportunity Grant Program in that the eligibility cut-off point for the amount of resources which a student may have is the lesser of $5,000 or 50 percent of the cost of education at his or her school. This change is consistent with the legislative history, which suggests that health professions student loans should go to medical or osteopathic students graduating after June 30, 1979, who come from low-income families.

Several respondents objected to the inclusion of a student's earnings during the school year as resources in determining eligibility.

In response to these comments, the Department has modified the definition of a student's resources for purposes of determining exceptional financial need to exclude earnings during the school year.

Eight commenters objected to the inclusion of parental income as a resource in determining recipients for health professions student loan funds. Conversely, two other commenters objected that under the interim-final regulations, parental income might be excluded as a resource because some of the national need analysis systems provide for analysis without parental financial information under certain specified conditions.

The Department has revised this section to clarify the fact that in determining a student's resources, the school must use a national need analysis system and other information which the school may have about the student's finances and must take into account the expected contribution of parents, spouse, self, or other family members (regardless of the tax status of the student). The Department believes that where there is the possibility of a student receiving necessary support from family members, a student should not receive a health professions student loan in view of the limited resources available in this program.

Respondents also questioned the application of the exceptional financial need criteria only to medical and osteopathic students graduating after June 30, 1979. Since this is a requirement imposed by Pub. L. 94–484, the Department cannot revise this provision.

§ 57.206(a)(2) Loan repayment notification.

Two respondents suggested that schools be required to notify in writing only approved applicants, rather than all applicants, of the provisions under which the loans may be repaid by the Secretary. The Department cannot accept this suggestion because section 740(b)(5) of the Act specifically requires notifying each applicant.

§ 57.207 Maximum amount of loan.

Four respondents objected to the establishment of the maximum amount of any health professions student loan as tuition plus $2,500. Since that maximum is set forth in section 741(a) of the Act, the Department cannot revise the terms of this provision.

§ 57.210 Repayment and collection of health professions student loans.

One respondent requested that this section be revised to permit one-half of the health professions student loan to be repaid by service in the National Health Service Corps.

It is noted that this section currently provides for repayment of portions of health professions student loans, as well as certain other loans, by the Secretary in return for an agreement to practice for at least two years in a health manpower shortage area as a member of the National Health Service Corps or otherwise. The amount of repayment is dependent on the length of time of service of the borrower. Accordingly, no change has been made in this section.

Another respondent suggested that the period of time during which the repayment of a health professions student loan may be suspended for advanced professional training be extended to seven years.

No change is necessary in response to this comment because there is no limit on the advanced training period with respect to health professions student loans made after November 18, 1971.

Another respondent proposed that the Department increase the time when the loan recipient must begin repayment from one to two years after graduation.

The Department cannot accept this proposal because the time of repayment is set forth in section 741(c) of the Act.

§ 57.211 Cancellation of health professions student loans for disability or death.

One respondent suggested the revision of this section, which permits the Secretary to cancel a health professions student loan upon the borrower's permanent disability or death, to prevent loan recipients from claiming cancellation based on permanent disabilities which existed before entering school.

The Department regards this proposed change as unnecessary because any permanent disability serious enough to warrant cancellation would likely have prevented the student from entering medical school, thus no health professions student loan could have been awarded.

§ 57.215(b) Records, reports, inspection, and audit.

In response to the requests of several respondents, the Department has revised this section concerning recordkeeping, audit and inspection requirements to reflect amendments made to section 705 of the Act by Pub. L. 95–623, "The Health Services Research, Health Statistics and Health Care Technology Act of 1978." This amendment changed the audit requirement from annual to biennial and removed the requirement that it be performed by a certified public accountant.

§ 57.217 Additional conditions.

One respondent objected to the "open-ended" nature of this section as thwarting the rulemaking procedures. The Department points out that this provision merely permits the Secretary to exercise discretion, consistent with the requirements of the regulations, in the administration of individual loan agreements among schools.

Several respondents objected to the initial publication of these regulations in interim-final form rather than as a Notice of Proposed Rulemaking. The Department decided that the publication of these regulations in interim-final form was necessary in order to implement

regulations for the allocation of funds for the 1978–79 school year. Although the regulations were effective upon publication, the Department invited the public to comment, and the regulations are being revised in response to these comments.

Finally, the Department has made several minor changes of an editorial or technical nature to clarify the regulations, as published in interim-final. Accordingly, Subpart C of 42 CFR Part 57 is revised and adopted as set forth below.

Dated: March 16, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: May 9, 1979.

Joseph A. Califano, Jr.,

Secretary.

Subpart C—Health Professions Student Loans

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); Secs. 740–744 of the Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391 (42 U.S.C. 294m–q).

§ 57.201 Applicability.

The regulations of this subpart apply to the federal capital contributions made by the Secretary to public or other nonprofit health professions schools for the establishment of health professions student loan funds and to loans made to students by schools from these funds.

§ 57.202 Definitions.

As used in this subpart:

"Act" means the Public Health Service Act, as amended.

"Date upon which a student ceases to be a full-time student" means the first day of the month which is nearest to the date upon which an individual ceases to be a full-time student as defined in this section.

"Federal capital loan" means a loan made by the Secretary to a school under section 744(a) of the Act, as in effect prior to October 1, 1977, the proceeds of which are to be returned to the Secretary.

"Full-time student" means a student who is enrolled in a health professions school and pursuing a course of study which is a full-time academic workload, as determined by the school, leading to a degree specified in section 741(b) of the Act.

"Health professions school" or "school" means a public or private nonprofit school of medicine, school of dentistry, school of osteopathy, school of pharmacy, school of podiatry, school of optometry, and school of veterinary medicine as defined in section 701(4) of the Act.

"Health professions student loan" means the amount of money advanced to a student by a school from a health professions student loan fund under a properly executed promissory note.

"Institutional capital contribution" means the money provided by a school, in an amount not less than one-ninth of the federal capital contribution, and deposited in a health professions student loan fund.

"National of the United States" means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

"School year" means the traditional approximately 9-month September to June annual session. For the purpose of computing school year equivalents for students who, during a 12-month period, attend for a longer period than the traditional school year, the school year will be considered to be 9 months in length.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

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

§ 57.203 Application by school.

(a) Each school seeking a federal capital contribution must submit an application at the time and in the form and manner than the Secretary may require.[1] The application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the statute, the regulations of this subpart, and the terms and conditions of the award.

(b) Each application will be reviewed to determine eligibility and the reasonableness of the amount of Federal support requested. The Secretary may require the applicant to submit additional data for this purpose.

(c) An application will not be approved unless an agreement between the Secretary and the applicant school for a federal capital contribution under section 740 of the Act is reached.

§ 57.204 Payment of Federal capital contributions.

(a) *Annual payment.* The Secretary will make payments to each school with which he or she has entered into an agreement under the Act at a time determined by him or her. If the total of the amounts requested for any fiscal year by all schools for federal capital contributions exceeds the amount of Federal funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller: (1) the amount requested in the application, or (2) an amount which bears the same ratio to the total amount of Federal funds determined by the Secretary at the time of payment to be available for that fiscal year for the Health Professions Student Loan Program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in all participating schools during that year. Amounts remaining after these payments are made will be distributed in accordance with this paragraph among schools whose applications requested more than the amount paid to them, but with whatever adjustments that may be necessary to prevent the total paid to any school from exceeding the total requested by it.

[1] Applications and instructions are available from the Division of Manpower Training Support, Bureau of Health Manpower, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

(b) *Method of payment.* The payment of federal capital contributions to a school will be paid in a manner that avoids unnecessary accumulations of money in any health professions student loan fund.

§ 57.205 Health professions student loan funds.

(a) *Funds established with federal capital contributions.* Any fund established by a school with federal capital contributions will be deposited and carried in a special account of the school. At all times the fund must contain monies representing the institutional capital contribution. This fund is to be used by the school only for (1) health professions student loans to full-time students; (2) capital distribution as provided in section 743 of the Act or as agreed to by the school and the Secretary, (3) costs of litigation and, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of health professions student loans.

(b) *Funds established with federal capital loans.*

(1) Each federal capital loan is subject to the terms of the promissory note executed by an authorized official on behalf of the borrowing school.

(2) The federal capital loans must be carried in a special account of the school, to be used by the school only for (i) repayments of principal and interest on federal capital loans; and (ii) costs of litigation and, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of health professions student loans.

§ 57.206 Eligibility and selection of health professions student loan applicants.

(a) *Determination of eligibility.* (1) Applicants are eligible for consideration for a health professions student loan if they are:

(i) Nationals of the United States, permanent residents of the Trust Territory of the Pacific Islands or the Northern Mariana Islands or lawful permanent residents of the United States, Puerto Rico, the Virgin Islands or Guam;

(ii) Enrolled, or accepted for enrollment in the school as full-time students;

(iii) In need of the amount of the loan to pursue a full-time course of study at the school; and

(iv) Of exceptional financial need in the case of students of medicine or osteopathy who will graduate after June 30, 1979. A student will be considered to demonstrate exceptional financial need if the school determines that his or her resources do not exceed the lesser of $5,000 or one-half of the costs of attendance at the school. Summer earnings, educational loans, veterans (G.I.) benefits and earnings during the school year will not be considered as resources in determining whether an applicant meets the eligibility criteria for exceptional financial need.

(2) The school must provide written notification to each applicant of the provisions of section 741(f) of the Act under which the Secretary may repay all or part of a loan.

(b) *Selection of applicants.* The school will select qualified applicants and determine the amount of student loans by considering:

(1) The financial resources available to the student by using one of the national need analysis systems or any other procedure approved by the Commissioner of Education and published under 45 CFR 144.13 in combination with other information which the school has regarding the student's financial status. The school must take into account, regardless of the tax status of the student, the expected contribution from parents, spouse, self or other family members; and

(2) The costs resonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's ability to attend the school on a full-time basis. The school must document the criteria used for determining these costs.

(c) *Selection of medical and osteopathic student applicants.* The school must consider medical and osteopathic students graduating after June 30, 1979, in the order of greatest need, taking into consideration the other resources available to the student through the school. For purposes of establishing priority for selecting medical and osteopathic student applicants to receive health professions student loans, summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school year will be considered as financial resources.

§ 57.207 Maximum amount of health professions student loans.

The total of the health professions student loans made from the fund to any student for a school year may not exceed $2,500 and the cost of tuition. The maximum amount loaned during a 12-month period to any student enrolled in a school which provides a course of study longer than the 9-month school year may be proportionately increased.

§ 57.208 Health professions student loan promissory note.

(a) *Promissory note form.* Each health professions student loan must be evidenced by a promissory note approved by the Secretary.

(1) Each promissory note must state that the loan will bear interest on the unpaid balance computed only for periods during which repayment of the loan is required, at the rate of 7 percent per year.

(2) A copy of each executed note must be supplied by the school to the student borrower.

(b) *Security.* A school may require security or endorsement only if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation.

§ 57.209 Payment of health professions student loans.

(a) Health professions student loans from any fund may be paid to or on behalf of student borrowers in installments considered appropriate by the school except that a school may not pay to or on behalf of any borrower more during any given installment period (e.g., semester, term, or quarter) than the school determines the student needs for that period.

(b) No payment may be made from a fund to or on behalf of any student borrower if at the time of the payment the borrower is not a full-time student.

§ 57.210 Repayment and collection of health professions student loans.

(a) Each health professions student loan, including accured interests, will be repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. Except as otherwise provided in this paragraph, repayment of a loan must begin one year after the student ceases to be a full-time student.

(1) If a borrower reenters the same or another school as a full-time student within the 1-year period, the date upon which interest will accure and the repayment period will begin will be determined by the date on which the student last ceases to be a full-time student at that school.

(2) The following periods will be excluded from the 10-year repayment period: (i) all periods for up to a total of 3 years of active duty performed by the borrower as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration Corps or

the U.S. Public Health Service Corps; (ii) all periods for up to a total of 3 years of service as a volunteer under the Peace Corps Act; and (iii) all periods of advanced professional training except that with respect to health professions student loans made prior to November 18, 1971 but after June 30, 1969, these periods of advanced training may not exceed a total of 5 years.[2]

(3) Each student borrower may, subject to the provisions of paragraph (b)(3) of this section, choose the repayment schedule which he or she prefers from those in use by the school, but a student borrower may at his or her option and without penalty, prepay all or part of the principal and accrued interest at any time.

(b) *Collection of health professions student loans.*

(1) Each school at which a fund is established must exercise due diligence in the collection of all health professions student loans due the fund. The school must use the collection practices which are generally accepted among institutions of higher education and which are at least as extensive and effective as those used in the collection of other student loan accounts due the school.

(2) With respect to any health professions student loan made after June 30, 1969, the school may fix a charge for failure of the borrower to pay all or any part of an installment when it is due, and in the case of a borrower who is entitled to a deferment under section 741(c) of the Act, or cancellation or repayment under section 741(f) of the Act for any failure to file timely and satisfactory evidence of the entitlement. The amount of the charge may not exceed $1 for the first month or part of a month by which the installment or evidence is late and $2 for each succeeding month or part of a month. The school may elect to add the amount of this charge to the principal amount of the loan as of the day after the day on which the installment or evidence was due, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

(3) With respect to any health professions student loan made after June 30, 1969, the school may require the borrower to make payments of at least $15 per month on all outstanding health professions student loans during the repayment period.

§ 57.211 Cancellation of health professions students loans for disability or death.

(a) *Permanent and total disability.* The Secretary will cancel a student borrower's indebtedness in accordance with section 741(d) of the Act if the borrower is found to be permanently and totally disabled on recommendation of the school and as supported by whatever medical certification the Secretary may require. A borrower is totally and permanently disabled if he or she is unable to engage in any substantial gainful activity because of a medically determinable impairment, which the Secretary expects to continue for a long time or to result in death.

(b) *Death.* The Secretary will cancel a student borrower's indebtedness in accordance with section 741(d) of the Act upon the death of the borrower. The school to which the borrower was indebted must secure a certification of death or whatever official proof is conclusive under State law.

§ 57.212 Repayment or cancellation of loans for practice in a health manpower shortage area.

(a) *Practicing in a health manpower shortage area.* A person who: (1) has obtained a degree as specified in section 741(f)(1)(A) of the Act; (2) has obtained one or more health professions student loans or, under a written loan agreement entered before October 12, 1976, any other loans necessary for costs (including tuition, books, fees, equipment, living and other expenses which the Secretary determines were necessary) of attending a health professions school; and (3) enters into an agreement to practice his or her profession for at least 2 consecutive years in a health manpower shortage area designated under section 332 of the Act, is entitled to have a portion of these loans repaid by the Secretary in accordance with paragraph (b) below. Prior to entering an agreement for repayment of loans, other than health professions student loans, the Secretary will require an individual to provide evidence satisfactory to the Secretary of the existence and reasonableness of the education loans, including a copy of the written loan agreement establishing the loan, and a notarized statement that the copy is a true copy of the loan agreement.

(b) *Repayment.* Loan repayment will be made to persons who meet the conditions set forth in paragraph (a) as follows:

(i) Upon completion by the borrower of the first year of practice as specified in the agreement, the Secretary will pay 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her practice.

(ii) Upon completion by the borrower of the second year of practice the Secretary will pay another 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her practice.

(iii) Upon completion by the borrower of a third year of practice, the Secretary will pay another 25 percent of the principal of, and interest on, each loan which was unpaid as of the date the borrower began his or her practice except that, the amount of loan repayments that may be made on behalf of a borrower in any year under paragraph (a) of this section may not exceed $10,000, and the total amount of payment which can be made under this section with respect to any loan may not exceed $50,000.

(c) *National Health Service Corps (NHSC) Scholarship recipients.* A recipient of an NHSC Scholarship under 42 CFR Part 62 may not enter into an agreement with the Secretary under this section until either (1) the participant has completed the NHSC Scholarship service obligation; (2) the Secretary has recovered from the participant an amount determined under 42 CFR 62.10, or (3) any service or payment obligation has been waived under 42 CFR 62.12. An NHSC Scholarship is not an educational loan for purposes of an agreement under this section.

§ 57.213 Continuation of provisions for cancellation of loans made prior to November 18, 1971.

Individuals who received health professions student loans as students of medicine, osteopathy, dentistry or optometry prior to November 18, 1971, may still receive cancellation of these loans for practicing in a shortage area or for practicing in a rural shortage area characterized by low family income. The regulations set forth in 42 CFR 57.216(b) (1976), as adopted on February 7, 1974 remain applicable to cancellation on this basis. The provisions can be found at 39 FR 4774 (February 7, 1974) and a copy can be obtained by writing to the Division of Manpower Training Support, Bureau of Health Manpower, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

[2] Individuals who received health professions student loans prior to July 1, 1969, remain subject to the repayment provisions of 42 CFR 57.214(a)(2) (1976) as adopted on February 7, 1974. These provisions can be found at 39 FR 4773 (Feb. 7, 1974) and a copy can be obtained by writing the Divisions of Manpower Training Support, Bureau of Health Manpower, Center Building, 3700 East-west Highway, Hyattsville, Maryland. 20782.

§ 57.214 Repayment of loans made after November 17, 1971, for failure to complete a program of study.

In the event that the Secretary undertakes to repay educational loans under section 741(*l*) of the Act, he or she will use the following criteria to make a determination as to each applicant's eligibility:

(a) An applicant will be considered to have failed to complete the course of study leading to the first professional degree for which an eligible education loan was made upon certification by a health professions school that the individual ceased to be enrolled in the school subsequent to November 17, 1971;

(b) An applicant will be considered to be in exceptionally needy circumstances if, upon comparison of the income and other financial resources of the applicant with his or her expenses and financial obligations, the Secretary determines that repayment of the loan would constitute a serious economic burden on the applicant. In making this determination, the Secretary will take into consideration the applicant's net financial assets, his or her potential earning capacity, and the relationship of the income available to the applicant to the low-income levels published annually by the Secretary under paragraph (c) of this section;

(c) An applicant will be considered to be from a low-income family if the applicant comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in this program, and the family has no substantial net financial assets. Income levels as adjusted will be published annually by the Secretary in the Federal Register.

(d) An applicant will be considered to be from a disadvantaged family if the individual comes from a family in which the annual income minus unusual expenses which contribute to the economic burdens borne by the family does not exceed the low-income levels published by the Secretary under paragraph (c) of this section and the family has no substantial net financial assets;

(e) An applicant will be considered as not having resumed his or her health professions studies within two years following the date the individual ceased to be a student upon a certification so stating from the applicant; and

(f) An applicant will be considered as not reasonably expected to resume his or her health professions studies within two years following the date upon which he or she terminated these studies, based upon consideration of the reasons for the applicant's failure to complete these studies, taking into account such factors as academic, medical, or financial difficulties.

The Secretary will only repay education loans made subsequent to November 17, 1971.

§ 57.215 Records, reports, inspection, and audit.

(1) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its health professions student loan fund that the Secretary may find necessary to carry out the purposes of the Act and these regulations. The school also must comply with the requirements of 45 CFR Part 74 and section 705 of the Act concerning recordkeeping, audit, and inspection.

(2) The following student records must be retained by the school for five years after an individual student ceases to be a full-time student:

(i) Approved student applications for health professions student loans;

(ii) Documentation of the financial need of applicants;

(iii) Reasons for approval or disapproval of applications and;

(iv) Other records as the Secretary may prescribe. Individual student records may be destroyed at the end of the five-year period, except that in all cases where questions have arisen as a result of a Federal audit, the records must be retained until resolution of all the questions.

§ 57.216 Nondiscrimination.

(a) Participating schools are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations apply:

(1) Section 704 of the Act (42 U.S.C. 292d) and its implementing regulation, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs).

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and its implementing regulation, 45 CFR Part 80 (prohibiting discrimination in Federally assisted programs on the grounds of race, color, or national origin).

(3) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and its implementing regulation, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in Federally assisted education programs).

(4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in Federally assisted programs on the basis of handicap).

(b) The recipient may not discriminate on the basis of religion in the admission of individuals to its training programs.

§ 57.217 Additional conditions.

The Secretary may with respect to any agreement entered into with any school under § 57.205, impose additional conditions prior to or at the time of any award when in his or her judgment these conditions are necessary to assure or protect the advancement of the purposes of the agreement, the interest of the public health, or the conservation of funds awarded.

§ 57.218 Noncompliance.

Wherever the Secretary finds that a participating school has failed to comply with the applicable provisions of the Act or the regulations of this subpart, he or she may, on reasonable notice to the school, withhold further payment of Federal capital contributions, and take such other action, including the termination of any agreement, as he or she finds necessary to enforce the Act and regulations. In this case no further expenditures shall be made from the health professions student loan fund or funds involved until the Secretary determines that there is no longer any failure of compliance.

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Health Care Financing Administration

42 CFR Part 405

Requirements of the Contract Between the Secretary and a Health Maintenance Organization Under Medicare

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final rule.

SUMMARY: These regulations set forth various requirements concerning the contract between the Secretary and a Health Maintenance Organization (HMO) under the Medicare program. They include requirements for: (1) Contract application procedures, criteria for eligibility and denial of application; (2) contract provisions, effective dates, renewals, and terminations; (3) information access and disclosure; (4)

HMO intermediary and carrier responsibilities; (5) beneficiary refund procedures; (6) recoupment of undercollections by the HMO; and (7) change in ownership and procedures for recognition of a successor in interest to the contract. The regulations implement statutory requirements for an HMO contract, and are intended to specify all the basic contract requirements that an HMO must follow in order to be reimbursed under Medicare.

DATE: Except for § 405.2036(h), these regulations are effective on May 18, 1979 and apply to all Medicare HMO contracts entered into or renewed on or after that date. Section 405.2036(h) will become effective on the effective date of final regulations on disclosure of information which will be published soon under 42 CFR Part 420, Subpart C.

FOR FURTHER INFORMATION CONTACT: Mr. Marinos Svolos, Medicare Bureau, Health Care Financing Administration, Room 106, East High Rise Bldg., 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone: (301) 594–9315.

SUPPLEMENTARY INFORMATION: A Health Maintenance Organization under Medicare is a legal entity which provides health services on a prepayment basis to Medicare beneficiaries who are enrolled in its plan, in accordance with the HMO statutory requirements of section 1876 of the Social Security Act.

These regulations implement the provisions of section 1876 which require an organization that qualifies as an HMO to enter into a contract with the Secretary in order to be reimbursed as an HMO under Medicare and which deal with the various terms of the contract. The regulations specify requirements for approval of a contract application, basic contract requirements, and procedures for contract terminations, renewals and change in ownership.

There are two types of HMOs under Medicare: (1) Cost basis, under which an HMO is reimbursed for the reasonable cost of furnishing covered services to its enrollees, and (2) risk or incentive basis, under which an HMO is reimbursed on the basis of a comparison of its adjusted per capita incurred cost of providing covered services to the adjusted average per capita cost that Medicare would have incurred if the services had been provided by providers and organizations in the area other than the HMO (*see* § 405.2051.) A risk-basis HMO is allowed to keep a portion of the savings it incurs in providing services to Medicare enrollees, and is required to absorb the losses it incurs if its costs for providing services are in excess of those that Medicare would have incurred.

These regulations specify the conditions under which an organization will be eligible to contract with the Secretary as either a cost-basis or a risk-basis HMO, or only as a cost-basis HMO. To be eligible, the organization must meet the applicable qualifying conditions specified in 42 CFR 405.2001 through 405.2007 concerning membership, range and provision of services, and Public Health Service HMO requirements. For a risk-basis HMO, the organization must demonstrate sufficient financial capability to absorb losses. In addition, HCFA must determine that entering into or renewing a HMO contract with the organization would be consistent with the efficient and effective administration of section 1876 of the Act. To be paid as an HMO under Medicare, an eligible organization must then enter into a contract with the Secretary, as specified in these regulations.

A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on December 22, 1976 (41 FR 55718) proposing amendments to the Medicare regulations which would set forth requirements related to the terms of contract between the Secretary and an HMO. These final regulations incorporate certain comments received on the NPRM, and contain a number of changes in organization, style and format designed to make the regulations simpler and easier to understand.

A few changes have also been made as a result of the HMO Amendments of 1976 (Pub. L. 94–460) and HEW reorganization activities that have occurred since the NPRM was published. The regulations specifying the qualifying conditions that an organization must meet to be eligible to participate as an HMO under Medicare have been amended to implement the 1976 amendments, and the reference to qualifying conditions in these regulations has been changed accordingly. Regulations effective October 1, 1977, established a new Chapter IV in Title 42 of the CFR and transferred all Health Care Financing Administration regulations to that new chapter. Accordingly, these final regulations are codified under Subpart T, Health Maintenance Organizations, of 42 CFR Chapter IV, as §§ 405.2028 through 405.2039. Additionally, the Assistant Secretary for Health is now responsible for determining whether an organization meets the definition of an HMO under section 1876, and HCFA is now responsible for administering the remainder of the Medicare HMO program. Legislation affecting HMOs was enacted on November 1, 1978 (Pub. L. 95–559). However, no changes in these contract regulations are necessary because of that legislation.

We have added the requirement in section 1876(i)(2)(B) of the Act, which was formerly contained in § 405.2012(c)(2), that an HMO must be able to demonstrate its financial ability to assume risks before it can be awarded a contract on an incentive basis. We have also added the requirement that all HMOs must agree to comply with Part B of title XI of the Act (the PSRO program) and implementing regulations, in order to ensure as much compliance as possible with PSRO requirements.

The requirement that an HMO disclose information to the Secretary on related organizations and new owners of the HMO has been amended to cross reference proposed regulations implementing section 3(a)(1) of Pub. L. 95–142, enacted on October 25, 1977. Proposed regulations were published on August 4, 1978 (43 FR 34710), and final regulations will be published soon. They would require a Medicare HMO to supply the Secretary with information identifying those persons with an ownership or control interest in the HMO.

We have also incorporated by reference into these contract regulations several basic contract requirements contained in other sections of this Subpart T, such as the statutory requirement in section 1876(i)(6)(B), implemented in § 405.2042(d) and § 405.2050(b), that the contract provided that only certain reinsurance costs are allowed.

Also, the regulations have been expanded in a few places in order to elaborate and clarify several points which we decided were unclear in the NPRM. For example, we decided that it was unclear from our definition of "money incorrectly collected" that there were certain circumstances in which an HMO could recoup undercollections for deductible and coinsurance amounts due from enrollees for a previous contract period. We have added a new provision, § 405.2033(c), to specify those circumstances.

Major Comments

Three organizations submitted public comments on the proposed regulations. All comments were considered in drafting the final regulations.

Denial of a Contract Because of Sufficient Number of HMOs in the Area

Suggestions were made to delete the provision allowing the Secretary to determine that entering into a contract with an otherwise qualified HMO would not be consistent with the effective and efficient administration of section 1876, if there is already a "sufficient" number of qualified HMOs under contract with the Secretary in the organization's geographic area. It was suggested that this provision is unnecessary and could possibly serve to limit the development of new HMOs. This comment has been accepted, and we will not use this reason as a basis for refusing to enter into a contract. We have also provided in the final rule more general standards for refusal to enter into or renew a contract, when to do so would not be consistent with the effective and efficient administration of the program. These standards incorporate the examples cited in the NPRM.

Audit of Subcontractors

A comment was made that only the records related to subcontracts, leases, and purchase orders exceeding $50,000 provided by an organization owned or operated by an HMO or related to an HMO by common ownership or control be subject to inspection and audit by the Secretary and Comptroller General. The NPRM proposed that all subcontracts with entities for leases and purchase orders of $2,500 or more be subject to audit. We have not increased the dollar limit because we believe the lower limit is necessary to minimize the possibility of program abuse and assure a proper determination of allowable costs. However, we have adopted the suggestion that only the records of subcontractors which are related organizations be subject to audit.

Disclosure of Information

Because of changes required by the government in the Sunshine Act (Pub. L. 94–409) a suggestion was made to delete references in the proposed regulations to the provisions of the Social Security Act and implementing regulations which deal with disclosure of information (Section 1106 of the Act and 20 CFR Part 401), and to base contract provisions governing disclosure of information by the HMO on the Freedom of Information and Privacy Acts. (5 U.S.C. 552; 552(a)). We have accepted this comment in part. It is our position that any system of records that an HMO develops and maintains in performing carrier or intermediary responsibilities is subject to the Privacy Act. We have therefore added the requirement that an HMO comply with the Act and implementing regulations with respect to these records. HMOs are not subject to the Freedom of Information Act because they are not agencies of the Department.

The purpose of our proposed requirement was to safeguard adequately the confidentiality of information on Medicare enrollees. We believe that it is essential to public confidence in the HMO program that the confidentiality of HMO Medicare enrollees be protected. In order to help ensure this confidentiality, we have added a requirement that the HMO agree to comply with the confidentiality requirements applicable to hospital providers. *(See* § 405.1026(a)). Our basis for imposing such a requirement is the Secretary's responsibility to encourage the expansion of the HMO program, and his authority, under 1876(i)(6)(C) of the Act, to impose necessary contract requirements.

Refunds of Money Incorrectly Collected or Other Amounts Due Enrollees

Comments were received suggesting specific changes in the proposed contract requirements which described how the HMO must refund monies incorrectly collected or other amounts due Medicare enrollees of the HMO. One comment made was that the date the beneficiary notified an HMO of an amount due was not significant; rather the HMO should not be required to set aside or refund any amounts until after a final determination had been made on the beneficiary's claim. We have accepted this comment and have revised § 405.2033(b)(3) accordingly.

Another comment was that the HMO should always have the option of making a refund for amounts incorrectly collected from any former Medicare enrollees by adjusting the premiums for its present Medicare enrollees, rather than being required to make individual lump sum payments to these enrollees. We have not accepted this comment in full because we believe that individual enrollees should be repaid in certain situations if it is feasible to do so. In order to avoid placing an undue burden on an HMO, however, we will allow an HMO to adjust the premiums of its present enrollees for amounts incorrectly collected from former enrollees of these amounts were collected for deductibles and coinsurance purposes on a premium basis or through a combination of premium collections and other charges.

A final comment was that the summary statement of premiums and other charges collected from enrollees be due 90 days after the close of the contract period, rather than 60 days as proposed. We agree that a longer time period is reasonable, and have accepted the comment.

Coordination of HMO Programs

It was suggested that the application process in HCFA and PHS could be coordinated to avoid unnecessary duplication of functions by the two Federal agencies and thereby be more efficient and cost effective and reduce the workload on an organization seeking HMO status under both programs. Even before enactment of the 1976 HMO Amendments (Pub. L. 94–460), which require that responsibility for determining the qualifications of an HMO under Medicare be the responsibility of the Assistant Secretary for Health, efforts to coordinate the HMO qualification procedures were begun. This effort has intensified since the passage of Pub. L. 94–460 and every effort is being made to avoid unnecessary duplication and, where possible, to coordinate HMO functions. However, two applications are still necessary in order to implement the divergent purposes of the two programs.

Inspection Period: Situations of Possible Fraud

There was a suggestion that the Secretary's right to reopen a final settlement where "there is a possibility of fraud" was too broad and should be more narrowly defined. We agree with this suggestion and have changed the language to read "reasonable possibility of fraud."

Notification of Enrollees by HMO When Contract Terminates

There was a comment that a cost basis HMO should not be required to notify its Medicare enrollees that its Medicare contract has been terminated. It was suggested that since the Medicare enrollees in a cost-basis HMO are not restricted to receiving all their Medicare services through the HMO, there is no need for them to know if the plan's contract as a Medicare HMO was significantly modified or terminated.

We have not accepted this comment because we believe that Medicare beneficiaries may feel that there are possible advantages, such as greater stability or lower deductible and coinsurance payments, to being enrolled in an HMO that has a Medicare contract, and that they might therefore want to know if any HMO in which they were enrolled had such a contract.

Audits of HMOs

One commenter suggested that the regulations require all Medicare audits of HMOs to be performed, if possible, in conjunction with the audits of HMOs required under title XIII of the Public Health Service (PHS) Act to prevent unnecessary duplication and overlap between the two programs. Although we will try to eliminate unnecessary duplication in HEW audits of HMOs, the basic differences in the purposes and objectives of these programs require separate audits. Audits of HMOs qualifying under the PHS Act are designed primarily to assure that grant and loan assistance moneys provided by PHS to recipient HMOs are used properly. Conversely, audits of HMOs for Medicare purposes are designed to assure that costs incurred by an HMO in providing or arranging for covered services are: Proper and necessary; reasonable in amount; appropriately apportioned among Medicare HMO members, other HMO members and nonmembers patients of the HMO; and that HMOs are reimbursed in accordance with the applicable law and Medicare reimbursement principles.

Special Program Costs Reporting Requirements

A suggestion was made that the requirements in § 405.2042(i) and § 405.2028(g) of the NPRM for a separate budget for special Medicare program costs be revised to require that the budget be submitted, along with the annual operating budget and enrollment forecast, at least 90 days prior to the start of the contract period, unless both we and the HMO agree to waive this requirement. We do not believe it is necessary to require by regulation that the budgets be submitted simultaneously, and we have decided that the requirement in § 405.2042(i) is sufficient and need not be repeated in these contract regulations. Accordingly, we have deleted § 405.2028(g) of the NPRM from these final regulations. It was also suggested that the regulations state that the Secretary be required to deny or approve each budget at least 45 days prior to the start of the contract period. While every effort will be made to review this budget quickly, it may not be possible in each case to complete the review 45 days prior to the start of a contract period. Therefore, such a requirement has not been included in the regulations.

Right of Review When Application Approved

It was also suggested that the provision was unnecessary that would have required the Secretary to inform an applicant organization of its right to administrative review of the Secretary's determination that the organization was eligible to enter into a contract. This provision has been revised to provide for review when the Secretary determines that an organization is eligible only to contract as a cost-basis HMO. (The applicant is also entitled to review when the Secretary determines that it is ineligible to contract as an HMO.)

Requirement To Furnish Data and Information Too Broad

A comment was made that the requirement for an HMO to furnish the Secretary any data and information he determines necessary for the administration or evaluation of the Medicare program was too broad. It was suggested that this requirement be revised to pertain only to data and information which is: (1) Available to the HMO or its subcontractors; and (2) available at a cost which in the judgment of the Department is not "disproportionate to the value of the information or data." We have not adopted this suggestion because we believe it might unduly restrict the Department in obtaining the data and information needed to administer the program effectively.

Right of Access to Subcontractors Records

It was suggested that the right of access and inspection to subcontractors records as stated in the proposed regulations was too broad, and that it should be limited "to only those *portions* of such documents that are necessary to verify transactions." This suggestion has not been accepted. We believe that the phrase in the regulations "... *pertinent* books, documents, papers, and records of the subcontractors involving *transactions related to the subcontract* . . ." (emphasis added) already sufficiently limits access to necessary materials, and that further limiting the right of access might prevent us from carrying out our responsibility to verify fully costs claimed by the HMO.

42 CFR Part 405, Subpart T is amended as set forth below:

1. The table of contents is amended by adding new § § 405.2028 through 405.2039, to read as follows:

Subpart T—Health Maintenance Organizations

* * * * *

Contract Requirements

Sec.
405.2028 Basis, purpose, and scope.
405.2029 Eligibility requirements and procedures for approval of a contract application.
405.2030 General contract requirements.
405.2031 Effective date and term of the contract.
405.2032 Required services and organization.
405.2033 Charges, refunds, and recoupment.
405.2034 Reinsurance.
405.2035 Coverage and enrollment.
405.2036 Information access and disclosure requirements.
405.2037 HMO Part A intermediary and Part B carrier responsibilities.
405.2038 Non-renewal, termination, or modification of a contract.
405.2039 Transfer of HMO ownership.
* * * * *

2. Section 405.2001 is amended by revising paragraph (a)(3) to read as follows:

§ 405.2001 Health maintenance organizations; general.

(a) *Introduction.* The regulations in this Subpart T set forth the requirements which an organization must meet in order to be eligible to enter into a contract with the Secretary as a health maintenance organization (HMO) under the health insurance program for the aged and disabled (title XVIII of the Social Security Act) and to be reimbursed through capitation payments for covered items or services the organization furnishes title XVIII beneficiaries who have enrolled with it.
* * * * *

(3) *Contract with the Secretary.* In order to participate and receive payment as an HMO under Medicare, an organization must enter into a contract with the Secretary as an HMO. The requirements pertaining to the Secretary's contract with an HMO are specified in §§ 405.2028 through 405.2039.
* * * * *

3. Subpart T is amended by adding new §§ 405.2028 through 405.2039 to read as follows:

Subpart T—Health Maintenance Organizations

* * * * *

Contract Requirements

§ 405.2028 Basis, purpose, and scope.

Sections 405.2029 through 405.2039 implement those parts of section 1876(a),

(i), and (j) of the Social Security Act pertaining to the contract between the Secretary and an HMO under the Medicare program, and specify:

(a) Eligibility requirements and procedures for approval of a contract application;

(b) Basic contract requirements;

(c) Procedures for refunds; and

(d) Procedures for contract termination, renewals, and changes in ownership.

§ 405.2029 Eligibility requirements and procedures for approval of a contract application.

An organization that wishes to contract as an HMO under the Medicare program on either a cost-basis or a risk-basis must submit an application and supporting information to HCFA in the form and detail required by HCFA. Whenever feasible, HCFA will not require an organization to resubmit information which it has already submitted to the Assistant Secretary for Health in connection with the determination required by paragraph (A)(1) of this section.

(a) *Eligibility requirements to enter into an HMO contract.* An organization will be determined eligible to enter into an HMO contract if:

(1) The Assistant Secretary for Health finds that it meets the qualifying conditions specified in §§ 405.2001 through 405.2007, or those conditions are waived as provided by these sections, and

(2) HCFA finds that: (i) Entering into, or renewing, an HMO contract with the organization would be consistent with the effective and efficient administration of section 1876 of the Act. HCFA may not approve a contract under this paragraph if it finds that the organization:

(A) Lacks sufficient administrative capability to carry out the requirements of the contract;

(B) Has a conflict of interest that would interfere with the performance of its contract, or the administration of the Medicare program; or

(C) Has any persons with ownership or control interests, or agents or managing employees, who have been convicted of criminal offenses related to their involvement in Medicaid, Medicare or the social services programs under title XX, and

(ii) In the case of an organization that is applying for a risk-basis contract, the organization:

(A) Has not previously voluntarily terminated or failed to renew a risk-basis contract under section 1876 of the Act; and

(B) Has the financial capability to assume the risk of any costs that might be reasonably anticipated during the contract period in excess of the adjusted average per capita cost for its area. Evidence of financial capability may include the purchase of an insurance program, or other financial arrangements that are satisfatory to HCFA.

(b) *Approval of application.* If HCFA determines that the organization meets the eligibility requirements specified in paragraph (a) of this section, HCFA will notify the organization in writing that:

(1) It is eligible to enter into a contract with the Secretary under 1876 of the Act—

(i) Either as a cost-basis HMO or as a risk-basis HMO or

(ii) Only as a cost-basis HMO;

(2) If the organization is dissatisfied with HCFA's determination that it is only eligible to enter into a contract as a cost-basis HMO, it may request a review of the determination by following the applicable procedures for reconsiderations of initial determinations specified in §§ 405.2065 through 405.2092; and

(3) If the organization wishes to be reimbursed as an HMO under Medicare, it must sign and submit a written contract that meets the requirements specified in §§ 405.2030 through 405.2036.

(c) *Denial of application.* If the organization does not meet the eligibility requirements specified in paragraph (a) of this section, HCFA will notify the organization in writing:

(1) That it is not eligible to enter into a contract with the Secretary under section 1876 of the Act;

(2) Of the reasons why the organization is ineligible for a contract; and

(3) That if it is dissatisfied with the notice of denial, it may request a review of the determination by following the applicable procedures for reconsiderations of initial determinations specified in §§ 405.2065 through 405.2092.

§ 405.2030 General contract requirements.

(a) *Submittal of contract.* In order to be reimbursed as an HMO under Medicare, an eligible organization must sign and submit a written contract, in the form required by HCFA, that meets the requirements of this subpart and contains any other provisions required by HCFA.

(b) *General provisions of contract.* The contract must provide that the HMO agrees to comply with:

(1) Title VI of the Civil rights Act of 1964, as provided in § 405.2065(c);

(2) Section 504 of the Rehabilitation Act of 1973, as amended;

(3) The requirements of Part B (Professional Standards Review) of title XI of the Social Security Act with respect to review of the services furnished its Medicare enrollees; and

(4) All provisions of this subpart.

(c) *Waived conditions.* All qualifying conditions that are waived (*see* § 405.2029(a)(1)) must be specified in the contract. The specification must include:

(1) The specific terms of the waiver;

(2) The expiration date of the waiver; and

(3) Any other information that HCFA considers relevant.

(d) *Exemption from Federal Procurement Regulations.* Under the authority provided by section 1876(j) of the Act, the Federal Procurement Regulations and HEW Procurement Regulations contained in title 41 of the Code of Federal Regulations will not apply to contracts entered into under this subpart.

§ 405.2031 Effective date and term of the contract.

(a) *Effective date.* The contract must specify its effective date, which may not be earlier than the date the contract is signed and executed by both the Secretary and the HMO.

(b) *Term.* The contract must specify its term.

(c) *Initial term.* The initial term of the contract may be not less than 12 months or more than 23 months.

(d) *Subsequent term.* Any subsequent term after the initial term will be for a period of 12 months.

(e) *Renewal.* A contract will be renewed automatically unless either party gives notice of its intent to terminate or not renew, as specified in § 405.2038.

§ 405.2032 Required services and organization.

The contract must specify that the HMO agrees to provide services, and is organized and operated, in the manner prescribed by section 1876(b)(1) (B) and (C) of the Social Security Act, and §§ 405.2001 through 405.2007 of this subpart.

§ 405.2033 Charges, refunds, and recoupment.

(a) *Charges.* The contract must provide that the HMO agrees to charge its Medicare enrollees—

(1) For covered items and services only as provided in § 405.2022(b).

(2) For noncovered items and services only as provided in § 405.2022(a).

(b) *Refunds.* (1) The contract must provide that the HMO agrees to:

(i) Report all premiums, membership fees, and charges collected from its Medicare enrollees within 90 days after the close of the contract period; and

(ii) Refund all amounts incorrectly collected from its Medicare enrollees or from others on behalf of the enrollees, and any other amounts due Medicare enrollees or others on behalf of the enrollees.

(2) *"Money incorrectly collected".* This means sums collected in excess of the amount for which the enrollee was liable under § 405.2022(b). It includes amounts collected at a time when the enrollee was believed not to be entitled to Medicare benefits but:

(i) The enrollee is later determined to have been entitled to Medicare benefits; and

(ii) The enrollees' entitlement period falls within the time the HMO's contract with the Secretary is in effect.

(3) *"Other amounts due".* This means amounts due an enrollee for items and services obtained from physicians, suppliers, or providers of services outside the HMO when:

(i) The enrollee is entitled to receive reasonable payment from the HMO for those items and services as provided in § 405.2021(a)(2); and

(ii) The amount has been determined to be due the enrollee under the procedures specified in §§ 405.2058 through 405.2063.

(4) *Method of making refunds.* (i) An HMO must make refunds to its present and former Medicare enrollees by means of a lump sum payment in the following situations:

(A) For amounts incorrectly collected if the amounts were not collected on a premium basis;

(B) For other amounts due; and

(C) For all refunds if the HMO is going out of business.

If a former enrollee has died, or cannot be located after a reasonable effort on the part the HMO to do so, the HMO must make the refund in accordance with State law.

(ii) An HMO may use one of the following methods to refund money incorrectly collected on a premium basis (or through a combination of premiums and other charges) from one or more of its present or former Medicare enrollees:

(A) By a premium adjustment to the individual enrollee's or all enrollees' future years' premiums;

(B) By a lump sum payment to the enrollee; or

(C) By a combination of premium adjustment and lump sum payment.

(5) *Reduction by HCFA.* If the HMO does not comply with the requirements of paragraphs (b)(1)(ii) and (4) of this section by the close of the contract period following the one in which the amount was determined to be due, HCFA will reduce its payment to the HMO by the amount of the sums incorrectly collected or otherwise due, and will arrange for this amount to be paid to the HMO's Medicare enrollees.

(c) *Recoupment.* An HMO may collect from its Medicare enrollees, or from others on behalf of the enrollees, deductible and coinsurance charges for which they were liable (*see* § 405.2022(b)) in a previous contract period if:

(1) The HMO's failure to collect these amounts during the contract period in which they were due resulted from:

(i) An underestimation of the actuarial value of the deductible and coinsurance amounts for the enrollees; or

(ii) A billing error or a miscalculation because of a mathematical error;

(2) The HMO identifies these amounts and obtains HCFA's advance approval to recoup these amounts and of the method and timing to be used for the recoupment. In the case of amounts specified in paragraph (c)(1)(i) of this section, the HMO collects these amounts through an adjustment to its enrollees' future premiums; and

(3) The HMO collects these amounts no later than 24 months following the end of the contract period in which they were due.

§ 405.2034 Reinsurance.

The contract must provide that the HMO will be reimbursed for reinsurance only as specified in §§ 405.2042(d) and 405.2050(b).

§ 405.2035 Coverage and enrollment.

(a) *Enrollment standards.* The contract must provide that the HMO agrees to have an enrollment that meets the standards specified in §§ 405.2004(c), 405.2020, and 405.2023(b).

(b) *Enrollment period.* The contract must provide that the HMO agrees to have an open enrollment period that meets the requirements of § 405.2023(a).

(c) *Continuity of services.* The contract must provide that the HMO agrees to continue providing care to its Medicare enrollees unless their enrollment is terminated according to § 405.2025.

§ 405.2036 Information access and disclosure requirements.

The contract must provide that the HMO agrees:

(a) That HEW or anyone designated by it may evaluate through inspection or other means the quality, appropriateness, and timeliness of services furnished under the contract to its Medicare enrollees;

(b) That HEW, the Comptroller General, or their designees may audit or inspect any books and records of the HMO or its transferee which pertain to services performed and determination of amounts payable under the contract.

(c) To maintain, as required by § 405.2044, books, records, documents and other evidence of accounting procedures and practices.

(1) These records must be sufficient to:

(i) Assure an audit trail; and

(ii) Properly reflect all direct and indirect costs claimed to have been incurred under the contract.

(2) These records must include at least those pertaining to:

(i) Matters of ownership, organization, and operation of the HMO's financial, medical, and other recordkeeping systems;

(ii) Financial statements for the current contract period and three prior periods;

(iii) Federal income tax or information returns for the current contract period and three prior periods;

(iv) Asset acquisition, lease, sale, or other action;

(v) Agreements, contracts, and subcontracts;

(vi) Franchise, marketing, and management agreements;

(vii) Schedules of charges for the HMO's fee-for-service patients;

(viii) Matters pertaining to costs of operations;

(ix) Amounts of income received by source and payment;

(x) Cash flow statements; and

(xi) Any financial reports filed with other Federal programs or State authorities.

(d) To make available for the purposes specified in paragraphs (a) and (b) of this section, its premises, physical facilities and equipment, its records relating to its Medicare enrollees, the records specified in paragraph (c) of this section, and any additional relevant information that HCFA may require.

(e) That the right to inspect, evaluate, and audit, will extend through 3 years from the date of the final settlement for any contract period unless:

(1) HCFA determines there is a special need to retain a particular record or group of records for a longer period and notifies the HMO at least 30 days before the normal disposition date;

(2) HCFA finds that Federal or State laws require a longer retention period;

(3) There has been a termination, dispute, fraud, or similar fault by the HMO, in which case the retention period may be extended to 3 years from the date of any resulting final settlement; or

(4) HCFA determines that there is a reasonable possibility of fraud, in which case it may reopen a final settlement at any time.

(f) To require all subcontractors (as defined in § 420.201 of this chapter [1]) that are related to the HMO by common ownership or control (see § 405.2042(b)(11)), all entities that are related to the HMO by common ownership or control providing services to its Medicare enrollees, through either oral or written agreements, and all entities that are related to the HMO by common ownership or control with whom the HMO has leases of real property or total purchase orders in excess of $2,500 during the contract period to—

(1) Agree that HEW and the Comptroller General of the United States or their designees have the right to inspect, evaluate, and audit any pertinent books, documents, papers, and records of the subcontractor involving transactions related to the subcontract; and

(2) Agree that the right under paragraph (f)(1) of this section to information for any particular contract period will exist for a period equivalent to that specified in paragraph (e) of this section.

(g) To submit to HEW:

(1) All financial information as specified in §§ 405.2047 and 405.2054 for final settlement; and

(2) Any information or data that HEW determines is necessary for the administration or evaluation of the Medicare program.

(h) To comply with the disclosure requirements specified in Subpart C, Part 420 of this chapter.[2]

(i) To comply with the requirements of the Privacy Act (5 U.S.C. § 552(a)) and implementing regulations with respect to any system of records developed in performing its carrier or intermediary responsibilities. (*See* 45 CFR Part 5b.)

(j) To meet the confidentiality requirements specified in § 405.1026(a) of this chapter with respect to all medical and other information on enrollees not covered by paragraph (i) of this section that is contained in its records, or obtained from HEW or others.

§ 405.2037 HMO Part A intermediary and Part B carrier responsibilities.

(a) *Part A intermediary responsibilities.*—(1) *Election required.* The contract must provide that the HMO will elect, according to § 405.2041(d):

(i) To have HCFA pay providers of services for covered items and services furnished to its Medicare enrollees;

(ii) To assume responsibility for paying providers of services directly for covered items and services furnished its Medicare enrollees; or

(iii) To use a combination of the methods specified in paragraphs (a)(1)(i) and (ii) of this section, if approved by HCFA.

(2) *Direct reimbursement by HMO.* If the HMO elects to pay providers of services directly for covered items and services, the HMO must:

(i) Determine the eligibility of its Medicare enrollees to receive covered items and services through the HMO;

(ii) Make proper coverage decisions and appropriate payments, in accordance with this part, for covered items and services for which its Medicare enrollees are eligible;

(iii) Assure that providers of services maintain and furnish appropriate documentation of physician certification and recertification, to the extent required by Subpart P of this part; and

(iv) Carry out any other procedures which HCFA may from time to time require.

(3) *Review of HMO bill processing capabilities.* If the HMO elects to pay providers of services directly, HCFA will determine whether the HMO has the experience and capability to carry out efficiently and effectively the responsibilities specified in paragraph (a) (2) of this section.

(4) *HCFA direct reimbursement required.* If HCFA determines that the HMO is not carrying out its bill-processing operations properly (or does not have the experience or capability to do so in the future), it may require the HMO to elect to have HCFA pay its providers of services directly. If the HMO refuses this election, HCFA may decline to enter into or may terminate a contract with the HMO.

(b) *Part B carrier responsibilities.* The contract must provide that in making reimbursement for non-provider Part B services furnished to its enrollees, an HMO is responsible for:

(1) Determining the eligibility of individuals to receive such items and services through the HMO;

(2) Making proper coverage decisions and appropriate payment, in accordance with the requirements of this part, for items and services for which its Medicare enrollees are eligible; and

(3) Carrying out any other procedures which HCFA may from time to time require.

§ 405.2038 Non-renewal, termination, or modification of a contract.

(a) *Non-renewal by HMO.* (1) If an HMO does not intend to renew its contract, it must:

(i) Give written notice to HCFA at least 90 days before the end of the current contract period;

(ii) Notify each Medicare enrollee by mail, at least 60 days before the end of the contract period; and

(iii) Notify the general public at least 30 days before the end of the contract period, by publishing a notice in one or more newspapers of general circulation in each community or county located in the HMO's enrollment area.

(2) The Secretary, at his discretion, may accept a non-renewal notice submitted less than 90 days before the end of the contract period if:

(i) The HMO notifies its Medicare enrollees and the public in accordance with paragraphs (a)(1) (ii) and (iii) of this section; and

(ii) Acceptance would not otherwise jeopardize the effective and efficient administraion of the Medicare program.

(b) *Termination or modification by mutual consent.* An HMO and the Secretary may modify or terminate the contract at any time by written mutual consent.

(1) *Modification.* If the contract is modified, the HMO must notify its Medicare enrollees of any modifications which the Secretary determines is approprite.

(2) *Termination.* If the contract is terminated:

(i) The HMO must notify its Medicare enrollees at least 30 days before the termination date; and

(ii) HCFA will notify the public at least 30 days before the termination date.

(c) *Non-renewal by the Secretary.* The Secretary may decide not to renew the HMO's contract at the end of the term. If the Secretary decides not to renew a contract, he will:

(1) Notify the HMO at least 90 days before the end of the contract period;

(2) Notify the HMO's Medicare enrollees at least 60 days before the end of the contract period;

(3) Notify the general publis at least 30 days before the end of the contract period; and

[1] Proposed regulations were published in the Federal Register on August 4, 1978 (43 FR 34710). These regulations will be issued in final soon.

[2] Proposed regulations specifying disclosure requirements were published in the Federal Register on August 4, 1978 (43 FR 34710). These regulations will be issued in final soon.

(4) Notify the HMO that if it is dissatisfied with the decision, it may request a review of the decision by following the procedures for reconsiderations of initial determinations specified in §§ 405.2065 through 405.2092.

(d) *Termination by the Secretary.* The Secretary may terminate a contract during its term for any of the reasons specified in § 405.2066(b)(1)–(3) by:

(1) Following the procedures specified in §§ 405.2065 through 405.2092; and

(2) Notifying the HMO's enrollees and the general public at least 30 days before the effective date of the termination.

§405.2039 Transfer of HMO ownership.

(a) *General rule.* (1) A transfer of the ownership or operation of an HMO, as specified in paragraphs (b),(c)(d), and (e) of this section, will render the contract invalid between the Secretary and the transferee, unless HCFA has approved a third party as the successor in interest to the contract through a novation agreement, as provided in paragraphs (f) and (g) of this section.

(2) An HMO which is contemplating or negotiating a change of ownership must notify HCFA at least 60 days in advance of the anticipated change of ownership. If it does not, the HMO (transferor) will continue to be liable to HCFA for per capita payments made to it by HCFA on behalf of its Medicare enrollees after the effective date of the transfer of ownership.

(3) If a change of ownership takes place without a novation agreement, the contract becomes invalid. If the new owner wishes to participate as an HMO under Medicare, it must:

(i) Notify HCFA that there has been a transfer of ownership of the HMO without a novation agreement; and

(ii) Apply for and enter into a contract as an HMO under Medicare, as specified in §§ 405.2029 through 405.2036.

(b) *Partnership.* In the case of a partnership, a change of ownership takes place in the circumstances specified in § 405.626(a) of this chapter.

(c) *Sole proprietorship.* In the case of a sole proprietorship, a change of ownership takes place in the circumstances specified in § 405.626(b) of this chapter.

(d) *Corporation.* (1) If an HMO is a corporate body, a change of ownership does not ordinarily occur if:

(i) There is a transfer of corporate stock; or

(ii) There is a merger of one or more corporations, with the HMO corporation surviving.

(2) A merger of two or more corporations involving an HMO corporation does constitute a change of ownership if the merger results in a new corporate entity.

(e) *Leasing.* If an HMO leases its facilities, in whole or in part, to another entity, the lessee does not assume HMO status under section 1876 of the Act.

(1) If the HMO leases all of its facilities to another organization, the Secretary's contract with the lessor organization terminates unless he has approved the transaction in advance.

(2) If the HMO leases part of its facilities to another organization, the contract remains in effect. However, HCFA will conduct a survey to determine whether the HMO continues to be in compliance with the HMO qualifying conditions specified in §§ 405.2001 through 405.2007.

(3) If the lessee of the facilities wishes to participate as an HMO under the Medicare program, it must apply for and enter into a contract with the Secretary as specified in §§ 405.2029 through 405.2036.

(f) *Provisions of novation agreement.*—(1) *Definition.* "Novation agreement" means the legal instrument executed by the current owner (transferor of an HMO), the proposed new owner (transferee) of an HMO, and HCFA, under which HCFA recognizes the transferee as the successor in interest to the existing contract.

(2) *Provisions.* (i) The transferee must assume all obligations under the contract; and

(ii) The transferor must waive its rights under the contract to obtain from the Secretary reimbursement for covered services furnished during the current contract period.

(3) *Guarantee of performance.* The transferor must guarantee performance of the contract by the transferee, or the transferee must post a satisfactory performance bond which is approved by HCFA.

(4) *Records access.* The transferor must agree to make its books, records, and other necessary information available to the transferee and to HCFA to permit an accurate determination of costs for the final settlement of the contract period.

(g) *Requirements for HCFA approval of a novation agreement.* A novation agreement may be approved and executed by HCFA if:

(1) The HMO (transferor) notifies HCFA at least 60 days in advance of the proposed change of ownership;

(2) The HMO submits, at least 30 days before the anticipated date of change of ownership, three signed copies of a proposed novation agreement to HCFA and one copy of any other documents required by HCFA; and

(3) HCFA determines that:

(i) The proposed transferee is in fact a successor in interest to the contract;

(ii) Recognition of the new party as a successor in interest to the contract with the HMO is in the best interest of the Medicare HMO program; and

(iii) The successor organization meets the requirements of this subpart to qualify as an HMO.

(Secs. 1102, 1871, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395hh and 1395mm.))

(Catalog of Federal Domestic Assistance Program No. 13.774-Medicare Supplementary Medical Insurance.)

Dated: March 5, 1979.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

Approved: May 10, 1979.

Hale Champion,

Acting Secretary.

[FR Doc. 79-15822 Filed 5-17-79; 8:45 am]

BILLING CODE 4110-35-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5662

Public Land Order; Emergency Withdrawal of Los Padres National Forest for Casitas Reservoir Watershed in California

Correction

In FR Doc. 79–15265 appearing at page 28666 in the issue for Wednesday, May 16, 1979, third column, the CFR cite in the heading should appear as set forth above.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

45 CFR Part 233

Budgeting Methods States May Use To Determine Eligibility and Amount of Assistance Under Aid to Families With Dependent Children Program

Correction

In FR Doc. 79–13831, appearing at page 26075, in the issue of Friday, May 4, 1979, on page 26083, in the middle column under § 233.26(a)(1), the seventh line, correct "budger" to read "budget".

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[FCC 79-254]

Amending Rules Concerning Wireless Microphones

AGENCY: Federal Communications Commission.

ACTION: Amendment of Parts 2 and 15 of the Commission's Rules.

SUMMARY: The Commission's Rules have been editorially amended by adding new sections to Parts 2 and 15 to warn manufacturers and users of wireless microphones that receiving type approval from the Commission does not in any way pass on compliance of these devices with other Federal laws, especially 18 U.S.C. Section 2512 concerning devices primarily useful for surreptitious interception of communications.

EFFECTIVE DATE: May 18, 1979.

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

FOR FURTHER INFORMATION CONTACT: Don Olmstead, Office of Chief Engineer, (202) 632-7073.

In the matter of amendment of Parts 2 and 15 of the Commission's rules relating to wireless microphones.

Adopted: May 2, 1979.

Released: May 10, 1979.

By the Commission:

1. At the request of the Department of Justice (DOJ), and to better inform the general public, the Commission is amending Parts 2 and 15 of the Rules to reflect the prohibition contained in 18 U.S.C. Section 2512 of the Criminal Code against making, possessing or selling devices "primarily useful for the purpose of the surreptitious interception of wire or oral communications."

2. The Commission has determined that wireless microphones have many legitimate and worthwhile uses. However, the use of these devices for eavesdropping is prohibited. Our Rules provide for the manufacture, sale, and use of wireless microphones provided they meet our technical requirements and have been granted an equipment authorization (type approval) pursuant to Part 2 of our Rules. It has not, in the past, been our policy to make determination as to the legality of such devices under 18 U.S.C. Section 2512. We have not attempted, nor did we feel it was appropriate, to interpret the words "primarily useful". Our considerations in issuing an equipment authorization have centered on compliance with our technical standards and the interference potential of the device. No change in this policy is contemplated by this Order. It should be noted parenthetically that many equipment authorizations for wireless microphones were issued prior to enactment of Section 2512 of title 18.

3. The DOJ contends that when a device possesses Commission "type approval", prosecution under 18 U.S.C. Section 2512 is exceedingly difficult because the statute requires a specific intention to violate the law. Moreover, it has been said that the "type approval" effectively signals to a jury that the Federal Government itself has possessed, examined, and approved the device without noticing its illegal characteristics. Thus, the DOJ has requested that the Commission not issue equipment authorizations where it is obvious that the "primary" purpose of the device is for the surreptitious interception of wire or oral communications. The size, type of antenna, sensitivity of the microphone, lack of an on-off switch are all said to demonstrate that the design of the device renders it "primarily useful" for surreptitious interception of communications. However, they do concede that there may be close cases in which event the use of expert testimony might be required.

4. To assist the DOJ in prosecutions under U.S.C. § 2512, we are amending Parts 2 and 15 of our rules to indicate that Type Approval of wireless microphones merely indicates compliance with our technical rules and makes no judgment on the legality of such devices or their use under 18 U.S.C. 2512.

5. For the reasons set forth above, adoption of the attached amendments will serve the public interest. Prior notice of rule making, effective date provisions, and public procedure thereon are unnecessary, pursuant to the requirements of 5 U.S.C. 553, inasmuch as these amendments only reflect existing law and raise no issues upon which comments would serve any useful purpose.

6. In view of the foregoing, and pursuant to authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, IT IS ORDERED, that Parts 2 and 15, ARE AMENDED as set forth in the attached APPENDIX, effective May 18, 1979.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. Section 2.927, is amended by adding paragraph (d) to read as follows:

§ 2.927 Limitations on grants.

* * * * *

(d) The issuance of an equipment authorization for a wireless microphone reflects no more than a Commission determination that the device has been shown to be capable of compliance with the applicable technical standards of the Commission's Rules, and should not be construed as a finding by the Commission as to matters not encompassed by the rules, especially with respect to compliance with 18 U.S.C. 2512.

PART 15—RADIO FREQUENCY DEVICES

2. Section 15.163, is amended by adding paragraph (d) to read as follows:

§ 15.163 Equipment authorization required.

* * * * *

(d) The issuance of an equipment authorization for a wireless microphone reflects no more than a Commission determination that the device has been shown to be capable of compliance with the applicable technical standards of the Commission's Rules, and should not be construed as a finding by the Commission as to matters not encompassed by the rules, especially with respect to compliance with 18 U.S.C. 2512.

[FR Doc. 79-15480 Filed 5-17-79; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 2 and 90

[RM-2406; RM-2543; RM-3108; RM-3111; RM-3136; FCC 79-259]

Frequency Allocations and Radio Treaty Matters; General Rules and Regulations and Private Land Mobile Radio Service; Providing for System Licensing in the Public Safety, Industrial, and Land Transportation Radio Services and To Provide for the Assignment of Call Signs on a System Rather Than a Single Station Basis in These Services

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order implementing new rules.

SUMMARY: New rules are adopted which implement, in stages, system licensing rather than individual station licensing in the private land mobile radio services. The rules also provide for some relaxation in the station identification requirements. The action is taken in response to five petitions for rule change and agency need for simplification and optimization of application processing procedures. The intended effect is to eliminate unnecessary redundancy in completing application forms and gradually to reduce applications processing time. Also intended is better station identification through a simplified procedure.

EFFECTIVE DATE: August 1, 1979.

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

FOR FURTHER INFORMATION CONTACT: Eugene C. Bowler, Private Radio Bureau, Mobile and Fixed Radio Branch (202) 632-6497.

In the Matter of Amendment of Parts 2, and 90 of the Commission's Rules to provide for system licensing in the Public Safety, Industrial, and Land Transportation Radio Services and to provide for the assignment of call signs on a system, rather than a single station, basis in these services. Amendment of Part 89 (Section 89.153) to allow stations in different Public Safety Radio Services to use the same call sign when controlled from a single dispatch center. Amendment of Parts 2 and 91 of the Commission's Rules and Regulations to revise the station identification requirements for mobile stations in the Industrial Radio Services. Amendment of Parts 91.56(a) and 91.57(a) to simplify the application procedure as it pertains to a Base/Mobile/Relay System. Amendment of Parts 89, 91, and 93 to eliminate the requirement of separate licensing of control stations that use antennas under 20 feet in height.

Adopted: May 2, 1979.

Released: May 11, 1979.

By the Commission: 1. The Commission has before it the petitions for rulemaking listed above filed, respectively, by Norman R. Coltri and James R. Barsuglia, RM-2406/2543 (the same petition was filed on two separate occasions); the Sears, Roebuck and Company (Sears), RM-3108; the National Association of Business and Educational Radio, Inc. (NABER), RM-3111; and by the California Mobile Radio Association (CMRA), RM-3136. These petitions have been considered together because they all relate to the subject matter of this decision.

2. Coltri and Barsuglia request that the Commission amend its rules to enable the assignment of a single call sign to a dispatch center which handles the communications of a single licensee having one or more stations in any of the Public Safety Radio Services. It is argued that in many instances, licensees have so many individually authorized stations operated by a single dispatcher, that no identification at all is transmitted because of the difficulty in remembering which station is in use at any particular time.

3. Sears has petitioned the Commission to either amend its rules to allow the issuance of a system call sign to each clearly segregated land mobile radio system, or else to eliminate the requirement for the transmission of station call sign by mobile radio units where the mobile units and the associated base station(s) operate on different frequencies. Sears believes that such mobile units should be permitted to use the "unit identifier" means of identification. Confusion in the land mobile radio community over proper mobile station identification procedure (particularly where a mobile relay system is involved), the need for streamlining operational procedures in order to obtain the most efficient channel utilization, and the apparent lack of need for mobile unit identification are reasons given by Sears in support of its petition.

4. NABER requests that applications for a single mobile relay system (i.e., a system involving the use of not more than one control or one mobile relay station) be made possible through the use of a single application form in order to eliminate a number of redundant data elements common to the three application forms which must presently be filed. NABER, too, stresses the desirability of the Commission's issuing a single system call sign.

5. The California Mobile Radio Association (CMRA) has requested rules under which the Commission would not need to license separately control stations utilizing antennas not more than 20 feet above ground, or more than 20 feet above the tree, natural formation or existing man-made structure (other than an antenna structure) on which the antennas may be mounted; and instead, license these stations in a manner similar to mobile units. CMRA cites the Commission's practice of allowing certain low-powered mobile stations to serve the functions of base and fixed stations, where the antenna height does not exceed 20 feet, and the need to improve our application filing and processing procedures as the primary arguments for the requested change.

6. Comments were submitted in RM-3108, RM-3111, and in RM-3136. All who submitted comments supported the requested rule amendments.

7. The Commission has had an on-going program looking toward improvements in our licensing and regulatory procedures. The changes requested by these petitions are in line with that program. However, we believe that the objectives of the petitioners would be achieved and our overall licensing and regulatory program for the private land mobile services would be improved by going somewhat further than requested and adopting procedures for system licensing and assigning a single system call sign in all of the private land mobile radio services regulated by Part 90 of the Commission's Rules.

8. Many requirements for radio communications call for multiple transmitting facilities involving various classes of stations. In the Public Safety Radio Services, for example, approximately 80% of all applications received relate to stations which could properly be termed as part of an overall communications system. In the Industrial Radio Services, the percentage is closer to 60 (in the Business Radio Service alone, it is 70). Similar systems, particularly in the Railroad Radio Service, are authorized in the Land Transportation Radio Services. A typical example of a "system," which is widely authorized, is the mobile relay system, which consists of a mobile relay and mobile stations, and usually at least one control station. Many systems involve the use of one or more control, mobile relay, base or operational fixed stations to provide radio communications over a specific area. This results in the filing of a large number of individual station applications. Yet it would be possible to encompass most, if not all of these facilities, in a fewer number of applications under a system licensing approach. Such an integrated, singly

licensed, system would consist of an intercommunicating group of land mobile or operational fixed stations, or a combination of both, and the associated mobile station. Characteristically, such a system would provide radio communications over a specific area of operation.

9. System licensing, while not changing the fundamental evaluation which takes place in the examination phase of applications processing, would reduce the number of authorizations issued and the subsequent accountability (license filing and data base entry) which must take place. Eventually, the number of renewal requests would decline in proportion to the numbers of systems authorized involving multiple transmitting facilities. The demand for additional call signs would be moderated and data base design and capture procedures could be less complex. Also, we are aware of the difficulties encountered by many licensees in understanding the present station identification rules, particularly where mobile relay stations are concerned. It is evident that some relief in the way of a rule simplification is needed, and the use of system call signs appears to be the key to such relief.

10. We have, accordingly, decided to amend Parts 2 and 90 to provide for land mobile system licensing. We are defining a "land mobile system" as a "regularly interacting group of land mobile stations intended to provide radio communications over a single area of operation." Usually, this involves a group of stations of different classes. The simplest system consists, at a minimum, of a base station and mobile station. More typically, it consists of one or more "control" stations, a "mobile relay" station, and a "mobile" station. (Most systems authorized above 450 MHz fit this description.) Other systems consist of either multiple base stations and a mobile station, or a combination of base and operational fixed stations, and a mobile station. Multiple base station systems are often utilized where the necessary area of operation is much larger than normal. In sum, a system, which would be authorized in a single license and which would be assigned a single call sign, may consist of the number of base stations, any fixed stations used to control those base stations, and the associated mobiles, all of which are used to provide coverage over the licensee's defined area of operation.

11. On the other hand, a licensee who plans to utilize two or more widely separated base stations to cover two or more independent or non-contiguous areas of operation may not combine those stations to form a single system unless the mobile units routinely operate mobile-to-mobile in the area between the two base stations, or frequently operate in the area served by each base station. Normally, the service areas of the various base stations must overlap or at least be contiguous. Also, we are not limiting system licensing to operations on a single frequency or channel, or pair of frequencies. Where an applicant has been able to justify the assignment of multiple channels to provide coverage over his area of operation, the necessary stations may be included in the single system authorization.

12. Unfortunately, the Commission's Master Frequency File cannot, at the present, handle the data for the systems we are proposing when two or more land stations at different locations are involved, except in the case of the 470–512 MHz band. Were such modifications to be made for all other types of stations, it would be necessary to require the licensee to resubmit an application for the entire system. This is because the Commission's principal land mobile data base (called the "Frequency Master File") is constructed around a "record-by-record" or "license-by-license" insertion and deletion system. While this would not be a problem in the case of small systems requiring the use of a single application form, a substantial burden would be placed on licensees of more complex systems. The burden on Commission personnel, too, would be significant in terms of the effort required to delete and replace a system record. These disadvantages can be avoided either by the development of a land mobile data base or a front-end system to handle the more complex systems' data for input to the Master Frequency File, but it will take some time to accomplish the necessary changes. We have, therefore, decided to adopt a phased approach to system licensing. We will authorize a system call sign now for an eligible system of any complexity in the 470–512 MHz band, and for a simple system (i.e., one consisting of not more than two land stations at different locations) in all of the other frequency bands. Later, on a date to be announced, when the necessary front-end system or land mobile data has been developed, we will expand the system licensing and system call sign concept to include the more complex systems outside the 470–512 MHz band. This approach should allow 50% of all land mobile applicants to take immediate advantage of system licensing, and the rest to do so when the computer procedures are developed.

13. In conjunction with these changes, it is likely that the application forms (both Form 400 and Form 425) will be replaced by a new form more suitable for system licensing. In the interim, applicants should follow the procedures set forth in Appendix B concerning the use of FCC Form 400 and 425 in applying for a system license.

14. The use of single system call sign will greatly alleviate the station identification problem, and we anticipate that many licensees may want to file for a system authorization as soon as possible. Unfortunately, we do not have the resources to cope with such an increase of applications, so we will not accept applications submitted solely for the purpose of obtaining a system call sign. We will accept applications involving the authorization of new stations or systems, or modification or renewal of a license of a station which is a component of what we have defined as a system. Where modification or renewal is involved, even if only of one station in a system, applications for inclusion of the other stations may also be submitted.

15. In order to provide relief for those licensees who will not be able to immediately consolidate their individual stations into a system, we are amending the station identification rules to generally permit two-frequency systems (such as two-frequency simplex, duplex and mobile relay systems) to be identified by the transmission of the call sign of the base station only. In instances, where communications occur between mobile units, one of the mobile units involved should transmit the call sign of the associated base station. In a mobile relay system, the mobile relay station is considered to be the "associated base station" of the control and mobile stations. Whenever a base station (including a control station) transmits the call sign of the system base or mobile relay station during the operating period, the mobile units need not identify by call sign. In the case of a system utilizing multiple base stations, the call sign of the particular base station being utilized may be transmitted by a mobile unit at the prescribed interval, or the mobile station call sign may be used.

16. This relaxation in station identification procedure is based on the fact that in systems operating on frequencies above 450 MHz, the base stations and the mobile units operate with a prescribed amount of frequency separation. Thus, knowing the assigned frequency of the base station (which can

be found through referencing its call sign), it is possible to determine the authorized frequency of the associated mobile units (and in a mobile relay system, the frequency of the control station). Also, in the Industrial and Land Transportation Radio Services, the call signs of stations communication with a base or mobile relay station are indicated on the station license, thereby providing us with a clear picture of the system configuration. This is not the case in the Public Safety Radio Services, however, so we are not able to relax the station identification requirements for public safety stations which operate on frequencies below 450 MHz. Licensees in the lower frequency bands will have to defer any change in their station identification procedure until modification or renewal of one of the stations in their system allows them to file for a system authorization and call sign.

17. While the action we are taking grants, in greater part, the referenced petitions, it is necessary to comment further on the proposals of Barsuglia and Coltri (RM–2406 and RM–2543) and the California Mobile Radio Association (RM–3136).

18. The Barsuglia-Coltri proposal, if adopted as proposed, would require even more extensive changes in the Commission's Frequency Master File. We believe, too, that administrative difficulties could arise in attempting to identify systems in different radio services, where they are "labeled", as it were, by only a single call sign identifier. The problem would be particularly acute in the case where an operating frequency was available for assignment in more then one radio service. Because of these difficulties, and because we feel the other changes we are implementing in this action go a long way to ease the station identification problems in the private land mobile radio services, we must deny the request for interservice assignment of a single call sign.

19. A difficulty with respect to the petition of the California Mobile Radio Associaton (RM–3136) is that if it were granted in its entirety, the Commission would not be provided with even a minimum amount of information as to the location of a control station meeting the proposed "20 foot rule." While we do not see any great need for knowing the precise technical location (latitude and longitude) of a control station transmitter because of the reduced interference protential characteristic of such a station, we do need an administrative location or street address in order to have an inspection address for the station and be able to enforce our transmitter control regulations. Thus, while we are granting the CMRA petition in substance, applicants will be required to provide the street address locations of all control station control points. Control stations may be moved without license modification, in the same way as are control points, provided that the Commission is notified of any such change within thirty (30) days. Also, we cannot relax the present requirements for control stations in the 470–512 MHz band because of the need to know the coordinates in order to check the antenna height above average terrain (AAT) and the distance to the associated mobile relay transmitter.

20. While the single call sign, system licensing approach being permitted by this action offers many advantages to licensees and to the Commission, there is one potential drawback which we wish to point out. Our field personnel, in performing our enforcement functions, may not be able to determine the location or the particular identity of a station which may be monitored in violation of one of our technical rules, or which may be causing interference. As an example, under the present system (where individual station call signs are assigned), if a control station in a multiple control station mobile relay system was observed to be off-frequency, the station call sign would be indicated on the ensuing Notice of Violation, and the licensee would know which station is off-frequency. This convenience would be given up where a system call sign is used. Practically, however, this should not be much of a problem, since we expect most licensees to use some form of internal station identification (such as the "unit number" method) for their own administrative purposes. Nevertheless, should such an identifier not be obtained by our field personnel during the course of station observation, the burden of identifying the particular station or transmitter will fall upon the licensee. This requirement, however, seems very small in comparison to the convenience afforded by system licensing and the resultant simplification of station identification.

21. Lastly, licensees of individually authorized stations may, when combining their stations in a system application, request that the call sign of one of the previously authorized base stations be assigned as the system call sign.

22. The rule changes we are adopting are essentially procedural in nature and would benefit both applicants and the Commission, with no adverse effect on any party. It does not appear that adverse comments would be received were these changes to be released for prior public comments (no comments at all were received on RM–2406 and RM–2543, and all of the comments received on RM–3108, RM–3111, and RM–3136 strongly supported these proposals), and it is in the public interest to initiate the new procedures relating to system licensing as soon as possible. Therefore, the prior notice and comment provisions of the Administrative Procedures Act (5 USC 533) do not apply. The reporting requirement included herein is adopted subject to GAO clearance, and unless we are advised to the contrary, will be effective August 1, 1979.

23. The new procedures become effective August 1, 1979. General Information on this matter may be obtained by contacting Mr. Eugene C. Bowler, of the Commission's Private Radio Bureau's Rules Division, at (202) 632–6497. More specific questions concerning completion of Form 400 and Form 425 should be directed to the Bureau's Licensing Division at (202) 632–6475.

24. Accordingly, it is ordered, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that petitions RM–2406 and RM–2543 are denied; petitions RM–3108 and RM–3111 are granted, as extended; and that petition RM–3136 is granted in part: and that effective August 1, 1979, Parts 2 and 90 of the Commission's Rules are amended as set forth in Appendix A. It is further ordered that this proceeding is terminated.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

I. Part 2 of the Commission's Rules and Regulations is amended as follows: § 2.302 is amended to read as follows:

§ 2.302 Call signs.

The table which follows indicates the composition and blocks of international call signs available for assignment when such call signs are required by the rules pertaining to particular classes of stations. When stations operating in two or more classes are authorized to the same licensee for the same location, the Commission may elect to assign a separate call sign to each station in a different class. (In addition to the U.S. call sign allocations listed below, call sign blocks AAA through AFZ and ALA through ALZ have been assigned to the Department of the Army; call sign block

AFA through AKZ has been assigned to the Department of the Air Force; and call sign block NAA through NZZ has been assigned jointly to the Department of the Navy and the U.S. Coast Guard.

* * * * *

II. Part 90 of the Commission's Rules and Regulations is amended as follows:

1. § 90.7 is amended to include a definition of "Land Mobile Radio System", and to clarify the definition of "Land Station."

§ 90.7 Definitions.

* * * * *

Land Mobile Radio Service. A mobile service between base stations and land mobile stations, or betwen land mobile stations.

Land Mobile Radio System. A regularly interacting group of base, mobile and associated control and fixed relay stations intended to provide land mobile radio communications service over a single area of operation.

Land Station. A station in the mobile service not intended to be used while in motion. (As used in this Part, the term may be used to describe a base, control, fixed, operational fixed or fixed relay station, or any such station authorized to operate in the "temporary" mode.)

* * * * *

2. The heading and text of § 90.117 are amended to read as follows:

§ 90.117 Applications for radio station or radio system authorizations.

Persons desiring a radio station or radio system authorization must first submit the appropriate application(s). Prescribed application forms are listed in § 90.119. They may be obtained from the Washington, D.C. office of the Commission, or from any of its engineering field offices. (See § 90.145 for information regarding special temporary authorizations.) Beginning August 1, 1979, the Commission will accept applications for land mobile radio systems as defined in § 90.7 of this Part. Until further notice, the following limitation shall apply to systems for which authorization is being sought: systems, except those utilizing frequencies exclusively in the 470–512 MHz Band, shall consist of not more than two land stations at different locations, unless the land stations are control stations meeting the requirements of § 90.119(a)(2)(ii), and a mobile station. No restrictions will be placed on the complexity of a system to operate exclusively in the 470–512 MHz Band. Effective January 1, 1980, applicants for new stations which comprise a system, or applicants modifying or renewing a station which is part of a system, shall file an application for a system authorization. (In the latter case, the applicant may select one of the land station call signs as the call sign of the system.) The obligation to file for system authorization falls only upon those applicants with a system falling within the purview of the limitation set forth above.

3. In § 90.119, paragraphs (a) and (b) are amended to read as follows:

§ 90.119 Application forms.

The following application forms shall be used.—

(a) Except as provided for in paragraph (c) of this section, Form 400 shall be used to apply:

(1) For new base, fixed, or mobile station authorizations governed by this part.

(2) For system authorizations, where the system meets the requirements of § 90.117.

(i) Except as provided in paragraph (a)(2)(ii) of this section, application for a system consisting of not more than two land stations at different locations (most commonly this will be a control station and a mobile relay station), and a mobile station, shall be submitted on a single Form 400.

(ii) If the control station(s) will operate on the same frequency as the mobile station, and if the height of the control station(s) antenna(s) will not exceed 6.1 meters (20 feet) above the ground, or an existing man-made structure (other than an antenna structure), there is no limit on the number of such stations which may be authorized. Item 1 of Form 400 shall be completed showing the frequency, the number of control stations, the emission, and the output power of the highest powered control station. Additionally, the Commission shall be provided with the address of each control station, and where different, the address of every control station control point.

(3) For modification or for modification and renewal of an existing authorization. (See § 90.135)

(4) For the Commission's consent to the assignment of an authorization to another person or entity. In addition, the application shall be accompanied by a letter from the assignor setting forth his desire to assign all right, title, and interest in and to such authorization, stating the call sign and location of the station, and that the assignor will submit his current station authorization for cancellation upon completion of the assignment. Form 1046 may be used in lieu of this letter.

(b) Except as provided for in paragraph (c) of this section, Form 405–A shall be used to apply for a renewal without modification of a station or system license.

* * * * *

4. In section 90.135 add new language to subparagraph (b)(3) to read as follows.

§ 90.135 Modification of license.

(a) * * *

* * * * *

(b) * * *

(3) Change in the number and location of station control points, or of control stations meeting the requirements of § 90.119(a)(2)(ii).

* * * * *

5. In § 90.425, paragraph (a) is amended to read as follows:

§ 90.425 Station identification.

* * * * *

(a) *Identification procedure.* Except as provided in paragraph (d) of this section, each station or system shall be identified by the transmission of the assigned call sign during each transmission or exchange of transmissions, or once each 15 minutes (30 minutes in the Public Safety and Special Emergency Radio Services) during periods of continuous operation. The call sign shall be transmitted by voice in the English language, or by International Morse Code in accordance with paragraph (b) of this section. Permissible alternative identification procedures are as follows:

(1) A mobile relay station call sign may be used to identify the associated control and mobile stations, except in the Public Safety and Special Emergency Radio Services where the stations operate on frequencies below 450 MHz. Alternatively, a base station (including a mobile relay station) which is controlled by radio may be identified by the transmission of the call sign of the station at which communications originate.

* * * * *

[FR Doc. 79-15485 Filed 5-17-79; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 5 and 21

[FCC 79-279]

Eliminating the Use of FCC Form 452-C (Transmitter Identification Card), To Eliminate the Requirement of Advance Notice of Equipment Tests and To Simplify Certain Posting Requirements

AGENCY: Federal Communications Commission.

ACTION: Order deleting and modifying rules.

SUMMARY: Federal Communications Commission amends Parts 5 and 21 of its Rules and Regulations to eliminate the use of FCC Form 452–C (Transmitter Identification Card), to eliminate the requirement of advance notice of equipment tests, and to simplify certain posting requirements. Under the rules change, licensees in the Domestic Public Radio Service and in the Experimental Radio Services are no longer required to post the original authorization but instead are required only to retain it on file and to post a clearly legible copy of the authorization at every control point of the station.

EFFECTIVE DATE: May 18, 1979.

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

FOR FURTHER INFORMATION CONTACT: Michael A. Menius, Mobile Services Division, Common Carrier Bureau. Telephone (202) 632–6450.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Parts 5 and 21 to eliminate the use of FCC Form 452–C (Transmitter Identification Card), to eliminate the requirement of advance notice of equipment tests, and to simplify certain posting requirements.

Adopted May 1, 1979.

Released May 10, 1979.

By the Commission:

1. In accordance with our ongoing policy of simplifying our rules and removing unnecessary requirements, we have adopted the following rule changes in Part 21 (the Domestic Public Radio Services) and in part 5 (the Experimental Radio Services (other than Broadcast)).

2. In 1977 the Commission took action to delete the requirement for use of FCC Form 452–C (Transmitter Identification Card) in all of the Safety and Special Radio Services, now named the Private Radio Services.[1] We stated at that time that retention of the FCC Form 452–C requirement was no longer necessary to our enforcement activities, so the requirement was consequently deleted. This Order will delete the same requirement in Parts 5 and 21, so that the use of the Transmitter Identification Card is no longer required in the Experimental Radio Services and in the Domestic Public Radio Services.[2]

3. Second, we are deleting the requirement, stated in rule section 21.212(a), that holders of construction permits provide advance notification of equipment testing to the Commission's Engineer-in-Charge of the radio district in which the permittee's station is located. A similar reporting requirement was deleted in 1977 from the Safety and Special Radio Services Rules and Regulations, now the Private Radio Services Rules and Regulations.[3] After weighing the benefits derived against the difficulties of compliance, the Commission has concluded that retention of this reporting requirement is no longer necessary to our enforcement activities and we are deleting it.

4. Third, we are simplifying our requirements in the Experimental Radio Services concerning the posting of station licenses. We are hereby eliminating the requirement that licensees post the original authorization. Under this rules change, the original authorization need only be retained as part of the station records. A clearly legible copy of the authorization for each fixed station must be posted at every control point of the station. This change will also eliminate the present posting requirement pertaining to mobile units. We believe these changes will ease the administrative burden on licensees. At the same time, the Commission will be able to perform its inspection and enforcement duties, since licensees will still be required to retain the original authorization on file.

5. The adopted changes are procedural in nature and relax existing rule requirements. Similarly, the Public Notice referred to in footnote 2 announced changes which are procedural and which relax existing rule requirements. The Commission finds, pursuant to 5 U.S.C. § 553, that public participation in the rules changes announced in this Order is impractical, unnecessary, and contrary to the public interest.

6. For the foregoing reasons, the Commission has concluded that the public interest will be served by adopting these rule amendments. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, 48 Stat. 1066, as amended, 1082, as amended (47 U.S.C. 154, 303) that Parts 5 and 21 of the Commission's Rules ARE AMENDED, effective May 18, 1979, as set forth in the attached Appendix.

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

[1] Commission Order FCC 77–522, Mimeo 70790, released August 30, 1977.

[2] The Commission had previously announced by Public Notice dated August 29, 1978 (Mimeo 6743) that the use of FCC Form 452–C would be discontinued in the Domestic Public Radio Services.

[3] Commission Order FCC 77–522, Mimeo 70790, released August 30, 1977.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 5 and 21 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 5—EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)

1. In Section 5.157, the headnote and text are amended to read as follows:

§ 5.157 Posting station licenses.

(a) The current original authorization for each station shall be retained as a permanent part of the station records but need not be posted.

(b) A clearly legible copy of the authorization for each station at a fixed location shall be posted at every control point of the station.

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

§ 21.202 [Deleted and reserved]

2. Section 21.202 is deleted and reserved.

§ 21.212 [Amended]

3. In Section 21.212, subparagraph (a)(1) is deleted and reserved.

[FR Doc. 79–15481 Filed 5–17–79; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 19

[FCC 79–255]

Employee Responsibilities and Conduct; Creation of a Sunshine Agenda

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: The FCC is amending its rules to permit the preparation and public distribution of a "Sunshine Agenda". The "Sunshine Agenda" will include an expanded plain English summary of items scheduled for discussion at open FCC meetings. The Commission has found that members of the public and press often find it difficult to understand the decisions at Commission meetings. For this reason, the amendment seeks to help members of the public and press understand more clearly the FCC's decision-making processes by providing additional information about items scheduled for discussion in FCC open meetings.

EFFECTIVE DATE: June 1, 1979.

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

FOR FURTHER INFORMATION CONTACT: Lawrence Martin or Erika Z. Jones at (202) 632–7000; or Norman Blumenthal at (202) 632–6990.

In the matter of creation of a "Sunshine Agenda."

Adopted: May 2, 1979.

Released: May 11, 1979.

By the Commission: Commissioners Lee and Washburn concurring in the result.

1. The National Association of Boardcasters has asked the Commission to consider providing the public with "abbreviated versions" or summaries of items scheduled for discussion at open Commission meetings. NAB, which is supported by Robert Tall, publisher of Washington Radio Reports, argues that these summaries would help members of the public understand more clearly the FCC's decision making processes. NAB points out that distribution of these summaries is consistent with the spirit of the Government in the Sunshine Act (5 U.S.C. 552(b)), the law which requires that most agency meetings be open to the public. At the present time, members of the public who attend Commission meetings are given an Agenda for the meeting including only the titles of the items scheduled for discussion.

2. The Commission agrees with NAB that more information should be provided to members of the public who attend Commission meetings. Our Consumer Assistance Office recently completed a series of workshops to teach members of the public how to participate in FCC rulemaking proceedings. During these workshops, the Consumer Assistance Office staff frequently heard comments from members of the public that discussions of agenda items at our Commission meetings are difficult to follow.

3. We have considered several alternative ways to satisfy the goal of providing members of the public with more information about agenda items scheduled for Commission discussion. We balanced the public's need for more information against the Commission's need to preserve the confidentiality of some aspects of draft documents prior to a Commission decision. We concluded that the best solution is to release a "Sunshine Agenda" at least seven days prior to a Commission meeting. The Sunshine Agenda, which would replace the public notice agenda currently released before a Commission meeting, would include the title and a brief summary of each agenda item scheduled for an open Commission meeting.

4. Commission Rules (§ 19.735–206) currently prohibit staff disclosure of "information about the content of agenda items." We are amending this section to clarify that this prohibition will not preclude the preparation and public distribution of a Sunshine Agenda. We are also clarifying that Commission regulations do not prohibit the staff from releasing information about the scheduling of agenda items.

5. For more information, call Lawrence Martin or Erika Z. Jones at 632–7000; or Norman Blumenthal at 632–6990.

6. Accordingly, WE ORDER, effective June 1, 1979, that Section 19.735–206 is amended as shown in the attached appendix. Authority for this amendment is contained in Section 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j) and 303(r). Because the amendments involve matters of procedure and internal standards of conduct, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

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

In Part 19, Section 19.735–206 is revised to read as follows:

§ 19.735–206 Misuse of information.

Except as provided in Section 19.735–206(c), or as authorized by the Commission, an employee shall not, directly or indirectly, disclose to any person outside the Commission any information, or any portion of the contents of any document, which is part of the Commission's records or which is obtained through or in connection with his Government employment, and which is not routinely available to the public and, with the same exceptions, shall not use any such documents or information except in the conduct of his official duties. Conduct intended to be prohibited by this section includes, but is not limited to, the disclosure of information about the content of agenda items (except for compliance with the Government in the Sunshine Act), 5 U.S.C. 552b or other staff papers to persons outside the Commission and disclosure of actions or decisions made by the Commission at closed meetings or by circulation, prior to the public release of such information. This section does not prohibit the release of an official Commission meeting agenda listing titles an summaries of items for discussion at an open Commission meeting. Also, this section does not prohibit the release of information about the scheduling of Commission agenda items.

[FR Doc. 79–15479 Filed 5–17–79; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 83

[FCC 79–276]

Providing for the Use of Single Sideband Emission A3J (Suppressed Carrier) on the Maritime Mobile Service Radiotelephone Frequency 2182 kHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Amendment of the rules to delete the requirement for A3H emission on the radiotelephone distress, safety and calling frequency 2182 kHz for vessels navigated on domestic voyages. The A3H requirement is retained for United States vessels to have the capability to communicate with foreign coast stations. It is unnecessary to retain this requirement for vessels which are solely navigated on domestic voyages.

EFFECTIVE DATE: January 1, 1980.

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

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bagnato, Private Radio Bureau, (202) 632–7197.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Part 83—to provide for the use of single sideband emission A3J (suppressed carrier) on the maritime mobile service radiotelephone frequency 2182 kHz.

Adopted: May 1, 1979.

Released: May 10, 1979.

By the Commission:

1. The Report and Order in GEN DOCKET NO. 78–208 was released on February 7, 1979 (FCC 79–67) and was published in the Federal Register on February 12, 1979 (44 FR 8870).

2. The rules applicable to vessels subject to the compulsory radiotelephone requirements of Title III, Parts II and III of the Communications Act of 1934, as amended, are contained in Subparts S and T of Part 83 of the Commission's rules respectively. Subpart S is applicable to vessels which

are usually navigated on international voyages and Subpart T is applicable to small passenger vessels usually navigated on domestic voyages.

3. In the docketed proceeding, it was our intention to improve the maritime radiotelephone safety system communications on 2182 kHz by a shift to suppressed carrier (A3J) emission. We retained the requirement for compulsorily fitted vessels to have the capability for A3H emission on 2182 kHz to communicate with foreign coast and a small number of foreign ship stations which are unable to operate on A3J emission. It was an oversight on our part to make this A3H requirement applicable to small passenger vessels which are not navigated on international voyages. Therefore, it is unnecessary to require vessels engaged on domestic voyages to have the capability for A3H emission. Accordingly, we will amend the applicable rules in Subpart T to reflect the requirement for A3J emission only.

4. Regarding questions covered in this document, contact Nicholas G. Bagnato, (202) 632-7175.

5. Accordingly, it is ordered, That pursuant to the authority contained in Section 303(r) of the Communications Act of 1934, as amended, Part 83 of the Commission's rules is amended as set forth in the attached Appendix, effective January 1, 1980. Since these amendments are deleting a requirement which is not applicable to this class of vessel, the prior notice, procedures and effective date provisions of 5 U.S.C. 553 would serve no useful purpose and hence, are not applicable.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 83 of Chapter 1 of Title 47 of the Code of Federal Regulations in amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. In Section 83.517, paragraphs (a) and (c)(2) are amended to read as follows:

§ 83.517 Medium frequency transmitter.

(a) The transmitter shall have a peak envelope output power of at least 60 watts for A3J[1] emissions on 2182 kHz, in accordance with § 83.351, and at least one ship-to-shore working frequency within the band 1605 to 2850 kHz enabling communication with a public coast station serving the region in which the vessel is navigated.

* * * * *

(c)(2) The transmitter has been demonstrated, or is of a type which has been demonstrated, to the satisfaction of the Commission as capable, with normal operating voltages applied, of delivering not less then 60 watts peak envelope power for A3J emissions on each of the frequencies 2182 and 2638 kHz into either an artificial antenna consisting of a series network of 10 Ohms effective resistance and 200 picofarads capacitance or an artificial antenna of 50 Ohms nominal impedance. An individual demonstration of the power output capability of the transmitter, with the radiotelephone installation normally installed on board ship, may be required whenever in the judgment of Commission this is deemed necessary.

2. In Section 83.519, paragraph (a) is amended to read as follows:

§ 83.519 Radiotelephone receivers.

(a) If a medium frequency radiotelephone installation is provided, the receiver used for maintaining the watch required by § 83.202(c) shall be capable of effective reception of A3J emissions, shall be connected to the antenna system specified by § 83.526, and shall be present to, and capable of accurate and convenient selection of, the frequencies 2182 kHz, 2638 kHz, and the receiving frequency(s) associated with the ship-to-shore transmitting frequency(s) provided pursuant to § 83.517(a).

* * * * *

[FR Doc. 79-15478 Filed 5-17-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Capability for A3J emission on 218 kHz shall be completed on or before April 30, 1979.

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47 CFR Parts 83 and 87

[Gen. Docket No. 78-310; FCC 79-275]

Stations on Shipboard in the Maritime Services and Aviation Services; Designating a Second Frequency for Bridge-to-Bridge Operations in the Southern Louisiana Section of the Mississippi River System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Amendment of the rules to designate a second frequency for bridge-to-bridge operations. This new frequency, 156.375 MHz, will replace the use of marine Channel 13, 156.65 MHz, in the southern Louisiana section of the Mississippi River System. This action is being taken at the request of the U.S. Coast Guard. It is being taken to alleviate interference and operational problems on Channel 13 in this particular area.

EFFECTIVE DATE: June 18, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Bruce A. Franca, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Amendment of Part 83 of the Commission's Rules to designate a second frequency for bridge-to-bridge operations in the southern Louisiana section of the Mississippi River System.

Adopted: May 1, 1979.

Released: May 15, 1979.

By the Commission:

Summary

1. This Report and Order amends Part 83 of the Commission's rules to designate a second frequency for bridge-to-bridge operations in the southern Louisiana section of the Mississippi River system. This action was requested by the United States Coast Guard (USCG).

Background

2. The Notice of Proposed Rule Making (NPRM) in this proceeding was released on September 29, 1978. In this NPRM, the Commission proposed to amend the rules to designate a second frequency for bridge-to-bridge operations. This proposed new frequency replaces Channel 13 (156.650 MHz) in the southern Louisiana Section of the Mississippi River system. Channel 67 (156.375 MHz) was proposed in the NPRM for this purpose.

3. The Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. § 1201, et seq. (Supp. I, 1971)) was enacted "to provide a positive means whereby the operators of approaching vessels can communicate their intentions to one another through voice radio, located convenient to the operator's navigation station." The Act also called for the need for a specific frequency or frequencies dedicated to the exchange of navigational information. The Commission in Docket No. 19343 (37 FR 11245) set aside Channel 13 (156.65 MHz) for this purpose.

4. While the bridge-to-bridge radiotelephone system has generally proved very effective in most areas of the country, this has not been the case in the southern Louisiana section of the Mississippi and the Gulf Intracoastal

Waterway. The USCG, therefore, with the recommendation of Industry Ad Hoc Committee for Ports and Waterways, proposed that a second frequency for bridge-to-bridge operations replace the use of Channel 13 in the Mississippi River from South Pass Lighted Whistle Buoy "2" and Southwest Pass Entrance Midchannel Lighted Whistle Buoy to mile 242.4 AHP (above head of Passes) near Baton Rouge. In addition, this new frequency will be used in the Mississippi River-Gulf Outlet, the Mississippi River-Gulf Outlet Canal, and the Inner Harbor Navigational Canal.

5. In the NPRM, the Commission proposed Channel 67 as the most suitable choice for use as this second bridge-to-bridge frequency. Channel 67 is presently available for commercial intership purposes. The Commission stated in the NPRM that the choice of an intership frequency would be the least disruptive of present operations in the New Orleans area. The Commission further stated that it felt it would be inpracticable and not in the public interest to choose one of the ship-to-shore commercial frequencies because of the large number of limited coast stations presently authorized on these frequencies in the New Orleans area. In addition, the Commission stated that Channel 67 is designated for ship movement activities by the international Radio Regulations which would be consistent with the general purposes of the bridge-to-bridge operations.

Comments

6. Eighty comments and one reply comment were received in this proceeding. The majority of these comments were from masters and pilots wholly supporting the proposed rule changes. Objections were raised in only six of the comments received. The Associated Branch Pilots, Bar Pilots for the Port of New Orleans, objected to the changing of channel 13 to channel 67. No reasons for this objection were given. The International Chamber of Shipping (ICS), a body representing national shipowners' associations in 29 maritime countries, felt that this action would place a further burden on shipowners. They suggested that in areas where additional bridge-to-bridge channels are required that the communication equipment be provided by the port/pilotage authorities. ICS also commented that a more widely fitted frequency be selected if the FCC adopts these requirements. The American Institute of Merchant Shipping (AIMS) opposed the proposed rule making on the basis it would be adverse to the safety of navigation and downgrade a presently effective system. They suggested that the FCC and USCG police channel 13 to improve the present bridge-to-bridge system. AIMS also suggested that if a problem still exists after an enforcement program that vessels on the surrounding waterways should utilize channel 67.

7. Mr. Jacques B. Michell indicated that he thought the problem of congestion on channel 13 was a result of improper radio procedures, abuses of the regulation, use of high transmitter power and the absence of an FCC/USCG enforcement program. Mr. Michell felt that all vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act should be required to have a transmitter incapable of operating at high (25 watts) power, that transmitter power be determined by the "strength of the signal . . . after it leaves the antenna," and that no other transmitter on the vessel be capable of operating on the bridge-to-bridge frequency. Mr. Michell further indicated that since this area of the lower Mississippi River system has the most volume and variety of traffic, and is governed by four different sets of navigational rules that this was the least likely candidate for a change.

8. The Central Committee on Telecommunications of the American Petroleum Institute (Central Committee) while generally supporting the Commission's proposals stated that any new rule provision should require the simultaneous, mandatory monitoring of *both* bridge-to-bridge channels in any area where a non-standard condition exists. The Central Committee indicated that provided that this safeguard were incorporated that they support the use of a second frequency in the southern Louisiana section of the Mississippi River system.

9. American Waterways Operators (AWO), in their comments, supported the proposed sectorization of the bridge-to-bridge function, and the choice of channel 67 as the second bridge-to-bridge frequency. AWO recommended that the Commission establish a lead time of at least 90 days before implementing bridge-to-bridge sectorization. AWO also indicated that the Coast Guard should monitor both channels 13 and 67 in order to alert vessels to use channel 67 when in the sector. AWO indicated that a six month active monitoring and enforcement program is necessary to assure effective transition. AWO stated that they believe it will be necessary from an operational standpoint, for vessels to monitor both channels 13 and 67 between Springfield Bend, mile 244.8 and Wilkenson Point, mile 235.5. AWO indicated the proposed rules should be modified to be consistent with this requirement.

Discussion

10. While we agree with AIMS and Mr. Michell that an enforcement program in the New Orleans area would be beneficial, we do not think that this action will eliminate the need for a second frequency for bridge-to-bridge operations. In view of the fact that the majority of the commenters supported the choice of Channel 67 and for the reasons stated in the NPRM, we feel that Channel 67 is the most appropriate choice for this second bridge-to-bridge frequency.

11. The Coast Guard in selecting the specific boundaries which were proposed in the NPRM indicated that these points were selected with careful examination of the defined changeover points. The Coast Guard stated that the entrances at the South and Southwest passes and the Mississippi River Gulf Outlet canal use the boundary line defined in 46 CFR 7. Vessels beyond this boundary are not subject to the Vessel Bridge-to-Bridge Radiotelephone Act, so a transitional problem does not exist. Vessels approaching this boundary from the sea, the Coast Guard stated, will have qualified pilots aboard before reaching the boundary. These pilots will be familiar with the available communications. In regard to the transition in the Mississippi River near Baton Rouge, the defined boundary for frequency change is Devil Swamp Light, mile 242.4 AHP. Upriver of this light, channel 13 is used. The Coast Guard indicated that a vessel upbound when reaching mile 240 AHP, and having resolved any navigational situation between mile 240 AHP and mile 242.4 AHP, should shift to channel 13 to enable the vessel to be in bridge-to-bridge communications with vessels above mile 242.4 AHP. In regard to the transition at the junction of Mississippi Gulf Outlet-Intercoastal Waterway, the Coast Guard indicated the following general procedures applies:

Vessels entering the Intracoastal Waterway Rigolets—New Orleans cut from the Mississippi River Gulf Outlet upon reaching the junction and resolving any navigational situation between the junction and the Michoud Canal, should shift Bridge-to-Bridge communications to channel 13 (156.650 MHz). Vessels entering the Mississippi River Gulf Outlet from the Intracoastal Waterway Rigolets—New Orleans cut, should shift to Channel 67 (156.375 MHz) after passing the Michoud Canal.

Accordingly, the Coast Guard stated that they consider these procedures are feasible and can be implemented safely. They stressed that the communications involved are between professionally experienced personnel who are familiar with the waterways and navigational procedures. The Coast Guard also indicated that there is only one bridge-to-bridge frequency in any defined waterway.

12. We support the Coast Guard in this regard and will not require that a watch be maintained on both bridge-to-bridge frequencies while in the river or at the transitional points. We do recognize however that from an operational standpoint vessels may at times wish to monitor and communicate on both frequencies. Therefore, the restriction on the use of channel 13 in the river is revised to permit transitional communications.

13. Regarding the implementation of this second bridge-to-bridge frequency, we agree with AWO that there should be sufficient lead time before actual implementation. AWO's recommendation of 90 days appears reasonable in this regard. We also agree that some sort of enforcement/monitoring program is necessary to assure effective transition to the Channel 67. The Commission's staff will work with the Coast Guard to make sure that an adequate program is established.

14. With regard to ICS's comment that the required communications equipment be provided by the port/pilotage authorities. Section 83.703 now provides that foreign vessels may fulfill the bridge-to-bridge requirement by use of portable equipment brought on board by the pilot. The portable equipment carried on board by the pilot will have channel 67 installed.

15. It was also proposed in the NPRM that all other use of Channel 67 be prohibited in the New Orleans VTS radio protection area [1] to prevent harmful interference to bridge-to-bridge operations on the river system. Accordingly, we proposed to amend Section 83.359 to prohibit the use of this frequency by aircraft while in the New Orleans VTS area. However, on September 13, 1978, the Commission adopted changes to Part 87 to reflect the availability of certain maritime mobile VHF frequencies contained in Part 83 for use by aircraft.[2] Consequently, it is now necessary to also amend Part 87.

[1] The New Orleans VTS protection area is specified as: The rectangle between north latitudes 27°30' and 31°30' and west longitudes 87°30' and 92°.

[2] Order, adopted September 13, 1978, FCC Mimeo 4047.

Action

16. For the reasons discussed above, we will amend Sections 83.351 and 83.359 generally as proposed in the Notice of Proposed Rule Making. In addition, for the reasons discussed above, we will also amend Section 87.183.

17. Regarding questions on matters covered in this document contact Bruce Franca (202) 632–7175.

18. Accordingly, IT IS ORDERED, That, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and Section 8(a) of the Vessel Bridge-to-Bridge Radiotelephone Act, the Commission's rules ARE AMENDED as set forth in the attached Appendix, effective June 18, 1979.

19. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 83 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

A. Part 83—Stations on Shipboard in the Maritime Services.

1. Section 83.351 is amended to read as follows:

§ 83.351 Frequencies available.

(a) * * *

Carrier frequency (MHz)	Conditions of use	
	Section	Limitations
* * * * *		
156.350	83.359	40, 41, 49.
156.375	83.359	40, 49, 76, 77, 78.
156.400	83.359	40, 49, 76.
* * * * *		
156.625	83.359	40, 50, 52, 76.
156.650	83.359	40, 41, 46, 53, 59.
156.675	83.359	40, 41, 45.
* * * * *		

(b) * * *

Channel designator	Frequency (MHz)		Points of communication
	Ship	Coast	
* * * * * * *			
Navigational			
67	156.375	156.375	Intership and ship to coast.
13	156.650	156.650	Do.

* * * * *

(53) Not available for use in the Mississippi River from South Pass Lighted Whistle Buoy "2" and Southwest Pass entrance Midchannel Lighted Whistle Buoy to mile 242.4 AHP (above head of Passes) near Baton Rouge; and, in addition, the Mississippi River-Gulf Outlet, the Mississippi River-Gulf Outlet Canal, and the Inner Harbor Navigational Canal, except to facilitate the transition from these areas.

* * * * *

(77) The frequency 156.375 MHz is available for navigational communications only in the Mississippi River from South Pass Lighted Buoy "2" and Southwest Pass entrance Midchannel Lighted Whistle Buoy to mile 242.4 AHP near Baton Rouge; and, in addition, over the full length of the Mississippi River—Gulf Outlet Canal from entrance to its junction with the Inner Harbor Navigation Canal, and over the full length of the Inner Harbor Navigation Canal from its junction with the Mississippi River to its entry to Lake Pontchartrain at the New Seabrook vehicular bridge.

(78) Use of the frequency 156.375 MHz for intership commercial communications is not permitted in the New Orleans VTS radio protection area specified in § 83.361.

* * * * *

2. Section 83.359(a) table is amended and (b)(6) is added to read as follows:

§ 83.359 Frequencies in the band 156–162 MHz available for assignment.

(a) The frequencies listed in the following table are available for assignment to stations as indicated.

* * * * *

(b) * * *

* * * * *

(6) Use of the frequency 156.375 MHz by aircraft is not permitted in the New Orleans VTS radio protection area specified in § 83.361.

B. Part 87—Aviation Services.

1. In Section 87.183, paragraph (j)(3) is amended by the addition of a footnote to read as follows:

§ 87.183 Frequencies available.

* * * * *

(j) * * *

(3) The frequencies 156.3, 156.375 [1], 156.4, 156.425, 156.450, 156.525, 156.625, 156.8 and 156.9 MHz may be used by aircraft stations to communicate with ship stations under these conditions:

(i) * * *

* * * * *

[FR Doc. 79-15484 Filed 5-17-79; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 13

[FCC 79-252]

Commercial Radio Operators; Implementing a System of Temporary Authorizations for Restricted Radiotelephone Operator Permits

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This action amends § 13.11 of the Commission's Rules to permit applicants for Restricted Radiotelephone Operator Permits to exercise operating privileges at radio stations requiring this class of operator permit immediately upon mailing an application to the Commission. This class of operator permit is primarily required for the operation of aviation and marine stations and for the routine operation of AM and FM broadcast stations. Previously it was necessary for applicants to wait three to four weeks for issuance of the license document before operating duties could be performed. This action is intended to remove that consideration.

EFFECTIVE DATE: Upon issuance of a Public Notice in the Federal Register in the future.

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

FOR FURTHER INFORMATION CONTACT: Roy E. Kolly or Vernon P. Wilson, Field Operations Bureau, (202) 632-7240.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Part 13 of the Commission's rules to implement a system of temporary authorizations for restricted radiotelephone operator permits; Order.

Adopted: May 2, 1979.

Released: May 10, 1979.

By the Commission:

1. On December 7, 1978, the Commission adopted an ORDER in Docket 78-846 which implemented a system of temporary authorizations for ship stations in the Maritime Services. Included in this system were provisions for an applicant for a marine station license to also obtain a temporary Restricted Radiotelephone Operator Permit which is required to operate the station. This Order did not, however, extend the temporary operating authority to the Aviation and Broadcast Services,[1] where these permits are also required or used.

2. It is estimated that approximately 71,000 applications per year will be submitted by persons who wish to operate broadcast stations. Additionally, approximately 100,000 Restricted Permits are issued annually for use in the Aviation Service. The Commission believes that persons who wish to operate broadcast and aviation stations should be permitted to obtain operator permits in the same manner as those who wish to operate in the Marine Service and thus be allowed to exercise radio operator privileges immediately upon filing an application and without having to wait for receipt of the document or having to travel to an FCC field office. The amendments to Part 13 of the rules, as shown in the Appendix, implement such a system.

3. To obtain a Restricted Radiotelephone Operator Permit, applicants will be required to submit a completed application form to the Commission's Gettysburg Processing Center. Applicants must read the application form to determine if they qualify to hold the permit. They must be at least 14 years of age and United States citizens, be able to transmit and receive spoken messages in English, and be able to keep a rough written log. [2] Applicants will complete an additional form stating that an application has been submitted and giving the date of submission. This form will be retained and will serve as termporary operating authority. It will be valid immediately upon mailing the application and will remain valid for a period of 60 days or until receipt of the permanent permit.

4. Authority for these amendments appears in Sections 4(i) and 303 of the Communications Act of 1934, as amended. In that the amendments adopted herein are editorial and procedural in nature, the prior notice and public procedure provisions of the Administrative Procedure Act, 5 U.S.C. 553 are not applicable. Further, such notice and public procedure provisions are impracticable, unnecessary and contrary to the public interest since the public convenience requires the implementation of new temporary authorization regulations as soon as possible, and it is unlikely that significant changes would be proposed by comments from the public. In addition, because the subject amendments relieve a rule restriction by permitting applicants to operate radio stations prior to issuance of their regular operator licenses, the effective date requirements of the Administrative Procedure Act are inapplicable and these amendments could, for good cause, become effective immediately. However, as the amendments being herein adopted are subject to clearance of reporting requirements by the General Accounting Office, the effective date of this action will be announced by public notice in the near future.

5. Further information on this matter may be obtained from Roy E. Kolly or Vernon P. Wilson, telephone 202-632-7240.

6. Accordingly, it is ordered that Part 13 of the Commission's rules is amended as set forth in the attached Appendix, effective upon issuance of a Public Notice in the Federal Register in the near future.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 13 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

In § 13.11, paragraph (b)(1) is amended to read:

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[1] Use of 156.375 MHz is not permitted in the New Orleans VTS radio protection area. The New Orleans VTS radio protection area is specified as: the rectangle between north latitudes 27° 30' and 31° 30' and west longitudes 87° 30' and 92°.

[1] On December 21, 1978, the Commission adopted an Order in Docket 78-871 which authorized the routine operation of most AM and all FM broadcast stations by persons holding any class of commercial radio operator license, including a Restricted Radiotelephone Operator Permit.

[2] The issuance of the Restricted Radiotelephone Operator Permit is pro forma. No qualifying examination is required and permits are issued to all applicants who meet these requirements.

§ 13.11 Procedure.

* * * * *

(b) * * *

(1) Applications for Restricted Radiotelephone Operator Permits shall be filed as follows:

(i) U.S. citizens, U.S. nationals, and citizens of the Trust Territory of the Pacific Islands—file application FCC Form 753 with the FCC, Gettysburg, PA. 17325.

(ii) Aliens—file FCC Form 755 with the FCC, Washington, D.C. 20554.

* * * * *

[FR Doc. 79-15476 Filed 5-17-79; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 83

[SS Docket No. 78-232; FCC 79-257]

Stations on Shipboard in the Maritime Services; Requiring That Remote Control Units Used in Conjunction With Marine VHF Radiotelephones Have the Capability of Reducing Power Output to One Watt or Less

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Amendment of the rules to require that remote control units used in conjunction with marine VHF transmitters have the capability of reducing power to one watt or less. Several companies are now manufacturing remote control units to satisfy operational requirements. It is necessary to assure that these remote control unit be capable of performing the necessary control functions.

EFFECTIVE DATE: September 1, 1979.

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

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bagnato, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Part 83 to require that remote control units used in conjunction with marine VHF radiotelephones have the capability of reducing power output to one watt or less; Report and order (proceeding terminated).

Adopted: May 2, 1979.

Released: May 10, 1979.

By the Commission:

1. The Commission is amending Part 83 of its rules to require that remote control units used in conjunction with very high frequency (VHF) marine radiotelephone stations be capable of reducing the power output of the radiotelephone transmitter to one watt or less.

Background

2. On August 4, 1978, the Commission released a Notice of Proposed Rule Making in this proceeding (43 FR 35112 (1978)). At that time, we said we were aware that several manufacturers were marketing marine radiotelephones with auxiliary remote control units. (A remote control unit allows a transmitter to be placed in one location and operated from another location. For example, a transmitter may be installed on the main bridge of a vessel and operated by remote control from the vessel's flying bridge—generally a small structure over the main bridge.) We noted that § 83.134 of the rules requires that a VHF marine radiotelephone transmitter incorporate features permitting power output of the transmitter to be reduced to one watt or less. We said, however, that it had come to our attention that some of the remote control units being marketed did not have the capability of reducing the power output of their associated transmitter to one watt or less.

3. The Commission said it knew that remote control units could be very useful in some instances, but that to be most effective, remote control units should be capable of performing certain functions. These functions include:

a. *Starting and stopping transmission.* This is required to control the transmitter from the remote location. For example, it enables the operator at the remote location to initiate a call for assistance in an emergency situation, or to cease all transmissions if the station is causing interference.

b. *Changing channels.* This function is also needed for effective control of the radiotelephone to permit the operator to change from the calling channel to a working channel and vice versa.

c. *Reducing transmitter output to one watt or less.* This function is necessary to reduce interference and to encourage the use of minimum (1 watt) power whenever possible. Additionally, the use of 1 watt is required on Channel 13 (156.65 MHz) under the bridge-to-bridge radiotelephone procedures in § 83.251. (Bridge-to-bridge refers to the Vessel Bridge-to-Bridge Radiotelephone Act, 33 U.S.C 1201, *et seq.*)

The rules already require that remote control units incorporate features to start and stop transmissions and change channels. Accordingly, we merely proposed to require that a remote control unit be capable of reducing the power output of its associated transmitter to one watt or less.

Comments and Commenters

4. Comments were submitted by the United States Coast Guard (USCG), Intech Incorporated (INTECH), Lorain Electronics Corporation (LORAIN), the Lake Carriers Association (LCA) and American Institute of Merchant Shipping (AIMS).

5. All of the commenters supported the objectives of this proceeding. However, several suggested minor clarification, word changes and alternative ways to reduce power. These suggestions are as follows:

a. The USCG said it supports the Commission's proposals, but that the rules as originally drafted could be misinterpreted. Specifically, the USCG said that the wording in footnote 1 to § 83.104 of the proposed rule could be misinterpreted to countermand the requirement to limit transmission on channel 13 (156.65 MHz) to an output power of one watt under the bridge-to-bridge procedures or the requirement to use minimum output power of one watt whenever possible.

b. INTECH indicated that it concurs with the Commission concerning the capabilities of remote control units but differs on how these goals can be achieved. INTECH said that it would be ideal if a remote control unit could perform all operating functions, but that sometimes cost considerations dictate alternative or simpler systems. For example, some remote control functions can be achieved by verbal command between crew members. These verbal commands could be passed by shouting or over the public address (P.A.) system.

c. LORAIN suggested dates for implementation of these requirements. LORAIN stated that there are between 25 and 30 vessels operating on the Great Lakes with remote control units installed prior to January 1, 1976, which do not have the capability of reducing power to one watt or less. Therefore, LORAIN proposed that these remote control units be authorized for use, and that only remote control units manufactured after June 1, 1979, be required to have the capability of reducing power to one watt or less.

d. LCA associated itself with LORAIN and concurred with LORAIN's suggested dates.

e. AIMS concurred with the Commission but brought a minor discrepancy to the Commission's attention. AIMS stated that there are handset extensions located on either bridgewing of a vessel which are used by the Master and/or pilot in the movement and docking of a vessel. These handsets are simply an extension

of the radio-telephone in the wheelhouse and alleviate the problem of the Master walking back to the wheelhouse in a situation requiring constant attention.

Discussion

6. We continue to believe that it is essential that a remote control unit be capable of performing all of the functions enumerated in paragraph 3. With respect to the specific comments submitted in this proceeding, we make the following observations:

a. We agree with the USCG and will make the necessary editorial changes to footnote 1 of Section 83.104(a)(1).

b. We do not agree with INTECH that a simpler system utilizing verbal commands is satisfactory. There would be no assurance that any verbal command, by either shouting or over the P.A. System, would be heard and obeyed. Therefore, we conclude that positive control by electrical means is necessary in a remote control unit.

c. We do not intend to apply these regulations to remote control units now installed or manufactured. We are establishing an effective date of September 1, 1979, for type acceptance of the remote control unit and an effective date of March 1, 1980, for installation of the remote control unit.

d. We agree with AIMS that the radiotelephone extension to the bridgewing is not a remote control unit but is, rather, a convenience used by a vessel's Master during specific movement or docking operations.

7. In the Notice of Proposed Rule Making, we proposed to amend § 83.104(a)(1) to include the capability of reducing the transmitter power output to one watt or less. We now believe that it is clearer to add a new subparagraph (4) and are amending § 83.104 in that manner.

8. Regarding questions on matters covered in this document, contact either Nicholas G. Bagnato or Bruce A. Franca, telephone (202) 632-7175.

Conclusion

9. Accordingly, *it is ordered*, That, pursuant to the authority contained in Sections 4(i) and 303(e), (f) and (r) of the Communications Act of 1934, as amended, the Commission's rules are amended, as set forth in the attached Appendix, effective September 1, 1979.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. In § 83.104, paragraph (a)(4) is added to read as follows:

§ 83.104 Operating controls.

(a) * * *

(4) In the case of stations operating in the 156 to 162 MHz band, reducing power output to one watt or less in accordance with § 83.134.[1]

* * * * *

[1] Stations installed before March 1, 1980, need not have the capability to reduce transmitter power to 1 watt or less at each remote control point; however, this provision does not waive the requirement to limit transmissions on channel 13 (156.65 MHz) to an output power of 1 watt under the bridge-to-bridge radiotelephone procedures (Section 83.251) or the requirement to use minimum output power of 1 watt whenever possible.

2. In § 83.134, paragraph (f) is amended by the addition of a footnote to read as follows:

§ 83.134 Transmitter power.

* * * * *

(f) Ship station transmitters using F3 emission in the band 156–162 MHz shall not exceed a carrier power of 25 watts [1, 2, 3, 4] and, additionally, shall include the capability to reduce, readily, the carrier power to one watt [2, 4, 5] or less.

* * * * *

[5] If a remote control unit is used with a transmitter manufactured after September 1, 1979, the remote control unit shall have the capability of reducing transmitter output power to one watt or less.

[FR Doc. 79-15475 Filed 5-17-79; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1374; Amdt. No. 1]

Auto-Train Corporation Authorized To Transport Automobiles Between Alexandria (Lorton), Va. and Sanford, Fla.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Amendment No. 1 to Service Order No. 1374.

SUMMARY: Service Order No. 1374 authorizes Auto-Train Corporation to transport automobiles between Lorton, Virginia, and Sanford, Florida, for Autobus. Amendment No. 1 extends the authority until modified or vacated by order of this Commission.

DATES: Effective 11:59 p.m. May 15, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided May 14, 1979.

Upon further consideration of Service Order No. 1374 (44 FR 23086), and good cause appearing therefor:

It is ordered, That § 1033.1374 *Auto-Train Corporation authorized to transport automobiles between Alexandria (Lorton), Virginia and Sanford, Florida, Service Order No. 1374 is amended by substituting the following paragraph (e) for paragraph (e) thereof:*

(e) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., May 15, 1979.

(49 U.S.C. (10304-10305 and 11121-11126).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15623 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Service Order No. 1372-A]

Chicago, Milwaukee, St. Paul & Pacific Railroad Co. Authorized To Operate Over Tracks of Chicago & North Western Transportation Co.

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1372–A.

SUMMARY: Since an emergency no longer exists, Service Order No. 1372 is vacated effective 11:59 p.m., May 16, 1979.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275–7840, Telex 89–2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided May 14, 1979.

Upon further consideration of Service Order No. 1372 (44 FR 21797), and good cause appearing therefor:

It is ordered, that § 1033.1372 *Chicago, Milwaukee, St. Paul and Pacific Railroad Company Authorized to Operate over tracks of Chicago and North Western Transportation Company,* Service Order No. 1372 is vacated effective 11:59 p.m., May 16, 1979.

(49 U.S.C. (10304–10305 and 11121–11126).)

A copy of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15624 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Service Order No. 1272; Amdt. No. 4]

Goodwin Railroad, Inc. Authorized To Operate Over Certain Tracks Owned by the State of New Hampshire

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Amendment No. 4 to Service Order No. 1272.

SUMMARY: Service Order No. 1272 authorizes the Goodwin Railroad Inc., to operate a line of railroad formerly operated by the Boston and Maine Railroad which is now owned by the State of New Hampshire between Concord and Lincoln, New Hampshire. An application for permanent authority was granted, subject to filing for authority to issue stock. Service Order No. 1272 is published in full in volume 42 of the **Federal Register** at page 44815.

DATES: *Effective 11:59 p.m., May 15, 1979. Expires when modified or vacated by order of this Commission.*

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C., 20423, Telephone (202) 275–7840, Telex 89–2742.

Decided May 11, 1979.

Upon further consideration of Service Order No. 1272 (42 FR 44815; 43 FR 7324, 36639 and 44 FR 10506), and good cause appearing therefor:

It is ordered, that § 1033.1272 *Goodwin Railroad, Inc. authorized to operate over certain tracks owned by the State of New Hampshire,* Service Order No. 1272 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., May 15, 1979.

(49 U.S.C. (10304–10305 and 11121–11126).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the **Federal Register.**

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15628 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Service Order No. 1348; Amdt. No. 1]

Chicago & North Western Transportation Co. Authorized To Operate Over Tracks of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission

ACTION: Emergency Order Amendment No. 1 to Service Order No. 1348.

SUMMARY: The line of the Chicago and North Western Transportation Company (CNW) between James Valley Junction, South Dakota, and Redfield, South Dakota, has deteriorated and is no longer operable thus isolating that portion of the CNW north of Redfield from the remainder of the system. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) has consented to use of its parallel line by the CNW between Wolsey, South Dakota, and Aberdeen, South Dakota. Use of this MILW line by the CNW will enable the CNW to continue service to shippers on its line north of Redfield. Amendment No. 1 to Service Order No. 1348 authorizes the use of these MILW tracks by the CNW pending disposition by the Commission of the application of the CNW seeking permanent authority to operate over this line.

DATES: Effective 11:59 p.m., May 15, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Section of Rail and Pipeline Operations, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C., 20423, Telephone (202) 275–7840, Telex 89–2742.

Decided: May 11, 1979.

Upon further consideration of Service Order No. 1348 (43 FR 55409) and good cause appearing therefor:

It is ordered that § 1033.1348 *Chicago and North Western Transportation Company authorized to operate over tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,* Service Order No. 1348 is amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective Date. This amendment shall become effective at 11:59 p.m., May 15, 1979.

(49 U.S.C. (10304–10305 and 11121–11126).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15625 Filed 5-17-79; 8:45 am]

BILLING CODE 70-3501-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

Alaska Salmon Fishery

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

ACTION: Approval and Partial Disapproval of Fishery Management Plan for the High Seas Salmon Fishery off Alaska, Interim Emergency Regulations with Request for Comments.

SUMMARY: The Assistant Administrator for Fisheries has approved, with the exception of one provision, the Fishery Management Plan (FMP) for the "High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude," prepared by the North Pacific Fishery Management Council (NPFMC). Regulations implementing the approved portion of the FMP are issued on an emergency basis in order to limit fishing effort on the salmon stocks. Comment is invited on these interim emergency regulations.

EFFECTIVE DATE: 0001 hours Alaska Standard Time (AST), May 15, 1979 and shall remain in effect until 2400 hours, AST June 29, 1979, as emergency regulations. Written comments on the interim final regulations are invited until July 18, 1979.

ADDRESS: Send comments to: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Washington, D.C. 20235. Please mark "AK Salmon" on outside of envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, Telephone: 907–586–7221.

SUPPLEMENTARY INFORMATION: The Assistant Administrator approved, with one exception, the FMP on April 30, 1979. FMP was prepared and submitted to the Assistant Administrator by the NPFMC and is the basis for the regulations published here. One provision of the FMP was not approved and will not be implemented. The disapproved portion of the FMP would have prevented fishing by hand trollers in the fishery conservation zone (FCZ). The Assistant Administrator determined that this provision was inconsistent with National Standard 4 of the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* (Act), because it would have prohibited fishing by certain hand trollers who had historically fished in this area, while it would have allowed power trollers with a similar history to continue to fish in the FCZ. Power trollers use power from their boats' engines to crank their reels, while hand trollers crank their reels manually. It was determined that no valid conservation purpose was served by the distinctions that were drawn between the two types of gear.

The Fishery Management Units

The salmon fishery covered by the FMP occurs throughout the waters off Alaska east of 175° east longitude. The fishery is divided into two management units, the West Area, west of Cape Suckling (143°53'36"W.) and the East Area, east of Cape Suckling. This division separates the fishery of Southeast Alaska from that of the rest of the State. Both management units include the FCZ and waters under Alaskan jurisdiction. All harvest taking place on those portions of the management units within State waters will be regulated by Alaska. The Council and the Assistant Administrator will continue to coordinate regulations with Alaskan officials to ensure consistent implementation. The FMP covers the five species of Pacific salmon found off Alaska and includes stocks that spawn in Alaska and those that spawn outside Alaska in the rivers of British Columbia, Washington, and Oregon. The salmon species of primary interest to the high seas troll fishery are coho and chinook.

The FCZ portion of the East Area is fished by both commercial salmon trollers and, to a small extent, recreational fishermen. The West Area has been closed to commercial trolling for several years, as the salmon stocks in that Area are fully utilized by the inshore fishery.

Optimum Yield

Optimum Yield for this fishery corresponds to the average annual harvest during recent years. The FMP is intended to maintain recent levels of fishing effort on the salmon stocks. The NPFMC determined that an increase in fishing effort would be detrimental to the stocks. Any substantial decrease in fishing effort, on the other hand, would be unacceptable for social and economic reasons, because many individuals are dependent on the ocean salmon fishery. In the West Area, optimum yield is set at zero, since the stocks in this area are fully utilized inshore and there is no current dependence on an ocean fishery. The basic mechanisms for achieving optimum yield for the fishery are the moratorium on entry to the fishery and the 28-inch minimum length requirement for chinook salmon established by these regulations.

Limited Entry Moratorium

The FMP documents the depressed condition of certain salmon stocks harvested by this fishery, particularly some of the native Alaska chinook stocks. The FMP and these regulations are intended to stabilize the level of fishing effort to avoid further harm to those stocks. An essential managment measure to accomplish this purpose is the one year moratorium on commercial power troll permits. This moratorium parallels the limited-entry system adopted by Alaska in 1973. The Alaskan limited-entry system is applied to all fishermen who land their catch in Alaska, including Alaskan residents and residents of other states. The moratorium in effect during the 1979 fishing season will limit the number of power trollers in the FCZ to those holding Alaska power troll permits and those who can establish that they fished for salmon in the FCZ during the years 1975–1977. Provision is made for appeal of permit denials.

The regulations contain separate permit provisions for those power trollers who do not have Alaskan limited entry permits but who have

previously fished for salmon in the FCZ and landed their catch outside of Alaska. These permits, unlike Alaskan permits, generally would not be transferable. This provision is intended to incorporate gradually all fishing permits into a unified system, while recognizing established fishing presence in the management area.

When Alaska instituted its limited entry program for commercial salmon power trollers, it was determined that 950 was the maximum number of vessels that should participate in this fishery. The FMP also identified this number as a maximum, while recognizing that an optimum number of vessels would likely be somewhat less than this. Under these regulations, this maximum number would be exceeded only to the extent necessary to ensure that no eligible person who has been dependent on this fishery would be precluded from harvesting salmon. The Council is currently developing, in cooperation with Alaska, a limited entry system for this fishery that would replace the present moratorium.

Harvest Restrictions

In addition, these regulations contain the following restrictions:

(1) Commercial salmon fishermen fishing in the East Area may use only troll gear. This measure continues the long standing ban on net fishing on the high seas.

(2) The East Area is open to commercial fishing until October 31. This period corresponds with seasonably mild weather. Provision is also made for closing the fishing season should the condition of the salmon stocks warrant such action.

(3) A 28 inch minimum-size limit is established for chinook salmon. This restriction is intended to direct fishing effort toward mature fish. No size limits were determined to be necessary to protect salmon species other than chinook.

(4) Recreational salmon fishermen are restricted to a daily bag limit of six salmon, no more than three of which may be chinook. This limit corresponds to Alaska regulations for waters under its jurisdiction.

With the exception of allowing hand trolling in the FCZ, these management measures are essentially the same as the Alaska regulations governing salmon fishing in waters under its jurisdiction.

These regulations are effective immediately as emergency regulations. The Assistant Administrator has found under section 305(e) of the Act that "an emergency involving * * * the fishery resource" exists. It is necessary to take immediate action to prevent an increase in fishing effort on these salmon stocks, some of which are at low levels of abundance. Of particular concern is the potential for increased fishing effort on these stocks that could occur if vessels affected by the severe restrictions in the salmon fishery off the coasts of Washington, Oregon and California shifted their effort to the FCZ off Southeast Alaska.

The Assistant Administrator also finds that formal notice of proposed rulemaking is impractical, unnecessary, and contrary to the public interest because of the emergency described above.

Public comments on these regulations are invited until July 18, 1979.

A notice of availability of the final Environmental Impact Statement was published on January 29, 1979 (44 FR 5707).

A draft regulatory analysis has been prepared on the interim regulations, copies of which are available and may be obtained from the Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated this 15th day of May 1979, at Washington, D.C.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

A new Part 674 is added to Title 50 CFR to read as set forth below:

PART 674—HIGH SEAS SALMON FISHERY

Subpart A—General

Sec.

Subpart B—Management Measures

Authority: 16 U.S.C. 1801 et seq.

Subpart A—General

§ 674.1 Purpose and scope.

(a) The purpose of this Part is to implement the High Seas Salmon Fishery Management Plan developed by the North Pacific Fishery Management Council pursuant to the Fishery Conservation and Management Act of 1976, as amended (the Act).

(b) These regulations govern fishing for salmon by fishing vessels of the United States within that portion of the North Pacific Ocean seaward of Alaska, east of 175° East Longitude, over which the United States exercises exclusive fishery management authority under the Act.

§ 674.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part shall have the following meanings (Some definitions in the Act are repeated here to aid understanding of the regulations):

ADF&G means the Alaska Department of Fish and Game.

Act means the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801–1882, as amended.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, or an individual to whom appropriate authority has been delegated.

Authorized Officer means: (a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(b) Any certified enforcement or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Commercial fishing means fishing for, or retention of, fish for sale or barter.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States (the "3-mile limit") to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means, any activity, other than scientific research, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described above.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) Fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Hand troll gear means one or more lines with lures or hooks attached, drawn through the water behind a moving vessel, and retrieved by hand or hand-cranked reels or gurdies and not by any electrically, hydraulically, or mechanically-powered device or attachment.

Management area means the two areas described below:

(a) *West Area* means the waters of the FCZ seaward of Alaska between 175° East Longitude and 143°53'36" West Longitude (Cape Suckling);

(b) *East Area* means the waters of the FCZ seaward of Alaska east of 143°53'36" West longitude.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether for bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Personal use fishing means fishing for, or retention of, fish for personal use and not for sale or barter.

Power troll gear means one or more lines, with hooks or lures attached, drawn through the water behind a moving vessel, and originating from a power gurdy or power-driven spool fastened to the vessel, the extension or retraction of which is directly to the gurdy or spool.

Regional Director means Director, Alaska Region, National Marine Fisheries Service (NMFS), P.O. Box 1668, Juneau, Alaska 99802, or an individual to whom appropriate authority has been delegated.

Salmon means the following species: Chinook (or king) salmon (*Oncorhynchus tshawytscha*); Coho (or silver) salmon (*O. kisutch*); Pink (or humpback) salmon (*O. gorbuscha*); Sockeye (or red) salmon (*O. nerka*); and Chum (or dog) salmon (*O. keta*).

Vessel of the United States means: (a) A vessel documented or numbered by the Coast Guard under United States Law; or

(b) A vessel, under five net tons, which is registered under the laws of any State.

§ 674.3 Relation to other laws.

(a) *Federal law.* For regulations concerning fishing for Tanner crab see 50 CFR Part 671; for regulations concerning fishing for groundfish in the Gulf of Alaska see 50 CFR Part 672; and for regulations concerning fishing for halibut see applicable regulations of the International Pacific Halibut Commission (IPHC). This Part 674 does not apply to fishing conducted under the North Pacific Fisheries Act, as amended (16 U.S.C. 1921 *et seq.*), and regulations thereunder.

(b) *State Law.* Certain responsibilities relating to the administration of these regulations will be performed by personnel of Alaska under the terms of an agreement with NOAA/NMFS and the United States Coast Guard.

(c) *Delegation.* The Assistant Administrator has delegated to the Regional Director authority to take actions pursuant to §§ 674.4 and 674.22.

§ 674.4 Permits.

(a) *General.*—(1) *Power troll permits.* The only persons who may engage in commercial fishing for salmon in the management area using power troll gear are operators of fishing vessels who:

(i) On May 15, 1979, held a valid State of Alaska power troll permanent entry permit;

(ii) On May 15, 1979, held a valid State of Alaska power troll interim-use permit; or

(iii) Hold a valid permit issued by the Regional Director under paragraph (b) of this section.

(2) [Reserved.]

(3) No permit is required of a crewmember or other person assisting in the operation of a commercial salmon troll vessel if the permit holder is on board and engaged in fishing.

(4) The right of access to the ocean salmon fishery provided herein constitutes a use privilege which may be modified or revoked without compensation.

(5) The permission to fish under this section expires at 11:59 p.m. (local time) on April 14, 1980.

(b) *Permits issued by the Regional Director.*—(1) *Eligibility.* (i) Except as provided in paragraph (b)(i)(ii) of this section, any person is eligible for a permit described in paragraph (a)(1)(iii) of this section if that person, during any one of the calendar years 1975, 1976, or 1977: (A) Operated a fishing vessel in the management area; (B) engaged in commercial fishing for salmon in the management; (C) caught salmon in the management area using power troll gear, and (D) landed such salmon.

(ii) The following persons are not eligible: (A) Persons described in paragraphs (a)(1)(i) or (ii) of this section; (B) persons who have ever held a State of Alaska power troll permit under this paragraph (b) as a result of having fished under such State permit; and (C) persons holding a permit under this paragraph (b).

(2) *Application.* (i) Each applicant for a permit under this paragraph shall submit a written application to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(ii) Each applicant shall provide the following information:

(A) The applicant's name, mailing address, and telephone number;

(B) The name of the fishing vessel;

(C) The fishing vessel's United States Coast Guard documentation number or State registration number;

(D) The home port of the fishing vessel;

(E) The length and registered tonnage of the fishing vessel;

(F) The color of the fishing vessel;

(G) The type of fishing gear used by the fishing vessel; and

(H) The signature of the applicant.

(iii) The information required by paragraphs (b)(2) (ii) (B)-(G) of this section shall be provided for each fishing vessel which the applicant intends to use for commercial fishing under this part. Any change in such information occurring after a permit is issued shall be reported to the Regional Director within 30 days of that change.

(iv) Each applicant shall submit State fish tickets or other equivalent documents showing the actual landing of salmon taken in the management area

by the applicant with power troll gear during any one of the years 1975–1977.

(3) *Issuance.* (i) Upon receipt of a properly completed application the Regional Director promptly shall determine whether permit eligibility conditions have been met, and if so, shall issue a permit. If the permit is denied, the Regional Director shall notify the applicant in accordance with paragraph (e) of this section.

(ii) If an incomplete or improperly completed permit application is filed the Regional Director promptly shall notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of receipt of notification, the application shall be considered abandoned.

(4) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that is altered, erased, or mutilated shall be invalid.

(5) *Replacement.* Replacement permits may be issued to replace lost or unintentionally mutilated permits. An application for a replacement permit shall not be considered a new application.

(c) *Transfers.* Except for emergency transfers authorized under paragraph (d) of this section, this paragraph (c) governs transfer of authorization under this part to engage in commercial fishing for salmon.

(1) *Alaska Permanent Entry Permits.* (i) The authorization under paragraph (a)(1)(i) of this section transfers with the transfer of the Alaska power troll permanent entry permit. At the time the State permit is transferred, the authority of the transferor under paragraph (a)(1)(i) expires.

(ii) Any person to whom transfer of a State of Alaska power troll permanent entry permit is denied by the State may apply to the Regional Director for approval of a transfer for purposes of paragraph (a)(1)(i) of this section. The Regional Director shall approve such transfer if he determines that such person had the ability to participate actively in the fishery at the time the transfer application was filed with the State.

(A) A request for transfer under this paragraph (c)(1)(ii) shall be filed with the Regional Director within 30 days of the State's denial of the transfer, and shall include (*1*) all documents and other evidence submitted to the State in support of the transfer and (*2*) a copy of the State's decision denying the transfer.

(B) If the transfer is denied, the Regional Director shall notify the applicant in accordance with paragraph (e) of this section.

(C) The authorization to engage in commercial fishing for salmon that is granted under this paragraph (c)(1)(ii) is not transferable, except that such authorization may be transferred to the person who holds the Alaska power troll permanent entry permit from which such authorization was originally derived.

(D) If the authorization to engage in commercial fishing in the management area is transferred under this paragraph (c)(1)(ii) the person who holds the Alaska power troll permanent entry permit from which such authorization originally derived may not engage in commercial fishing for salmon in the management area under paragraph (a)(1)(i) of this section, unless such authorization is trasferred to that person under paragraph (c)(1)(ii)(C) of this section and the Regional Director is so notified in writing.

(2) *Other Permits.* Authorization to engage in commercial fishing for salmon under paragraphs (a) (1) (ii) or (iii) of this section is not transferable.

(d) *Emergency Transfer.* (1) The authorization to engage in the commercial salmon fishery under paragraph (a) of this section may be transferred on a temporary basis but not beyond the remainder of the calendar year, when sickness, injury, or other unavoidable hardship prevents the permittee from such fishing.

(2) Prior to any such emergency transfer, the permittee, or another person if the permittee is unable due to sickness or injury, shall submit to the Regional Director written request for an emergency transfer. Such request shall state the reasons why the permittee is prevented from fishing.

(3) Upon receipt of a request, the Regional Director promptly shall determine whether or not to authorize the emergency transfer, and shall notify the applicant in accordance with paragraph (e) of this section. The Regional Director may request additional information to aid in his determination. Such transfer shall not take effect until written authorization from the Regional Director is received.

(4) Paragraphs (d)(2) and (3) of this section do not apply to Alaska power troll permits if the State has authorized an emergency transfer, and the Regional Director is so notified in writing.

(e) *Appeals and Hearings.* (1) A decision by the Reginal Director to:

(i) Deny a permit under paragraph (b)(3)(i) of this section; or

(ii) Deny a transfer under paragraph (c) or (d) of this section, shall be in writing, shall state the facts and reasons therefore, and shall advise the applicant of the rights provided in this paragraph (e).

(2) Any decision of the Regional Director shall be final 30 days from receipt by the applicant, unless an appeal is filed with the Assistant Administrator within that time. Failure to file a timely appeal shall constitute waiver of the appeal. (Address: Assistant Administrator for Fisheries, National Marine Fisheries Service, Room 400, Page 2 Building, 3300 Whitehaven Street, N.W., Washington, D.C. 20235).

(3) Appeals under this paragraph shall be in writing and set forth the reasons why the appellant believes the Regional Director's decision was in error, and shall include any supporting facts or documentation.

(4) The appellant may, at the time the appeal is filed with the Assistant Administrator, request a hearing with respect to any disputed issue of material fact. Failure to request a hearing at this time shall constitute a waiver of the hearing. If a request for a hearing is filed, the Assistant Administrator may order a hearing if he determines that a hearing is necessary to resolve material issues of fact and shall so notify the appellant.

(5) If the Assistant Administrator orders a hearing he shall appoint a hearing examiner to conduct an informal fact finding inquiry into the matter. The hearing examiner, following the hearing, promptly shall furnish the Assistant Administrator with a report and recommendations.

(6) As soon as practicable after considering the matters raised in the appeal, and any report or recommendation of the hearing examiner in the event a hearing is held under this section, the Assistant Administrator shall notify the appellant in writing of his final decision. The notice shall summarize the findings of the Assistant Administrator and set forth the basis of the decision. The decision of the Assistant Administrator shall be final.

(f) *Display.* Any permit described in paragraph (a) of this section shall be on board the vessel at all times while the vessel is in the FCZ, and shall be displayed for inspection upon request of any Authorized Officer.

§ 674.5 Recordkeeping and reporting requirements.

(a) *Salmon Landed Inside Alaska.* (1) The operator of any fishing vessel subject to this Part who lands salmon in Alaska, for each sale or delivery of salmon caught by such vessel, shall

submit an accurately completed Alaska fish ticket.

(2) At the election of the vessel operator, the fish ticket shall be either: (i) Submitted by the vessel operator directly to the ADF&G within one week after such fish are sold or delivered; or (ii) prepared, at the request of the operator, by the purchaser (i.e., any person who receives fish for a commercial purpose from a fishing vessel subject to this part) and submitted by the purchaser to the ADF&G within one week after such fish are received by the purchaser. The fish ticket shall be submitted to the local ADF&G representative.

(b) *Salmon Landed Outside Alaska.* (1) The operator of any fishing vessel subject to this Part whose port of landing is in the United States but outside Alaska, or who sells, transfers or delivers salmon in the FCZ, shall submit a completed Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket, to the ADF&G within one week after the date of each sale or delivery of any species of fish covered by these regulations. (ADF&G address: Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, Subport Building, Juneau, Alaska 99801).

(2) An operator who, in an application for a permit under § 674.4(b)(2) or by subsequent notice, indicated that more than one vessel might be used for fishing shall state on the document submitted under paragraph (b)(1) of this section which vessel was used.

§ 674.6 [Reserved]

§ 674.7 Prohibitions.

It is unlawful for any person:

(a) To fish for, take, or retain any salmon in violation of the Act or these regulations, including but not limited to the following:

(1) During closed seasons or in closed areas specified in Subpart B of this part;

(2) By means of gear or methods prohibited by Subpart B of this part;

(3) If such salmon are less than the minimum length specified in Subpart B of this part; or

(4) In numbers exceeding the daily limit for personal use fishing as specified in Subpart B of this part.

(b) To engage in commercial fishing for salmon with power troll gear without a valid permit as set forth in § 674.4(a).

(c) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any salmon taken in violation of the Act, this part, or any other regulations issued under the Act.

(d) To refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulations issued under the Act.

(e) Forcibly to assault, resist, oppose, impede, intimidate, or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (d) of this section.

(f) To resist a lawful arrest for any act prohibited by this part.

(g) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part.

(h) To transfer directly or indirectly, or attempt to so transfer, any salmon harvested by a vessel of the United States to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act which authorizes receipt by that foreign fishing vessel of salmon harvested by a vessel of the United States.

(i) To violate any other provision of the Act, this Part, or any regulation issued under the Act.

§ 674.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logs, documents, and catch for purposes of enforcing the Act and this Part.

(b) *Boarding.* A vessel signalled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;

(2) When necessary to facilitate boarding, provide sufficient illumination; and

(3) Take such other actions as necessary to ensure the safety of the Authorized Officer and his party, and to facilitate the boarding.

§ 674.9 Penalties.

(a) *General.* Any person or fishing vessel found to be in violation of this Part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable law.

(b) *Permit Sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) does not apply to permits issued under this part.

Subpart B—Management Measures

§ 674.20 General.

The management measures set out in this Part are effective until amended, modified or rescinded. This Part 674 does not apply to fishing conducted under the North Pacific Fisheries Act, as amended (16 U.S.C. 1021 *et seq.*), and regulations issued thereunder at 50 CFR Part 210.

§ 674.21 Catch limitations.

(a) *Size Restrictions*—(1) *Minimum size limit*—(i) *Chinook Salmon.* Only chinook salmon 28 inches or more in length with head on, or 23 inches or more with head off, may be retained (see Figure 1).

(ii) *Other Salmon.* There is no minimum size limit for sockeye, coho, pink, or chum salmon.

(2) *Method of Measurement.* A salmon with head on is measured in a straight line passing over the pectoral fin, from the tip of the snout to the tip of the tail in its natural open position. A salmon with head off is measured from the midpoint of the cleithral (gill) arch to the tip of the tail in its natural open position (see Figure 1).

(3) *Mutilation.* No person on a fishing vessel in the management area shall mutilate or otherwise disfigure a salmon for which a minimum size is set by these regulations, in a manner which prevents determining that salmon's length.

(b) *Personal Use Daily Limit.* No person may catch in the management area and retain more than six (6) salmon for personal use per day, or possess while in the management area more than twelve (12) salmon. No more than three of the salmon retained or possessed may be chinook.

(c) *Landing Requirements.* Salmon taken in the management area which have had the adipose fin removed or clipped shall be retained and landed with the head on, even if such fish are less than the minimum length specified in this part (see Figure 1). Such salmon shall be made available for retrieval of the coded wire tag by an appropriate official at the port of landing.

§ 674.22 Time and area closures.

(a) *In-Season Adjustments.* (1) The Regional Director may, following consultation with the ADF&G, adjust season opening or closing dates for any species regulated by this Part, in any

portion of the management area during the fishing year, by issuing a field order in accordance with the procedures in § 674.23(b).

(2) Any such adjustment shall be based upon a determination by the Regional Director that (i) the condition of any salmon stock in any portion of a management area is substantially different from the condition anticipated at the beginning of the fishing year, and (ii) such differences reasonably support the need for in-season conservation measures to protect salmon stocks.

(3) one or more of the following factors may be considered in making this determination:

(i) The effect of overall fishing effort within a management area;

(ii) Catch-per-unit-of-effort and rate of harvest;

(iii) Relative abundance of stocks within the area;

(iv) Condition of stocks within the area; and

(v) Any other factors relevant to the conservation of the salmon resource.

(b) *Field Orders*—(1) *Contents.* Field Orders issued by the Regional Director under this part shall include the following information: (i) The reason for the field order; (ii) a description of the area subject to the field order; and (iii) the effective date of such field order.

(2) *Public Notice.* No field order issued under this section shall be effective until:

(i) It is published in the **Federal Register;**

(ii) It has been posted for 48 hours, and otherwise made available to the public, in accordance with procedures customarily used by the ADF&G for posting and publicizing similar notices of opening or closure; and

(iii) It has been broadcast for 48 hours at those time intervals, channels and frequencies customarily used by the ADF&G to broadcast similar notices of opening or closure.

(3) *Public Comment.* (i) If the Regional Director decides, for good cause, that a field order should be issued without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the order will be received and considered by the Regional Director for a period of 60 days after the effective date of the field order. (Address: Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska 99802).

(ii) During any such 60-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which the field order was based. (Address: National Marine Fisheries Service, Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802).

(iii) As soon as practicable after the expiration of the 60-day period, the Regional Director shall reconsider the necessity for the field order and shall either (A) publish in the **Federal Register** a notice of continued effectiveness of the field order, responding to comments received; or (B) modify or rescind the field order in accordance with the procedures of this section.

(4) *Effective Period.* A field order issued pursuant to this paragraph shall remain in effect until (i) any expiration date stated in a field order or a notice published by the Regional Director pursuant to this section; (ii) April 14, 1980, whichever is earlier.

§ 674.23 Time and area limitations.

(a) *Commercial fishing*—(1) *West Area.* Commercial fishing for salmon in the West Area is not permitted.

(2) *East Area.* (i) Commercial fishing for chinook, chum, sockeye, and pink salmon in the East Area is permitted from April 15 to October 31 only.

(ii) Commercial fishing for coho salmon in the East Area is permitted from June 15 to September 20 only.

(b) *Personal use fishing.* Personal use fishing for salmon in the management area is permitted the entire year.

(c) *Season dates.* All season dates in this section are inclusive. Time periods begin at 12:01 a.m. and end at 11:59 p.m. on the dates specified, based on local time.

§ 674.24 Gear restrictions.

(a) *Commercial Fishing*—(1) *West Area.* Commercial fishing for salmon in the West Area is not permitted.

(2) *East Area.* Commercial fishing for salmon in the East Area is permitted only with power or hand-troll gear.

(b) *Personal use fishing.* Personal use fishing for salmon in the management area is permitted only with a single line held in the hand or attached to a hand-held or closely attended rod, which line may not have more than one artificial lure or two single hooks attached.

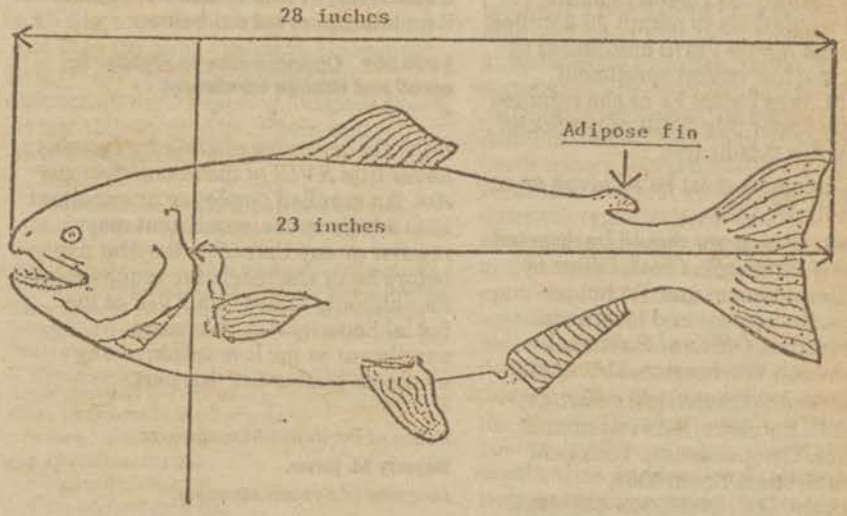

Figure 1. Chinook salmon with lines indicating (a) the minimum legal length for a whole chinook salmon, (b) the minimum legal length for a chinook salmon with its head removed, and (c) the adipose fin.

[FR Doc. 79-15707 Filed 5-17-79; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 98
Friday, May 18, 1979

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

OFFICE OF PERSONNEL MANAGEMENT

[5 CFR Part 890]

Federal Employees Health Benefits Program: Opportunities To Register To Enroll and Change Enrollment; on Becoming Eligible for Benefits Under Title XVIII of the Social Security Act

AGENCY: Office of Personnel Management.

ACTION: Proposed Rule.

SUMMARY: The Office of Personnel Management is proposing to amend the Federal Employees Health Benefits (FEHB) regulations to permit an enrollee with a high option FEHB enrollment to change to a low option enrollment within 31 days before he or she acquires eligibility under title XVIII of the Social Security Act (Medicare).

DATE: Comments must be received on or before July 17, 1979.

ADDRESS: Comments should be directed to Craig B. Pettibone, Chief, Office of Policy Development and Technical Services, Retirement and Insurance, Compensation, Office of Personnel Management, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Edward G. Borchers, Retirement and Insurance, Compensation, Technical Services Section, Room 4334, Washington, D.C. 20415, 202–632–4684.

SUPPLEMENTARY INFORMATION: When an enrollee of the Federal Employees Health Benefits (FEHB) Program is also covered under title XVIII of the Social Security Act (Medicare), Medicare benefits are provided first, and the FEHB plan supplements the benefits provided under Medicare up to 100 percent of allowable expenses, or up to the full benefits provided under the plan. Since plans under the FEHB Program generally afford protection against the same expenses as Medicare, FEHB plan benefits are usually reduced when an enrollee is also covered under Medicare. For this reason, a low option FEHB enrollment is, in most cases, an excellent supplement to Medicare and costs considerably less than a high option enrollment, which generally provides greater benefits.

The current FEHB regulations permit changes to a low option enrollment to be made at any time after Medicare eligibility is acquired. However, since the effective date of such a change can be no earlier than the pay period after the one in which the election is received by the employing office or retirement system, an overlap of Medicare and high option FEHB coverage is unavoidable. The proposed amendment would permit an individual with a high option FEHB enrollment to change to low option within 31 days before he or she becomes eligible for Medicare. In this manner, an individual with a high option FEHB enrollment who acquires full Medicare coverage can avoid an overlap of Medicare and high option coverage. Accordingly, it is proposed to amend § 890.301(n) of title 5, Code of Federal Regulations, as set out below:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(n) *On becoming eligible for benefits under title XVIII of the Social Security Act.* An enrolled employee or annuitant with a high option enrollment may register at any time after the 31st day before he or she meets the requirements for eligibility under title XVIII of the Social Security Act, to change enrollment to the low option of any available plan under this part.

* * * * *

Office of Personnel Management.

Beverly M. Jones,

Issuance of System Manager.

[FR Doc. 79-15528 Filed 5-17-79; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 272]

[Amdt. No. 145]

Food Stamp Program; Lost Benefits to Currently Ineligible Households

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking would modify 7 CFR 272.1(g)(1)(iv)(B) (published on October 17, 1978 at 43 FR 47846–47934) by providing additional requirements for State agencies regarding the notification of currently ineligible households entitled to the restoration of lost food stamp benefits. The change will assure that most such households are made aware of their entitlement to retroactive benefits.

DATES: Comments should be received on or before July 2, 1979 to be assured.

ADDRESS: Comments should be submitted to: Joseph E. Sheppard, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Susan McAndrew, Acting Chief, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250, 202–447–6535.

SUPPLEMENTARY INFORMATION: Under former procedures the Department did not issue lost food stamp benefits to currently ineligible households, but did provide procedures for the payment of lost benefits at the time such households again became eligible to participate in the Food Stamp Program. Under the Food Stamp Act of 1977 (Title 13, Pub. L. 95–113) currently ineligible households are entitled to prompt restoration of any benefits which were wrongfully denied or terminated during a period of participation.

Section 272.1(g)(1)(iv) of the final rulemaking published on October 17, 1978 provides two methods of notifying currently ineligible households whose entitlement to lost benefits was established prior to implementation of the Food Stamp Act of 1977. State agencies which can readily identify such households are required to notify and restore benefits within four months of the date the procedures for restoration of lost benefits are implemented. Under the regulation, other State agencies are required to issue a one-time press release advising the currently ineligible households of their entitlement to restoration of lost benefits.

As a result of problems brought to our attention after the publication of the rulemaking on October 17, 1978, the

Department is concerned that the requirement for a one-time press release may not be sufficient to assure that most currently ineligible households are made aware of their entitlement to retrocative benefits. Accordingly, the Department is proposing to modify § 272.1(g)(1)(iv)(B) by providing additional requirements for State agencies issuing the one-time press release. These State agencies would also be required to send a mailing to local Community Action Programs, grantees of the Community Food and Nutrition Programs of the Community Services Administration, general assistance agencies, legal service programs funded by the Legal Services Corporation, State employment service and unemployment compensation offices, all groups listed in the State's Outreach Plan and to other State and Federal governmental agencies providing services to low-income households, such as District Offices of the Social Security Administration. The mailing, which will be in the form of a letter provided by the Food and Nutrition Service (FNS), will request that these organizations and agencies publicize the availability of retroactive benefits to currently ineligible households. The mailing will also inform the organizations and agencies that the State agency will supply fliers and posters in quantity upon request. These fliers and posters will be provided to State agencies by FNS.

State agencies would also be required to display posters in all local agency welfare, food stamp certification and issuance offices until January 1, 1980, and to mail out the request for assistance within 30 days of receipt from FNS.

The Department also considered the alternative of requiring all State agencies to conduct a file search of all inactive files to individually locate and notify households entitled to lost benefits. The Department feels that the administrative burden of such a requirement would be so unreasonable when weighed against its effectiveness as to render this alternative unwarranted. For State agencies which did not maintain a separate register of ineligible households entitled to lost benefits or which do not have the computer capability to readily identify such households, a monumental manual case file search involving great cost and massive use of staff time would be required.

The extraordinary burden imposed on the State agency by such a manual search of millions of inactive case files is especially significant as most State agencies are still in the process of converting the active caseload to the criteria imposed by the regulations of October 17, 1978.[1] The Department also feels that a manual search is not justified in view of the relatively small number of ineligible households entitled to lost benefits.[2] The Department believes that the use of outreach organizations and other governmental agencies, such as Social Security offices, Employment Service offices, public assistance offices, and general assistance offices, will greatly increase the effectiveness of the press release in notifying currently ineligible households of their entitlement to restoration of lost benefits.

The appendix to this rulemaking contains the language of the mailing to the outreach organizations and governmental agencies assisting in the notifications currently ineligible households entitled to lost benefits, the language of the notice to the households and the language of a poster.

In view of the brevity of this amendment and the need to timely advise currently ineligible households of their entitlement to retroactive benefits, Robert Greenstein, Acting Administrator, FNS has determined that a 45-day comment period is sufficient and is in the public interest. Comments will be available for review and inspection during regular business hours at 500 12th Street SW., Room 658, Washington, D.C. 20250.

[1] Nationwide we estimate that there are over 5,000,000 active case files and at least an equal number of inactive files. A poll of States revealed that only seven State agencies maintained separate registers in some but not all, project areas. All other State agencies recorded entitlement to retroactive benefits in the household's case file and did not maintain a separate register.

The following listing of the top 10 food stamp areas illustrates the size of any file search. None of these areas kept a separate register.

1. New York, 575,000.
2. California, 439,000.
3. Puerto Rico, 334,000.
4. Pennsylvania, 317,000.
5. Illinois, 306,000.
6. Ohio, 252,000.
7. Florida, 229,000.
8. Texas, 220,000.
9. Michigan, 202,000.
10. Massachusetts, 176,000.

Figures represent May 1978 participation by food stamp households, rounded to the nearest thousand.

[2] Preliminary results indicate the number may be very small. Arizona, one of the States which maintained a separate register of ineligible households entitled to restoration of lost benefits, has sought to notify and provide lost benefits to the 120 households on the register. Of these, 45 have negotiated their Authorization to Participate (ATP) cards; 39 ATP's have been returned to the State agency undelivered and 36 have not been negotiated. The State has approximately 45,000 active cases and a similar number of inactive cases.

Accordingly, it is proposed to amend § 272.1 of Chapter II, Title 7, Code of Federal Regulations as follows:

In § 272.1(g)(1)(iv)(B), strike all language and substitute the following:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

* * * * *

(1) *Amendment 132.* * * *

* * * * *

(iv) * * *

* * * * *

(B) Other State agencies shall issue a one-time-only press release notifying ineligible households that benefits can be restored. The press release shall advise households to contact the local food stamp office for more information. In addition, State agencies issuing the press release shall request the assistance of local Community Action Programs, grantees of the Community Food and Nutrition Program of the Community Services Administration, general assistance agencies, legal services programs funded by the Legal Services Corporation, State employment service and unemployment compensation offices, all groups listed in the State Food Stamp Outreach Action Plan and other State and Federal governmental agencies providing services to low-income households, such as District Offices of the Social Security Administration. FNS shall provide the State agency with copies of the letter to be used to request assistance from outreach organizations and governmental agencies, and the fliers and posters which will be distributed upon request to such organizations and agencies. The language of the request for assistance, the notice to households and the poster is contained in Appendix A to this section. The State agency shall mail the request for assistance and display posters in all local agency food stamp certification and issuance offices and welfare offices within 30 days of receipt from FNS. The State agency shall display the posters in its offices until January 1, 1980.

Appendix A—Text of Letter of Request for Assistance

Dear Friend: We are requesting your help in publicizing a change in the Food Stamp Program. As you may know, recently published food stamp regulations provide for the payment of lost benefits to all food stamp households which are entitled to such benefits. Under prior regulations households which lost benefits as the result of an error could not receive such benefits if the benefits were to be issued at a time when the household was not eligible to participate in the Program. The lost benefits could only be

issued if and when the household again became eligible to participate in the Program. Under the new regulations households which have outstanding entitlements to lost benefits regardless of current eligibility will be able to receive their benefits. We are requesting your assistance in making it known that currently ineligible households with outstanding entitlements to lost benefits may now claim these benefits.

Enclosed is a copy of the notice advising currently ineligible households of the availability of lost benefits. A poster which contains language similar to that of the notice is also available. Copies of the notice and the poster can be obtained by contacting the State or local food stamp office.

Sincerely,

Text of Notice to Currently Ineligible Households Entitled to Lost Benefits

Attention Former Food Stamp Users

Due to a change in the food stamp rules, you may now receive retroactive food stamp benefits, even though you are not now on food stamps.

If—at any time in the past:

- You were notified that the food stamp office made a mistake on your case; *or*
- You won a fair hearing; but
- You couldn't get the additional benefits owed you because you weren't on the program.

Then—Please fill in the form below and mail or carry it to your local food stamp office.

Remember:

*You don't have to be on food stamps now to get these benefits.

*If you don't agree with the decision of the food stamp office after they review your file, you have the right to request a fair hearing.

Request for Review: Please Review My Casefile To Determine if I Should Get the Retroactive Benefits Noted Above.

Signature _____
Date _____
Your Name (please print) _____
Telephone number _____
Address _____
Food Stamp Case No. (if you know) _____
Last month you received food stamps (if you know) _____

USDA policy does not permit discrimination because of race, color, sex, age, handicap, religion, national origin or political belief. Any person who believes he or she has been discriminated against in any USDA related activity should write immediately to the Secretary of Agriculture, Washington, D.C. 20250.

Text of Poster

Attention Former Food Stamp Users

Due to a change in the food stamp rules, you may now receive retroactive food stamp benefits, even though you are not now on food stamps.

If—At any time in the past:

*You were notified that the food stamp office made a mistake on your case; *or*

*You won a fair hearing; but

*You couldn't get the additional benefits because you weren't on the program

Then—Please fill in the form that goes with this poster or write or call the local food stamp office for more information.

Remember:

*You don't have to be on food stamps now to get these benefits

*If you don't agree with the decision of the food stamp office after they review your file, you have the right to request a fair hearing.

USDA policy does not permit discrimination because of race, color, sex, age, handicap, religion, national origin or political belief. Any person who believes he or she has been discriminated against in any USDA related activity should write immediately to the Secretary of Agriculture, Washington, D.C. 20250.

(91 Stat. 958 as amended (7 U.S.C. 2011–2027))

Note.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A–107.

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

A draft impact analysis has been prepared pursuant to Executive Order 12044 and the Secretary's directive set forth at 43 FR 50988. A copy thereof can be obtained from Acting Deputy Administrator Shepherd.

Dated: May 15, 1979.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 79–15630 Filed 5–17–79; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

[7 CFR Part 1133]

[Docket No. AO–275–A31]

Milk in the Inland Empire Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: The hearing is being held at the request of dairy farmers to consider proposals that would expand the marketing area and revise the basis for determining which order should regulate a plant that qualifies for pooling under more than one order. Also, proposals to allow greater diversions of producer milk to nonpool plants will be considered, as well as proposals that would change certain reporting and payment dates under the order. Proponents contend that the requested order changes are needed to reflect changed marketing conditions and to insure orderly marketing in the area.

DATE: June 12, 1979.

ADDRESS: Holiday Inn, 4212 Sunset Boulevard, Spokane, Washington 99204.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–7183.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held at the Holiday Inn, 4212 Sunset Boulevard, Spokane, Washington, beginning at 9:30 a.m., on June 12, 1979, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Inland Empire marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposal relative to a redefinition of the marketing area raises the issue whether the provisions of the present order would tend to effectuate the declared policy of the Act, if they are applied to the marketing area as proposed to be redefined and, if not, what modifications of the provisions of the order would be appropriate.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Northwest Dairymen's Association

Proposal No. 1

Expand the marketing area to include Adams, Chelan, Douglas, Grant, and Lincoln Counties, all in the State of Washington.

Proposal No. 2

Amend § 1133.7 by revising paragraph (d)(2), (3) and (4) as follows:

§ 1133.7 Pool plant.

* * * * *

(d) * * *

(1) * * *

(2) A plant qualified pursuant to

paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition in the marketing area than in such other marketing area but which plant maintains pooling status for the month under such other Federal order; or

(4) A plant pursuant to paragraph (b) of this section which also meets the pool plant requirements of another Federal order and from which greater shipments are made during the month to plants regulated under such other order than are made to plants regulated under this order.

Proposal No. 3

Amend § 1133.13 by revising paragraph (c) as follows:

§ 1133.13 Producer milk.

* * * * *

(c) With respect to diversions to nonpool plants:

(1) A cooperative association may divert for its account under paragraph (b)(1) of this section the milk of any member-producer eligible for diversion. The total quantity of milk so diverted may not exceed 70 percent in any of the months of September through February, and 80 percent in any of the months of March through August, of its total member-producer milk received at all pool plants or diverted therefrom during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member-producers if each association has filed in writing with the market administrator a request for such computation;

(2) A handler operating a pool plant may divert for his account under paragraph (a)(2) of this section milk of any producer eligible for diversion, other than a member of a cooperative association which diverts milk under paragraph (c)(1) of this section. The total quantity of milk so diverted may not exceed 70 percent in any of the months of September through February, and 80 percent in any of the months of March through August, of the milk received at or diverted from such pool plant during the month from producers who are not members of a cooperative association that diverts milk under paragraph (c)(1) of this section;

(3) Milk diverted in excess of the limits specified shall not be considered as producer milk, and the diverting handler shall specify the producers whose milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by the handler;

(4) Producers eligible for diversion are those whose milk has been received at the pool plant prior to diversion from such plant (but not necessarily in the current month);

(5) For the purpose of location adjustments pursuant to §§ 1133.52 and 1133.75, diverted milk shall be considered to have been received at the location of the plant to which diverted.

Proposed by Mayflower Farms

Proposal No. 4

§ 1133.30 [Amended]

a. In § 1133.30 change the date for filing the report of receipts and utilization from the 7th to the 9th.

§ 1133.31 [Amended]

b. In § 1133.31, change the date for filing the payroll report from the 20th to the 22nd.

§ 1133.32 [Amended]

c. In § 1133.32(d), change the date for filing the supporting statement to producers from the 17th to the 20th.

§ 1133.45 [Amended]

d. In § 1133.45(d), change the date for filing the report of utilization from the 16th to the 18th.

§ 1133.62 [Amended]

e. In § 1133.62, change the date for the uniform price announcement from the 12th to the 14th.

§ 1133.71 [Amended]

f. In § 1133.71, change the date for payments into the producer-settlement fund from the 14th to the 16th.

§ 1133.72 [Amended]

g. In § 1133.72, change the date for payments out of the producer-settlement fund from the 15th to the 18th.

§ 1133.73 [Amended]

h. In § 1133.73(c)(1) and (d), change the date for making partial payments to cooperative associations from the second-to-the-last day of the month to the last day of the month.

§ 1133.73 [Amended]

i. In § 1133.73(b), change the date for making final payments to producers from the 17th to the 20th.

§ 1133.73 [Amended]

j. In § 1133.73(c)(1) and (d), change the date for making final payments to cooperative associations from the 15th to the 18th.

§ 1133.85 [Amended]

k. In § 1133.85, change the date for paying the administrative assessment from the 14th to the 16th.

§ 1133.86 [Amended]

l. In § 1133.86(b), change the date for transferring marketing service deductions to the market administrator from the 14th to the 16th.

§ 1133.86 [Amended]

m. In § 1133.86(c), change the date for transferring marketing service deductions to cooperative associations from the 16th to the 18th.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 5

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the market administrator, James A. Burger, P. O. Box 23606, Portland, Oregon 97223 or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.

Office of the Administrator, Agricultural Marketing Service.
Office of General Counsel.
Dairy Division, Agricultural Marketing Service (Washington office only).
Office of the Market Administrator, Inland Empire marketing area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on May 14, 1979.

William T. Manley,
Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-15512 Filed 5-17-79; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 212]

[Docket No. ERA-R-79-26]

Retailer Price Rule for Motor Gasoline

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of its intent to reexamine its Mandatory Petroleum Price Regulations for retailers of motor gasoline (Subpart F, Part 212) and to consider what changes in the regulations would be appropriate. This review is prompted in part by petitions for rulemaking filed with ERA by associations of motor gasoline retailers (including the National Congress of Petroleum Retailers, Inc.). ERA has also received requests to make its price regulations easier for dealers and the public to understand. In addition, ERA is aware that market conditions for motor gasoline have changed considerably in the past year and that these changed circumstances may require modification of certain aspects of the price regulations.

The petitions for rulemaking state, among other things, that the current price rules do not permit retailers to earn an adequate profit on sales of motor gasoline and are difficult to understand. The changed circumstances in market conditions include reductions in allocation levels and uncertainty about future supply levels to retailers. In addition, ERA wishes to consider whether alternatives to the present price regulations would be easier to enforce and thus would enable the government to provide the public with better protection against unlawful overcharges. ERA is also interested in modifications which will provide the public with clearer information about lawful price levels so that individual members of the public will be able to protect against price overcharges.

Accordingly, in response to the petitions for rulemaking and current market conditions, ERA gives notice of its intent to review what alternatives and modifications of regulations for pricing of motor gasoline by retailers may be available to take further action regarding these regulations, if appropriate. The details of this proceeding will be announced in a subsequent notice.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634-2170.
Edwin P. Mampe (Regulations and Emergency Planning), Economic Regulatory Administration, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-7200.
W. Mayo Lee (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6754.

Issued in Washington, D.C., May 14, 1979.

Douglas G. Robinson,
Acting Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 79-15616 Filed 5-17-79; 8:45 am]
BILLING CODE 6450-01-M

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 15]

Requirement of Foreign Brokers and Foreign Traders To Designate an Agent in the United States To Receive Service of Communications Issued by the Commission

Correction

In FR Doc. 79-15279 appearing on page 28678 in the issue for Wednesday, May 16, 1979, in the second column, the comment date should read "July 16, 1979.".

Also, on page 28682, the first column, the second entry in the table of contents should read.

15.06 Designation of an Agent for service by Foreign Traders trading directly through Futures Commission Merchants.

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 282]

[Docket No. RM79-21]

Regulations Implementing Alternative Fuel Cost Ceilings on Incremental Pricing Under the Natural Gas Policy Act of 1978

Issued: May 11, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking and Opportunity for Written and Oral Presentation of Data, Views, and Arguments.

SUMMARY: The Federal Energy Regulatory Commission hereby gives notice of a proposed rulemaking and public hearings for the purpose of implementing one aspect of the incremental pricing provisions of the Natural Gas Policy Act of 1978. Specifically, the notice contains regulations establishing alternative fuel price ceilings for incremental pricing purposes.

DATES: Comments by June 19, 1979. Requests to speak: *St. Paul, Minnesota hearing:* by May 30, 1979; *Los Angeles, California hearing:* by June 1, 1979; *Atlanta, Georgia hearing:* by June 8, 1979; *Washington, D.C. hearing:* by June 11, 1979. Hearing dates: *St. Paul, Minnesota hearing:* June 6, 1979, 9:30 a.m.; *Los Angeles, California hearing:* June 8, 1979, 9:00 a.m.; *Atlanta, Georgia hearing:* June 15, 1979, 9:00 a.m.; *Washington, D.C. hearing:* June 18, 1979, 10:00 a.m.

ADDRESSES: All comments and requests to speak should be sent to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Reference Docket No. RM79-21).

HEARING LOCATIONS: *St. Paul, Minnesota hearing:* Minnesota Public Service Commission, 7th Floor, American Center Building, Kellogg and Robert Streets, St. Paul, Minnesota 55101; *Los Angeles, California hearing:* State Building, 107 S. Broadway, Los Angeles, California 90016; *Atlanta, Georgia hearing:* Georgia Public Service Commission, 162 State Office Building, 244 Washington Street S.W., Atlanta, Georgia 30334; *Washington, D.C. hearing:* Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Hearing Room A, Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Norman A. Pedersen, Federal Energy Regulatory Commission, Room 9006, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 275–4147.

James C. Liles, Federal Energy Regulatory Commission, Room 3106, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 275–4121.

Nancy E. Williams, Federal Energy Regulatory Commission, Room 8100F, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 275–0422.

I. Background

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621), signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. The regulations described in this Notice are proposed for purposes of implementing Title II of the NGPA, "Incremental Pricing", and, particularly, subsection 204(e).

In general, under Title II, interstate pipeline companies are required to pass through portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the surcharge placed on industrial users be such that the ultimate cost of gas to the user does not exceed the cost of the fuel oil which he would use as an alternative.

The incremental pricing program is to be implemented in two phases. The only facilities affected during the first phase will be those using natural gas as fuel for large industrial boilers. Title II requires that the regulations implementing this first phase be promulgated by November 9, 1979.

During the second phase of the program, incremental pricing may be extended to a broader class of industrial users than those affected by the first stage. The regulations implementing the second phase must be promulgated by May 9, 1980 and will be subject to Congressional review.

This docket, RM79–21, and the regulations set forth below, involve only the implementation of the alternative fuel cost ceilings on incremental pricing, as required by section 204 of the NGPA. In this notice the Commission addresses the issue of whether the appropriate alternative fuel cost to be used in determining the ceiling should be reduced from the level of No. 2 fuel oil.

The other regulations which are needed to implement the first phase of the incremental pricing program will be promulgated in Docket No. RM79–14. That docket will involve both the regulations prescribing the mechanism for incremental pricing and the regulations establishing procedures for obtaining exemptions under section 206 of the NGPA. It is currently anticipated that a notice of proposed rulemaking will be issued in Docket No. RM79–14 within the next few weeks.

II. Public Input to This Proposed Rulemaking

In the course of developing the proposed regulations set forth below, the Commission staff has held informal public discussions with state officials, other representatives of the regulatory community, and various sectors of the natural gas industry. The public conferences have provided a forum for the open exchange of ideas and information on many aspects of the NGPA incremental pricing provisions.

The first conference was held on February 12, 1979 in Docket No. RM79–14. notice of this conference was issued on January 12, 1979 (44 FR 6133, January 31, 1979). A preliminary proposal which had been developed by Commission staff for the implementation of the surcharge passthrough provisions of Title II was included in the January 12th notice. This conference was attended by representatives of many sectors of the natural gas industry—pipeline companies, industry associations, distribution companies, and consumers. On February 22, 1979, the Commission staff held a discussion with representatives of the National Association of Regulatory Utility Commissioners to discuss issues involved in the implementation of incremental pricing. Attending the conference were Chairman Kati Sasseville of the Minnesota Public Service Commission, Commissioner Carmel C. Marr of the New York Public Service Commission and Commissioner Leigh H. Hammond of the North Carolina Utilities Commission.

Additional informal conferences were held on April 2–4, 1979. The April 2nd conference was called in this docket, RM79–21, to give interested parties an opportunity to address the issue of the alternative fuel cost ceiling on incremental prices. In the Notice convening the conference (issued March 14, 1979 (44 FR 16937, March 20, 1979)), conference participants were asked to discuss eight issues regarding establishment of an appropriate alternative fuel cost:

1. Should the alternative fuel cost ceiling be based on the cost of no. 2 fuel oil, the cost of No. 6 fuel oil or someting in between?

2. What should be the regions for which alternative fuel cost ceilings should be determined?

3. Should the ceiling be based on the wholesale price of fuel oil or the retail price?

4. Should the alternative fuel cost ceiling be based on the price quoted for fuel oil before state and local taxes are included, or should the ceiling be based on the price after state and local taxes are included?

5. What should be the length of the period for which weighted averages should be taken in deriving alternative fuel cost ceilings from oil price data?

6. Should there be a downward adjustment of the average cost of oil? If so, what should be the factor by which there will be a downward adjustment?

7. How often should data on fuel oil prices be collected?

8. How frequently should the ceiling be published?

The April 3rd conference (noticed on March 16, 1979 (44 FR 17526, March 22, 1979)) was convened in Docket No. RM79–14 to discuss the various mechanisms for implementation of the surcharge passthrough provisions which were suggested by participants in the February 12th conference.

On April 4 and 12, 1979, the Commission staff had further meetings with members of the National Association of Regulatory Utility Commissioners to discuss issues regarding the incremental pricing program. Present were Commissioner John C. Pickett and Commissioner N. M. Norton, Jr., of the Arkansas Public Service Commission, Commissioner Robert Fischbach of the North Carolina Utilities Commission, and representatives of the state commissions of Illinois, Michigan, California, Wisconsin, New York, Maryland, the District of Columbia, Virginia, Connecticut, Oklahoma and Ohio.

The February and April conferences were very helpful. The Commission expresses its sincere appreciation to all who participated.

All of these formal conferences were transcribed. The transcripts and the written comments provided to the Commission have been made available for public inspection in the Commission's Office of Public Information. The transcripts and written comments associated with the conferences convened in Docket No. RM79–21 shall be part of the public record upon which the final rulemaking in that docket will be based. Similarly, the transcripts and written comments filed in connection with the conferences convened in Docket No. RM79–14 shall

be part of the public record in that proceeding.

III. Proposed Regulations

Section 204 of the NGPA sets forth provisions regarding the manner in which incremental costs of natural gas, as defined in the Act, are to be passed through to industrial boiler fuel facilities subject to the incremental pricing program. Those costs are to be billed as a surcharge. There is, however, a ceiling on how high incremental pricing can take the cost of gas billed to industrial boiler facilities. Subsection (e) of section 204 directs that the ceiling shall be set at the level paid by industrial users for No. 2 fuel oil, unless the Commission determines that the ceiling should be lowered to a point not lower than the price paid for No. 6 fuel oil. The statute states:

Sec. 204 Method of Passthrough

* * * * *

(e) Determination of Alternative Fuel Cost.—(1) In General.—Except as provided in paragraph (2), the appropriate alternative fuel cost for any region (as designation by the Commission) shall be the price, per million Btu's, for Number 2 fuel oil determined by the Commission to be paid in such region by inddustrial users of such fuel.

(2) Reduction of Appropriate Alternative Fuel.—The Commission may, by rule or order, reduce the appropriate alternative fuel cost—

(A) For any category of incrementally priced industrial facilities, subject to the rule required under section 201 (including any amendment under section 202 to such rule) located within any region and served by the same interstate pipeline; or

(B) For any specific incrementally priced industrial facility which is subject to such requirements and which is located in any region;

to an amount now lower than the price, per million Btu's, for the Number 6 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel, if and to the extent the Commission determines, after an opportunity for written and oral presentation of views, data, and arguments, that such reduction is necessary to prevent increases in the rates and charges to residential, small commercial, and other high-priority users of natural gas which would result from a reallocation of costs caused by the conversion of such industrial facility or facilities from natural gas to other fuels, which conversion is likely to occur if the level of the appropriate alternative fuel cost were not so reduced.

The Commission believes that the Congressional intent expressed in subsection 204(e) is that the incremental pricing program should not serve to encourage industrial users to switch from natural gas to fuel oil if such switching would result in increased rates for residential and small commercial customers. Accordingly, if setting the alternative fuel cost ceiling at the level of No. 2 fuel oil would be likely to cause fuel switching and a shifting of capital costs from industrial to residential and commercial customers, the ceiling should be reduced in a manner so as to minimize the likelihood of fuel switching. The Commission is mindful of the Congressional admonition that it act expeditiously to prevent incremental pricing pricing from causing load loss and, hence, higher costs to high priority users:[1]

> The conferees urge the Commission to take whatever action it deems appropriate or necessary * * * to avoid any delays in reducing the substitute fuel level so as to avoid the likelihood of conversions from natural gas by industrial users if those conversions would result in increases in natural gas rates for any residential, small commercial, and other high priority customers. The conferees intend that in determining the likelihood of these conversions occurring, the Commission move rapidly in the administering hearings so as to avoid the irreparable damage which the conferees believe will occur to high priority users if these believe will occur to high priority users if thee other industrial users, faced with uncertain natural gas rates, begin taking steps to secure alternate fuel supplies.

A related concern is, of course, the substantial dependence of the United States on imported crude oil. Any increased use of fuel oil by industrial users would only serve to exacerbate this situation.

While, however, the ceiling should be reduced so as to minimize the likelihood of fuel switching and its consequences, the Commission believes that the ceiling should be reduced only as much as necessary to realize that goal. The basic purpose of incremental pricing under Title II is to direct to industrial users, to the greatest extent possible, the increased acquisition costs of natural gas resulting from the provisions of the NGPA. Any reduction in the alternative fuel cost ceiling below the point necessary to prevent fuel switching would be contrary to that purpose. Thus, the Commission must, in its implementation of subsection 204(e), strike a balance between the two goals of maximizing flow-through of incremental costs to industrial facilities and minimizing fuel switching. Setting the alternative fuel cost ceiling gives rise to a number of issues which involve striking the proper balance between these two goals. The discussion which follows is structured around those issues.

[1] S. Rep. No. 95–1752, 95th Cong., 2nd Sess. 100 (1978).

A. *No. 2 or No. 6*

The predominant question with respect to the implementation of subsection 204(e) is whether the alternative fuel cost ceiling should be reduced from the level of No. 2 fuel oil to the level of No. 6. Many of the commenters participating in the April 2nd conference urged that the alternative fuel cost ceiling be set at the level of No. 6 fuel oil rather than No. 2 in order to deter, to the greatest extent possible, any loss of industrial load. Experiences with load shifting were recounted, and situations were described in which fuel switching to the detriment of high-priority consumers might occur. Commenters stated that the alternative fuel for large industrial boilers is usually No. 6 oil, not No. 2. They stated that the operators of large boilers make decisions on an almost daily basis as to their use of fuel—opting for that which bears the lowest price.

The American Gas Association (AGA) submitted the results of a survey it conducted of member companies on the question of where the alternative fuel cost ceiling should be set. Based on the results of that survey, the AGA concluded that if the alternative fuel cost ceiling were established at the No. 2 rather than No. 6 level, at least 741 billion cubic feet (Bcf) of industrial sales would be lost in the year 1980.

The view that there would be substantial load loss and shifting of capital costs if the ceiling were not reduced was broadly supported by participants at the conference. The Public Staff of the North Carolina Utilities Commission submitted an analysis of the industrial service currently provided by the Public Service Company, one of three gas utility companies serving North Carolina. This study showed that of industrial boiler fuel users served by that utility, 87.75 percent, based on volumetric use, have a capability to use No. 6 fuel oil, and 8 percent have the capability to use No. 5 fuel oil. The Public Staff also estimated the effect a loss of these industrial customers would have on the Public Service Company's rates. By looking only at industrial facilities using in excess of 300 Mcf per day—the category of facilities subject to the first phase of the incremental pricing regulations—the Public Staff calculated that the loss of the users who have the capability to use No. 5 and No. 6 fuel oil would mean an increase in the rates to remaining customers on the system of 14.7 cents per decatherm.

The Northern Natural Gas Company said there are approximately 60 customers on its system which will be subject to the first phase of the incremental pricing program. Northern Natural estimated that these customers will, in 1980, use approximately 3.5 percent of the volume of natural gas sold by Northern. Northern found through discussions with its customers that for approximately one-half of the gas volumes consumed by the large industrial users, No. 6 fuel oil is the alternative fuel. Thus, Northern anticipates that there would be a substantial loss of industrial sales if the alternative fuel cost ceiling remained at the No. 2 level.

The State of Louisiana commented that large industrial boilers in Louisiana equipped to burn No. 6 fuel oil outnumber by more than 3 to 1 boilers that are equipped to burn No. 2 fuel oil. the Mississippi River Transmission Corporation submitted an estimate that approximately 20 percent of its total volume of direct sales go to large industrial users who are equipped to burn No. 6 fuel oil.

The Pacific Gas and Electric Company (PG&E), which serves customers in northern California, submitted comments showing that since 1975 it has already lost 110 Bcf of sales due to customers shifting to alternate fuels for economic reasons. PG&E stated that each ten billion cubic feet of gas sales to industrial customers provides approximately $5 million of revenue to help offset fixed costs, giving an indication of the proportion of fixed costs that industrial users absorb.

The comments received to date have covered a spectrum of the interests affected by incremental pricing. Of particular interest is the fact that all state utility commissions which have commented to date—bodies which represent views to which this Commission must give special consideration—have cautioned that a ceiling set at the No. 2 fuel oil level would result in significant conversions to fuel oil for boiler fuel purposes.

In addition to the comments, the Commission has available to it data obtained by the Energy Information Administration (EIA). In December 1978, the Energy Information Administration of DOE sent a questionnaire, Form EIA–134 to interstate pipelines, local distribution companies, state commissions and other interested persons to gather information, on a voluntary basis, about the alternative fuel capabilities of both large and small industrial boilers. EIA also solicited opinions as to what the ceiling should be. The Commission has examined the results of this survey, bearing in mind that the responses were voluntary and thus do not constitute a statistically valid sample. The survey indicated that a significant number of boiler fuel facilities in a majority of the states are equipped to burn No. 6 fuel oil. Further, the majority of respondents favored a ceiling based on the No. 6 oil price. However, the survey also indicated that there are a number of boiler fuel facilities which will be subject to the first phase of the incremental pricing program that only have an alternative fuel capability to use No. 2 fuel oil.

The Commission has also analyzed the data reported on the EIA–50 form. EIA–50 is used to gather information on the alternative fuels that are used to offset curtailments in the delivery of natural gas. Analysis indicates that during the period April 1977—March 1978, large industrial users utilized No. 5 or No. 6 fuel oil to offset approximately 40 percent of the natural gas curtailment they experienced. This percentage translates to approximately 64 million barrels of oil. The EIA–50 data also indicate that No. 1 and No. 2 fuel oil was utilized to offset approximately 20 percent of natural gas curtailments during the same period.

Thus, both the comments received at the April 2nd conference and the data available to the Commission from EIA tend to show that there is a singificant likelihood of widespread conversion from gas to No. 6 fuel oil if the alternative fuel cost ceiling were set uniformly at the level of No. 2 fuel oil prices. The precise amount of the shift cannot be statistically determined from the available data and comments. Nor can the effect on high-priority consumers be estimated. However, there is a clear likelihood that sizable shifts from gas to oil could occur. On the other hand, however, it has not been shown that it is necessary to reduce the alternative fuel cost ceiling to the No. 6 level for all industrial boiler fuel users in order to prevent conversions from gas to oil and a shifting of capital costs to high-priority customers.

The question of where to set the alternative fuel cost ceiling must be addressed with great caution. The Commission is aware that an inappropriate ceiling could have an extremely serious adverse impact on the natural gas industry and its customers. The results could potentially be irreparable if a pipeline or distribution company were unable to replace lost industrial load with either new industrial load or new high-priority use. And even if new high-priority load could be added over time, in all probability it could not be added quickly enough to compensate for sudden large losses of industrial load.[2] Moreover, the Commission is cognizant of the public policy impact an inappropriate action would have with respect to the country's demand for additional supplies of imported crude oil.

In order to balance these concerns with the Congressional intent that incremental costs be borne by industrial customers to the maximum extent possible, the Commission proposes that three alternative fuel cost ceilings be established for each region of the country—one at the level of No. 2 fuel oil, another at the level of high sulfur No. 6 fuel oil and a third at the level of low sulfur No. 6 fuel oil. Industrial boiler fuel facilities would be incrementally priced only up to the level of the lowest priced fuel oil which they could in fact use. This approach would avoid the establishment of a blanket ceiling for all users—one which might be too high for some users, and thus result in their loss to the system, while being too low for other users, allowing them to escape some of the costs which Congress intended they should bear under the incremental pricing program.

In the proposed regulations, "high sulfur" oil is defined as oil containing over 1 percent sulfur. "Low sulfur" oil is oil containing 1 percent or less sulfur. The Commission proposes to have different ceilings for high and low sulfur No. 6 fuel oil because the information available to the Commission indicates that the price differential between the two categories of No. 6 oil can be as great as that between No. 2 and No. 6 prices. In a letter dated April 24, 1979, the Assistant Secretary for Policy and Evaluation of the Department of Energy urged the Commission to consider the variations in No. 6 fuel oil prices due to sulfur content. The Assistant Secretary noted that, using data compiled by the Energy Information Administration of DOE, No. 6 fuel oil containing .3 percent or less sulfur has at times carried a price 36 cents higher, on a per million Btu basis, than No. 6 fuel oil with more than 1 percent sulfur. Furthermore, due to legal restrictions having to do with air quality standards, there may be a large number of boilers which are equipped to utilize only low sulfur No. 6 oil.

Under the proposal contained in the attached proposed rule, there would be a certification procedure for determining the alternative fuel capability of industrial boiler fuel facilities which are

[2] Further, even if new high-priority load were attached to offset the loss of industrial load, additional storage might be required.

not exempt from incremental pricing.[3] If a facility is technically able and legally permitted to burn low sulfur No. 6 fuel oil, or if a facility is technically able and legally permitted to burn high sulfur No. 6 fuel oil, a responsible official of the facility may so certify. If there were such a certification, a non-exempt industrial boiler fuel facility would be incrementally priced at the level of the lowest priced alternative fuel—No. 6 low sulfur fuel oil or No. 6 high sulfur fuel oil—which the facility had been certified as being capable of burning. If there were no such certification of legal and technical capability to burn either low or high sulfur No. 6 fuel oil, a non-exempt facility would be deemed to have the capability to burn No. 2 fuel oil and would be incrementally priced at that level.

Certifications would be made through the filing of an alternative fuel capability form, signed under oath by a responsible company official, with the Commission. A copy of the executed form would be filed with the natural gas supplier serving the facility. Blank forms would be supplied to industrial customers by their supplier at the same time that forms requesting exemptions are supplied,[4] September 1, 1979, and they would be available on an ongoing basis after that for the benefit of firms which subsequently install No. 6 alternative fuel capability. If a facility is not equipped to burn a No. 6 oil, but such capability is later installed, the certification could be filed at a later date.

The proposed regulations require that owners retain any documents showing that a facility is equipped with alternative fuel capability for a period of three years following the first billing by a natural gas supplier under the program which reflects a surcharge at one of the two No. 6 alternate fuel prices. The type of proof which would fulfill this requirement, aside from the alternative equipment itself, would be, for example, bills for the actual installation of the equipment, a qualified engineer's report that capability is in place, bills for purchases of No. 6 fuel oil, or contracts for the supply of No. 6 oil. This retention of records would allow for the audit of filed certifications by Commission enforcement personnel. An affiant will be required to describe on his alternative fuel capability form what he will retain as evidence for his claim that his facility is capable of burning a No. 6 oil.

The certification required under this approach will only have to be filed once and, thus, should not place a significant burden on industrial end-users.

A natural gas supplier will be required to have available for public inspection all alternative fuel capability forms he has received. Additionally, all such forms filed with the Commission will be available to the public. Any interested person who desires to protest any certification of alternative fuel capability may do so by filing a protest in accordance with section 1.10 of the Commission's Rules of Practice and Procedure.

Any industrial user which believes that the self-certification procedure imposes a special hardship on him may request administrative relief under the adjustment procedures which were recently promulgated as interim regulations by the Commission (Order No. 24, issued on March 22, 1979 in Docket No. RM79–32).

The Commission believes that the three-tiered ceiling described above represents an appropriately cautious approach which should be adopted in the initial stage of the incremental pricing program. Retention of the No. 2 ceiling established in section 204(e) of the NGPA would, the Commission believes on the basis of the data and comments now before it, be likely to lead to fuel switching and a shifting of capital costs to high-priority customers. An across-the-board reduction of the ceiling to the level of No. 6 fuel oil would, however, fail to maximize flow-through of incremental costs to industrial users, insofar as some industrial facilities are either legally or technically incapable of using No. 6 oil.

The Commission requests comments on the three-tiered approach. Particularly, the Commission requests comments as to whether modifications to the three-tiered approach described above are required to provide for situations where an industrial facility has an alternative fuel capability to utilize a fuel of a quality between No. 2 and either low or high sulfur No. 6 fuel oil. No. 4 or No. 5 fuel oil are often obtained by blending No. 2 and No. 6. Where No. 2 and No. 6 are blended, it is very possible the alternative fuel thus obtained carries a lower net acquisition cost than No. 2 does by itself. Thus, it might be appropriate to permit an industrial user using a blend to have an alternative fuel ceiling below that set for No. 2, though above the No. 6 ceiling levels. Commenters on this issue are requested to submit as much data as possible. If a regulatory solution is recommended, commenters are requested to submit regulatory language which they believe would address the problem effectively.

Under the proposed rule, technical capability and legal ability to use various fuels would determine what ceiling would apply to a specific facility. The Commission requests commenters to provide information about the extent of No. 6 fuel burning capability generally and by category of user and region.

Additionally, the Commission asks commenters to address the question of whether, if it is shown that there is widespread technical capability and legal ability to switch from gas to No. 6 fuel oil, it is legal and appropriate for the Commission, on the basis of its expertise and knowledge of gas pricing policy and economics, to infer that there would be a likelihood of fuel switching with an adverse shifting of capital costs to high priority customes.

B. *Regions*

Subsection 204(e) gives the Commission the flexibility to determine the regions for which alternative fuel price ceilings shall be established.

The majority of industry participants in the April 2nd conference encouraged the Commission to establish alternate fuel price ceilings for each Standard Metropolitan Statistical Area (SMSA). These commenters stated that market conditions vary from one metropolitan area to another, and from a metropolitan area of a state to a rural area. Several of the factors involved in the establishment of oil prices were described, such as transportation costs, air quality standards, the relative availability of oil in a given region, the size and conditions of a purchase, and the quality of the oil purchased. By establishing ceilings for each SMSA, commenters suggested that the ceilings would be more sensitive to the conditions existing in any particular area.

Some commenters urged that the incremental pricing regions should be the service areas of local gas distribution companies. These commenters stated that this approach would permit each company to continue to maintain uniform rates throughout its service area.

The representatives of individual states who commented on this issue were unanimous in urging that states be the regions. A few commenters stated that large multi-state regions would best serve the purposes of subsection 204(e).

In deciding what the incremental pricing regions should be, there are five standards which should be considered:

[3] The procedure for obtaining an exemption will be addressed in detail in the notice of proposed rulemaking in Docket No. RM79–14. It is requested, therefore, that comments submitted in this docket, RM79–21, not address the exemption issue.

[4] See footnote 3 on previous page.

(1) the number of regions should be a manageable number from an administrative point of view; (2) each region should be such that prices charged to end-users will be reasonably close to the average for the region; (3) each region should include enough oil users to obtain a statistically meaningful sample size; (4) regions should be rationally related to industrial concentrations and fuel oil marketing areas; and (5) the regions should be as consistent with political boundaries as possible.

The Commission staff suggested three approaches which would be administratively workable and would satisfy to a large degree the five criteria above. These would be: (1) to use states as regions; (2) to divide the continental United States into eight large multi-state regions; or (3) to use the eight large multi-state regions, but break out from them the 31 metropolitan regions which have a population of one million or above.

The Commission proposes to adopt the third approach, which would result in the establishment of alternative fuel price ceilings for 39 separate regions. A list of the 39 regions and a map indicating them is attached as an Appendix to the regulations set forth below. The 31 metropolitan areas with a population of one million or more were derived from data gathered by the Bureau of the Census of the United States Department of Commerce. They reflect either SMSA's or Consolidated Metropolitan Statistical Areas (CMSA's). Like SMSA's and CMSA's, the metropolitan regions observe county boundaries. The eight large multi-state regions were derived by modifying various regional divisions used by the Bureau of the Census, the Department of Energy and others to take into account energy production, distribution and sale patterns.

Hawaii and Alaska are not included in any of the regions, since neither state will be affected by the initial phases of the incremental pricing program. Neither presently utilizes gas from nor produces gas for the interstate market.

The metropolitan/multi-state region approach would permit the establishment of alternative fuel price ceilings which, to a substantial degree, would reflect market conditions in discrete marketing areas, but it would avoid the administrative burden involved in establishing prices for nearly 300 SMSA's. There should be a relatively small dispersion of observed prices around the mean, and sample size will probably be adequate. The nation's larger industrial and oil marketing concentrations are recognized, and state or county boundaries are followed.

The Commission believes that the metropolitan/multi-state approach is preferable to using states, since state boundaries frequently do not bear a rational relationship to industrial or oil marketing areas. The approach is also preferable to using distribution company service areas since some distribution companies, for example, Atlanta Gas, service non-contiguous and divergent areas.

The Commission requests comments both on the proposed approach and on, especially, two other possible approaches: the use of states as regions and the use of large multi-state regions. If the comments submitted in response to this notice present persuasive reasons for adopting one of these other approaches, the Commission hereby gives notice that it may do so in promulgating a final rule.

C. *Data Collection*

The Commission proposes to request that the Energy Information Administration (EIA), in its role as the data collection agency of the Department [5], gather the data necessary to determine alternative fuel prices charged to industrial users in each region and to process that data in order to arrive at three ceiling levels for each incremental pricing region.[6]

EIA would be requested to gather before-tax data on the prices charged to large, non-utility industrial users for sales made on a contract basis for large lots of No. 2 fuel oil, high sulfur No. 6 fuel oil and low sulfur No. 6 fuel oil. The data would be collected from sellers rather than purchasers. Respondents would be asked to identify the regions, based on a facsimile of the map which is appended to the regulations below, to which the sales for which prices are provided are being made. For any case in which a meaningful sample cannot be obtained for a region, the EIA will be requested to derive a price in accordance with appropriate statistical methodology.

1. *Data Collection from Sellers Rather Than Purchasers.*—It is proposed that EIA collect prices on the three alternative fuels from firms selling the fuels rather than from purchasers for the following reasons. First, the EIA currently collects data on No. 2 prices on a regular basis, and this collection effort can easily be adapted to the requirements of the incremental pricing program. Second, it is EIA's experience that collection of price data from end-users of a product is very difficult. If they do not respond voluntarily, enforcing compliance is a lengthy and burdensome task. Further, end-users who are using both fuel oil and natural gas would have an incentive to misreport the prices they are paying for fuel oil in order to lower their potential price for natural gas.

2. *Large Lot Sales Data.*—No. 6 fuel oil is typically sold in large quantities and priced on such a basis. No. 2 fuel oil sold for boiler fuel use in large industrial facilities is also sold and priced in large quantities. Since the first phase of the incremental pricing program involves large industrial boiler fuel facilities, it is proposed that the data on which the alternative fuel cost ceilings will be based should reflect large, bulk lot industrial sales.

3. *Contract Rather Than Spot Market Data.*—The Commission proposes that the prices gathered by EIA should be those charged by a seller to a buyer in a contractual type of relationship. There are two reasons for using contract rather than spot market prices. First, spot prices during a given month may not be indicative of the actual prices which large industrial users are paying. It appears on the basis of the information the Commission has before it, that large non-utility industrial users typically purchase a predominant amount of their fuel oil on a contract basis. Second, spot market prices tend, over the long term, to average out at a level near long-term contractual prices. The spot prices may at any one time be higher or lower than contract prices, but over any significant length of time, they should approximate, on the average, the contractual prices charged over the same span of time.

4. *Price FOB Buyer's Receiving Terminal.*—Fuel oil sellers would be requested to report to EIA the FOB prices at the purchaser's receiving terminal. Thus, the price data gathered by EIA would reflect transportation costs. This approach was suggested by

[5] Section 508(b) of the NGPA vests in the Commission, for purposes of carrying out the functions vested in it by the NGPA, all of the authority vested in the Secretary of Energy by section 301(a) of the DOE Organization Act, which encompasses the authority set forth in section 11(b) of the Energy Supply and Environmental Coordination Act of 1974 and sections 13(b), (c) and (d) of the Federal Energy Administration Act of 1974. This authority will be exercised by the EIA on behalf of the Commission.

[6] It was initially hoped that a data collection effort already in place could be modified to fit the needs of the incremental pricing program, in order to minimize the administrative burden involved in starting the program. The EIA specifically investigated the possibility of using utility purchases of fuel oil as reported on Form EIA-423. EIA concluded, however, that the quality of fuel oil and the terms of purchase encompassed by utility purchases vary significantly from industrial purchases of boiler fuel. In addition, there is no Form EIA-423 data available for No. 6 fuel oil deliveries for 14 states.

the majority of the comments received on this issue. Almost all commenters have urged that the alternative fuel price ceilings should reflect the price purchasers pay for the fuel oil delivered to the facility in which the fuel is to be burned.

5. *Before-Tax or After-Tax Data.*—The Commission proposes that all fuel oil prices submitted to EIA be reported exclusive of state and local taxes. The reason for requesting per-tax data and for basing the alternative fuel cost ceilings on such data is that, although the calculation of the incremental pricing surcharge will take into account state and local taxes, the alternative fuel cost ceiling, exclusive of taxes, will have to be known in order to carry out the surcharge calculation. The calculation of incremental pricing surcharges will be discussed in Docket No. RM79–14. The Commission believes the majority of EIA's respondents will be able to report pre-tax prices, since sellers must keep such records for tax purposes and often quote prices exclusive of local taxes.

6. *Conversion Factor.*—Subsection 204(e) requires that the alternative fuel cost by stated on a per million Btu basis. The prices which EIA will collect will typically be on a per barrel basis. Thus, a conversion will be required. The Connecticut Natural Gas Corporation submitted a comment suggesting that adequate provision be made to account for the variations in the Btu content of oils. The EIA has utilized, over time, standard conversion factors of 5.8 million Btu's per barrel of No. 2 fuel oil and 6.3 million Btu's per barrel of No. 6 fuel oil in processing prices of various fuels to place them on a comparable basis. It is anticipated EIA will continue to utilize these factors.

D. *Averaging and Adjustment Methodology*

After EIA collects data on the prices charged for No. 2, No. 6 low sulfur and No. 6 high sulfur fuel oil to industrial users in each of the 39 incremental pricing regions, ceilings will have to be generated from the collected data. The Commission proposes that from the data it collects, EIA derive an average price, weighted by volumes, for each of the three ceiling levels for each region. Once weighted averages have been determined, each average would be adjusted downward by two standard deviations. The point which is two standard deviations removed from the mean would be the ceiling price for incremental pricing purposes unless that point is lower than the lowest reported price for the period. In that event, the lowest reported price would be the ceiling.

The Commission believes the proposed downward adjustment methodology should result in ceiling prices which are close to what the largest industrial users actually pay. If there were no downward adjustment, those industrial boiler fuel facilities which could purchase oil for a price below the weighted average would, absent some unforeseen economic factor, switch to the fuel oil they were capable of burning. The result would be load loss and a shifting of capital costs to high-priority customers.

Under the "two standard deviation" approach, if the price data collected from fuel oil dealers were to form an appoximately normal or "bell" shaped curve, and the ceiling were set at the weighted average minus two standard deviations, about 2½% of all fuel oil sales would be priced below the ceiling.[6]

There is, however, reason to suspect that the fuel oil price data will not form a normal, "bell" shaped curve. For a variety of reasons having to do with the nature of the fuel oil market, data distributions which are skewed to the right (higher prices) and ending more or less abruptly on the left (lower prices) are likely. The point which is two standard deviations less than the mean of such a distribution may well be below the lowest price reported.[7] It is for this reason the commission proposes to use the higher of the two possible prices—the weighted average adjusted downward by two standard deviations, or the lowest observed price—as the ceiling. If subsequent experience with this approach suggests that the weighted average price need only be adjusted downward by one standard deviation in order to arrive at a price in the vicinity of the lowest actual observed price, the commission will later consider altering the two standard deviation methodology.

Several comments were submitted at the April 2nd conference as to the appropriate adjustment that should be made in deriving a ceiling price from a weighted average. Some comments supported use of fixed percent adjustment factors ranging from 7.5 to 20 percent. An arbitrary percentage adjustment factor would, however, be inflexible. In some cases it would result in a ceiling which would be above a substantial number of observed prices while in other cases it would result in a ceiling below any observed price. Thus, either it would result in fuel switching or it would unnecesssarily reduce the flow-through of incremental costs to industrial customers. The approach proposed in this notice attempts to steer between this Scylla and Charybdis.

Several other commenters urged that the ceiling be set at the level of the lowest observed price, with no adjustment. Use of the lowest observed price would insure to a large extent against loss of load, but, if the lowest observed price were atypical, could reduce significantly and unnecessarily the amount of incremental costs which could be passed through to industrial users.

E. *Frequency of Data Collection and Publication*

The Commission proposes to request EIA to collect data and to publish alternative fuel price ceilings each month. This reflects the view expressed by many of the participants in the April 2nd conference. The Commission is concerned about the administrative burden involved with a monthly collection and publication schedule. However, the Commission is currently disposed to accept the counsel of those comments expressing the view that oil prices are changing so rapidly that anything less frequent than monthly publication of ceiling prices would be inadequate.

On the one hand, in a period of rising oil prices, a certain proportion of the costs which industrial users could bear would not be directed to them if alternate fuel ceilings were established on a less frequent basis. On the other hand, if there were falling prices due, perhaps, to undercutting of the ceiling by fuel oil dealers, less frequent publication would probably result in fuel switching.

Several commenters expressed their concern that fuel oil dealers may be

[6] A standard deviation is a statistical measure of the degree of dispersion, or scatter, in a sample of data which has been gathered at random. The greater the degree of dispersion, the greater the value of the standard deviation. The probability that any single observation in a large set of randomly selected observations will lie far from the average is mathematically described in terms of the standard deviation. For example, if a set of data is distributed according to a "bell" shaped curve, approximately 68% of all observations will differ from the average by less than one standard deviation. Approximately 95% of the observations will differ from the average by less than two standard deviations. In this latter case, generally half of the outlying observations, or about 2½% of the total, will be on the low side. Thus, while 50% of all observations can be expected to be lower than the average, only about 2½% can be expected to be lower than the average minus two standard deviations.

[7] Commissioner Robert Fischbach of North Carolina submitted data for a recent month indicating that the lowest price being paid in that state by an industrial user for No. 6 fuel oil is approximately 1.6 standard deviations below the weighted average price paid by the North Carolina state government for No. 6 oil.

tempted to undercut the alternative fuel price ceilings established in any given period in order to lure possible customers to fuel oil. Establishment of alternative fuel price ceilings on a monthly basis should discourage undercutting. If fuel oil dealers cut their prices in one month, the ceiling prices would soon decrease also, since the ceiling prices will be based on fuel oil prices actually charged. If the undercutting were to continue, the ceiling prices would quickly reach a level where further undercutting would be uneconomical for fuel dealers.

The Commission believes that any lag between the collection of data and the publication of ceiling prices based thereon should be minimized. EIA has informed the Commission that the collection and analysis of data for any given month will require approximately 45 days of processing time. On the other hand, however, ceiling prices should be available to the public at least 15 days before they are to be utilized. Accordingly, the Commission proposes to request EIA to publish ceiling prices within 45 days after the close of the month for which data is collected, but no later than 15 days prior to the first day of he month for which the ceiling prices would be applicable. Thus, data collected for October, 1979 would have to be published in the form of ceiling prices by December 14, 1979. (December 15, 1979, falls on a weekend.) The ceiling prices would be published in the Federal Register and would be available through the FERC Office of Public Information.

The Commission is aware that, at least in part, prices for heavy oils have fluctuated seasonally. Prices for heavy oils usually decline in the summer months and begin to rise in late summer and early fall. This phenomenon, if it were to occur, could create problems. April fuel oil prices will, for example, form the basis of ceilings for July. By then, industrial users might be able to purchase fuel oil at a lower cost. The Commission specifically requests comments as to whether, and to what extent, there is a seasonality problem; whether the proposed "two-standard deviation" downward adjustment method will adequately compensate for this seasonality problem; and whether any additional adjustments will be required. If any commenters urge that there should be some additional adjustment to compensate for seasonal fluctuations in oil prices they should describe with specificity the sort of adjustment method they would propose.

IV. Comments Requested.

The Commission requests comments on the proposed regulations set forth below. In particular, the Commission requests comments on whether the proposals are workable, whether they will serve to fully implement the alternative fuel cost ceiling provisions of Title II of the NGPA, and the nature and significance of any environmental issues. Any person who believes an approach other than that described in this Notice would provide a more workable and appropriate regulatory approach to implement section 204(e) of the NGPA is encouraged to submit suggestions in detail.

The Commission also requests the submission of any studies, data or statistical analyses that will enable it to thoroughly eveluate the various alternatives described above and as may be submitted by commenters.

V. Comment Procedures

A. *Written Comments.*—Interested persons are invited to submit written comments, data, views, or arguments with respect to this proposal. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM79–21. An original and 14 copies should be filed. All comments received prior to 4:30 p.m. EDT, June 19, 1979, will be considered by the Commission to promulgation of final regulations. All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during regular business hours.

B. *Public Hearings.*—Public hearings concerning this proposal will be held in St. Paul, Minnesota on June 6, 1979; in Los Angeles, California on June 8, 1979; in Atlanta, Georgia on June 15, 1979; and in Washington, D.C. on June 18, 1979. The times and places for the hearings are indicated in the "DATES" and "ADDRESSES" section of this Notice. Any person interested in this proceeding or representing a group or class of persons interested in this proceeding may make a presentation at any of the hearings provided that a written request to participate is submitted to the Secretary of the Commission at the address given above at least seven days before the date the hearing is to be convened. Requests to participate should include a reference to Docket No. RM79–21, should indicate the hearing in which the person making the request wishes to participate, should indicate the amount of time desired, and should include a telephone number where the person making the request may be reached. A list of the participants in each hearing will be available in the Commission's Office of Public Information three days before the hearing and will be available at the site of the hearing on the morning of the hearing. The presiding officer is authorized to limit oral presentations at the public hearings both as to length and as to substance. Persons participating in the public hearings should, if possible, bring 150 copies of their testimony to the hearings.

The hearings will not be judicial or evidentiary-type hearings. There will be no cross-examination of persons presenting statements. However, the panel may question such persons and any interested person may submit questions to the presiding officer to be asked of persons making statements. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the presiding officer at the hearings. Transcripts of the hearings will be available in the public file for this proceeding, Docket No. RM79–21, in the Commission's Office of Public Information.

The Commission proposes to make these amendments, when adopted, effective on September 1, 1979. As noted above, Title II of the NGPA requires that final regulations be in place by November 9, 1979. In order that both the regulations set forth below and the regulations to be adopted in Docket No. RM79–14 can be implemented with the least disruption to currently followed reporting and accounting practices, the Commission proposes to adopt these regulations prior to the November 9th deadline.

(Natural Gas Act as amended, 15 U.S.C. 17 *et seq.;* the Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.;* the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.;* E.O. 12009, 42 FR 46267)

In consideration of the foregoing, it is proposed to amend Subchapter I of Chapter I of Title 18 of the Code of Federal Regulations by the addition of a new Part 282, to read, in part, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

Subchapter I of Chapter I of Title 18 is amended by adding a new Part 282 to read as follows:

PART 282—INCREMENTAL PRICING

Subpart A—General Rules and Definitions

Sec.

Subpart B [Reserved]

Subpart C [Reserved]

Subpart D—Alternative Fuel Cost

Subpart E [Reserved]

Subpart F [Reserved]

Appendix

Authority: This part is issued under the Natural Gas Act as amended, 15 U.S.C. 717 *et seq.;* the Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.;* the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.;* E.O. 12009, 42 FR 46267.

Subpart A—General Rules and Definitions

§ 282.101 Purpose.

The purpose of this part is to set forth an incremental pricing rule in accordance with Title II of the Natural Gas Policy Act of 1978. The rule requires that certain costs of acquiring natural gas be passed through as a surcharge on sales of natural gas used for certain uses specified in the rule.

§ 282.102 Applicability and effective date.

(a) *Costs.* Costs described in Subpart —— and incurred by natural gas suppliers on or after January 1, 1980 shall be subject to this part.

(b) *Natural gas suppliers.* Interstate pipelines and local distribution companies shall be subject to this part.

(c) *Effective date.* The provisions of this part shall be effective September 1, 1979.

§ 282.103 Definitions.

For purposes of this part: (a) "Natural gas supplier" means an interstate pipeline or a local distribution company.

(b) "Industrial facility" means any facility which primarily changes raw or unfinished materials into another form or product.

(c) "Non-exempt industrial boiler fuel facility" means any industrial boiler fuel facility other than any such facility which has been exempted from the provisions of this part in accordance with § ——.

(d) "No. 2 fuel oil" means No. 2 oil as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM D 396–78.

(e) "No. 6 fuel oil" means No. 6 oil as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM D 396–78.

(f) "Low sulfur fuel oil" means any oil containing 1 percent (1%) or less sulfur content by weight.

(g) "High sulfur fuel oil" means any oil containing more than 1 percent (1%) sulfur content by weight.

Subpart B [Reserved]

Subpart C [Reserved]

Subpart D—Alternative Fuel Cost

§ 282.410 Scope.

This subpart implements section 204(e) of the NGPA and sets forth the method of determination of the alternative fuel price ceiling to be used in the calculation of the incremental pricing surcharge to industrial users.

§ 282.402 General Rule.

(a) The alternative fuel capability of each non-exempt industrial boiler fuel facility shall be determined as described in § 282.403.

(b)(1) Alternative fuel price ceilings shall be determined for No. 2 fuel oil, No. 6 low sulfur fuel oil, and No. 6 high sulfur fuel oil for each incremental pricing region in the manner described in § 282.404.

(2) The alternative fuel price ceiling which shall be applicable to a non-exempt industrial boiler fuel facility for incremental pricing purposes during any month shall be the ceiling which has been established for that month for the region in which the facility is located and which corresponds to the lowest-priced alternative fuel capability of the facility as determined in accordance with § 280.403.

§ 282.403 Alternative fuel capability of a facility.

(a) *General rule.* Each non-exempt industrial boiler fuel facility subject to this part shall, for purposes of this part, be deemed to have the capability to use No. 2 fuel oil as an alternative to natural gas, except for those facilities which are certified as having the capability to burn No. 6 high sulfur fuel oil or No. 6 low sulfur fuel oil, as provided by paragraph (b) of this section. Such certification shall be made by filing an alternative fuel capability form as provided in paragraph (c) of this section.

(b) *Certification of No. 6 capability.* A responsible official associated with a non-exempt industrial boiler fuel facility:

(1) may certify that the facility has the capability to burn No. 6 high sulfur fuel oil if the facility is technically capable and legally permitted to burn No. 6 high sulfur fuel oil; or

(2) may certify that the facility has the capability to burn No. 6 low sulfur fuel if the facility is technically capable and legally permitted to burn No. 6 low sulfur fuel oil.

(c) *Alternative fuel capability form.* (1) *Commission to provide form.* The Commission shall provide the alternative fuel capability form referenced in paragraph (a) to be used in the certification of the alternative fuel capabilities of non-exempt industrial boiler fuel facilities.

(2) *Commission address.* Alternative fuel capability forms will be available upon request from the Office of ——————, Federal Energy Regulatory Commission, Room ——, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(3) *Forms available from natural gas suppliers.* Natural gas suppliers shall make available for the use of their customers copies of the FERC alternative fuel capability form.

(i) *Initial service of form.* Not later than September 1, 1979, each natural gas supplier shall mail or otherwise supply an alternative fuel capability form to each facility on each natural gas supplier's system which the natural gas supplier did not determine to be exempt from incremental pricing on the basis of the natural gas supplier's own records.

(ii) *Ongoing availability of form.* After September 1, 1979, natural gas suppliers shall make alternative fuel capability forms available at their principal place of business on an ongoing basis during regular business hours.

(4) *Contents of form.* The alternative fuel capability form shall: (i) provide the affiant the opportunity to certify that its industrial boiler fuel facility is technically capable and legally permitted to burn No. 6 low sulfur fuel oil;

(ii) provide the affiant the opportunity to certify that its industrial boiler fuel facility is technically capable and legally permitted to burn No. 6 high sulfur fuel oil;

(iii) notify the affiant that its industrial boiler fuel facility will be subject to an alternative fuel price ceiling corresponding to the level of the

alternative fuel capability certified by the affiant;

(iv) contain a provision placing the affiant on notice that if a certification is made that an industrial boiler fuel facility is technically capable and legally permitted to burn a No. 6 fuel oil, records substantiating such certification must be retained, as provided in paragraph (g) of this section; and

(v) require the affiant, either on the form or in an attachment to the form, to describe the records which will be retained.

(5) *Filing.* A certification of alternative fuel capability shall be effective only after an alternative fuel capability form is completed, signed and dated under oath, and filed with the Office of ————, Federal Energy Regulatory Commission, Room ———, 825 North Capitol Street, N.E., Washington, D.C. 20426, with a copy sent to the natural gas supplier serving the facility.

(d) *Effective date of certification.* A properly executed and filed alternative fuel capability form shall determine the alternative fuel price ceiling which shall be applicable to a facility as of the beginning of the first full month of service after the form is filed with the Commission and received by the facility's natural gas supplier.

(e) *Public availability of certification.* (1) A natural gas supplier shall maintain at its principal place of business copies of all alternative fuel capability forms which it has received and make such copies available for public inspection during regular business hours.

(2) Copies of alternative fuel capability forms filed with the Commission shall be available through the Office of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426. A copy of the alternative fuel capability form filed by any particular industrial user will be mailed to any interested party who requests it.

(f) *Protests.* Any interested person who desires to protest the alternative fuel capability claimed on an alternative fuel capability form may file a protest. The procedures set forth in § 1.10 shall govern the filing of such a protest.

(g) *Record retention.* (1) Each industrial user shall maintain books and records to substantiate a certification of alternate fuel capability under this section. Such books and records shall be retained for a period of three years following the initial billing by the natural gas supplier which reflects the alternate fuel capability which has been certified.

(2) Each industrial user shall make such books and records available during regular business hours for public inspection in a convenient form and place.

282.404 Alternative fuel price ceilings.

(a) *General rule.* Each month, for each region as set forth in paragraph (b) of this section, three alternative fuel price ceilings on incremental pricing shall be established. These ceilings shall be based on the prices paid in each such region by industrial users for No. 2 fuel oil, No. 6 low sulfur fuel oil and No. 6 high sulfur fuel oil. Such price data shall be gathered in accordance with paragraph (c) of this section and shall be derived from that data in accordance with paragraph (d) of this section. Alternative fuel price ceilings shall be published in accordance with paragraph (e) of this section.

(b) *Incremental pricing regions.* Alternative fuel price ceilings shall be established for each of the 39 regions described and indicated in the Appendix to this part.

(c) *Data from which alternative fuel price ceilings will be determined.* Each month, data shall be collected on the prices being charged for No. 2 fuel oil, No. 6 high sulfur fuel oil and No. 6 low sulfur fuel oil to industrial users located in each incremental pricing region. Such data shall be collected from fuel oil sellers. The prices collected shall be those that are charged for volumes delivered to large, non-utility industrial users which purchase on a large lot or contract basis and shall not include state or local sales taxes.

(d) *Method for deriving alternative fuel price ceilings.* (1) Based on the data described in paragraph (c) of this section, an average price, weighted by volumes, shall be calculated for each of the three alternative fuels for each region.

(2) Weighted average prices shall be adjusted downward by two standard deviations.

(3) For each region, the weighted average price for each fuel, as adjusted, shall be compared to the lowest reported actual price for such fuel. The higher of these shall be established as the alternative fuel price ceiling for that fuel for the region.

(e) *Publication of ceilings.* (1) Alternative fuel price ceilings shall be made public no later than fifteen days prior to the first day of the calendar month during which such ceilings will be used for incremental pricing under this part.

(2) The alternative fuel price ceilings published in December, 1979, for the month of January, 1980, shall be based on data reported for October, 1979 sales. Ceilings published in following months shall be similarly based on data gathered for the second month previous to the month in which the ceiling is published.

Subpart E [Reserved]

Subpart F [Reserved]

Appendix

Region 1.—Boston-Lawrence-Lowell, Mass.-N.H. Metropolitan Area.
(Associated with Region 32.)
Counties: Essex, Mass., Middlesex, Mass., Norfolk, Mass., Plymouth, Mass., Suffolk, Mass., Rockingham, N.H.
Region 2.—Hartford-New Britain-Bristol, Ct. Metropolitan Area.
(Associated with Region 32.)
Counties: Hartford, Ct., Middlesex, Ct., Tolland, Ct.
Region 3.—New York-Newark-Jersey City, N.Y., N.J., Ct. Metropolitan Area.
(Associated with Region 33.)
Cities: New York City.
Counties: Putnam, N.Y., Rockland, N.Y., Westchester, N.Y., Bergen, N.J., Essex, N.J., Morris, N.J., Somerset, N.J., Union, N.J., Hudson, N.J., Nassau, N.Y., Suffolk, N.Y., Monmouth, N.J., Middlesex, N.J., Passaic, N.J., Fairfield, Ct.
Region 4.—Philadelphia-Wilmington-Trenton, Pa., Del., Md., N.J. Metropolitan Area.
(Associated with Region 33.)
Counties: Bucks, Pa., Chester, Pa., Delaware, Pa., Montgomery, Pa., Philadelphia, Pa., Burlington, N.J., Camden, N.J., Gloucester, N.J., Mercer, N.J., New Castle, Del., Salem, N.J., Cecil, Md.
Region 5.—Baltimore, Md. Metropolitan Area.
(Associated with Region 33.)
Cities: Baltimore, Md.
Counties: Anne Arundel, Md., Baltimore, Md., Carroll, Md., Harford, Md., Howard, Md.
Region 6.—Washington, D.C., Md., Va. Metropolitan Area.
(Associated with Region 33.)
Cities: District of Columbia, Alexandria, Va., Fairfax, Va., Falls Church, Va., Manassas, Va., Manassas Park, Va.
Counties: Charles, Md., Montgomery, Md., Prince George's, Md., Arlington, Va., Fairfax, Va., Loudoun, Va., Prince William, Va.
Region 7.—Atlanta, Ga. Metropolitan Area.
(Associated with Region 34.)
Counties: Butts, Ga., Cherokee, Ga., Clayton, Ga., Cobb, Ga., DeKalb, Ga., Douglas, Ga., Fayette, Ga., Forsyth, Ga., Fulton, Ga., Gwinnett, Ga., Henry, Ga., Newton, Ga., Paulding, Ga., Rockdale, Ga., Walton, Ga.
Region 8.—Tampa-St. Petersburg, Fla. Metropolitan Area.
(Associated with Region 34.)
Counties: Hillsborough, Fla., Pasco, Fla., Pinellas, Fla.
Region 9.—Miami-Fort Lauderdale, Fla. Metropolitan Area.
(Associated with Region 34.)
Counties: Broward, Fla., Dade, Fla.
Region 10.—Buffalo, N.Y. Metropolitan Area.
(Associated with Region 33.)

Counties: Erie, N.Y., Niagara, N.Y.
Region 11.—Pittsburgh, Pa. Metropolitan Area.
(Associated with Region 33.)
Counties: Allegheny, Pa., Beaver, Pa., Washington, Pa., Westmoreland, Pa.
Region 12.—Detroit-Ann Arbor, Mich. Metropolitan Area.
(Associated with Region 35.)
Counties: Lapeer, Mich., Livingston, Mich., Macomb, Mich., Oaklawn, Mich., St. Claire, Mich., Wayne, Mich., Washtenaw, Mich.
Region 13.—Cleveland-Akron-Lorain, Ohio Metropolitan Area.
(Associated with Region 35.)
Counties: Cuyahoga, Oh., Geauga, Oh., Lake, Oh., Medina, Oh., Portage, Oh., Summit, Oh., Lorain, Oh.
Region 14.—Columbus, Oh. Metropolitan Area.
(Associated with Region 35.)
Counties: Delaware, Oh., Fairfield, Oh., Franklin, Oh., Madison, Oh., Pickaway, Oh.
Region 15.—Cincinnati-Hamilton, Ohio-Ky.-Ind. Metropolitan Area.
(Associated with Region 35.)
Counties: Clermont, Oh., Hamilton, Oh., Warren, Oh., Boone, Ky., Campbell, Ky., Kenton, Ky., Dearborn, Ind., Butler, Oh.
Region 16.—Indianapolis, Ind. Metropolitan Area.
(Associated with Region 35.)
Counties: Boone, Ind., Hamilton, Ind., Hancock, Ind., Hendricks, Ind., Johnson, Ind., Marion, Ind., Morgan, Ind., Shelby, Ind.
Region 17.—New Orleans, La. Metropolitan Area.
(Associated with Region 37.)
Parishes: Jefferson, La., Orleans, La., St. Bernard, La., St. Tammany, La.
Region 18.—Milwaukee-Racine, Wis. Metropolitan Area.
(Associated with Region 35.)
Counties: Milwaukee, Wis., Ozaukee, Wis., Washington, Wis., Waukesha, Wis., Racine, Wis.
Region 19.—Chicago-Gary, Ill.-Ind. Metropolitan Area.
(Associated with Region 35.)
Counties: Cook, Ill., Du Page, Ill., Kane, Ill., Lake, Ill., McHenry, Ill., Will, Ill., Lake, Ind., Porter, Ind.
Region 20.—St. Louis, Mo.-Ill. Metropolitan Area.
(Associated with Region 36.)
Cities: St. Louis, Mo.
Counties: Franklin, Mo., Jefferson, Mo., St. Charles, Mo., St. Louis, Mo., Clinton, Ill., Madison, Ill., Monroe, Ill., St. Clair, Ill.
Region 21.—Houston-Galveston, Tx. Metropolitan Area.
(Associated with Region 37.)
Counties: Brazoria, Tx., Fort Bend, Tx., Harris, Tx., Liberty, Tx., Montgomery, Tx., Waller, Tx., Galveston, Tx.
Region 22.—Minneapolis-St. Paul, Minn.,-Wis. Metropolitan Area.
(Associated with Region 36.)
Counties: Anoka, Mn., Carver, Mn., Chisago, Mn., Dakota, Mn., Hennepin, Mn., Ramsey, Mn., Scott, Mn., Washington, Mn., Wright, Mn., St. Croix, Wis.
Region 23.—Kansas City, Mo.-Kan. Metropolitan Area.
(Associated with Region 36.)
Counties: Cass, Mo., Clay, Mo., Jackson, Mo., Platte, Mo., Ray, Mo., Johnson, Kan., Wyandotte, Kan.
Region 24.—Dallas-Fort Worth, Tx. Metropolitan Area.
(Associated with Region 37.)
Counties: Collin, Tx., Dallas, Tx., Denton, Tx., Ellis, Tx., Hood, Tx., Johnson, Tx., Kaufaman, Tx., Parker, Tx., Rockwall, Tx., Tarrant, Tx., Wise, Tx.
Region 25.—Denver-Boulder, Col. Metropolitan Area.
(Associated with Region 38.)
Counties: Adams, Col., Arapahoe, Co., Boulder, Col., Denver, Col., Douglas, Col., Gilpin, Col., Jefferson, Col.
Region 26.—Phoenix, AZ. Metropolitan Area.
(Associated with Region 39.)
Counties: Maricopa, Az.
Region 27.—Los Angeles-Long Beach-Anaheim, Ca. Metropolitan Area.
(Associated with Region 39.)
Counties: Los Angeles, Ca., Orange, Ca., Ventura, Ca., Riverside, Ca., San Bernardino, Ca.
Region 28.—San Diego, Ca. Metropolitan Area.
(Associated with Region 39.)
Counties: San Diego, Ca.
Region 29.—Seattle-Takoma, Wash. Metropolitan Area.
(Associated with Region 39.)
Counties: King, Wash., Spohomish, Wash., Pierce, Wash.
Region 30.—Portland, Or.-Wash. Metropolitan Area.
(Associated with Region 39.)
Counties: Clackamas, Or., Multnomah, Or., Washington, Or., Clark, Wash.
Region 31.—San Francisco-Oakland-San Jose, Ca. Metropolitan Area.
(Associated with Region 39.)
Counties: Alameda, Ca., Contra Costa, Ca., Marin, Ca., San Francisco, Ca., San Mateo, Ca., Santa Clara, Ca., Napa, Ca., Solano, Ca.
Region 32.—New England Multistate Region.
Maine
New Hampshire excluding: Rockingham County.
Vermont.
Massachusetts excluding: Essex, Middlesex, Norfolk, Plymouth and Suffolk Counties.
Connecticut excluding: Hartford, Middlesex, Tolland and Fairfield Counties.
Rhode Island.
Region 33.—Mid-Atlantic Multistate Region.
New York excluding: Putnam, Rockland, Westchester, Nassau, Suffolk, Erie and Niagara Counties, New York City.
Pennsylvania excluding: Bucks, Chester, Delaware, Montgomery, Philadelphia, Allegheny, Beaver, Washington, and Westmoreland Counties.
New Jersey excluding: Bergen, Essex, Morris, Somerset, Union, Hudson, Monmouth, Middlesex, Passaic, Burlington, Camden, Gloucester, Mercer and Salem Counties.
Delaware excluding: New Castle County.
Maryland excluding: Cecil, Charles, Montgomery, Prince George's, Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, Baltimore City.
Region 34.—Southern Multistate Region.
Virginia excluding: Arlington, Fairfax, Loudoun and Prince William Counties, Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park Cities.
North Carolina, South Carolina, Tennessee.
Georgia excluding: Butts, Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton Counties.
Broward, Dade, Hillsborough, Pasco, and Pinellas Counties.
Alabama, Mississippi.
Region 35.—Mid Western Multistate Region.
West Virginia.
Kentucky excluding: Boone, Campbell, and Kenton Counties.
Ohio excluding: Cuyahoga, Geauga, Lake, Medina, Portage, Summit, Lorain, Clermont, Hamilton, Warren, Butler, Delaware, Fairfield, Franklin, Madison and Pickaway Counties.
Indiana excluding: Lake, Porter, Dearborn, Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan and Shelby Counties.
Michigan excluding: Lapeer, Livingston, Macomb, Oakland, St. Clair, Wayne and Washtenaw Counties.
Illinois excluding: Cook, Du Page, Kane, Lake, McHenry, Will, Clinton, Madison, Monroe, and St. Clair Counties.
Wisconsin excluding: Milwaukee, Ozaukee, Washington, Waukesha, Racine, and St. Croix Counties.
Region 36.—Plains States Multistate Region.
Minnesota excluding: Anoka, Carver, Chisago, Dakota, Hennepin, Ramsey, Scott, Washington, and Wright Counties.
Iowa.
Missouri excluding: St. Louis City, Franklin, Jefferson, St. Charles, St. Louis, Cass, Clay, Jackson, Platte, and Ray Counties.
Kansas excluding: Johnson and Wyandotte Counties.
Nebraska.
North Dakota.
South Dakota.
Region 37.—South Central Multistate Region.
Arkansas.
Louisiana excluding: Jefferson, Orleans, St. Bernard and St. Tammany Parishes.
Texas excluding: Collin, Dallas, Denton, Ellis, Hood, Johnson, Kaufman, Parker, Rockwall Tarrant, Wise, Brazoria, Fort Bend, Harris, Liberty, Montgomery, Waller, and Galveston Counties.
Oklahoma.
New Mexico.
Region 38.—Rocky Mountain Multistate Region.
Montana.
Idaho.
Wyoming.
Utah.
Colorado excluding: Arapahoe, Boulder, Denver, Douglas, Gilpin, Jefferson, and Adams Counties.
Region 39.—Pacific Coast Multistate Region.
Washington excluding: King, Snohomish, Pierce and Clark Counties.
Oregon excluding: Clackamas, Multnomah, and Washington Counties.

Nevada.
California excluding: Los Angeles, Orange, Ventura, Riverside, San Bernardino, Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Napa, Solano, and San Diego Counties.
Arizona excluding: Maricopa County.

[FR Doc. 79-15477 Filed 5-17-79; 8:45 am]
BILLING CODE 6450-01-M

[18 CFR Part 286]

[Docket No. RM79-42]

Proposed Rulemaking under the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Natural Gas Policy Act of 1978 authorizes the Commission to assess civil penalties for knowing violations of the Act or of rules and orders issued thereunder. To clarify the procedures to apply in such instances the Commission proposes to adopt the rules set forth herein.

DATES: Comments by June 18, 1979; hearing on June 22, 1979.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Reference Docket No. RM79-42)

FOR FURTHER INFORMATION CONTACT:
Philip M. Marston, Office of Enforcement, Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, D.C. 20426 (202) 275-0303; or
Stephen R. Melton, Office of Enforcement, Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, D.C. 20426 (202) 275-4040.

SUPPLEMENTARY INFORMATION:

I. Background

Section 504(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) authorizes the Commission to assess civil penalties of up to $5,000 for knowing violations of the NGPA or of rules and orders issued thereunder. To clarify the procedures to apply in such instances, the Commission proposes to establish procedures to govern the assessment of civil penalties under the NGPA.

II. Summary Of The Proposal

The proposed regulation would add a new § 286.103 to Part 286 of the Commission's regulations. Under the procedures, the Commission would initiate a civil penalty proceeding by issuing and serving upon the alleged violator a notice of the proposed assessment order naming respondent, describing briefly the violations for which the penalty is assessed, and fixing the amount of penalty to be paid within 60 days following receipt of the order.

The notice would also inform the respondent that he may submit factual information or legal arguments to the Commission within 30 days following receipt of the notice. In the submission, respondent may attempt to show, for example, why no penalty should be imposed or why the amount of the penalty should be reduced.

Within 30 days after receiving the respondent's submission, the Commission will act either by issuing an assessment order or by concluding that no further action on the notice will be taken.

If the penalty has not been paid within 60 days following receipt of the notice and order, the Commission could institute an enforcement action in an appropriate federal district court for an order affirming and enforcing the penalty assessment. Section 504(b)(6)(F) of the NGPA provides that in such an enforcement action the court shall have authority to conduct a *de novo* review of both the law and the facts. Accordingly, the proposal's summary procedures for initiating the process at the administrative level provide respondents an adequate opportunity to participate.

III. Written Comment Procedures

Interested persons are invited to submit written comments, data, views, or arguments with respect to this proposal. An original and 14 copies should be filed with the Secretary of the Commission. All comments received prior to June 18, 1979 will be considered by the Commission prior to promulgation of final regulations. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street NE., Washington, D.C., during regular business hours. Comments should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, and should reference Docket No. RM79-42

IV. Public Hearing Procedures

A public hearing concerning this proposal will be held in Washington, D.C. on June 22, 1979 beginning at 10:00 a.m. and will continue if necessary on the following day. Any person interested in this proceeding or representing a group or class of persons interested in this proceeding may make a presentation at the hearing provided a written request to participate is received by the Secretary of the Commission prior to 4:30 p.m., on June 18, 1979.

Requests to participate in the hearing should include a reference to Docket No. RM79-42 as well as a concise summary of the proposed oral presentation and a number where the person making the request may be reached by telephone. Prior to the hearing, each person filing a request to participate will be contacted by the presiding officer or his designee for scheduling purposes. At least five copies of the statement shall be submitted to the Secretary of the Commission prior to 4:00 p.m., on June 18, 1979. The presiding officer is authorized to limit oral presentation at the public hearing both as to length and as to substance. Persons participating in the public hearing should, if possible, bring 10 copies of their testimony to the hearing.

The hearing will not be a judicial or evidentiary-type hearing. There will be no cross-examination of persons presenting statements. However, the panel may question such persons, and any interested person may submit questions to the presiding officer to be asked of persons making statements. If time permits, at the conclusion of the initial oral statements, persons who have made oral statements will be given the opportunity to make a rebuttal statement. Any further procedural rules will be announced by the presiding officer at the hearing. A transcript of the hearing will be made available at the Commission's Office of Public Information.

(Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3340, 15 U.S.C. § 3301 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. § 7101 *et seq.*, E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, the Commission proposes to amend Part 286, Subchapter I, Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

Part 286, Subchapter I, Chapter I of Title 18, Code of Federal Regulations, is amended by adding a new § 286.103 to read as follows:

* * * * *

§ 286.103 Assessment of civil penalties.

(a) *Scope.* This section applies to proceedings for the assessment of civil penalties pursuant to Section 504(b)(6) of the NGPA.

(b) *Penalties.* The Commission may assess a civil penalty of not more than $5,000 for any one violation against any person whom the Commission determines to have knowingly violated any provision of the NGPA or any provision of any rule or order of the Commission issued under the NGPA. In the case of a continuing violation, each day of violation shall constitute a separate violation.

(c) *Assessment procedure.*

(1) *Notice of assessment.* When the commission determines on the basis of information available to it that knowing violations have occurred or are occurring and that the imposition of civil penalties is appropriate, the Commission shall initiate assessment proceedings by issuing and serving upon the alleged violator a notice of the proposed penalty naming such person as respondent, setting forth the violations for which the penalty is to be assessed, and fixing the amount of the penalty. The notice shall also inform the respondent that he may, within 30 days following receipt of the notice submit factual information or legal arguments bearing on alleged liability or on the appropriate amount of the penalty to be assessed.

(2) *Assessment order.* Within 30 days following receipt of the respondent's submission, if any, the Commission shall issue and serve upon the respondent an assessment order or shall determine that no further action will be taken. The assessment order shall set forth the violations for which the penalty is assessed, fix the amount of the penalty assessment, and direct the respondent to pay the assessment within 60 days of the date the order issues.

(d) *Failure to pay.* If respondent has not paid the assessment within 60 days following receipt of the notice and order, the Commission may institue an action in the appropriate federal district court for an order affirming and enforcing the penalty assessment.

[FR Doc. 79-15514 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[18 CFR Part 290]

[Docket No. RM79-6]

Public Utility Regulatory Policies Act of 1978; Proposed Implementation

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Intent to Act.

SUMMARY: This notice advises that the Federal Energy Regulatory Commission intends to promulgate final regulations implementing section 133 of the Public Utility Regulatory Policies Act of 1978, by May 30, 1979.

DATES: Final Regulations by May 30, 1979.

FOR FURTHER INFORMATION CONTACT:
Gregory D. Martin, Office of Commissioner Matthew Holden, 825 N. Capitol St., N.E., Room 9010, Washington, D.C. 20426 (202) 275-4176
William Lindsay, Office of Electric Power Regulation, 825 N. Capitol St., N.E., Room 5200, Washington, D.C. 20426 (202) 275-4777.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15517 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Parts 401 and 422]

Disclosure of Official Records and Information; and Organization and Procedures; Availability of Information and Records to the Public

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Decision to develop Regulations.

SUMMARY: The Social Security Administration plans to revise and relocate the rules in Part 422, Subpart E, on the availability of information and records to the public. We plan to review these rules for consistency with the HEW policies on Freedom of Information in 45 CFR Part 5. Also, we plan to rewrite the rules to make them easier to understand. We plan to move these rules from Part 422 to Part 401 so that our rules on the disclosure and availability of information are located in one place. The Health Care Financing Administration plans to transfer to 42 CFR Part 411 material concerning the medicare program.

FOR FURTHER INFORMATION CONTACT:
Armand Esposito, Office of Regulations, Room 4-J-10, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7455.

Dated: May 15, 1979.

Approved:

Standford G. Ross,
Commissioner of Social Security.

[FR Doc. 79-15619 Filed 5-17-79; 8:45 am]

BILLING CODE 4110-07-M

Food and Drug Administration

[21 CFR Parts 182 and 186]

[Docket No. 78N-0336]

Lard and Lard Oil; Proposed Affirmation of GRAS Status as Indirect Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to affirm the generally recognized as safe (GRAS) status of lard and lard oil as indirect human food ingredients. The safety of these ingrediants has been evaluated under the comprehensive safety review being conducted by the agency. This proposal would list these ingredients as food substances affirmed as GRAS.

DATES: Comments by July 17, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: The FDA is conducting a comprehensive safety review of direct and indirect human food ingredients classified as GRAS or subject to a prior sanction. The Commissioner of Food and Drugs has issued several notices and proposed regulation, published in the **Federal Register** of July 26, 1973 (38 FR 20040), initiating this review, under which the safety of lard and lard oil has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the Commissioner proposes to affirm the GRAS status of these ingredients.

Lard is the fat rendered from fresh, clean, sound, fatty tissues of swine (*Sus scrofa*) in good health at the time of slaughter. The tissues do not include bones, detached skin, head skin, ears, tails, organs, windpipes, large blood vessels, scrap fat, skimmings, settlings, or pressings, and are reasonably free of muscle tissues and blood.

Lard is a soft, white, unctuous mass that melts over a range of about 39° to 48° C. The saponification number of lard

ranges from 192 to 203, and the iodine value from 45 to 70. The fatty acid components of the triglycerides that make up lard vary somewhat in nature and amount, depending on the diet of the animal, but generally are about as follows: oleic, 35 to 60 percent; palmitic, 20 to 32 percent; stearic, 5 to 18 percent; linoleic, 3 to 15 percent; palmitoleic, 2 to 4 percent; myristic, 0.5 to 2.5 percent. All other fatty acid components are less than 2 percent each. The free fatty acid content of lard is very low (0.2 to 0.7 percent expressed as oleic acid).

Lard oil is a low melting fraction that has been expressed from lard. Its saponification number is from 195 to 197, its iodine value is 56 to 74, and it solidifies at −2° to 4° C.

Lard and lard oil are listed in § 182.70 (21 CFR 182.70) as GRAS for use in food as substances migrating from cotton and cotton fabrics used in dry food packaging under regulations published in the **Federal Register** of June 10, 1961 (26 FR 5221). Lard oil is also listed under § 176.210 (21 CFR 176.210) as a defoaming agent used in the manufacture of paper and paperboard for food packaging.

Although lard is not on the GRAS list of direct human food ingredients, it is considered as a traditional food item. Moreover, it is listed as an optional ingredient in the food standards for bakery products in Part 136 (21 CFR Part 136) and in the food standard for margarine in § 166.110 (21 CFR 166.110). Lard is also used in various food products. However, direct use information, such as the names of the foods and the use levels, is, in general, not available to the Commissioner. The Commissioner therefore emphasizes that this proposal concerns the affirmation of GRAS status of lard and lard oil as indirect human food ingredients only.

No consumption data on lard and lard oil were included in the National Academy of Sciences (NAS) survey because they were not on the GRAS list of direct food ingredients. In 1960, 58 million pounds of lard were used in margarine, 497 million pounds in shortening, and 1,399 million pounds in all other foods. In 1973, these figures changed to 119, 316, and 685 million pounds, respectively. Therefore, an 834 million-pound decrease in all food uses occurred from 1960 (1,954 million pounds) to 1973 (1,120 million pounds). The decrease has been brought about by consumers' switching to vegetable oil products and by declining lard production. Lard production is currently estimated to be about 1.2 billion pounds, 0.9 billion pounds of which is accounted for by domestic disappearance. There is no information available on the amount of lard used annually for indirect food use and no guidelines to estimate the amount of lard migrating to food resulting from such indirect food use. Lard oil is more often used for industrial purposes, e.g., as a cutting oil or lubricant, than for food purposes.

Lard and lard oil have been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 519 abstracts were reviewed, and 45 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (the Select Committee) chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

In chickens, the digestibility coefficients (percent of ingested fat that is digested) have been reported by various workers to range from 84 to 95 percent. The energy value was found by Peterson and Vik-Mo to be 7.92 kcal per g and by Renner and Hill to be 8.8 kcal per g. Hydrolysis of lard to the form of free fatty acids before administration reduced the digestibility coefficient of lard to 65 percent. Carlson and Bayley determined the digestibility coefficient of lard to be 81 percent when fed to young pigs as 10.7 percent of the diet (about 3.7 g per kg body weight). In tests with human volunteers who consumed 50 to 115 g of lard daily (about 0.8 to 1.9 g per kg body weight), Langworthy found lard to be digested to the extent of 97 percent. Three-day metabolic balance studies with normal, full-term infants five to nine days old on the first day of study, indicated that fecal excretion of fat averaged only 0.30 g per kg per day when intake of lard averaged 6.37 g per kg body weight per day, indicating that about 95 percent of the ingested lard was digested.

Acute toxicity studies have not been reported. Toxicity studies on the products of digestion of lard—the fatty acids and glycerol—have been described in other reports of the Select Committee, including glycerin and glycerides, tallow and stearic acid, coconut oil, peanut oil, oleic acid and linoleic acid, and hydrogenated soybean oil. None of these substances is toxic even in doses in excess of usual intakes. It should be borne in mind in considering the data that follow, that all of these studies involved doses of lard or lard oil that are vastly larger than would be expected to occur in foods due to the migration of lard from the packaging materials containing them.

In a six-week feeding study in which lard was fed to 12 twenty-one-day-old male Wistar rats at dietary levels providing from 10 to 73 percent of the calories (about 5 to 40 g per kg per day) Thomasson found that the food-efficiency of lard was comparable to that of summer butterfat and that feeding lard at these levels did not decrease survival.

Silberberg and Silberberg found that a 24 percent lard diet, (about 30 g lard per kg body weight) fed from weaning to death, significantly increased the mortality and shortened the life span of male (50 percent dead at a mean age of 447 days compared to 559 days in controls), but not female mice of the C57 strain. Male DBA mice were similarly affected but to a lesser degree (50 percent dead at a mean age of 325 days compared to 373 days in controls). Subsequently, the same authors fed a 25 percent (about 30 g lard per kg body weight) lard diet to C57 mice for five months beginning at ages one month, seven months or twelve months after which they were fed the control diet for life. The life span of the animals fed lard during the period of growth (starting at one month or seven months old) was as long as or longer than the controls (655 days and 694 days, respectively, as compared to 653 days for controls). Mean age at death of animals fed lard from weaning through life was 546 days.

In research by Santyany, Velasco and Pancaldi, 2 two-month-old female rats were maintained on a bread, milk, and water diet and three female litter mates were given, in addition, 4 to 5 g of lard daily (some 80 g of lard or more per kg body weight). This extraordinarily high proportion of fat in the diet would be expected to diminish the intake of nutrients provided by the control ration. A few days after the experiment was begun, the rats fed the lard supplement began to lose their appetites and became emaciated. This was accompanied by edema of the snout, eyes, and external genital organs. As the lard feeding continued, these disturbances diminished until they disappeared after 9 to 10 days to "recur periodically, and in a progressively more attenuated form." All five females produced litters. The pups from the rats fed lard were stunted (average weight 4 g compared to 5.7 g for pups from control dams), sickly, poorly nourished, cyanotic, and had dry, wrinkled skin. Livers were small, yellowish, and soft in consistency, indicative of a state of adiposis. These results were confirmed by repeating the lard feeding using three other females and examination of their offspring.

Vinson and Cerecedo raised Evans-Long rats through three generations and Wistar strain rats through four generations on diets containing 2, 5, and 10 percent lard (2, 5, and 10 g per kg body weight, respectively, at the start of feeding after weaning). Growth in both strains in all generations at all lard levels was excellent. There were four parent females of the Evans-Long strain, and 15 females in each of the F_1 and F_2 generations.

There were 27 parent females of the Wistar strain and 35, 13, and 7 females, respectively,

in the F_1, F_2, and F_3 generations. The dams lost considerable weight during lactation but regained it rapidly when litters were separated. Provision of lard *ad libitum* (up to 8 g per day consumed), in addition to the above diet, failed to improve lactation performance. The addition of 500 mg of brewer's yeast per day prevented weight loss of lactating dams. The authors concluded the lard diet was inadequate in some essential constituent or that the large amounts of fat interfered with ingestion of adequate amounts of other food constituents.

Silberberg and Silberberg maintained more than 100 male C57 black mice throughout life on a stock diet containing 5 percent fat and supplemented with 25 percent lard (about 25 g lard per kg of body weight). Articular aging was hastened in the test animals as compared to that in a similar number of control animals. In general, the incidence of osteoarthritis was doubled. However, some mice remained free of articular changes even in old age. The test animals were considerably heavier than the controls (mean weight 31 to 40 g compared to 25 to 32 g in controls). These investigators compared their results with C57 mice to those observed with a DBA strain. The mice on the same high lard diet gained only 8 percent more weight than did the controls and with hardly any increase in fat deposits. These results were related by the authors to the more rapid growth rate of the DBA mice. In a similar study, three groups of C57 black mice were fed a diet enriched with 25 percent lard (about 25 g per kg body weight) or 23 percent lard plus 3 percent linoleic acid. The linoleic acid supplement partly reversed the osteoarthritic effect of the high fat diet. The aminals on the 25 percent lard diet showed the fastest growth to 12 months of age (mean maximum weight 36.4 g), but thereafter lost weight more rapidly (to mean weight of 26.7 g) than the mice receiving 3 percent linoleic acid or the controls. In contrast, Sokoloff and Mickelsen found DBA/2 JN male mice maintained on a 25 percent lard diet (more than 30 g per kg body weight at the start of the experiment) to be more obese than those on a cottonseed oil diet at the same level, but found no evidence of the development of degenerative joint disease.

No oral studies of the carcinogenicity of lard have been reported. However, lard was used as a vehicle for parenteral testing of various compounds for carcinogenicity in early work. Andervont injected subcutaneously each of 190 mice of five pure strains and one mixed stock with 1 ml of lard given in three doses over a four week period. After 27 weeks no animals had developed tumors. Barry and Cook injected 20 mice and 20 rats (strain not indicated) subcutaneously with a lard fraction that was liquid at 37° C. The dose in mice was 0.5 cc weekly at first and later 1 cc "at longer intervals"; in rats 1 cc at first and later 3 cc "at longer intervals." The mice observed after 40 weeks, and the rats after 124 weeks, showed no malignant injection-site tumors. Burrows *et al.* reported that of 143 rats (strain not indicated) subjected to weekly subcutaneous injections of 1 ml of lard to maintain a depot of lard under the skin, seven had spindle-cell tumors at the site of injection when examined after one year of treatment.

A number of studies have been conducted of the effects of dietary lard at doses up to 23 g per kg body weight on increasing the level of plasma lipids and the appearance of atherosclerotic signs in man and laboratory animals. However, considering the limited uses for lard and lard oil covered in this report, it is improbable that the very small intakes that would be expected could be significant factors in influencing serum cholesterol or fat levels. Other reports of the Select Committee, such as that on hydrogenated soybean oil, will consider the possible atherosclerotic impact of dietary fat.

Qualified scientists of the Select Committee have carefully evaluated all of the available safety information on lard and lard oil. In the Select Committee's opinion:

Lard has been consumed in pork, as an ingredient in foods, or has been added to food as the result of frying, for centuries. Aside for the implication of all animal fats as contributors to atherosclerosis, no deleterious effects have been recorded. Some adverse effects observed in experimental animals can be ascribed to very high levels of fat in the diet rather than to specific effects of lard. Sugh high dietary levels of lard or lard oil are unlikely to occur in the diet of man. Moreover, the amount of lard or lard oil transferable to food from lard-treated cotton fabrics used in packaging, is obviously minute compared to the amount of lard ingested in food.

The Select Committee concludes that there is no evidence in the available information on lard and lard oil that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when they are used in cotton and cotton fabric dry food packaging materials as now practiced or as they might reasonably be expected to be used for such purposes in the future. Based upon his own evaluation of the available information on lard and lard oil, the Commissioner agrees with this conclusion. Therefore, the Commissioner concludes that no change in the current GRAS status of lard and lard oil is justified, and proposes that they be affirmed as GRAS as indirect human food ingredients. The use of lard and lard oil permitted by other regulations is not affected by this GRAS affirmation action.

Copies of the scientific literature review on lard and lard oil, and the report of the Select Committee are available for review at the office of the Hearing Clerk (HFA–305), Rm. 4–65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 and may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22151 as follows:

Title	Order No.	Price code	Price[1]
Lard and lard oil (scientific literature review)	PB-234-891/AS	AO5	$6.00
Lard and lard oil (select committee report)	PB-270-368/AS	AO2	4.00

[1] Price subject to change.

This proposed action does not affect the present use of lard and lard oil for pet food or animal feed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409(d) 701(a), 52 Stat. 1055, 72 Stat. 1784 as amended, 1787, (21 U.S.C. 321(s), 348(d), 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Parts 182 and 186 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.70 [Amended]

1. In § 182.70 *Substances migrating from cotton and cotton fabrics used in dry food packaging* by deleting "Lard" and "Lard oil" from the list of substances.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. In Part 186 by adding new §§ 186.1390 and 186.1391 to read as follows:

§ 186.1390 Lard.

(a) Lard is the fat rendered from fresh, clean, sound, fatty tissues of swine (*Sus scrofa*) in good health at the time of slaughter. The tissues do not include bones, detached skin, head skin, ears, tails, organs, windpipes, large blood vessels, scrap fat, skimmings, settlings, or pressings and are reasonably free of muscle tissues and blood. The fatty acid distribution of the triglycerides is approximately 35 to 60 percent oleic, 20 to 30 percent palmitic, 5 to 18 percent stearic, 3 to 15 percent linoleic, 2 to 4 percent palmitoleic, 0.5 to 2.5 percent myristic, and less than 2 percent other

fatty acids having carbon chain lengths of 8 to 22 carbon atoms.

(b) The ingredient is of food grade and meets the requirements of § 172.860(b) of this chapter.

(c) The ingredient is used as a constituent of cotton and cotton fabrics used for food packaging.

(d) The ingredient is used at levels not to exceed good manufacturing practices in accordance with § 186.1(b)(1).

§ 186.139 Lard oil.

(a) Lard oil (CAS Reg. No. 8016–28–2) is a low melting fraction that has been expressed from lard. It is a colorless or pale yellow liquid, insoluble in cold water or alcohol; its major constituents are olein and stearin.

(b) The ingredient is of food grade and meets the requirements of § 172.860(b) of this chapter.

(c) The ingredient is used as a constitutent of cotton and cotton fabrics used for dry food packaging.

(d) The ingredient is used at levels not to exceed good manufacturing practices in accordance with § 186.1(b)(1).

The Commissioner hereby gives notice that he is unaware of any prior sanction for the indirect use of these ingredients in foods under conditions different from those proposed in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulations proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of such applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on the sanction at any later time. This notice also constitutes a proposal to establish a regulation under Part 181 (21 CFR Part 181), incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before July 17, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administation, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order.

Dated: May 9, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–15193 Filed 5–17–79; 8:45 am]

BILLING CODE 4110–03–M

[21 CFR Part 146]

[Docket No. 78P–0122]

Reduced Acid Frozen Concentrated Orange Juice; Establishment of Identity Standard

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a standard of identity for reduced acid frozen concentrated orange juice based upon a petition by the Coca-Cola Co. The petitioner stated that the purpose of this action is to meet the demand of consumers who wish to have a sweeter orange juice without the addition of a sweetener.

DATES: Comments by July 17, 1979; proposed compliance for products initially introduced into interstate commerce: July 1, 1981.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: A temporary permit to market test reduced acid frozen concentrated orange juice was issued to the Coca-Cola Co., P.O. Box 2079, Houston, TX 77001, under 21 CFR 130.17 on August 6, 1975 (40 FR 33063), and later the brand name and market area were amended. The petitioner requested an extension of the permit (issued August 18, 1978 (43 FR 36695)) and, in compliance with the requirements of 21 CFR 130.17, has submitted a petition to establish a standard of identity for reduced acid frozen concentrated orange juice.

The product is prepared in the same manner as prescribed for frozen concentrated orange juice in 21 CFR 146.146, except: the product contains no added sweetening ingredients, some acid is removed, and the Brix/acid ratio is not less than 21 to 1 or more than 26 to 1. The acidity of the product is controlled by a process using an anionic ion-exchange resin that is regulated by § 173.25 *Ion-exchange resins* (21 CFR 173.25). The Coca-Cola Co. stated that the removal of citric acid from a portion of the orange juice produces a sweeter and smoother orange juice than standardized frozen concentrated orange juice, and it does not affect the wholesomeness of the product.

The Coca-Cola Co. reported that based on information gained under the temporary marketing permit, it is of the opinion that establishment of the standard of identity is in the interest of consumers in general and, in particular, of consumers who either do not use or limit their consumption of orange juice. The petitioner said the new product is nutritionally equivalent to frozen concentrated orange juice (21 CFR 146.146) and that it will provide consumers with a wider range of wholesome citrus products.

The Commissioner of Food and Drugs proposes that all reduced acid frozen concentrated orange juice products initially introduced into interstate commerce on or after July 1, 1981 shall comply with the regulation except as to any provisions that may be stayed by the filing of proper objections.

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in § 25.1(d)(4) (21 CFR 25.1(d)(4)) that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required for this proposal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Part 146 be amended by adding new § 146.18 to read as follows:

§ 146.148 Reduced acid frozen concentrated orange juice.

(a) Reduced acid frozen concentrated orange juice is the food that complies with the requirements for composition and label declaration of optional ingredients prescribed for frozen concentrated orange juice by § 146.146, except that it may not contain any added sweetening ingredient. A process involving the use of anionic ion-

exchange resins permitted by § 173.25 of this chapter is used to reduce the acidity of the food so that the ratio of the Brix reading to the grams of acid, expressed as anhydrous citric acid, per 100 milliliters of juice is not less than 21 to 1 or more than 26 to 1.

(b) The name of the food is "Reduced acid frozen concentrated orange jucie".

Interested persons may, on or before July 17, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Executive Order 12044 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption.

Dated: May 10, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–15317 Filed 5–17–79; 8:45 am]

BILLING CODE 4110–03–M

[21 CFR Part 168]

[Docket No. 78N–0363]

Soft Sugars; Notice of Intent To Establish Standards; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Extension of Comment Period.

SUMMARY: The agency is extending the comment period on an advance notice of proposed rulemaking that invited interested persons to review the Codex Alimentarius Commission (Codex) "Recommended International Standard for Soft Sugars" and to comment on the desirability and need for a U.S. standard for this food. This action is based upon a request from The Sugar Association, Inc.

DATE: Comments by June 25, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: P. G. Harrill, Bureau of Foods (HFF–411), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 23, 1979 (44 FR 10747), the Food and Drug Administration (FDA) published an advance notice of proposed rulemaking that invited interested persons to review the Codex Alimentarius Commission (Codex) "Recommended International Standard for Soft Sugars" and to comment on the desirability and need for a U.S. standard for this food. Comments were to be filed by April 24, 1979.

Subsequently, FDA received a request from The Sugar Association, Inc., for a 60-day extension of the comment period. The Association stated that it is currently collecting relevant descriptive data on soft sugars and needs additional time to gather and collate as complete a set of data as possible.

The FDA concludes that The Sugar Association, Inc., has given sufficient grounds to support the need for additional time to comment on the notice. Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), the comment period on the advance notice of proposed rulemaking for soft sugars is extended to June 25, 1979.

Interested persons may, on or before June 25, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 10, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–15319 Filed 5–17–79; 8:45 am]

BILLING CODE 4110–03–M

[21 CFR Part 168]

[Docket No. 78N–0362]

White Sugar; Notice of Intent To Establish Standard; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Extension of Comment Period.

SUMMARY: The agency is extending the comment period on an advance notice of proposed rulemaking that invited interested persons to review the Codex Alimentarius Commission (Codex) "Recommended International Standard for White Sugar" and to comment on the desirability and need for a U.S. standard for this food. This action is based upon a request from The Sugar Association, Inc.

DATE: Comment by June 25, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: P. G. Harrill, Bureau of Foods (HFF–411), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 23, 1979 (44 FR 10749), the Food and Drug Administration (FDA) published an advance notice of proposed rulemaking that invited interested persons to review the Codex Alimentarius Commission (Codex) "Recommended International Standard for White Sugar" and to comment on the desirability and need for a U.S. standard for this food. Comments were to be filed by April 24, 1979.

Subsequently, FDA received a request from The Sugar Association, Inc., for a 60-day extension of the comment period. The Association stated that it is currently collecting relevant descriptive data on white sugars and needs additional time to gather and collate as complete a set of data as possible.

The FDA concludes that The Sugar Association, Inc., has given sufficient grounds to support the need for additional time to comment on the notice. Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), the comment period on the advance notice of proposed rulemaking for white sugar is extended to June 25, 1979.

Interested persons may, on or before June 25, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 10, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc 79–15318 Filed 5–17–79; 8:45 am]

BILLING CODE 4110–03–M

DEPARTMENT OF AGRICULTURE

Forest Service

[36 CFR Part 251]

National Forest System Lands; Special Uses

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This is a proposal to revise the regulations governing the authorization of the occupancy of land and conduct of activities on National Forest System lands. It does not include those activities covered in the regulations on the disposal of timber, minerals and mineral materials, and livestock grazing.

The provisions on granting rights-of-way have been expanded and changed. These changes are necessary to implement Title V of the Federal Land Policy and Management Act of 1976. Procedures for authorizing other kinds of special uses are not significantly changed.

DATES: Comments must be received on or before August 16, 1979.

ADDRESS: Submit comments to: Chief John R. McGuire, Forest Service, Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: S. W. Van Doran or William R. Boring, Lands Staff, Forest Service, USDA (703–235–8107).

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act of 1976 (FLPMA) replaced most authorities previously available to the Bureau of Land Management (BLM) and the Forest Service (FS) to grant rights-of-way. FLPMA is broadly stated and provides wide discretion.

Most aspects of either agency's current policies and procedures could have been continued. Those procedures were, however, different in some respects as a result of specific direction provided in authorities previously exclusive to one or the other agency and to divergence in the agency's basic assignment. Recognizing that significantly different procedures could result in unequal treatment of users, the two agencies set out to develop, insofar as possible, a common system for granting rights-of-way. Thus, while this set of regulations applies only to National Forest System lands, BLM's regulations for the public lands it administers will be procedurally similar.

Public Participation

Joint Agency staff teams developed an outline of suggested common right-of-way grant procedures. The outline was distributed November 14, 1977, to user groups, States and other affected governmental bodies and interested individuals and groups. Four informal public meetings were held to hear comments and answer questions. About 300 people attended the meetings and some 60 made presentations. In addition, about 160 written statements were received. Although comments were requested by February 1, 1978, all received have been carefully reviewed. In addition, agency members met with several individuals and groups to discuss specific concerns. Many comments lacked a necessary correlation with other Titles of FLPMA and other statutes. The basic policy statements in Title I, FLPMA, and the Multiple Use Sustained Yield Act; the emphasis on inventory and dynamic land use planning in Title II, FLPMA, and the National Forest Management Act, are important consideration in interpreting Title V of FLPMA (Rights-of-way).

The BLM and FS recognize the efforts and appreciate the thoughtful comments of the many participants in this joint rulemaking process. While individual response to each and every comment is not practical, all repetitive and significant comments have been integrated into the proposed rules or are addressed as follows:

Comment

Several industry groups urged the development of separate regulations designed specifically for their particular needs.

Response

Under careful analysis the request translated into predetermination by regulation of the type, duration, terms, etc., of any right-of-way granted for that use or to that group. To be fully satisfactory, the right-of-way granted would have to be adequate for the most demanding circumstances that might occur. This would not comply with the clear limitations in FLPMA to make the grant fit its particular circumstances with respect to the ground to be occupied, duration, and terms and conditions.

Separate regulations for size classes of a particular type of use only partially solved the problem and did not resolve different levels of other items, i.e., disclosures, needed under given circumstances. The initial Outline of Proposed Procedures illustrated this problem. It mentioned all of the possible disclosure requirements that might be necessary under any circumstance. Commentors were rightfully appalled and urged a much less stringent approach tailored to project and applicant circumstances. Several urged that the regulations describe a basic minimum process that would be supplemented only as necesary to fulfill particular requirements.

Forest Service regulations have in the past been very brief and basic. Where necessary, additional guidance has been provided to field officers in the Forest Service Manual. The Manual is written in relatively broad terms for agencywide guidance but is frequently supplemented at Regional and National Forest levels to achieve consistency along with appropriate adaptation to local conditions. The system has served well with few complaints.

The Congress has provided in FLPMA one set of essential instructions for a multitude of kinds and sizes of rights-of-ways. Following this example, these proposed rules describe a single basic system for receiving and processing applications and granting appropriately conditioned permits, easements and leases to use National Forest System lands.

Comment

Several States and the Federal Highway Administration pointed out that FLPMA did not preclude grants for highway purposes under Sections 107 and 317 of Title 23 of the United States Code. They added that the grants made by the Department of Transportation under Title 23 have satisfied their needs.

Response

The Forest Service plans at this time to continue its current practice of consenting to appropriation of highway rights-of-way by the Federal Highway Administrator.

Comment

Owners of private lands adjacent to or intermingled with National Forest lands pointed out that FLPMA carefully avoids any modification of the provisions of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532–538), or conflict with present practices under that act. They urged that provisions of the act to grant road easements and to enter into cost-share road agreements be liberally interpreted and used in granting access to private lands within and outside of cost-share agreement areas.

Response

Practices under the 1964 act are covered in 36 CFR 212.8–12. No change is planned in this regulation or associated practices at this time. Section 510 of FLPMA provides that herafter no right-of-way for the purposes listed in Title V Rights-of-way shall be granted except under and subject to the provisions, limitations, and conditions contained in FLPMA. The 1964 Act and the Highway Act (Title 23) are the two specified exeptions.

We conclude that it was the intent of Congress to preserve the authority and practices under the 1964 act but only insofar as and in the manner in which they were being used. Any other right-of-way application should be made under and in full compliance with FLPMA.

Comments

The mining industry requested clarification of whether the joint procedures and proposed regulations would cover authorizations for roads and other access facilities to mining claims.

Response

Both agencis recognize the right of ingress and egress authorized by the Mining Law of 1872. Language differences between the FS Organic Act of 1897 and FLPMA (BLM's organic act), lead the two agencies to adopt somewhat different procedures.

Parties exercising rights of ingress and egress on National Forest System lands must, in accordance with the Act of June 4, 1897, " * * * comply with the rules and regulations covering such National Forest." The FS will continue its present procedure of approving the miner's operating plan and granting separate rights-of-way (under FLPMA) for access structures (roads, trams, etc.) to be constructed off the mining claim. BLM's authority in this area rests in Section 302(b) of FLPMA. It states: "In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." We anticipate that access across the public lands to unpatented mining claims will be authorized by BLM in the approved mining plan.

Comment

Several electric utilities and others objected to the requirement for a right-of-way issued by the land administering agency as well as a license from the Federal Energy Regulatory Commission (FERC) for elements of the same hydroelectric project.

Response

Section 510 of FLPMA provides that no right-of-way for the purposes listed shall be granted across National Forest lands except under the provisions of Title V. Only two exceptions are made: rights-of-way granted under the Act of October 13, 1964, and Sections 107 and 317 of Title 23, the Highway Act. Section 511 goes on to require that applicants seeking a license, cetificate or other authority from another agency but which involves a right-of-way across " * * * National Forest System lands must simultaneously apply to the Secretary * * * for the appropriate authority to use * * * ." those lands. Thus, rights-of-way necessary on National Forest System land must be authorized under FLPMA.

The regulatory authorities and responsibilities of the Federal Energy Regulatory Commission are carefully preserved in section 501(a)(4) which specifically includes "systems for generation, transmission, and distribution of electric energy" but requires that the applicant also comply with all applicable requirements of the Federal Power Commission (now FERC) under the Federal Power Act. Duplication is minimized to the fullest extent possible in the proposed rules. Land rental charges will not be duplicated.

Comment

Most commenters wanted decisionmaking authority at as close to the local level as possible. On the other hand, there was concern that broad discretionary authority could be abused by individual line officers resulting in unreasonable interpretation of criteria and a wide variation of decisions. Some asked for local expertise and on the ground knowledge; others opted for high-level management review and decisions to assure adequate expertise and consistency.

Response

The proposed rules recognize the need for both local expertise and uniform decisions. Uniformity could be obtained through extremely detailed regulations designed to cover all contingencies. However, this would eliminate the flexibility needed to respond to specific circumstances. The regulations will establish a basic process which will be supplemented with suitable guidance to field personnel through manuals and training. Authority to issue permits will be delegated to Forest Supervisors and, in some circumstances, District Rangers. Authority to grant easements will generally be retained at the Regional Office level to assure the level of uniformity and expertise commensurate with project complexity and the rights conveyed. Line officials are charged with making reasonable multiple use management decisions as a prerequisite of the position they hold. They and their staffs are trained for the express purpose of achieving efficiency and consistency. Opportunities for abuse of discretion are limited. Where unresolved differences of opinion occur, prompt administrative review by higher officers can be obtained by applicants and others under 36 CFR 211.19.

Comment

Almost without exception, the comments asked for a faster, more streamlined process, particularly for small projects with little environmental consequence.

Response

In order to expedite the application process we are urging initiation of a pre-application contact with local FS officials to enable the applicant and agency personnel to understand each other's needs. If used, application processing can be scheduled, and both the agency and the applicant can recognize the factors that determine processing time. A tentative schedule based on applicant needs, workload, the environmental sensitivity of the area, project complexity, and the quality of inventories and land use plans will serve to avoid agency delays and unattainable expectations by applicants.

Also, since the regulations provide a basic process which can be supplemented, the action on a project

can be tailored to its particular needs and circumstances.

Comment

Most commenters expressed support for the preapplication process described in the outline. Several pointed out that some early information regarding plans or proposals must be kept confidential.

Response

The regulations provide or confidentiality, when requested, to the extent reasonable and consistent with laws governing public information.

Comment

The largest number of comments received concerned the amount of detailed material that could be required of an applicant. Commenters uged that only minimal information be called for to identify the applicant, disclose plans and financial and technical capability, and describe the rights and privileges requested. They further visualized the creation of a hiatus where a grant would not be made until another agency had issued some necessary permit or clearance and that agency would not act until the right-of-way had been granted.

Response

The Oil and Gas Pipeline Right-of-way Act of 1973, upon which FLPMA was patterned, contains stringent mandatory disclosures of applicant organization and associated plans, contracts and agreements. FLPMA contains identical language except that the requirements are imposed only "as deemed necessary" for a determination as to whether a right-of-way shall be granted and what terms and conditions are to be included.

The Outline of Joint Procedures attempted to show a distinction between mandatory requirements and other material that might be necessary because of circumstances. Readers, however, assumed that agency officers would automatically require all possible information without regard to its usefulness, or need.

The legislative history provides guidance in this respect. The Senate Report states that informaton already on file need not be refiled and explains the required public disclosure of the ownership and control of business entities as follows:

> Requiring disclosure is based upon the principle that the Federal Government should know the true identity of the entity and individuals applying for permission to use the national resource lands.

The House Report states:

> The committee expects the Secretaries to be cautious in their demands or information. They are expected to seek only the minimum amount of information essential for making the determinations required by law.

The proposed regulations will depend upon the authorized officer to require only as much informaton as is necessary to assure that the applicant is a legal business entity possessing the technical and financial capability to construct, operate and maintain the proposed project. The findings of Public Utility Commissions, the Federal Energy Regulatory Commission and the Interstate Commerce Commission may be used, for example, in lieu of a finding by the authorized officer. Information already on file need not be refiled. To minimize duplication, copies of pertinent information submitted to other agencies for associated permits and clearances can be submitted to the Forest Service.

Since organizational structure frequently changes over time, authorizations to other than individuals will normally include a requirement that the holder will provide the details of its organizational structure upon demand of the authorized officer.

Unless the issuance of associated clearances is in doubt and the land would be subject to unnecessary environmental impacts, authorizations will normally be granted but made contingent upon the issuance of associated necessary clearances and permits.

The application procedure is designed to bring the applicant and the agency together much earlier than in the past to encourage an understanding of each other's needs and capabilities. Thereafter, the process is a mutual effort to determine what disclosures may be needed, the information and data necessary for environmental analysis, and acceptable alternatives. Environmental analysis will frequently be based upon conceptual plans and maps to be followed by such detailed plans, surveys, and standards as are determined to be necessary.

Comment

Many comments urged that the regulations impose time limits on the agencies for processing applications.

Response

This problem involves the time factors inherent in compliance with applicable statutes, such as the National Environmental Policy Act and the National Historic Preservation Act, and consultation with other agencies, local government and the interested public. It also reflects the difficulty of maintaining, funding, and efficiently scheduling an organization to handle a highly variable workload.

The House Report states:

> The Committee considered putting time limits on the Secretaries, requiring final action within a specified period after filing an application. It decided, however, to grant the Secretaries flexibility in this respect. *It expects them, however, to take every reasonable step to assure action at the earliest practical time.* (emphasis added).

We will do our best to respond promptly and these regulations are designed to streamline the application process.

Early contact and mutual coordination in the preapplication process will actively involve prospective users in the land use allocation and planning process. When land use plans fully consider right-of-way needs, processing of individual projects can be expedited. For example, many considerations will have been predetermined during the planning of a designated right-of-way corridor. In addition the expense and time of false starts can be avoided.

A deliberate effort has been made to limit the application process to reduce the burden on applicants. For example, disclosures are limited to the minimum necessary to comply with statutes and good business practices; and project details, plans, and surveys need only be commensurate with project size and complexity, anticipated impacts, and the commitment of lands and resources requested. Public involvement will also be tailored to the impacts and interests involved.

Applications can be processed at the same time associated permits and clearances are being obtained or grants can be made subject to their issuance.

Comment

The Outline for Joint Procedure provided for the issuance of temporary use permits to allow an applicant to enter upon the land to gather information. Many objected to or indicated the need for clarification of this provision.

Response

Receipt of an application will be acknowledged in writing. The acknowledgement will authorize the applicant to make non-disturbing use of National Forest land for studies and gathering of information necessary for completion of the application. Temporary use permits will be necessary where resource disturbance is likely such as clearing for surveys, digging of test pits, and other activities which result in noticeable disturbance

of the land and resources or occupancy of the land by structures or other improvements. These temporary permits will require an application and environmental analysis, commensurate with the size and extent of impacts anticipated.

Comment

Several commenters demanded that the environmental analysis and the deicision whether or not to authorize a project be limited to the project itself and not address related activities made possibly by virtue of the grant, e.g., private land development.

Response

Considerations under the National Environmental Policy Act are not limited to a proposal by itself. Agencies are to use all practical means to foster the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations. Environmental analysis should consider both primary and secondary consequences, favorable and adverse effects, irreversible and irretrievable commitments of resources, and cumulative impacts. Although emphasis is placed upon on-site impacts all anticipated environmental consequences must be addressed. It is appropriate therefore, to illuminate off-site consequences.

FLPMA requires that right-of-way grants contain terms and conditions to "(i) protect Federal property and economic interests; (ii) manage efficiently the lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the land adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto."

It is clear that the Congress is concerned with offsite consequences.

While valid rights cannot be abridged, it is inconceivable that the Congress intended that grants be made on Federal land which would trigger related actions obviously adverse to the public interest. These principles would also be applicable to transportation and utility corridors. We are not addressing corridor designation herein since it is considered part of the land management planning process and will be included in those procedures and rules in 36 CFR Part 219.

Comment

A few comments stated that the purpose of FLPMA was to grant, not deny, rights-of-way. One suggested that denials be limited to conflicts with Congressionally designated areas, e.g., Wilderness. Many expressed concern for appeal rights when applications are denied.

Response

FLPMA states that a decision of whether or not a right-of-way should be granted and the determination of terms and conditions rests with the Secretary involved. FLPMA and other special use authorities provide permissive authorities that may be used to accommodate the needs of individuals, groups and industries only when they are in, or are at least compatible with the public interest and will comply with the objectives, policies and applicable statutes for and under which the lands are managed.

Comments

Many electric utilities objected to the so-called "wheeling" provisions in the proposed outline for power transmission lines of 66 KV or higher.

Response

The House Report indicates the committee reviewed the policy requiring holders of transmission line rights-of-way to make excess capacity available for wheeling of power from other systems. The committee rejected suggestions to modify this policy and stated; "the action by the committee is to be considered a specific endorsement and support of * * *" this policy. Accordingly the wheeling provisions are included in these regulations unchanged except to reflect the transfer of the Power Marketing Administration to the Department of Energy.

Comment

Comments regarding terms and conditions of a grant varied greatly. In substance, many urged totally unconditioned grants. Several wanted all conditions expressed in regulations and no latitude in their application. Others urged selective application.

Response

Section 504(e) provides for regulations with respect to terms and conditions and for regular revision of such regulations. It goes on to state that such regulations shall be applicable to every right-of-way granted or renewed under Title V. Section 505 requires that each right-of-way shall contain terms and conditions and then provides criteria for conditions. The proposed rules closely parallel Section 505. The authorized officer will determine the terms and conditions necessary in each case to satisfy the public interest and applicable statutes. Upon acceptance by the applicant the grant shall become the agreement or contract between the holder and the agency.

Comment

Several expressed concern about possible interpretations of the payment requirement for mineral and vegetative materials removed, used, or destroyed to accommodate a right-of-way. For example, one urged that no payment be required for merely dislodging minerals.

Response

Contrary to some previous statutes and parts of statutes now replaced, FLPMA does not convey any rights to timber and mineral materials through a right-of-way grant. Removal, disposal or use of such materials must be authorized under applicable laws.

The Senate Report is helpful. It states that a right-of-way holder may not use mineral or vegetative material without obtaining an authorization under applicable law to do so. It goes on to state:

> This does not prevent the holder from excavating for construction purposes and using or moving earth and nonmerchantable vegetation and disposing of them in approved locations * * * It merely requires the holder to purchase mineral materials, such as gravel, and vegetative materials, such as timber, where the sale of such materials is authorized or otherwise required by statute or regulation.

The regulations concerning timber and mineral materials on National Forest lands appear in 36 CFR Part 221 and 251.4, respectively. Instructions concerning the charges to be made and the possibility of their waiver are covered in those sections.

Comment

A few comments urged that right-of-way holders pay for loss of wildlife habitat caused by their use.

Response

Under existing authorities payments of this nature would be deposited in the Treasury and would not be directly available for habitat work. We prefer to require appropriate mitigation measures. Properly designed and located rights-of-way often enhance wildlife habitat by furnishing needed variety of forage and valuable "edge effect" for wildlife. In addition, revegetation and other mitigating measures are carefully designed to protect or restore wildlife habitat. Replacement of wildlife habitat lost to water development projects can be required under other existing statutes.

Comment

A few commented on right-of-way widths and several objected to precise survey requirements for determining boundaries.

Response

These questions are addressed in the legislative history. The Senate Report states:

> The committee intends that all rights-of-way granted under this title be *limited* to the minimum amount of land reasonably necessary for conduct of the particular project or activity involved (their emphasis).
>
> The Committee has consciously avoided establishing arbitrary width limitations because experience has shown that they are not a practical guide to environmentally sound construction design; they are not amenable to technological change; and they limit the Secretary's discretion and ability to cope with unique circumstances.

Regarding surveys, the Senate report states:

> This subsection provides that the Secretary shall specify the boundaries of each right-of-way as precisely as is practicable. The Committee expects that the Secretary will exercise considerable flexibility in weighing the merits of each situation. Expensive and highly precise surveys are not normally required for many rights-of-way, such as low standard logging spurs or livestock driveways.
>
> Thus, it is expected that the Secretary will weigh the proportionate values involved when determining the appropriate level of accuracy in setting such rights-of-way boundaries.

The House Report states:

> The Secretaries are authorized to specify the boundaries of rights-of-way and limits the grant to the project facilities and such additional lands as are necessary for operation and maintenance and to protect the environment. The purpose of this is to permit identification of the lands in the right-of-way on the ground with such degree of precision as may be needed in each case.
>
> The requirement is not meant to suggest that the outside boundaries of a right-of-way have to be surveyed or even marked although there may be cases where this will be needed.

The proposed rules provide the authorized officer with wide flexibility in determining survey standards on a case by case basis. They also provide for filing surveys after construction, again to provide maximum flexibility and reduce costs to applicants.

Comments

Many comments addressed the duration or term of the grant. Most utilities recommended a 50-year term. Other users pointed out that a perpetual grant was appropriate for some rights-of-way, especially roads. Many emphasized that the duration for any particular kind of use must fully accommodate the needs of all such cases. It appeared that these users were requesting that the duration of grants be fixed by regulation.

Response

Section 504(b) FLPMA states: "*Each* right-of-way or permit granted, issued or renewed * * * shall be limited to a reasonable term in light of *all circumstances concerning the project.*" (emphasis added) FLPMA goes on to list several criteria to be used in determining duration, but implicit in the language is a case-by-case analysis. The section provides that the right-of-way shall specify whether it is or is not renewable and the terms and conditions applicable to renewal. Title I of FLPMA provides that although particular parcels may be disposed of in the national interest, the public lands will be retained in Federal ownership and be managed on the basis of multiple use and sustained yield. Future use of the land is to be projected through a land use planning process. Title II provides guidance for land use planning and the issuance of decisions to implement the plans. However, such decisions "* * * shall remain subject to reconsideration, modification and termination through revision * * *" of the land use plan. To respond to this direction, right-of-way grants need to retain reasonable opportunity to adjust to change. The legislative history is helpful. The Senate Report states: "One purpose of this section is to give the holder * * * a degree or certainty and security as to his tenancy so that adequate financing can be arranged. This is particularly necessary for major projects. In certain instances, due to the very long term nature of * * * investments * * * it may be appropriate to specify a length of term which is very long or even perpetual. In such cases there should be *provision for review and revision of terms and conditions* to reflect changing times and conditions." (emphasis added).

The House Report states: "The requirement that the term of a right-of-way be 'limited to a reasonable term' does not prevent the issuance * * * for indefinite terms, the exact duration of which will be contingent on continuation of specific events or circumstances." Two examples are given—a timber road could be issued for "so long as the lands served by it are managed for long term timber production"; and a reservoir could be authorized for "* * * so long as the power is produced in commercial quantities." The report goes on to say "an alternative would be to provide in the right-of-way a right of renewal so long as the same contingencies exist."

The proposed process has been modified to (1) state the objective as a term no longer than is necessary to accomplish the purpose of the authorization and reasonable in light of all circumstances concerning the use and (2) clearly identify project financing as one of the criteria for determining duration. Long term authorizations (those exceeding 30 years) will provide for revision of terms at specified times to provide an opportunity to reflect changing times and conditions.

Given the thrust of FLPMA for matching duration to the needs of individual projects and the wide variety of local situations, setting maximum terms in the regulations is inappropriate. Guidance in deciding duration will be in agency manuals. These are public documents.

Comment

A few commenters asked that only easements or short term temporary permits be granted.

Response

This comment is consistent with the provisions of Section 28 of the Mineral Leasing Act of 1920. FLPMA, however, provides for the granting of "rights-of-way" which is defined to include an easement, lease, permit, or license. The Senate Report states: "It is intended that the Secretary will use any mix of leases, licenses or permits as he finds appropriate for such uses." It is clear that the basic policies of both agencies require continuing management of the public lands in a manner that retains reasonable ability to make changes in the public interest. Easements however, grant an interest in the land and are not

easily modified. The proposed rules provide for modification only at time of renewal or transfer or in accordance with specific terms and conditions included in the grant.

BLM and FS have used every avenue in this rulemaking to streamline and speed up the handling of applications. While this is not to say that the consideration of requests for revocable permits will be cursory, it is obvious that issuing officers must be entirely satisfied before making long term, irrevocable easement commitments of the land. In addition, to assure adequate expertise the granting of easements will generally be retained at higher management levels.

Historically, the Forest Service has issued only permits for most rights-of-way yet there have been very few instances when the revocability of these permits has proven a disadvantage to the holder.

The proposed rules provide for the use of permits and easements in the combination that most efficiently balances the needs of applicants, management, and the public.

Comment

Several parties asked recognition that exclusive use and control of rights-of-way may be necessary when their use could pose a threat to public safety or another use might be technically incompatible.

Response

Both agencies recognize safety and other hazards associated with mixing industrial and recreational or other public use. They also recognize the technical incompatibility or added cost burdens associated with the proximate location of some uses.

Section 503 of FLPMA states:

> In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this Act.

The Secretaries are directed to take into consideration, "* * * National and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices", in designating and confining rights-of-way to corridors.

It is clear that rights-of-way are to be granted and managed on a basis that provides only such exclusiveness as is truly necessary for the proposed use and is compatible with multiple use management and the public health and safety. Unsafe and untenable combinations will not be required. Further, common use of permit areas will be granted only after consultation with all parties involved.

Comment

Many commenters opposed the principle of imposing liability without fault upon users and urged low limits if adopted.

Response

We believe it is appropriate that those who place special risks on National Forest lands should assume a significant part of the cost of injury or damage and immediate corrective actions, e.g., control of fires, caused by the use.

We could agree that liability without fault would be unnecessary if it were possible to leave malfunctions unattended until rectified by the user. That is not possible, however, with uses having great destructive potential, (forest fires, oil spills, explosion, radioactivity). In such cases, prompt action must be taken to avoid massive destruction and the loss of life and property. With regard to fire, a high level of public funds is invested in the development and maintenance of effective fire organizations. In fact, a good argument can be made for asking high-risk users to contribute to the organization and training of forces held in readiness to combat fires. On the other hand, the majority of risks can be reasonably reduced within existing technology for undergrounding, insulating, and improved system design, for example, thereby minimizing the user's liability.

Liability without fault will be imposed only in cases of high risk uses such as, but not limited to, powerlines and oil and gas pipelines.

Liability without fault will not be imposed for low risk uses such as roads, telephone facilities and fences.

When liability without fault is imposed, the authorization will state a limit commensurate with the foreseeable risks or hazards presented, but shall be no more than $1,000,000.

Comment

Many comments urged that right-of-way permits and easements be freely transferable by the holder without agency review or approval.

Response

Special use authorizations grant specified rights and privileges to named individuals or entities. At the same time they require certain responsibilities be assumed by the holder. Transfer of privileges and responsibilities must be controlled; i.e., approved, in order to maintain a viable contractual relationship between the user and the agency.

In addition, FLPMA and the Oil and Gas Pipeline Act require certain qualifications and disclosures from applicants. The agencies have a responsibility to determine that transferees qualify prior to the transfer.

Comment

Several commenters urged that grants be renewed, revised and transferred subject only to the initial terms and conditions.

Response

As discussed previously, the legislative history of FLPMA acknowledges the possible need for very long term grants but indicates that such grants should provide for revision of terms and conditions to reflect changing times. Title II gives guidance in land use planning and provides that management decisions shall remain subject to reconsideration, modification, and termination through revision of the land use plan involved. Land use authorizations need to be made in a manner that will retain reasonable opportunites to adjust to new perceptions of the public interest. An application to change the use authorized or the grant area is a recognition by the holder of a need for revision. Such application opens the contractual relationship for appropriate revisions in the interest of both the holder and the Government.

The proposed regulations provide for modification at time of transfer. The need to update terms and conditions and the specific changes will be explained prior to transfer thus reducing unexpected impacts on new owners.

Terms and conditions will also be reviewed and changed if appropriate at time of renewal. In addition, very long term grants will provide for modification in the public interest at specified times, generally keyed to the revision of land management plans.

Alternatives would involve denial of applications and issuing only short term grants and revokable permits, due to inability to predict future contingencies. We believe the maximum latitude will allow users and administering officers to work out the best combination under given circumstances. Modifications in the public interest will be applied in a reasonable manner.

Comment

The several comments about termination and suspension varied widely. A few indicated fear of unreasonable acts by the administering officers. At the same time one commenter felt that action should be taken only for repeated violations and another said only for willful and reckless misconduct.

Response

In accordance with FLPMA, failure to construct, non-use, abandonment of failure to comply with terms and conditions of the grant and regulations are sufficient grounds for termination. The proposed rules provide for written notice of the grounds for action and reasonable time to cure any non-compliance. Right-of-way easements will be terminated after an administrative proceeding under the Administrative Procedures Act (5 U.S.C. 554). Immediate temporary suspension may be effected when the authorized officer determines it to be necessary to protect the public health or safety or the environment. Prompt on-the-ground review by a superior officer will be arranged if requested by the holder. Permits may be terminated upon a clear showing of public interest grounds that override the individual interest involved.

Comment

Several commenters asked that if a right-of-way was to be terminated, sufficient time be granted to allow for budgeting of costs. A few asked that a right-of-way terminated only when a reasonable alternative route was available.

Response

The regulations provide for early notification. Normally the authorized officer will work with the holder to identify acceptable alternatives but agencies cannot bind themselves to do this in all cases. However, the need for termination seldom arises; such action must be fully justified and reasonable notice given.

Comment

Most comments objected to bonding to assure compliance with terms and conditions. Many requested that regulated utilities and major companies be exempted from bonding.

Response

Both agencies have had this authority in the past and have used it with discretion. Bonding guarantees that money to repair damages is available if necessary. Bonding will be used only when the potential for damage is significant. FLPMA's requirement that a right-of-way will not be issued until the authorized officer is satisfied that the holder is technically and financially capable, should reduce dependence on bonding.

Comment

The comments made about land rental fees were often contradictory. A few said fees should be based upon fair market value appraisal of the highest and best use of the land, others said not to use highest and best use. Still others asked, "fair market value of what?" Several requested a single lifetime payment, a few suggested five year payments, and others agreed with annual payments. Some urged individual appraisals while others said "keep it simple" or use standard predetermined rates, and a few demanded that everybody pay the same rates. Several recommended that fees not be adjusted with market changes and one urged that the holder be required to manage the land for wildlife production in lieu of fees.

Response

In Title I FLPMA the Congress declares that it is the policy of the United States that, " * * * (9) the United States receive *fair market value of the use* of the public lands and their resources unless otherwise provided for by statute." (emphasis added) FLPMA reflects the fee principles stated in the Natural Resources User Charges Study transmitted to Agencies by the former Bureau of the Budget in 1964. It states in part:

> Many Federal Government programs furnish specific, identifiable benefits to the individuals and businesses using them. Equity to all tax payers demands that those who enjoy the benefits should bear a greater share of the costs.
>
> Where federally owned resources or property are leased or sold, a fair market value should be obtained. Charges are to be determined by the application of sound business management principles and so far as practicable and feasible in accordance with comparable commercial practices.
>
> The Federal Government should recover fair market value for the use of Federal land resources. Competitive bidding will be used to establish the fair market value in all instances where an identifiable competitive interest exists. Where a competitive interest does not exist, fees should be comparable to those charged for the use of similar private lands. Fees and charges for long-term use should be established in such manner as will allow for periodic timely adjustment.

Following these principles, fees will be determined through land appraisal or other sound business management principles and will represent the fair market value of the benefits received by the holder of a special use authorization.

Appraisal techniques acceptable to the appraisal industry will be used. BLM and FS coordinate techniques and results for consistency, as appropriate.

Predetermined rates developed on local or regional bases through comparision to appraised cases will be used under the circumstances that do not warrant the expense of individual appraisals.

In accordance with the Act, annual fees will be charged except where the annual rental is less than $100. In such cases payment in advance for periods up to five-years may be required. Fees will be adjusted when necessary to reflect current fair market value.

Comment

Many comments requested that the regulation establish unequivocal free use or particular kinds of uses; e.g., telephones, industries (mining) and types of organizations (REA cooperatives and governmental bodies). Others urged that all users pay the same rates.

Response

The Act provides discretionary authority to waive rental fees where a right-of-way is granted in reciprocation for a right-of-way conveyed to the United States in connection with a cooperative cost-share program. It also provides discretionary authority to charge less than fair market value, including free use, to certain governmental and non-profit entities or where a valuable benefit is provided to the public or the programs of the agency without or at reduced, charges. The House Report indicates the committee considered and supported the long-time agency policy of providing special fee considerations favoring State and local governments and non-profit organizations. The Senate Report, however states "* * * it is not the intent of this committee to allow use of * * * land without charge except where the holder is the Federal Government itself * * *."

Failure to charge fair market value fees results in a subsidy by the public-at-large. It follows that free or reduced charges should be used only in those circumstances where the general public benefits from the use. Non-profit entities that are essentially tax or donaton supported who are engaged in a public or semi-public activity designed for the

public health, safety or welfare will qualify for reduced charges.

As a matter of equity we believe it is inappropriate to either reduce fees or grant free use when the holder follows practices equivalent to private commercial enterprise. For this reason cooperatives and municipal utilities whose principle source of revenue is customer charges will, hereafter, be charged fair market value fees.

In view of wide variations in organization, purpose, and manner of doing business it is impractical to attempt to interpret in the regulations each and every circumstance that may or may not qualify for fee reductions. Fair and equitable application will rest with the authorized officer. Uniformity will be achieved through Manual guidance and training.

Comment

There was almost unanimous objection to various aspects of cost reimbursement. Several said that the Government should pay the cost of environmental studies because the public, not the applicant, benefits. Many asked to be exempt because their use was in the public interest through furnishing services needed by customers. Most felt that the non-refundable fee schedules were inequitable and too high. Many asked for itemized accounting and provisions for audit of agency records when actual costs rather than fee schedules are used. Several suggested that private land owners would reciprocate by charging for costs when granting rights-of-way to the government. Several also wanted cost recovery waived when rental fees were waived, mandatory refund of excess payments, and return of payments if the application was denied.

Response

It is generally the Forest Service practice to process applications without provision for cost recovery. The BLM initiated cost reimbursement for all non-governmental rights-of-way in 1975 based on existing authorities. In 1976 FLPMA gave BLM and the FS additional discretionary authority to recover "reasonable" costs. The authority to collect costs has been litigated under the previous authority, and most recently under FLPMA. In at least two cases, the Federal District Courts ruled that special studies and environmental reports were public benefits and their costs should not be charged to an applicant. The ruling on FLPMA is subject to appeal. In his 1965 budget message to the Congress, The President said, "Many Federal Government programs furnish specific, identifiable benefits to the individuals and businesses using them. Equity to all taxpayers demands that "those who enjoy the benefits should bear a greater share of the costs." However, practices of the several Federal agencies are not consistent. Also, the unsettled litigation casts doubts on the appropriateness of some elements of the procedures proposed in the Outline of Joint Procedures. For these reasons the two agencies have decided to continue individually with their current practices until overall Federal policy and legalities are better understood.

Comment

Many commenters objected to obtaining agency approval prior to modifying facilities within an authorized right-of-way. Some opposition was based on interpreting the language in the Outline of Proposed Procedures to require approval of every activity including internal changes (changing electronic equipment within communication vaults), replacing broken insulators, etc. Several asked that upgrading capacity and phased reinforcement of facilities be allowed without advance approval.

Response

The proposed rules are designed to accommodate normal maintenance without advance approval. Planned expansion, phased construction, upgrading, or reinforcement of authorized facilities can be included in the original application processing and authorized in the grant. When the grant is designed to accommodate changes, the contact and plan provision discussed below will involve minimal effort. The language now indicates that amended applications will be required when changes involve additional land or when the grant does not authorize the proposed use. The rules require contact with the office administering the land and the joint development of contingency plans when activities or changes will impact the resources or visual characteristics or make previous analysis invalid. Contact and plans are also required for changes that might adversely affect other users or the public. Contingency plans provide for appropriate protection, rehabilitation, and additional environmental analysis, if needed.

Redesignation of Sections

In addition to amending the text, the sections in Part 251 have been reorganized.

The following table shows the relationship of the regulations before and after the redesignation.

Prior designation	Subject	Moved to
251.1 (a) and (d)	Special uses	251.50.
251.1(b)(1)	Delegations	251.52.
251.1(b)(2)	Terms	251.56.
251.1(b)(3)	Termination	251.60.
251.1(b)(4)	Transfer	251.59.
251.1(b)(5)	Reasonable rates	251.56(f)(i).
251.1(c)	Other authorizations	251.53.
251.2	Free use	251.57(b).
251.3	Charges	251.57.
251.6	Exchange of use	Deleted, now unnecessary, conflicts with Title IV FLPMA.
251.7	Alaskan home and industrial sites	Deleted, made ineffective by the National Forest Management Act of 1976 and Pub. L. 95-174.
251.8	Community improvements	Deleted, this now falls under Title V FLPMA.
251.50-65	Act of March 4, 1911, Procedures	Replaced by Title V FLPMA.

Impact Statements

It is hereby determined that publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (U.S.C. 4332(2)(c)).

The impact of this regulation has been considered against economic impact statement criteria and it has been determined that an economic impact statement is not required.

M. Rupert Cutler,

Assistant Secretary.

May 14, 1979.

In light of the foregoing, it is proposed to amend 36 CFR Part 251—Land Uses as follows:

1. By revising the table of contents to read as follows:

PART 251—LAND USES

Common Mineral Materials

Sec.

251.4 Disposal of materials.

251.4a Use and disposal of materials in acquired and related lands.

Natural Resources Control

251.9 Management of municipal watersheds.

251.9 Prohibition of location of mining claims within certain areas in the Custer State Park Game Sanctuary, South Dakota.

251.11 Governing mining locations under the mining laws of the United States within that portion of the Barney National Forest, State of South Dakota, designated as the Custer State Park Game Sanctuary.

251.14 Conditions, rules, and regulations to govern exercise of timber rights reserved in conveyances to the United States.

251.15 Conditions, rules and regulations to govern exercise of mineral rights reserved in conveyances to the United States.

Rights of Grantors

251.17 Grantor's right to occupy and use lands conveyed to the United States.

251.18 Rights-of-way reserved by the grantor on lands conveyed to the United States.

251.19 Exercise of water rights reserved by the grantor of lands conveyed to the United States.

Designation of Areas

251.23 Experimental areas and research natural areas.

Petersburg Watershed

Sec.

251.35 Petersburg Watershed.

Special Uses

251.50 Special uses.
251.51 Definitions.
251.52 Delegaton of authority.
251.53 Authorities.
251.54 Special use applications.
251.55 Nature of interest.
251.56 Terms and conditions.
251.57 Rental fees.
251.58 Cost reimbursement. [Reserved]
251.59 Transfer of special uses.
251.60 Termination and suspension.
251.61 Modification.
251.62 Acceptance.

Authority: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, sec. 1, 33 Stat. 628; (16 U.S.C. 551, 472), unless otherwise noted; (43 U.S.C. 1761).

Special Use Permit (Heading Changed to Common Mineral Materials)

§§ 251.1–251.3 and 251.6–251.8 [Revoked]

2. By changing the heading of the first subpart from Special Use Permit to Common Mineral Materials and by revoking §§ 251.1 through 251.3 and 251.6 through 251.8.

Rights-of-Way for Electric Power Transmission Lines (Heading Changed to Special Uses)

3. By changing the heading of the last subpart from Rights-of-way For Electric Power Transmission Lines to Special Uses and by revising the subpart to read as follows:

Special Uses

§ 251.50 Special uses.

(a) All uses of National Forest lands, improvements and resources, excepting those provided for in the regulations govering the disposal of timber, minerals, and mineral materials, and the grazing of livestock shall be designated "special uses," and shall be authorized by special use permits, easements, or leases.

(b) Nothing in this section shall by construed to prohibit the temporary occupancy of National Forest lands without permit for the protection of life or property in emergencies, provided a special use permit for such use is obtained at the earliest opportunity.

(c) The temporary use or occupancy of National Forest lands by individuals for camping, picnicking, hiking, fishing, hunting, riding, boating, parking of vehicles and similar purposes may be allowed without a special use permit: *Provided,* That the prescribed fee is paid for such use or occupancy of sites for which a schedule of fees has been established; *And provided further,* That permits may be required for such uses when in the judgment of the Chief of the Forest Service the public interest or the protection of such lands requires the issuance of permits.

§ 251.51 Definitions.

(a) "Applicant"—any individual, partnership, corporation, association, or other business entity, and any Federal, State or governmental entity or agency which applies for a special use authorization.

(b) "Authorized Officer"—an employee of the Forest Service who has been delegated the authority to act for the Chief.

(c) "Chief"—the Chief of the Forest Service.

(d) "Easement"—Authorization for a nonexclusive right of use for a specified facility and purpose which conveys a conditioned interest in National Forest System land and which is revocable for abandonment or noncompliance only after an administrative proceeding pursuant to 5 U.S.C. section 554.

(e) "Holder"—any applicant who has received a special use authorization.

(f) "Lease"—An authorization which conveys a right of occupancy and use of National Forest System land for a specified facility, period, and purpose and is both revocable and compensable according to its terms.

(g) "National Forest System Lands"—all lands and interests in lands administered by the Forest Service.

(h) "Permit"—a special use authorization which provides permission, without conveying an interest in land, to occupy and use National Forest System land for specified purposes, and which is revocable at the discretion of the authorized officer.

(i) "Right-of-way"—An easement, permit, or lease that allows the use of Federal lands for the construction, operation, maintenance and termination of a project or facility passing over, upon, under or through such lands.

(j) "Secretary"—the Secretary of Agriculture.

(k) "Special Use Authorization"—a permit, lease, or easement which conveys occupancy and/or use privileges to a holder.

(l) "Term Permit"—a special use authorization to occupy and use National Forest System lands other than rights-of-way under 43 U.S.C. 1761, for a

specified period and is both revocable and compensable according to its terms.

§ 251.52 Delegation of authority.

Special use authorizations shall be issued, granted, amended, or renewed by the Chief of the Forest Service, or upon authorization from him under existing delegation at 7 CFR Part 260, by the Regional Forester, Forest Supervisor, Forest Ranger, or other forest officer, and shall be in such form and contain such terms, stipulations, conditions, and agreements as may be required by the regulations of the Secretary of Agriculture and the instructions of the Chief of the Forest Service.

§ 251.53 Authorities.

The Chief of the Forest Service under authority duly delegated, or the Chief's delegated representative, is authorized to issue permits, term permits and leases and to grant easements, as follows:

(a) Permits under the Act of June 4, 1897 (30 Stat. 35; 16 U.S.C. 551) for purposes other than rights-of-way.

(b) Permits under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431, 432), for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity in conformity with the rules and regulations prescribed by the Secretaries of the Interior, Agriculture, and War, December 28, 1906 (43 CFR 3.1 to 3.17).

(c) Leases under the Act of February 28, 1899 (30 Stat. 908; 16 U.S.C. 495) for public sanitariums or hotels near or adjacent to mineral springs.

(d) Term permits under the Act of March 4, 1915 (38 Stat. 1101, as amended, 70 Stat. 708; 16 U.S.C. 497) for periods not exceeding thirty years and for not to exceed eighty acres for the purposes of (1) hotels, resorts, and other structures and facilities, other than rights-of-way for recreation, public convenience, or safety; (2) industrial or commercial purposes, other than rights-of-way; and (3) education or public activities; and for not to exceed five acres for summer homes and stores.

(e) Except for rights-of-way; permits, term permits, leases, and easements as authorized by the Act of September 3, 1954 (68 Stat. 1146; 43 U.S.C. 931c, 931d), to States, counties, cities, towns, townships, municipal corporations, or other public agencies for periods not in excess of 30 years, at prices representing the fair market value, fixed by the Chief, Forest Service, through appraisal for the purpose of constructing and maintaining on such lands public buildings or other public works.

(f) Term permits under Section 7 of the Act of April 24, 1950 (64 Stat. 84; 16 U.S.C. 580d) for periods not exceeding thirty years for the use of structures or improvements under the administrative control of the Forest Service and land used in connection therewith.

(g) Permits, term permits, and easements in the National Grasslands and other lands acquired or adminstered under Title III, Act of July 22, 1937 (50 Stat. 525; 7 U.S.C. 1011d) for purposes other than rights-of-way.

(h) Easements for rights-of-way for pipeline purposes for the transportation of oil and gas and products thereof; and permits for the temporary use of additional lands as is necessary in connection with construction, operation, maintenance or termination of the pipeline or to protect the natural environment or the public safety under Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449) as amended (30 U.S.C. 185).

(i) Permits, leases and easements under the Federal Land Policy and Management Act of 1976 (90 Stat. 2743; 43 U.S.C. 1761–71) for rights-of-way for:

(1) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) Pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) Systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791);

(5) Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communications;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities; or

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through National Forest System lands; and

(8) Permits for the temporary use of additional lands as is reasonably necessary for the construction, operation, maintenance, or termination of a right-of-way project or a portion thereof, or for access thereto.

(j) Temporary or permanent easements under the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532–38) for road rights-of-way over lands and interests in land administered by the Forest Service. The Regulations pertaining to procedures under this authority appear in 36 CFR 212.10.

(k) Permits under the Wilderness Act of September 3, 1964 (16 U.S.C. 1131–36) for temporary structures and commercial services and for access to valid mining claims or other valid occupancies and to surrounded State or private land within designated wilderness. The Regulations under this authority appear in 36 CFR Part 293.

(l) Permits under the Land and Water Conservation Fund Act of September 3, 1964 (86 Stat. 459) for group activities, recreation events, motorized recreation vehicles, and other specialized recreation uses.

§ 251.54 Special use applications.

(a) *Pre-application activity.* When occupancy and/or use of National Forest System land is desired a proponent is encouraged to contact the Forest Service office(s) responsible for management of the affected land as early as possible so potential constraints may be identified, the proposal can be considered in land management plans, and processing of an application can be tentatively scheduled. The proponent will be given guidance and information about: (1) Possible land use conflicts as identified by review of land management plans, landownership records, and other readily available information sources; (2) application procedures and probable time requirements; (3) applicant qualifications; (4) cost reimbursement requirements; (5) necessary associated clearances, permits, and licenses; (6) environmental and management considerations; (7) special conditions; and (8) identification of on-the-ground investigations which will require temporary use permits. If requested by the proponent, the Forest Service officer will, to the extent reasonable and authorized by law, not disclose project

and program information revealed during preapplication contacts.

(b) *Filing applications.* Applications for special uses will be filed with the district ranger or forest supervisor having jurisdiction over the affected land (36 CFR 200.2) except:

(1) Applications for projects on lands under the jurisdiction of two or more administrative units of the Forest Service may be filed at the most convenient Forest Supervisor's Office having jurisdiction over part of the project and the applicant will be notified where subsequent communications should be directed;

(2) Applications for Federal Aid Highways will be filed in the form of a letter from the State Highway Department to the Federal Highway Administrator pursuant to regulations 23 CFR Part 712, Subpart E;

(3) Applications for cost-share and other road easements will be filed in accordance with regulations 36 CFR 212.10 (c) and (d);

(4) Applications for oil and gas pipeline rights-of-way crossing Federal lands under the jurisdiction of two or more Federal agencies shall be filed with the State Office, Bureau of Land Management, pursuant to regulations 43 CFR Part 2882.

(c) *Coordination of applications.* Some authorizations for use of National Forest System land will be contingent upon State, county, or other Federal agency license, permit, certificate or other approval document such as, Federal Communication Commission license, Federal Energy Regulatory Commission license, State water right, or county building permit. Applicants filing applications with other Federal, State or local agencies for a license, certificate, or other authority for a project on National Forest System land, other than an oil or gas pipeline right-of-way crossing land under the jurisdiction of two or more Federal agencies, will simultaneously file an application with the Forest Service under this section for the appropriate authority to use the National Forest System land. To minimize duplication, pertinent information from the application made to the other agency can be appended and referenced in the submittal to the Forest Service.

(d) *Rights of applicants.* The filing of an application entitles the applicant only to a full review of the application. No rights or use privileges are conveyed without written authorization.

(e) *Application content.* Applications shall include:

(1) *Applicant identification.* Identification of the applicant sufficient that the Government will know the true identity of the entity and/or individuals applying. The authorized officer may accept the the findings of an agency such as a Public Utility Commission, the Federal Energy Regulatory Commission, or the Interstate Commerce Commission, for example, in lieu of another detailed finding. Information required by this provision which is already on file with the Forest Service need not be refiled if reference is made to the previous filing date, place and case number. The applicant's name and address is required and, if the applicant is not an individual, the name and address of the applicant's agent who is authorized to receive notice of actions pertaining to the application. If called for by the authorized officer, the applicant shall furnish the following additional information:

(i) A State and local government agency: A copy of the authorization under which the application is made.

(ii) A public corporation: The statute or other authority under which it was organized.

(iii) A Federal government agency: The title of the agency official delegated the authority to file the application.

(iv) A private corporation: Evidence of incorporation and, if it is operating in a State other than that in which it is incorporated, a certificate from the Secretary of State or other proper official of that State indicating that it has complied with the laws of the State governing foreign corporations to the extent require to entitle the company to operate in good standing under the laws of that State; and the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and the name and address of each affiliate of the entity together with, in the case of an affiliate, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity and, in the case of an affiliate which controls that entity, the number or shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(v) A partnership, association or other unincorporated entity: A certified copy of the articles of association or other similar document, if any, creating the entity and a certificate of compliance entitling the partnership to operate in good standing under the laws of the State.

(2) *Technical and financial capability.* Sufficient evidence to satisfy the authorized officer that the applicant has or, prior to commencement of construction, will have the technical and financial capability to construct, operate, maintain, and terminate the project for which authorization is requested, and is otherwise acceptable.

(3) *Project description.* A project description in sufficient detail to enable the authorized officer to determine the feasibility of the project or activity proposed, its impacts on the environment, any benefits provided to the public, the safety of the proposal, the lands to be occupied or used, the terms and conditions to be included, and whether the proposal will comply with the Regulations of the Secretary of Agriculture.

(4) *Environmental protection plan.* For a new project which may have a significant impact on the environment, a plan for the protection and rehabilitation of the environment during construction, operation, maintenance, and termination of the project.

(5) *Additional information.* Any other information and data requested by the authorized officer to enable him to determine feasibility of the project or activity proposed; impacts on the environment; compliance with applicable statutes; compliance with requirements for associated clearances, certificates, permits, or licenses; and suitable terms and conditions to be included in the authorization; and, to make a decision to approve or deny the application.

(f) *Processing applications.* The authorized officer will acknowledge receipt of the application in writing. The acknowledgement will authorize the applicant to make nondisturbing use of National Forest land for studies and the gathering of information necessary for completion of the application. Surveys, test pits, studies, and other activities which result in land occupancy or noticeable disturbance of the land or resources may proceed only upon the issuance of appropriate special use permits. Thereafter, the authorized officer will issue temporary permits as necessary to allow the applicant to enter upon the land to gather information; assess the applicant's qualifications; complete an environmental analysis and/or an environmental impact statement in accordance with the National Environmental Policy Act of 1969; determine compliance with appliable statutes; consult with other agencies, local officials, or interested parties and hold public meetings when sufficient interest exists to warrant the time and expense; and take any other action necessary to fully evaluate and

make a decision to approve or deny the application and to prescribe suitable terms and conditions. Federal, State, and local government agencies and the public will be given adequate notice and an opportunity to comment upon special use proposals in accordance with Forest Service practices established under the National Environmental Policy Act and OMB Circular A–95.

(g) *Special application procedures*—(1) *Application for oil and gas pipeline rights-of-way.* These will include the citizenship of the applicant(s) and disclose the identity of the participants in the entity. Such disclosure shall include, where applicable, the name and address of each partner, the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of the United States of America, shall not own any interest in any oil and gas pipeline right-of-way or associated permit. The authorized officer shall notify the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources, promptly upon receipt of an application for a right-of-way for a pipeline twenty-four (24) inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty (60) days (not counting days on which the House of Representatives or the Senate has adjourned for more than three (3) days) after a notice of intention to grant the right-of-way, together with the Authorized Officer's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waivers the waiting period.

(2) *Applications for electric power transmission lines of 66 KV or above.* Each application for authority to construct and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or higher under this subpart shall be referred to the Secretry of the Department of Energy to determine the relationship of the proposed facility to the power-marketing program of the United States. Where the proposed facility will not conflict with the program of the United States the authorized officer, upon notification to that effect, will proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application: *Provided, however,* That if increased costs to the applicant will result from changes to eliminate conflicts with the power-marketing-program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements covering costs and other appropriate factors.

(h). *Denial.* Denial of an application will be in writing and state the reasons therefor.

§ 251.55 Nature of interest.

(a) A holder is authorized only to occupy such land and conduct such activities as is specified in the special use authorization issued or granted to him. The holder may allow others to use the land only as his agent in furtherance of his rights and privileges. The holder may sublet the use and occupancy of the premises, and improvements authorized only with the prior written approval of the authorized officer but the holder shall continue to be responsible for compliance with all conditions of the special use authorization.

(b) All rights in land subject to a special use authorization no expressly granted are retained by the United States, including but not limited to (1) continuing rights of access to all National Forest System lands (including the subsurface and air space); (2) a continuing right of physical entry to any part of the authorized facilities for inspection, monitoring, or for any other purposes or reason consistent with any right or obligation of the United States under any law or regulation; and (3) the right to require common use of the land or to authorize the use of the land by others in any way not inconsistent with a holder's existing rights and privileges after consultation with all parties involved.

(c) Special use authorizations are subject to all outstanding valid rights.

(d) Each special use authorization will specify the lands to be used or occupied which shall be limited to that which the authorized officer determines: (1) Will be occupied by the facilities authorized; (2) to be necessary for the construction, operation, and maintenance of the authorized facilities or the conduct of authorized activities; and, (3) to be necessary to protect the public health and safety and the environment.

(e) The holder of a special use authorization will secure authorization under applicable law, and pay in advance, the value as determined by the authorized officer for any mineral and vegetative materials (including timber) to be cut, removed, used, or destroyed by the holder from the authorized use area or other National Forest System lands.

§ 251.56 Terms and conditions.

(a) *General.* Each special use authorization shall contain: (1) Terms and conditions which will (i) carry out the purposes of applicable statutes and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, evironmental protection, and siting, construction, operation, and maintenance of or for such use if those standards are more stringent than applicable Federal standards; and (2) such terms and conditions as the authorized officer deems necessary to (i) protect Federal property and economic interests; (ii) manage efficiently the lands which are subject to the use or adjacent thereto and protect the other lawful users of the lands adjacent to or occupied by such use; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area of the use who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the use to cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public interest.

(b) *Duration and renewability.* Each special use authorization will specify its duration and, if appropriate, renewability. The duration shall be limited to a term which the authorized officer determines to be no longer than is necessary to accomplish the purpose of the authorization and is reasonable in light of all circumstances concerning the use, including: (1) Land management

and other plans, (2) public benefits provided, (3) cost and life of the authorized facilities, (4) project financial arrangements, and (5) the life of associated facilities, licenses, etc. Authorizations exceeding 30 years will provide for revision of terms and conditions at specified intervals to reflect changing times and conditions.

(c) *Pre-construction approvals.* The Forest Service will approve the location of all developments. Approval of design and plans (or standards, if appropriate) for construction of facilities will be required prior to construction.

(d) *Liability.* (1) Holders of rights-of-way for high risk use and occupancy, such as, but not limited, to powerlines, and oil and gas pipelines, shall be held strictly liable for all injury, loss, or damage, including fire suppression costs: *Provided,* That the maximum strict liability shall be specified, but shall not exceed $1,000,000. Liability for injury, loss or damage, including fire suppression costs, in excess of the specified maximum shall be determined by laws governing ordinary negligence.

(2) Holders of rights-of-way for other than high risk uses shall pay the United States for all injury, loss, or damage, including fire suppression costs, in accordance with existing Federal and State laws.

(3) Holders of rights-of-way shall also indemnify the United States from any and all liability, loss, or damage the United States may suffer as a result of claims, demands, losses, or judgments against the United States arising from the use and occupancy of rights-of-way granted under these regulations.

(e) *Bonding.* The authorized officer may require the holder of a special use authorization to furnish a bond or other security satisfactory to him to secure the obligations imposed by the terms of the authorization.

(f) *Special terms and conditions.* (1) Public service enterprises. Special use permits authorizing the operation of public service enterprises, shall require that the permittee charge reasonable rates and furnish such services as may be necessary in the public interest.

(2) Common carriers. Oil and gas pipelines and related facilities authorized under Section 28 of the Mineral Leasing Act of 1920, as amended, shall be constructed, operated and maintained as common carriers.

The owners or operators of pipelines shall accept, convey, transport, or purchase without discrimination all oil gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands. In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased. The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality. Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(3) Electric power transmission facilities having a voltage of 66 kilovolts or more. Unless waived on the advice of the power-marketing administration an applicant for a right-of-way for an electric power transmission facility having a voltage of 66 kilovolts or more must execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following:

(i) In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(ii) The Department of Energy—(hereinafter referred to as the "Department") shall be allowed to utilize for the transmission of electric power and energy any surplus capacity of the transmission facility in excess of the capacity needed by the holder of the grant (subsequently referred to in this paragraph as "holder") for the transmission of electric power and energy in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and to utilize the increased capacity for the transmission of electric power and energy. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(A) When the Department desires to utilize surplus capacity thought to exist in the transmission facility, notification will be given to the holder and the holder shall furnish the Department within 30 days a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the transmission of electric power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(B) Where the certificate indicates that there is not surplus capacity or that the surplus capacity is less than that required by the Department the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt of such additional information the authorized officer shall determine, as a matter of fact, if surplus capacity is available and, if so, the amount of such surplus capacity.

(C) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

(D). The expense of the interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(E) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition, and, except in emergencies, shall maintain in a closed position all connections under the holder's control necessary to the transmission of the Department's power and energy over the holder's transmission facilities. The parties may, by mutual consent, open any switch where necessary or desirable for maintenance, repair or construction.

(F) The transmission of electric power and energy by the Department over the holder's transmission facilities will be effected in such manner as will not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the transmission facility which has been provided at the Department's expense.

(G) The holder will not be obligated to allow the transmission of electric power and energy by the Department to any person receiving service from the holder on the date of the filing of the

application for a grant, other than statutory preference customers including agencies of the Federal Government.

(H) The Department will pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy, the payment to be an amount in dollars representing the same proportion of the total monthly cost of such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost will be determined in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission, exclusive of any investment by the Department in the part of the transmission facilities utilized by the Department.

(I) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department, the holder needs for the transmission of electric power and energy in connection with its operations the whole or any part of the capacity of the transmission facility theretofore certified or determined as being surplus to its needs, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification or determination shall not affect the right of the Department to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this section.

(J) If the Department and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the authorized officer shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the authorized officer are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on the Department and the holder.

(K) As used in this section, the term "transmission facility" included (*1*) all types of facililties for the transmission of electric power and energy and facilities and (*2*) the entire transmission line and associated facilities, from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(L) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Secretary of Energy or his designee.

§ 251.57 Rental fees.

(a) Special use authorizations, except as otherwise provided in paragraph (b) of this section or when specifically authorized by the Secretary of Agriculture, shall require the payment in advance of an annual fee as determined by the authorized officer. The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles. *Provided, however,* When the annual fee is less than $100 an advance lump-sum payment for up to five years may be required.

(b) A lesser charge, including free use, may be authorized when equitable and in the public interest, for the use and occupancy of National Forest System lands in the following circumstances:

(1) The holder is a Federal, State, or local government or any agency or instrumentality thereof; excluding municipal utilities and cooperatives whose principal source of revenue is customer charges.

(2) The holder is a nonprofit association or nonprofit corporation, which is not controlled or owned by profit-making corporations or business enterprises, and is engaged in public or semi-public activity which furthers public health, safety, or welfare.

(3) The holder provides without charge, or at reduced charges, a valuable benefit to the public or to the programs of the Secretary. A fee may be waived when a right-of-way is authorized in reciprocation for a right-of-way conveyed to the United States.

(4) When the value of the use is included in the fees for an authorized use or occupancy for which the United States is already receiving compensation.

(c) Special use permits issued under section 7 of the act of April 24, 1950, may require as all or a part of the consideration the reconditioning and manintenance of the government-owned or controlled structures, improvements, and land to a satisfactory standard: *Provided,* That the total consideration so received shall be commensurate with the value of the use authorized.

(d) Special use permits involving government-owned or controlled buildings, structures, or other improvements which require caretakers' services, or the furnishing of special services such as water, electric lights, and clean-up, may require the payment of an additional fee or charge to cover the cost of such services (15 FR 5902, August 31, 1950, as amended at 21 FR 7722, October 10, 1956).

(e) Rental fees may be initiated or adjusted whenever necessary to reflect current fair market value (1) as a result of fee review or (2) upon a change in the holder's qualifications under paragraph (b) of this section. Reasonable notice will be given prior to imposing or adjusting rental fees.

§ 251.58 Cost reimbursement. [Reserved]

§ 251.59 Transfer of special use privileges.

A special use authorization may be transferred with approval of the authorized officer, provided the transferree is qualified as an applicant (see § 251.54) and agrees to comply with and be bound by the terms and conditions of the authorization and such new conditions and stipulations as existing or prospective circumstances may warrant. If the holder of a special use authorization through voluntary sale or transfer or through enforcement of a valid legal proceeding or operation of law shall cease to be the owner of the authorized physical improvements other than any owned by the United States, the authorization shall be subject to cancellation to extinguish the rights and privileges granted therein.

§ 251.60 Termination and suspension.

(a) The authorized officer may terminate or suspend any special use authorization (1) for noncompliance with applicable statutes, regulations, or terms and conditions of the authorization; (2) for failure of the holder to exercise the rights and privileges granted; (3) with the consent of the holder; or (4) when, by its terms, the authorization terminated on the occurrence of a fixed or agreed upon condition, event, or time.

(b) Permits may be terminated in accordance with terms of the permit, for reasons in the public interest.

(c) Rights-of-way granted to a Federal agency will be terminated only with that agency's concurrence.

(d) Prior to suspension or termination, the authorized officer shall give the holder written notice of the grounds for such action and reasonable time to cure any noncompliance. *Provided, however,* Immediate temporary suspension may be required when the authorized officer determines it to be necessary to protect the public health or safety or the environment. In any such case, the superior of the authorized officer will, within 10 days of request of the holder, arrange for an on-the-ground review of the adverse conditions with the holder. Following this review the superior will take action to affirm, modify or cancel the suspension as soon as possible.

(e) A permittee may request administrative review of decisions giving notice of termination or suspension under 36 CFR 211.19.

(f) In the case of an easement, an appropriate administrative proceeding pursuant to 5 U.S.C. 554 shall be held. If the Administrative Law Judge determines that grounds for suspension or termination exist and such action is justified, the authorized officer shall suspend or terminate the easement. Provided, however, immediate temporary suspension may be affected prior to an administrative proceeding when the authorized officer determines it to be necessary to protect the public health or safety or the environment. No administrative proceeding shall be required where the easement by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

(g) Upon abandonment, termination, revocation, or cancellation of a special use authorization, the holder shall remove within a reasonable time his structures and improvements and shall restore the site, unless otherwise agreed upon in writing or in the authorization. If the holder fails to remove all such structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but that will not relieve the holder of liability of the cost of their removal and restoration of the site.

§ 251.61 Modifications.

(a) Material deviation during construction from the approved plans or the location shown in the application shall be made only upon the prior approval of the authorized officer. A significant deviation not considered in processing the application will receive appropriate review prior to approval.

(b) The holder may be required to furnish as-built plans, map(s), or survey(s) of the actual facilities upon completion.

(c) Holders will contact the responsible District Ranger or Forest Supervisor and develop contingency plans prior to maintenance or reconstruction activities that will materially impact the natural resources, other users, or the public.

(d) A holder will file a new application when a special use authorization must be amended to authorize new or additional use or area.

§ 251.62 Acceptance.

An easement, lease, or term permit shall be conditioned upon the signed acceptance of the applicant. Written acceptance shall constitute a contract between the applicant and the United States. Failure to accept within 60 days is sufficient reason for a denial of the application.

[FR Doc. 79-15632 Filed 5-17-79; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 162]

[OPP-250018; FRL 1228-4]

Enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act; Registration, Reregistration, and Classification Procedures

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Notification to the Secretary of Agriculture of Proposed Regulation prescribing terms and conditions whereby a State may issue a registration for a pesticide to meet a "special local need" under Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

SUMMARY: Notice is hereby given as required by Section 25(a)(2)(D) of FIFRA that the Administrator, EPA, has forwarded to the Secretary of the U.S. Department of Agriculture, a copy of EPA's proposed regulation designed to implement Section 24(c) of FIFRA, which authorizes States to issue registrations for pesticides to meet a "special local need".

FOR FURTHER INFORMATION CONTACT: P. H. Gray, Jr., Operations Division (TS-770-M), Office of Pesticide Programs, EPA, 401 M St. SW., Washington, D.C. 20460. (202/472-9403).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register.** If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall publish in the **Federal Register** (with the proposed regulation) the comments of the Secretary, if requested by the Secretary, and the response thereto of the Administrator. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the regulation for publication in the **Federal Register** any time after such 30 day period.

Pursuant to FIFRA, Section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. The Section 24(c) regulation has also been submitted for review to the FIFRA Scientific Advisory Panel as required by Section 25(d).

Dated: May 10, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-15651 Filed 5-17-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 100b]

Consolidated Grant Applications for Insular Areas

Correction

In FR Doc. 79-15008 appearing at page 28012 in the issue for Monday, May 14, 1979, in the "**FOR FURTHER INFORMATION CONTACT**" paragraph, the telephone number should be corrected to read: "(202) 472-3730".

BILLING CODE 1505-01-M

Social Security Administration

[45 CFR Parts 232, 233 and 302]

Aid to Families With Dependent Children, Child Support Enforcement; Redetermining Eligibility and Computing a Supplemental Payment in States Required To Do So

AGENCIES: Social Security Administration, HEW, Office of Child Support Enforcement, HEW.

ACTION: Notice of Decision To Develop Regulations.

SUMMARY: The Social Security Administration and the Office of Child Support Enforcement plan to recommend to the Secretary the publication of proposed regulations for redetermining eligibility and computing a monthly supplemental payment for AFDC recipients in States required to do so by Section 402(a)(28) of the Social Security Act. That section requires that monthly supplemental payments be made to recipients who have less disposable income because the law now requires that child support payments previously paid directly to the family be paid to the State Child Support Enforcement Agency (under Part IV–D of the Act).

This rule will affect assistance payments in three groups of States: (1) Those which did not, in July 1975, and which do not now, discount child support payments "dollar-for-dollar" in computing the amount of a family's assistance; (2) those which permit recipients to retain $5 per month of income, under 45 CFR 233.20(a)(4)(i), without any reduction in assistance; and (3) those which allow the conservation of certain kinds of income for the future identifiable needs of a child under section 402(a)(8)(B)(i) of the Act without any reduction in assistance.

This proposal will establish a new 45 CFR 232.21 and amend 45 CFR 233.20 and 302.32.

The Department of Health, Education, and Welfare has classified these regulations as policy significant.

FOR FURTHER INFORMATION CONTACT: Ms. Alice M. Stewart, 330 C Steet, S.W., Washington, D.C. 20201, telephone (202) 245–0521.

Dated: May 15, 1979.

Approved:

Stanford G. Ross,

Commissioner of Social Security and Director, Office of Child Support Enforcement.

[FR Doc. 79–15620 Filed 5–17–79; 8:45 am]

BILLING CODE 4110–07–M

FEDERAL MARITIME COMMISSION

Proposed Procedures for Environmental Policy Analysis

[46 CFR Part 547]

[Docket No. 79–51]

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The rules proposed in Docket No. 75–6 are withdrawn and replaced by new proposed rules. The purpose and effect of this action is to provide procedures for implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

DATES: Comments (original and fifteen copies) on or before June 30, 1979.

ADDRESSES: Comments to: Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Room 11101, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: The Commission commenced a rulemaking proceeding in Docket No. 75–6 to adopt rules implementing the National Environmental Policy Act of 1969 (NEPA). Because of several intervening events, the most important of which is the promulgation of final rules by the Council on Environmental Quality (CEQ), we are discontinuing Docket No. 75–6 and in its place proposing to amend Title 46 CFR by adding Part 547 as set forth below.

In drafting this proposal we have considered CEQ's final regulations, comments received in Docket No. 75–6, and recent judicial interpretations of NEPA. These rules differ in many respects from our earlier proposal, and more fully comport with the purposes of NEPA as it applies to our unique regulatory scheme.

Sections 547.1 and 547.2 set forth, respectively, the purpose and scope of the rules and the organizational structure for handling all activities pursuant to NEPA. Section 547.2 designates the Chief of the Office of Environmental Analysis (OEA), under the direction of the Director, Bureau of Industry Economics, as the Commission official responsible for such activities.

A general information section 547.4, requires all comments submitted pursuant to this Part to be addressed to the Secretary of the Commission, and states that information and status reports on NEPA activities will be available from the OEA.

The definitions section 547.3, includes definitions of "Potential Action" and "Proposed Action" which reflect the specific procedures applicable to the Commission's activities.

Section 547.5, *Categorical Exclusions,* expands the list of exclusions in response to comments received in Docket No. 75–6 and upon review of all Commission activities. This better enables the Commission to identify those actions having a significant environmental impact and to allocate its resources in the review of those actions.

Sections 547.6 and 547.7 concern environmental assessments and findings of no significant impact. If, after completing an environmental assessment, the OEA detemines that a Commission action will not signficantly affect the environment, a finding of no significant impact will be prepared and published in the **Federal Register.** Normally this document will signify the end of the Commission's environmental consideration of the action.

If an environmental impact statement is to be prepared, the procedures in § 547.8 will govern. This section uses the terms "potential action" and "proposed action" as disjunctives to encompass all Commission actions. In certain circumstances, therefore, the Commission will begin the NEPA process before there is a Commission proposal, as that term has been defined by CEQ.

In Docket No. 75–6, § 547.13 set forth a procedure whereby a final environmental impact statement (FEIS) would be introduced into evidence at any hearing before an Administrative Law Judge (ALJ). This section has been deleted. NEPA does not require the introduction of an impact statement at an evidentiary hearing. It only requires that an agency, at the time of its report or decision, consider the environment together with its normal decision-making criteria. In actions before the Commission, this occurs at the time of the Commissoin's decision and report, not on or before the Initial Decision of an ALJ in those cases where one is prepared.

The procedure incorporated as subsections 2, 3, 4 and 5 of § 547.8(c) applies to all Commission proceedings, not only to those for which a hearing is conducted before an ALJ. It allows any party to a proceeding, within twenty days of issuance of the FEIS, to raise a substantial and material error of fact concerning the FEIS and request a hearing thereon. The Commission may then refer any such issue to an ALJ for resolution. This procedure eliminates any confusion which might occur if

hearings related solely to Shipping Act issues were infused with environmental issues and the parties' responses to the FEIS. The factual issues for resolution will be narrowed only to those which are substantial and material and can, therefore, be resolved expeditiously.

As an alternative to this proposal, the Commission has considered retaining the hearing procedure provision of Docket No. 75–6, with certain modifications. As modified, this section would read:

Sec. 547.—*Hearing Procedures*

(a) *Proceedings before an Administrative Law Judge* (1) Subject to any procedural requirements imposed by the Administrative Law Judge consistent with this part, when a Commission action requiring preparation of an environmental impact statement is the subject of a hearing under the Administrative Procedure Act, 5 U.S.C. 501 *et seq.*, and the Commission's rules of practice and procedure, 46 CFR Part 502, the OEA shall, prior to the close of the record, submit the FEIS for the record. This FEIS shall be considered the direct testimony of the person responsible for its preparation, and it shall be admitted into evidence in accordance with Rule 156 of the Commission's rules of practice and procedure, 46 CFR 502.156.

(2) Any party to the proceeding may, in the discretion of the Administrative Law Judge, cross-examine as to matters contained in the FEIS and offer non-cumulative, probative evidence in support or in opposition thereto. Such cross-examination may include examination of the person preparing the statement with respect to the statement, and others with respect to comments submitted by them.

(3) The Director of the Bureau of Hearing Counsel, or his or her designee, shall represent the OEA at all hearings under this Part except that, in the event of a conflict of interest, the Commission's General Counsel shall appoint special counsel to represent the OEA.

(4) Where an environmental impact statement is submitted in a proceeding before an Administrative Law Judge, the initial decision of the Administrative Law Judge shall make all necessary findings and conclusions with respect to all environmental issues raised by such impact statement. To the extent that the findings and conclusions of the Administrative Law Judge are different from those in the FEIS, the statement shall be deemed modified to that extent, and the initial decision shall be distributed as provided for in section 547.

(5) If the Commission upon review, either on its own motion or after receiving exceptions filed pursuant to the Commission's Rules of Practice and Procedure, 46 CFR Part 502, reaches conclusions different from those contained in an initial decision with respect to environmental issues, the FEIS will be deemed modified to that extent. Unless otherwise directed by the Commission, the Commission Order will be deemed final when served.

(b) *Other proceedings.* (1) If any party, by petition to the Commission within 20 days of service of the FEIS, shows that the FEIS contains a substantial and material question of fact, the resolution of which requires a hearing, and expressly requests that such a hearing be held, the Commission shall refer any such issue(s) to an Administrative Law Judge for expedited resolution consistent with the procedures set forth in this section.

(2) The Administrative Law Judge shall make such findings of fact on the issue(s) designated by the Commission and shall then certify such findings to the Commission which shall be deemed a supplement to the FEIS. To the extent that such findings differ from the FEIS, it shall be modified by the supplement.

This section would permit the consideration of environmental impact statements in formal hearings. Environmental impact statements in hearings before an ALJ would be submitted pursuant to subsection (a) which provides that final impact statements be submitted before the record is closed. The impact statement would be considered the direct testimony of the person responsible for its preparation, and treated like other evidence submitted for the record. Cross-examination would be limited, in the ALJ's discretion, to those instances where oral testimony will aid in resolving material and substantial factual diputes. Oral rebuttal testimony will be limited in the same manner. To the extent the ALJ's Initial Decision alters the findings and conclusions of the impact statement, the impact statement would be modified accordingly.

In those proceedings not heard before an ALJ where facts in a final statement are contested, the procedures in subsection (b) would apply. If a party timely challenges a factual assertion in a final impact statement and expressly requests a hearing, the Commission could, if good cause exists, refer any such issue to an ALJ for expedited resolution. The ALJ would make findings of fact on the issues designated by the Commission and certify such findings to the Commission.

Comments on the procedures embodied in § 547.8(c) and the alternative proposal set forth are invited from all interested persons.

Section 547.9 enumerates, to the extent possible, those Commission actions which would ordinarily require the preparation of an environmental impact statement. Section 547.10 requires the Commission to identify all alternatives considered by it in preparing its public record of its decision.

Section 547.11 concerns circumstances in which certain information must be filed with the Commission. It also indicates that, where appropriate, parties should seek early assistance from the OEA. Additionally, it clarifies that only the Commission can formally require that information be submitted, but that in appropriate cases the Commission will seek information under section 21 of the Shipping Act.

Now therefore, it is ordered, That notice is hereby given that the Federal Maritime Commission is proposing to amend Title 46 CFR by adding a new Part 547;

It is further ordered, That notice of this order and the attached proposed rules be published in the **Federal Register**; and

It is further ordered, That all interested persons may participate in this rulemaking proceeding by filing with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before June 30, 1979, an original and 15 copies of their views and arguments pertaining to the proposed rule. All suggestions for changes in the text of the proposed rule should be accompanied by the language thought necessary to accomplish the desired change and statements and arguments in support thereof.

By the Commission.

Francis C. Hurney,

Secretary.

PART 547—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

Sec.

Authority: Sec. 43, Shipping Act, 1916, (46 U.S.C. 841); sec. 102, National Environmental Policy Act of 1969, (42 U.S.C. 4332(2)(B)).

§ 547.1 Purpose and scope.

(a) *Purpose.* This part implements the National Environmental Policy Act of 1969 (NEPA) and incoporates and complies with the Council on Environmental Quality's (CEQ) Regulations (40 CFR parts 1500 *et seq.).*

(b) *Scope.* This part applies to all actions of the Federal Maritime

Commission (Commission). To the extent possible, the Commission shall integrate the requirements of NEPA with its obligations under section 382(b) of the Energy and Conservation Act of 1975, 42 U.S.C. 6362.

§ 547.2 Organization.

The Commission's activities performed pusuant to this part will be performed by the Bureau of Industry Economics' Office of Environmental Analysis (OEA). The Chief of the OEA, shall administer the Commission's EPA responsibilities.

§ 547.3 Definitions.

(a) "Shipping Act" means the Shipping Act, 1916, as amended, 46 U.S.C. 801 *et seq.*

(b) "Common Carriers by Water or Other Persons Subject to the Act" means any common carrier by water as defined by section 1 of the Shipping Act, including conferences of such carriers, or any person not a common carrier by water carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

(c) "Environmental Impact" means any alteration of existing environmental conditions of creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action under consideration.

(d) "Potential Action" means the range of possible Commission actions that may result from a Commission proceeding in which the Commission has not yet formulated a proposal. Such proceedings include investigations initiated pursuant to the Commission's statutory authority.

(e) "Proposed Action" means that stage of activity where the Commission has determined to take a particular course of action and the effects of that course of action can be meaningfully evaluated.

(f) "Environmental Assessment" means a concise document that serves to "briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact" (46 CFR 1508.9).

(g) "Recyclable" means any secondary material that can be used as a raw material in an industrial process in which it is transformed into a new product replacing the use of a depletable natural resource.

§ 547.4 General information.

(a) All comments submitted pursuant to this Part shall be addressed to the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573.

(b) A list of Commission actions for which a finding of no significant environmental impact has been made or for which an environmental statement is being prepared will be maintained by the Commission in the Office of the Secretary and will be available for public inspection.

(c) Information or status reports on environmental statements and other elements of the NEPA process can be obtained from the Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573 (telephone: [202] 523–5835).

§ 547.5 Categorical Exclusions.

(a) No environmental analyses need be undertaken or environmental documents prepared in connection with actions which do not individually or cumulatively have a significant effect on the quality of the human environment because they neither increase nor decrease air, water, or noise pollution; the use of fossil fuels, recyclables, or energy; or are purely ministerial actions. The following types of Commission actions are therefore excluded:

(1) Issuance, modification, denial and revocation of freight forwarder licenses, pursuant to section 44 of the Shipping Act.

(2) Certification of financial responsibility of passenger vessels pursuant to 46 CFR Part 540.

(3) Certification of financial responsibility for water pollution cleanup pursuant to 46 CFR Parts 542 and 543.

(4) Promulgation of procedural rules pursuant to 46 CFR Part 502.

(5) Acceptance or rejection of tariff filings in foreign and domestic commerce.

(6) Receipt of terminal tariffs pursuant to section 17 of the Shipping Act.

(7) Suspension of and/or decision to investigate tariff schedules pursuant to section 3 of the Intercoastal Shipping Act, 1933.

(8) Consideration of amendments to agreements filed pursuant to section 15 of the Shipping Act, which neither increase nor diminish the authority granted in the original approval of the section 15 agreement.

(9) Consideration of agreements between common carriers or other persons subject to the Shipping Act, to discuss, propose or plan future action, the implementation of which requires filing a further agreement under section 15 of the Shipping Act.

(10) Consideration of equipment interchange, husbanding or wharfage agreements filed for section 15 approval.

(11) Receipt of non-exclusive transshipment agreements pursuant to 46 CFR Part 524.

(12) Action relating to collective bargaining agreements pursuant to 46 CFR 530.9.

(13) Action pursuant to section 18(c) of the Shipping Act, concerning the justness and reasonableness of controlled carriers' rates, charges, classifications, rules or regulations.

(14) Receipt of self-policing reports and shipper requests and complaints pursuant to 46 CFR Parts 527 and 528.

(15) Receipt of financial reports prepared by common carriers by water in the domestic offshore trades pursuant to 46 CFR Parts 511 and 512.

(16) Adjudication of small claims pursuant to 46 CFR Part 502.301 *et seq.* and 46 CFR Part 502.311 *et seq.*

(17) Action taken on special docket applications pursuant to 46 CFR Part 502.92.

(18) Consideration of matters related solely to the issue of Commission jurisdiction.

(19) Investigations conducted pursuant to 46 CFR Part 513.

(20) Investigatory and adjudicatory proceedings pursuant to the Shipping Act, 1916, and the Merchant Marine Act of 1920, or portions thereof, the purpose of which is to ascertain past violations of these Act.

(21) Consideration of dual rate contract systems pursuant to section 14b of the Shipping Act.

(22) Action regarding access to public information pursuant to 46 CFR Part 503.

(23) Action regarding receipt and retention of minutes of conference meetings pursuant to 46 CFR Part 537.

(24) Administrative procurements (general supplies).

(25) Contracts for personal services.

(26) Personnel actions.

(27) Requests for appropriations.

(b) If interested persons nonetheless allege that a categorically excluded action will have a significant environmental effect (*e.g.*, increased or decreased: Air, water or noise pollution; use of recyclables; use of fossil fuels or energy) they shall, by written submission to the OEA, explain in detail their reasons. The OEA shall review these submissions and determine whether to prepare an environmental assessment. If the OEA determines not to prepare an environmental assessment, such persons may petition the Commission for review of the OEA's decision within 15 days of receipt of notice of such determination.

(c) If the OEA determines that the individual or cumulative effect of a particular action otherwise categorically excluded offers a reasonable potential of having a significant environmental impact, it shall prepare an environmental assessment pursuant to § 547.6.

§ 547.6 Environmental Assessments.

(a) Every Commission action, not specifically excluded under § 547.5, or for which the OEA must prepare an Environmental Impact Statement (EIS) pursuant to § 547.9, shall be subject to an environmental assessment.

(b) In appropriate cases, the OEA may publish in the **Federal Register** a Notice of Intent to Prepare and Environmental Assessment briefly describing the nature of the potential or proposed action and inviting written comments to aid in the preparation of the environmental assessment and early identification of the significant environmental issues. Such comments must be received by the Commission no later than 20 days from the date of publicaton of the notice in the **Federal Register.**

§ 547.7 Finding of No Significant Impact.

(a) If upon completion of an environmental assessment the OEA determines that a potential or proposed action will not have a significant impact on the environment, a finding of no significant impact shall be prepared and published in the **Federal Register.** This document shall accompany the environmental assessment and shall briefly present the reasons why the potential or proposed action, not otherwise excluded under § 547.5, will not have a significant effect on the human environment and why, therefore, an EIS will not be prepared.

(b) Petitions for review of a finding of no significant impact must be received by the Commission within 20 days from the date of publication in the **Federal Register.** If no petitions are received, the Commission may adopt the finding of no significant impact. If petitions are received, the Commission shall review the petitions and either adopt the finding of no significant impact or order the OEA to prepare an EIS pursuant to § 547.8. The Commission shall publish in the **Federal Register** a notice of adoption of a finding of no significant impact or a notice of the preparation of an EIS.

§ 547.8 Environmental Impact Statements.

(a) *General.* (1) An EIS shall be prepared by the OEA when:

(i) The environmental assessment indicates that a potential or proposd action may have a significant impact upon the environment; or

(ii) A potential or proposed action comes within one of the classes of actions set forth in § 547.9.

(2) The EIS process will commence:

(i) For adjudicatory proceedings, when the Commission issues an order of investigation or a complaint is filed;

(ii) For rulemaking or legislative proposals, as close as possible to the commencement of such action; and

(iii) For other actions, the time the action is noticed in the **Federal Register.**

(3) The major decision point in the EIS process is when the Commission issues its final decision or report on the action.

(4) In appropriate cases, the EIS shall consider any significant effect upon the environment of the global commons outside the jurisdiction of any nation.

(b) *Draft Environmental Impact Statements.* (1) The OEA will initially prepare a draft environmental impact statement (DEIS) in accordance with 40 CFR 1502.

(2) The DEIS shall be distributed to every party to a Commission proceeding for which it was prepared. One copy per person will also be provided to interested persons at their request. To the extent practicable, no fee will be charged or, if necessary, the fee shall be that provided in 46 CFR 503.43.

(3) Comments on the DEIS must be received by the Commission within forty-five (45) days of the date the Environmental Protection Agency (EPA) publishes in the **Federal Register** notice that the DEIS was filed with it. Eighteen copies shall be submitted as provided in § 547.4(a). Comments shall specifically address the adequacy of the DEIS and/or the merits of the alternatives discussed in it. All comments received will be made available to the public. Extensions of time for commenting on the DEIS may be granted by the Commission for up to 15 days if good cause is shown.

(c) *Final Environmental Impact Statement.* (1) After receipt of comments on the DEIS, the OEA will prepare a Final Environmental Impact Statement (FEIS) pursuant to 40 CFR Part 1502, which shall include a discussion of the possible alternative actions to a potential or proposed action. The FEIS will be distributed in the same manner as specified in § 546.8(b)(2).

(2) The FEIS shall be prepared prior to the Commission's final decision and shall be filed with the Secretary, Federal Maritime Commission. Upon filing, it shall become part of the administrative record.

(3) If any party, by petition to the Commission within 20 days of EPA's notice in the **Federal Register,** asserts that the FEIS contains a substantial and material error of fact which can only by properly resolved by conducting an evidentiary hearing, and expressly requests that such a hearing be held, the Commission may refer any such issue(s) to an Administrative Law Judge (ALJ) for expedited resolution.

(4) The ALJ shall make findings of fact on the issue(s) designated by the Commission and shall certify such findings to the Commission as a supplement to the FEIS. To the extent that such findings differ from the FEIS, it shall be modified by the supplement.

(5) Discovery may be granted by the ALJ on a showing of good cause and, if granted, shall proceed on an expedited basis.

§ 547.9 Actions normally requiring an EIS.

(a) The following classes of Commission actions will ordinarily require the preparation of an EIS:

(1) Actions which substantially alter cargo routing patterns resulting in significant changes in the use of fossil fuels or the production of air, water or noise pollution;

(2) Actions which change rates and thereby substantially alter the volume of recyclables resulting in significant changes in the use of fossil fuels or the recyclable's virgin counterpart or the production of air or water pollution;

(3) Actions which substantially change the type, capacity or number of vessels employed in a specific trade resulting in significant changes in the use of fossil fuels or the production of air, water or noise pollution;

(4) Actions which substantially alter terminal or port facilities resulting in significant changes in the production of air, water or noise pollution.

(b) For any such action, the OEA shall commence the preparation of an EIS without first preparing an environmental assessment.

§ 547.10 Record of decision.

The Commission shall consider each alternative described in the FEIS in its decisionmaking and review process. At the time of its final report or order, the Commission shall prepare a record of decision pursuant to 40 CFR 1505.2.

§ 547.11 Information required by the Commission.

(a) Every person filing a complaint, protest, petition, section 15 application or dual rate contract application requesting Commission action that will:

(1) Alter cargo routing patterns between ports or change modes of transportation;

(2) Change rates or services for recyclables;

(3) Change the type, capacity or number of vessels employed in a specific trade; or

(4) Alter terminal or port facilities;

shall submit to the Secretary, Federal Maritime Commission, no later than 15 days from the date of filing of such document, a statement setting forth in detail the impact of the requested Commissoin action on the quality of the human environment.

(b) The statement submitted shall include:

(1) A description of the requested Commission action;

(2) The probable impact of the requested Commission action on the environment (*e.g.*, the use of energy or natural resources, the effect on air, noise, water pollution) compared to the environmental impact created by existing uses in the area affected by it;

(3) Any adverse environmental effects which cannot be avoided if the Commission were to take or adopt the requested action;

(4) A description of any irreversible and irretrievable commitments of resources which will be involved in the requested action should it be taken or adopted by the Commission;

(5) The effect the requested action will have on the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(6) The alternatives to the requested Commission action.

If environmental impacts, either adverse or beneficial, are alleged, they must be sufficiently identified and quantified to permit meaningful review. Individuals may contact the OEA for informal assistance on how to prepare this statement. Early contact with the OEA is suggested. The OEA shall independently evaluate the information submitted and shall be responsible for assuring its accuracy if used by that official.

(c) In all cases, the OEA may request every common carrier by water, or other person subject to the Act, or any officer, agent or employee thereof, as well as all parties to proceedings before the Commission, to submit, within 25 days of such request, all material information necessary to comply with NEPA and this part. Such requests shall be informal. Information not produced in response to an informal request may be obtained by the Commission pursuant to section 21 of the Shipping Act.

§ 547.12 Time constraints for final administrative actions.

No decision on a proposed action shall be made or recorded by the Commission until the later of the following dates:

(a) Ninety (90) days after EPA's publication of the notice described in § 547.8(b) for a DEIS; or

(b) Thirty (30) days after publication of EPA's notice for an FEIS (40 CFR 1506.10(b)).

[FR Doc. 79-15617 Filed 5-17-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 79-114; RM-3169]

FM Broadcast Station in North Platte, Nebr.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of a third FM channel to North Platte, Nebraska. Petitioner, Tri-State Broadcasting Association, Inc., states the proposed station would provide an additional voice to a growing community.

DATES: Comments must be filed on or before July 9, 1979, and reply comments must be filed on or before July 30, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (North Platte, Nebraska); notice of proposed rule making.

Adopted: May 9, 1979.

Released: May 15, 1979.

By the Acting Chief, Broadcast Bureau:

1. *Petitioner, Proposal, Comments:*

(a) A petition for rule making [1] was filed on July 13, 1978, by Tri-State Broadcasting Association, Inc. ("petitioner"), licensee of daytime-only AM Station KJLT, North Platte, Nebraska, proposing the assignment of Class C Channel 278 as a third FM assignment to North Platte, Nebraska.

(b) The channel could be assigned in conformity with the minimum distance separation requirements.

(c) Petitioner states that, if the channel is assigned, it will apply for its use.

2. *Community Data:*

(a) *Location*: North Platte, seat of Lincoln County, is located in west central Nebraska, approximately 400 kilometers (250 miles) west of Omaha, Nebraska, and 384 kilometers (240 miles) northeast of Denver, Colorado.

(b) *Population*: North Platte—21,200; Lincoln County—29,538.[2]

(c) *Local Aural Broadcast Service:* North Platte is served locally by two full-time AM stations (KAHL and KODY). Two Class C FM channels (235 and 246) are assigned to North Platte. There is a pending application for one and a construction permit has been granted for the other.

3. *Economic Considerations:* Petitioner states that North Platte is the largest city in western Nebraska, and is the business and cultural center for the surrounding area. It asserts that the North Platte Chamber of Commerce estimates the present population of Lincoln County to be 37,000. Petitioner claims that the current estimated population of North Platte is 25,500. We are told that the area has a strong agricultural base with cattle ranching and the production of alfalfa for stock feeding as well as for the manufacture of alfalfa pellets being the significant aspects of the agricultural activity. Also, retail sales for North Platte are said to be increasing.

4. *Preclusion Studies and Coverage:* Preclusion would occur on all channels from 275 through 281. Twenty-one communities with populations greater than 1,000 will sustain preclusion on one or more of these channels. Twelve [3] of these have no FM channel assignments; two (Ainsworth and Cozad) have AM stations. A staff study verifies petitioner's list which indicated that alternate channels are available for assignment to nine of the twelve communities. Petitioner should provide information regarding available alternate channels for the remaining communities: Rushville, Cambridge and Cozad. It appears that no first or second FM or nighttime aural service would be provided.

5. *Additional Considerations:* Petitioner asserts that outside of the city of North Platte, the population is found mainly on ranches and farms, hence, the

[1] Public Notice of the petition was given on August 2, 1978, Report No. 1135.

[2] Population figures are taken from the 1970 U.S. Census.

[3] *Nebraska:* Grant (pop. 1,204); Ainsworth (2,073), Rushville (1,137) Chappell (1,204), Oshkosh (1,067), Cambridge (1,145), Curtis (1,166), Cozad (4,219); *South Dakota:* Martin (1,248), Pine Ridge (2,768); *Colorado:* Holyoke (1,640); *Kansas:* Oakley (2,327).

wide area of which North Platte is the focal point, is one which needs the FM signal, particularly for weather forecasts, news and informational broadcasts. It claims that although local service to the community is presently provided by two AM stations and that the two FM channels assigned to North Platte have been applied for, such communications outlets are not sufficient in light of North Platte's size and growth. Petitioner notes that FM radio is particularly advantageous during weather adversities to carry the needed information which is important in this tornado and blizzard area of the country.

6. The request for a third FM assignment to a community of 21,200 persons exceeds the FM population guidelines. Petitioner alleges that North Platte has increased in population but has supplied no documentation to this effect. It is requested to do so in comments. Because of the relative isolation of the community we are willing to consider the proposal even though it is in excess of the population criteria we employ. However, petitioner should supply additional information about the apparent relative scarcity of area radio services.

7. In light of the foregoing, the Commission proposes to amend the FM Table of Assignments (§ 73.202(b) of the Commission's Rules), with regard to North Platte, Nebraska, as follows:

City	Channel No.	
	Present	Proposed
North Platte, Nebr.	235, 246	235, 246, 278

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before July 9, 1979, and reply comments on or before July 30, 1979.

10. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Martin I. Levy,

Acting Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposing Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 79-15474 Filed 5-17-79; 8:45 am]

BILLING CODE 6712-01-M

[47 CFR Parts 83 and 87]

[PR Docket No. 79-100; FCC 79-258]

Restrictions governing the use of the frequency 157.425 MHz (Channel 88) by aircraft consistent with the restrictions applying to other marine VHF frequencies available to aircraft.

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule Making.

SUMMARY: We are proposing to make the frequency 157.425 MHz subject to the same restrictions that are applicable to other marine VHF frequencies when being used by aircraft. Our rules presently contain inconsistencies on usage of marine VHF frequencies by aircraft and this action will eliminate the inconsistencies.

DATES: Comments must be received on or before June 18, 1979, and Reply Comments must be received on or before June 28, 1979.

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

FOR FURTHER INFORMATION CONTACT: Kemp J. Beaty, Private Radio Bureau, (202) 632-7197.

SUPPLEMENTAL INFORMATION: In the Matter of amendment of Parts 83 and 87 of the rules to make the restrictions governing the use of the frequency 157.425 MHz (Channel 88) by aircraft consistent with the restrictions applying to other marine VHF frequencies available to aircraft.

Adopted: May 2, 1979.

Released: May 10, 1979.

Introduction

By the Commission: 1. On July 12, 1978, we adopted the Report and Order in Docket 21255 (FCC 78-488; 95438; released July 26, 1978; 43 FR 32797) which permitted aircraft to use certain marine VHF frequencies for communication with ships. By a later Order adopted September 1, 1979 (Mimeo 4047; released September 13,

1978; 43 FR 41896) these same amendments were placed in Part 87.

2. Aircraft engaged in fish spotting had been permitted to use the frequency 157.425 MHz (Channel 88) to communicate with vessels prior to the action in Docket 21255. The only restriction on this usage was that aircraft had to use a transmitter type accepted for Part 83. This permitted the use of 25 watts of output power on Channel 88. The other marine VHF frequencies authorized for use by aircraft are restricted to 5 watts output power and have an altitude restriction of 1000 feet. These restrictions are the same as those established by the International Telecommunication Union (ITU) for international use.[1]

3. Our present rules regarding the use of the Channel 88 by aircraft are in conflict with the philosophy of the international Radio Regulations and inconsistent with our other rules regarding the use of marine VHF frequencies by aircraft. It is only appropriate that we modify our rules regarding Channel 88 when used by aircraft to eliminate the conflict with the international Radio Regulations and to eliminate the inconsistency with our other rules regarding aircraft use of marine VHF frequencies.

Our Proposal

4. We are proposing to bring Channel 88 under the same conditions of use that presently affect the other maritime mobile VHF frequencies that may be used by aircraft. This would limit the aircraft's altitude to 1000 feet and the transmitter output power to five watts. In order that present users of Channel 88 not be penalized we are also proposing to permit the use of presently licensed equipment that has an output power of more than 5 watts until January 1, 1985.

5. Regarding questions on matters covered in this document contact Kemp J. Beaty, telephone (202) 632-7175.

6. The proposed amendments to the rules, as set forth in the Appendix are issued pursuant to the authority contained in Section 4(i) and Sections 303(c), (e), (f), (g) and (r) of the Communications Act of 1934, as amended.

7. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's rules, interested persons may file comments on or before June 18, 1979, and reply comments on or before June 28, 1979. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

8. In accordance with the provisions of Section 1.419 of the Commission's rules, an original and 5 copies of all statements, briefs, or comments filed shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Parts 83 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. In Section 83.351, paragraph (a) Table is amended to read as follows:

§ 83.351 Frequencies available.

(a) * * *

Carrier frequency (MHz)	Conditions of use	
	Section	Limitations
* * * * *		
157.425	83.359	40, 49, 55, 72, 76

* * * * *

2. In Section 83.359, paragraphs (b) and (b)(2) are amended to read as follows:

§ 83.359 Frequencies in the band 156–162 MHz available for assignment.

* * * * *

(b) In addition to the limitations contained in § 83.351(b)(34) and (b)(55) aircraft may use the frequencies 156.3, 156.375, 156.4, 156.425, 156.450, 156.525, 156.625, 156.8, 156.9 and 157.425 MHz under the following circumstances and subject to the following limitations:

* * * * *

(2) The mean power of aircraft station transmitters shall not exceed five watts; however, a power of one watt or less shall be used to the maximum extent possible. Aircraft stations authorized the use of 157.425 MHz with equipment having an output power of more than five watts may continue to use that equipment and higher power on that frequency until January 1, 1985.

* * * * *

PART 87—AVIATION SERVICES

In Section 87.183, paragraphs (j)(2) and (j)(3)(ii) are amended to read as follows:

§ 87.183 Frequencies available.

* * * * *

(j) * * *

(2) Except in the Great Lakes and along the St. Lawrence Seaway the frequency 157.425 MHz is available for assignment to aircraft stations for communication with commercial fishing vessels while engaged in commercial fishing activities. Operations by aircraft on this frequency will be subject to the conditions appearing in paragraph (j)(3) of this section.

(3) * * *

(ii) the mean power of aircraft station transmitters shall not exceed five watts; however, a power of one watt or less shall be used to the maximum extent possible. Aircraft stations authorized the use of 157.425 MHz with equipment having an output power of more than five watts may continue to use that equipment and higher power on that frequency until January 1, 1985.

* * * * *

[FR Doc. 79-15483 Filed 5-17-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Radio regulations Nos. 952A and 952B.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

Endangered and Threatened Wildlife and Plants; Review of the Status of Ten Birds and Two Mammals from Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Review of status of ten Guamanian birds and two Guamanian mammals.

SUMMARY: Upon petition from the Government of Guam, the Service is reviewing the status of ten birds and two mammals from Guam to determine if they should be listed as Endangered or Threatened species, and their Critical Habitat determined. The Government of Guam submitted substantial data with their petitions to indicate that all of these birds and mammals may be threatened by various factors and that listing them pursuant to the Endangered Species Act of 1973, and determining their Critical Habitat, may be an important element in assuring their survival. These data are summarized in the following notice. The Service welcomes additional data on their status

as well as information which could lead to Critical Habitat determinations for each of the species under review.

DATES: Information regarding the status of these species should be submitted on or before June 17, 1979.

ADDRESSES: Comments and data submitted in connection with this review should be sent to the Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Office of Endangered Species, Fish and Wildlife Service, United States Department of the Interior, Washington, D.C. 20240, Phone: (703) 235-2771.

SUPPLEMENTARY INFORMATION:

Background

The Service has received two petitions from the Government of Guam to list certain species from that island as Endangered species. The first of these petitions was sent on August 28, 1978, by the Honorable Ricardo J. Bordallo, then Governor of Guam, and requested the Service to list the following species: Marianas fruit dove *(Ptilinopus roseicapillus)*, Marianas gallinule *(Gallinula chloropus guami)*, Guam rail *(Rallus owstoni)*, edible nest swiftlet *(Collocalia inexpectata bartschi)*, Marianas fruit bat *(Pteropus mariannus mariannus)*, and the little Marianas fruit bat *(Pteropus tokudae)*. The second petition was sent by the Honorable Joseph E. Ada, Acting governor of Guam, on February 27, 1979. It petitioned the Service to list the Micronesian kingfisher *(Halcyon cinnamomina cinnamomina)*, Micronesian broadbill *(Myiagra oceanica freycineti)*, white throated ground dove *(Gallicolumba xanthonura xanthonura)*, cardinal honey-eater *(Myzomela cardinalis saffordi)*, Marianas crow *(Corvus kubaryi)*, and bridled white-eye *(Zosterops conspicillata conspicillata)*.

Data concerning the status of these species submitted in support of the petitions are summarized as follows:

Marianas fruit dove.—Excessive loss of habitat due to urbanization with substantial clearing of forested areas taking place in the last 15 years. The species was hunted on Guam until 1969; it is still illegally taken or accidentally shot during the hunting season for other species. Population on Guam, 100 birds; total population on Guam, Rota, Tinian and Saipan, less than 500 birds.

Marianas gallinule.—Loss of suitable freshwater wetlands through draining for agriculture has caused a decline in this species. Currently, less than 100 are found on Guam, and fewer than 50 on Tinian; the population on Saipan and Pagan is unknown.

Guam rail.—Introduced predators have played havoc on this flightless species. Only between 500 and 1000 birds continue to survive on Guam.

Edible nest swiftlet.—Heavy use of insecticides and herbicides during and following World War II has caused a major decline. Currently one to two hundred are found on Guam; unknown numbers occur on Rota, Tinian and Saipan.

Marianas fruit bat.—Two major factors relating to decrease in populations are habitat destruction and illegal hunting on Guam. Less than 100 occur on Guam; numbers elsewhere are unknown.

Little Marianas fruit bat.—Illegal hunting and loss of habitat are the two most significant factors responsible for the decline Extremely small numbers are reported for Guam.

Micronesian kingfisher.—Loss of much of the native limestone forest of Guam has caused the decline. Numbers are estimated at between 100 and 150 birds.

Micronesian broadbill.—Decline has been reported owing to clearing of much of the native habitat for urban development. Fewer than 100 birds remain on Guam.

White-throated ground dove.—Clearing of the native habitat due to increased urbanization has been the primary factor in the decline. Other factors are the use of defoliants in World War II rendering much of habitat useless to native bird populations; damage from super typhoon Pamela in 1976; and illegal and accidental shooting during the hunting season for other birds. Less than 100 of these doves remain on Guam; numbers unknown on other islands.

Cardinal honey-eater.—On Guam, the loss of most of the native limestone forest has restricted the species to the remaining areas of pristine limestone forest occuring in the northern cliffline. Heavy spraying of insecticides in World War II caused the virtual disppearance of the bird in the southern two thirds of the island. 100 to 200 birds occur now on Guam; numbers elsewhere unknown.

Marianas crow.—Loss of native forest habitat on Guam due to increased urbanization. Hunters and poachers shoot crows because they are considered pests. 100–150 birds are estimated to survive.

Bridled-white-eye.—Loss of native habitat due to urbanization and use of insecticides during and following World War II cause declines. Super typhoon Pamela in 1976 also was detrimental. Less than 150 birds are known to survive.

Acting Governor Ada recommends that for the Micronesian kingfisher, Micronesian broadbill, white-throated ground dove, cardinal honeyeater, Marianas crow and bridled white-eye, the following area be determined Critical Habitat for all: Northern cliffline of Guam from NCS Beach through Mangilao for a distance of 1.0 km from mean low water. No Critical Habitat recommendations were presented by former Governor Bordallo in his petition for the Guam rail, edible nest swiftlet, Marianas fruit bat and little Marianas fruit bat. He did, however, recommend the following as Critical Habitat: Marianas fruit dove—"From Naval Communications Station around the northern cliffline area through the Anao Conservation area to Mati Point from an elevation of 0′ to 500′ or for a distance of 0.5 km. from mean high water." Marianas gallinule—"Fena Lake, Agana Swamp and other wetlands."

A copy of the petition is available for examination during normal business hours at the Office of Endangered Species, 1000 N. Glebe Road, Arlington, Virginia, Suite 500.

The Service has determined that the two petitions present substantial evidence warranting a review of the status of these species and hereby announces that it is reviewing the status of the specified Guamanian species to determine whether or not any or all of them should be determined as Endangered or Threatened species. It is also reviewing data submitted on Critical Habitat to ascertain if the habitat specified above for the eight Guamnanian birds should be determined as Critical. The Service also solicits Critical Habitat data for the other species. The Service is particularly anxious to obtain information on the status of the above species which occur on other islands as well as Guam to determine whether those species should be listed throughout their ranges or whether only the Guam populations should be listed. This review is being conducted in compliance with Section 4(c)(2) of the Endangered Species Act of 1973, as amended, which requires that, in the case of petitions, a review must be made and published prior to the initiation of any subsequent procedures for listing such species as Endangered or Threatened.

With this notice of review, the Service is inviting and requesting anyone who may have information on any of the 12 species under consideration concerning

their status, distribution, population trends, critical habitat or other pertinent data to contact the Director. The Service will analyze all data that is now has, as well as any data that are obtained as a result of this review, and will take appropriate action concerning listing and determining Critical Habitat for any or all of these species.

This notice of review was prepared by John L. Paradiso, Office of Endangered Species (703/235–1975).

Dated: May 2, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79–15499 Filed 5–17–79; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 44, No. 98
Friday, May 18, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Rural Rental Housing Loan Policies, Procedures, and Authorizations; Memorandum of Understanding Between Farmers Home Administration and Administration on Aging

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) gives notice of the selection of the 10 counties for participation in the Joint Farmers Home Administration (FmHA) and Administration on Aging (AOA) demonstration effort to provide congregate housing projects with adequate support services in rural areas.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Conn, telephone 202–447–7207.

SUPPLEMENTARY INFORMATION: On April 5, 1979, FmHA published in the **Federal Register** (44 FR 20396) the regulations implementing the Memorandum of Understanding betwen FmHA and AOA for a joint demonstration effort to provide congregate housing units for the elderly under FmHA's rural rental housing program with support services provided through AOA under the Older American Act of 1965 as amended. That publication provided that at least six demonstration areas would be selected. However, because of the overwhelming interest and support for this program, the demonstration effort has been expanded to 10. FmHA has, therefore, increased the funds earmarked for this program to $10,000,000 Which is $1,000,000 per project. AOA has increased its reservation of funds to $850,000 for each year for a 3-year program. The sites have been selected by FmHA and AOA based on statistical data measurements of the site selection criteria contained in the Memorandum of Understanding which was also published on April 5, 1979. The counties were selected using the following process:

1. Each State FmHA Office and the State Agency on Aging nominated at least one or two counties within the State for the National selection process following the site selection criteria of the Memorandum of Understanding.

2. In order to assure the diversity of rural areas and locations needed for this National demonstration effort, the nominated counties were then grouped according to their location in the 10 regions of the Department of Health, Education and Welfare (HEW).

3. The counties were then evaluated by the National Office staffs of FmHA and AOA on the basis of:

a. Percentage of elderly population.
b. Racial mix.
c. Income levels.
d. Poor housing conditions.
e. Support by State and local officials.
f. The ability of the appropriate Area Agency on Aging to provide support services.

4. The final selections were made based on the criteria listed above using the flexibility needed for a National demonstration effort.

Data used in the site selection process is available upon written request to the Farmers Home Administration, Rural Rental Housing Division, South Agriculture building, Room 5333, 14th & Independence Avenue SW., Washington, D.C. 20250. For further information contact Dr. Joyce Berry, phone (202) 447–3390 or Mr. Paul R. Conn, phone (202) 447–7207.

The sites selected for the 10 HEW Regions are as follows:

Region I—New Hampshire, Carroll County.
Region II—New York, Chautauqua County.
Region III—Virginia, Accomack County.
Region IV—Mississippi, Claiborne County.
Region V—Michigan, Lake County,
Region VI—New Mexico, Sierra County.
Region VII—Iowa, Decatur County.
Region VIII—South Dakota, Charles Mix County.
Region IX—California, Riverside County.
Region X—Oregon, Baker County.

One project, with a total development cost of approximately $1,000,000, is planned for new construction in each selected county.

Parties interested in participating in this program as applicants under FmHA's Section 515 rural rental housing program should contact the State Director of FmHA in the appropriate State for additional information.

The involved FmHA State Directors are:

1. *Vermont (for NH):* 141 Main Street, Post Office Box 588, Montpelier, VT 06502.
2. *New York:* U.S. Courthouse and Federal Building, Room 871, 100 South Clinton, Syracuse, NY 13260.
3. *Virginia:* Federal Building, Room 8213, 400 North Eighth Street, Post Office Box 10106, Richmond, VA 23240.
4. *Mississippi:* Milner Building, Room 830, Jackson, MS 39201.
5. *Michigan:* 1405 South Harrison Road, Room 209, East Lansing, MI 48823.
6. *New Mexico:* Federal Building, Room 3414, 517 Gold Avenue, SW., Albuquerque, NM 87102.
7. *Iowa:* Federal Building, Room 873, 210 Walnut, Des Moines, IA 50309.
8. *South Dakota:* Federal Building, Room 208, 200 Fourth Street, SW., Huron, SD 57350.
9. *California:* 459 Cleveland Street, Woodland, CA 95695.
10. *Oregon:* Federal Building, Room 1590, 1220 Southwest Third Avenue, Portland, OR 97204.

All applicant proposals for funding shall be submitted to the FmHA District Office or County Office having jurisdiction in the area for processing rural rental housing loans. All applications must contain the information prescribed in Exhibits F–6 and F–7 of Subpart D of Part 1822, Chapter XVIII, Title 7, Code of Federal Regulations. Additional requirements that follow must be met to assure that the housing facilities and the applicant can meet the requirements needed for this National demonstration effort.

Therefore, additional information must be submitted with the preapplication as follows:

1. *Community Involvement in the Planning and Development of the Project:* Each applicant must document its willingness to work, and the manner in which it will work, with local concerned citizens, prospective occupants, local lenders and public officials in the planning, design, location and support services program for the project.

2. *Involvement of the Area Agency on Aging.* Each applicant will be required to cooperate fully with the Area Agency on Aging in the developmental stages of

the application and later in the operational stages of the project. Each applicant should, therefore, to the extent possible, at the time the preapplication is being submitted, indicate how it plans to work with the Area Agency on Aging.

3. *Site Location.* Each site for this National Demonstration Program must be identified and owned, optioned or otherwise under the control of the applicant at the time the preapplication is submitted. Thus, proof of this requirement must be included. Furthermore, a site analysis must be submitted showing where the site is located relative to services within the general areas such as shopping centers, medical facilities, banks, etc., and specifically showing facilities and activities immediately surrounding the site.

4. *Architectural Design Concepts.* Each applicant is required to obtain the services of a qualified architect to design the project. For the preapplication, complete working drawings should *not* be developed. However, to provide FmHA and AOA with basic understanding of how the architect proposes to design the project, preliminary (schematic) drawings, submitted with the preapplication, should be detailed enough to show how the building(s) will be located on the site, the number and size of units, and the location and size of space(s) that will be provided for the support services.

This information must be accompanied by an Architectural Program Narrative that describes the characteristics of the elderly population being served by the specific facility as well as the methodology by which specific user needs will be addressed by the architect in the development of the preliminary plans. At a minimum, these needs should address issues of the use of: interior and exterior space, security, recreation, provisions for individuality within living units, access to facilities from surrounding areas, and how the design will provide an aesthetically pleasing environment—thus preventing a sense of institutionalization on the part of the residents and promoting independent life styles. Further, the applicant should include a statement of qualifications and experiences of the architect in the design of similar or comparable facilities with the preapplication.

5. *Management Plans.* A detailed management plan indentifying the manager and his/her background and qualifications must be provided. The management plan, to the extent possible, should address fully how the project is to be operated. The applicant is encouraged to be innovative but efficient. Each project must provide the following support services:

(1) Meal service—full or partial;

(2) Housekeeping elements for those unable to perform these responsibilities;

(3) Personal care and services for those who need assistance in daily care;

(4) Transportation and other access to essential services; and

(5) Social and recreational activities.

A. *Selection Criteria*

Preapplications submitted to FmHA will be evaluated on the basis of the Memorandum of Understanding, the requirements of the Subpart D of Part 1822, Chapter XVIII, Title 7, Code of Federal Regulations, and the following:

1. Ability of applicant to provide competent management to operate a congregate housing project.

2. Desirability of site and its location.

3. Architectural competence and design of the project with specific relevance to the methodology by which the design reflects the individual and group needs of the elderly residents.

4. Ability of applicant to coordinate the development and operation of the housing project with the Area Agency on Aging, local officials, concerned citizens, and prospective occupants.

B. *Estimated Timetable for Funding and Final Selection Process*

1. *May*—Interested parties investigate and discuss program with FmHA State Directors and State and Area Agency on Aging.

2. *June 15*—All preapplications to be submitted to FmHA in final form. The FmHA State Director, with the assistance of the State and Area Agency on Aging, will review all the applications and make recommendations for funding. Applications will be evaluated on the basis of the requirements of Subpart D of Part 1822, Chapter XVIII, Title 7, Code of Federal Regulations, and selection criteria previously listed.

3. *June 30*—FmHA State Directors to have completed review of all preapplications and submit no more than three preapplications recommended for funding to the National Office for review and selection of the finalists by FmHA and AOA. The selection criteria shown in this publication will also be used at the National level to select the 10 finalists, with consideration being given to the need to have contrasting congregate housing models needed for this National demonstration program.

4. *July 30*—National Office of FmHA and AOA to have selected the final 10 projects to be funded and notified the FmHA State Director. The State will then inform the finalists of its selection along with any additional requirements that must be met.

5. Selected applicants, with assistance of FmHA and the Area Agency on aging, complete final applications and submit to the District Office for submission to the FmHA State Director by September 1, 1979.

6. All projects, unless notified otherwise, must be funded by FmHA by no later than September 15, 1979, in order to utilize the funds that have been set aside for use this fiscal year.

(42 U.S.C. 1480; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.279)

Dated: May 11, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 79-15497 Filed 5-17-79; 8:45 am]

BILLING CODE 3410-07-M

CIVIL AERONAUTICS BOARD

Application for an All-Cargo Air Service Certificate

May 11, 1979.

In accordance with Part 291 (14 CFR 291) of the Board's Economic Regulations (effective November 9, 1978), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 35369, from Allegheny Airlines, Inc. of Washington, D.C. for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of section 291.12(c) of Part 291, interested persons may file an answer in opposition to this application within twenty-one (21) days after publication of this notice in the **Federal Register**. An executed original and six copies of such answer shall be addressed to the docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-15575 Filed 5-17-79; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-15574 Filed 5-17-79; 8:45 am]

BILLING CODE 6320-01-M

Subpart Q Applications

Date filed	Docket No.	Description
May 7, 1979	35485	Allegheny Airlines, Inc., Washington National Airport, Hangar No. 11, Washington, D.C. 20001. Application of Allegheny Airlines, Inc. requests the Board pursuant to Section 401 of the Act and Part 201 of the Board's Economic Regulations for amendment of its certificate of public convenience and necessity for Route 97 so as to authorize it to engage in scheduled nonstop air transportation of persons, property, and mail between the terminal point Dallas-Ft. Worth, Texas, and the terminal point Phoenix, Arizona. Answers and Conforming Applications are due on June 4, 1979.
May 7, 1979	35486	Allegheny Airlines, Inc., Washington National Airport, Hangar No. 11, Washington, D.C. 20001. Application of Allegheny Airlines, Inc. requests the Board pursuant to Section 401 of the Act and Part 201 of the Board's Economic Regulations for amendment of its certificate of public convenience and necessity for Route 97 so as to authorize it to engage in scheduled nonstop air transportation of persons, property, and mail between the terminal point Washington, D.C., and the terminal point Denver, Colorado. Answers and Conforming Applications are due on June 4, 1979.
May 7, 1979	35487	Allegheny Airlines, Inc., Washington National Airport, Hangar No. 11, Washington, D.C. 20001. Application of Allegheny Airlines, Inc. requests the Board pursuant to Section 401 of the Act and Part 201 of the Board's Economic Regulations for amendment of its certificate of public convenience and necessity for Route 97 to eliminate the one-stop restriction in Condition 4 which precludes nonstop service between Boston and Cleveland. Answers and Conforming Applications due on May 21, 1979.
May 10, 1979	35516	Trans-Mediterranean Airways, S.A.L., c/o Stanton D. Anderson, Esq., Surrey, Karasik and Morse, 1156 Fifteenth Street, N.W., Washington, D.C. 20005. Application of Trans-Mediterranean Airways, S.A.L. requests the Board pursuant to Section 402 of the Act and the Board's Rules of Practice, 14 C.F.R. Part 302, for renewal and modification of its foreign air carrier permit, authorizing it to engage in foreign air transportation with respect to property and mail between a point or points in Lebanon, with intermediate points in Basel, or points Amsterdam, Copenhagen, Stockholm, Frankfurt, Paris, London, and the terminal point New York, New York; with authority to engage in charter trips in foreign air transportation. Applicant requests that all flight frequency limitations be eliminated; that all restrictions be eliminated regarding the size of the aircraft which may be used; that the restriction be eliminated which imposes conditions upon its contractual relations with ARAMCO; and that other restrictions in its present permit, which reduce its operating flexibility, be eliminated. Answers and Conforming Applications are due on June 7, 1979.
May 10, 1979	35521	Braniff Airways, Inc., P.O. Box 35001, Dallas, Texas 75235. Application of Braniff Airways, Inc. requests the Board pursuant to Section 401(e)(7)(B) of the Act for an amendment of its certificate of public convenience and necessity to remove a restriction from its certificates for Route 153 and Route 151, segment 1 against nonstop service between Rio de Janeiro and Buenos Aires. Answers and Conforming Applications are due on May 25, 1979.
May 11, 1979	35531	Allegheny Airlines, Inc., Washington National Airport, Hangar No. 11, Washington, D.C. 20001. Application of Allegheny Airlines, Inc. requests the Board pursuant to Section 401 of the Act, and Part 201 of the Board's Economic Regulations, for an amendment of its certificate of public convenience and necessity for Route 97 so as to authorize it to engage in scheduled nonstop air transportation of persons, property, and mail in the following city-pair markets: Boston — Miami, Fort Lauderdale New York — Miami, Fort Lauderdale, Orlando, Tampa, West Palm Beach Newark — Fort Lauderdale, Orlando, Miami, Tampa, West Palm Beach Philadelphia — Miami, Fort Lauderdale Pittsburgh — Miami, Fort Lauderdale Washington — Miami Indianapolis — Miami Cincinnati — Miami Columbus — Fort Lauderdale, Tampa St. Louis — Sarasota, West Palm Beach Answers and Conforming Applications are due on June 8, 1979.

Nonstop or Single-Plane Service In a Market; Intent To Discontinue

The Civil Aeronautics Board is changing the way it processes carrier's notice of intent to discontinue nonstop or single-plane service in a market or markets. The notices are filed under section 401(j)(2) of the Federal Aviation Act and a newly adopted interim rule, Part 323 of the Procedural Regulations (44 FR 20635, April 6, 1979).

Until now, the CAB has issued a public document on every carrier-filed 401(j)(2) notice. Effective immediately, it will no longer do so unless the services terminated would have an impact on a

community's essential air service or an objection is filed. The notices will, of course, be examined for compliance with the interim rule.

Requests for an exemption from 401(j)(2) to terminate service short of the full 60 days notice period will continue to be handled by Board order, as will any objections to a notice or any notice proposing service reductions which the Board determines have an impact on essential air transportation at any community.

The new procedures are effective immediately and apply to 401(j)(2) notices currently being processed as well as future filings.

By the Civil Aeronautics Board, May 10, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-15576 Filed 5-17-79; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Arizona Advisory Committee (SAC) of the Commission will convene at 12 Noon and will end at 2:00 pm, on June 9, 1979, at the Ramada Inn, 3801 East Van Buren Street, Phoenix, Arizona.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 213 North Spring Street, Room 1015, Los Angeles, California 90012.

The purpose of this meeting is to plan projected activities concerning Arizona SAC projects.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., May 15, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-15518 Filed 5-17-79; 8:45 am]

BILLING CODE 6335-01-M

Nebraska Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Nebraska Advisory Committee (SAC) of the Commission will convene at 9:00 am and will end at 2:00 pm, on June 7, 1979, at the State Capitol, Room 1003, Lincoln, Nebraska 68509.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, Old Federal Office Building, Room 3103, 911 Walnut Street, Kansas City, Missouri 64106.

The purpose of this meeting is to conduct a committee orientation and training session in order to prepare for the Western Nebraksa Treatment of Minorities by Public Service Agencies Study.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., May 15, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-15519 Filed 5-17-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Implementation of Executive Order 11988, Floodplain Management, and 11990, Protection of Wetlands: Extension of Comment Period

On April 5, 1979, the Economic Development Administration (EDA) published a notice in the **Federal Register** (44 FR 20471 *et seq.*) announcing the Agency's procedures for implementing Executive Order 11988 on Floodplain Management and Executive Order 11990 on Protection of Wetlands. In that notice, EDA requested that all comments be submitted to EDA by May 7, 1979.

EDA has received two comments requesting the Agency to extend the period for comment until May 31, 1979. In order to allow more time for comment, EDA is hereby extending the time for comment on these procedures until June 7, 1979. All comments should be submitted to EDA by that date. For further information concerning these procedures, contact John Hansel, Special Assistant for the Environment, U. S. Department of Commerce, Room 7217, Washington, D.C. 20230, (202) 377-4208.

Dated: May 14, 1979.

Robert T. Hall,

Assistant Secretary for Economic Development.

[FR Doc. 79-15520 Filed 5-17-79; 8:45am]

BILLING CODE 3510-24-M

Martin Wood Products, et al.; Petitions for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from ten firms: (1) Martin Wood Products, 12275 Branford Street, Sun Valley, California 91352, a producer of wood tool handles (accepted May 4, 1979); (2) Art Braun, Inc., 4901 Perkins, Cleveland, Ohio 44103, a producer of knit tops, pants, dresses and swimwear for men and women (accepted May 7, 1979); (3) Microsonic Trading Corporation, 509 Spring Garden Street, Philadelphia, Pennsylvania 19123, a producer of watches (accepted May 7, 1979); (4) Atlas Radio, Inc., 417 Via Del Monte, Oceanside, California 92054, a producer of amateur radio equipment (accepted May 8, 1979); (5) Eastmoor Company, Inc., 800 Chicago Street, Michigan City, Indiana 46360, a producer of women's pants and skirts (accepted May 8, 1979); (6) Miss Erica, Inc., 7475 West 4th Avenue, Hialeah, Florida 33014, a producer of handbags (accepted May 9, 1979); (7) Activair Sportswear, Inc., 461 Eighth Avenue, New York, New York 10001, a producer of men's and women's shirts, pants, blazers and skirts (accepted May 9, 1979); (8) Dynaco, Inc., 9613 Oates Drive, Sacramento, California 95827, a producer of stereo equipment (accepted May 9, 1979); (9) R. Tain, Ltd., 1125 Wyckoff Avenue, Brooklyn, New York 11227, a producer of sweaters (accepted May 10, 1979); and (10) Abbott Machine Company, Inc., Wilton, New Hampshire 03086, a producer of yarn winding equipment (accepted May 11, 1979). The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communites (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the

tenth calendar day following the publication of the notice.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 79-15521 Filed 5-17-79; 8:45 am]

BILLING CODE 3510-24-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Hearing

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Notice of a change in the date of a public hearing on a draft environmental impact statement/draft fishery management plan for the reef fish fishery of the Gulf of Mexico.

DATE CHANGE: The Gulf of Mexico Fishery Management Council announced a series of Public Hearings on its proposed fishery management plan for the reef fish fishery of the Gulf of Mexico in (44 FR 21681). The hearing originally scheduled for May 8, 1979 at the Bayfront Center Neptune Room in St. Petersburg, Florida has been rescheduled for May 30, 1979 at the same site. The May 8, 1979, meeting was canceled because of inclement weather. The meeting time, 7 p.m. to 10 p.m., remains unchanged.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne E. Swingle, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

Dated: May 11, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-15500 Filed 5-17-79; 8:45 am]

BILLING CODE 3510-22-M

Sea-Arama, Inc.; Modification of Permit

Notice is hereby given that, pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Public Display Permit No. 162 issued to Sea-Arma, Inc., on December 28, 1976, as modified August 1, 1978, is further modified as follows:

Section B is modified by deleting section B-6 and substituting therefor the following:

"6. This Permit is valid with respect to the taking authorized herein until June 1, 1981."

This modification is effective on May 18, 1979.

The Permit, as modified, and documentation pertaining to the modification is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;
Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731; and
Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: May 11, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-15501 Filed 5-17-79; 8:45 am]

BILLING CODE 3510-22-M

Sea World Inc.; 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: Sea World, Inc. (P2I).

b. Address: 1720 S. Shores Road, Mission Bay, San Diego, California 92109.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Killer whale *(Orcinus orca)*, 1.

4. Type of Take: The applicant seeks a permit to import 1 killer whale from an aquarium in Canada.

5. Location of Activity: Niagara Falls, Canada.

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 June 18, 1979. 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.

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.;
Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;
Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and
Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: May 11, 1979.

William Aron,

Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 79-15502 Filed 5-17-79; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979; Correction of Addition

The document published in the Federal Register on May 14, 1979 (44 FR 28035) is amended to correct the Effective Date to May 14, 1979 for the following:

SIC 7349

Custodial Service
Federal Building
3rd and Hill Avenue
Gallup, New Mexico

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 79-15530 Filed 5-17-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1979; Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Deletion from Procurement List.

SUMMARY: This action deletes from Procurement List 1979 commodities

produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 18, 1979.

ADDRESS: Committee for purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 23, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published notice (44 FR 17767) of proposed deletion from Procurement List 1979, November 15, 1978 (43 FR53151).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodities are hereby deleted from Procurement List 1979:

Class 7520

Pencil, Mechanical
7520–00–223–6674
7520–00–268–9912
7520–00–577–4570

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 79–15531 Filed 5–17–79; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1979; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1979 commodities to be produced by and service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 20, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1979, November 15, 1978 (43 FR 53151):

Class 7530

Folder, File, Pressboard
7530–00–286–6924 (For GSA Regions 3, 9, 10)
Folder, File, Pressboard
7530–00–286–6923 (For GSA Regions 4, 5, 6, 7, 8, 9, 10)

SIC 0782

Grounds Maintenance
Mare Island Naval Base
Vallejo, California
At the following Housing Areas:
1. Coral Sea Village Bldg. 301D–4
2. Farragut South Bldg. 302D–3
3. Farragut Central Bldg. 303E–3
4. Farragut North

E. R Alley, Jr.,

Acting Executive Director.

[FR Doc. 79–15532 Filed 5–17–79; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 10, 1979.

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group will hold meetings on June 21, 1979 from 8:30 a.m. to 5:00 p.m. and June 22, 1979 from 8:30 a.m. to 12:00 p.m., at Hanscom Air Force Base, Massachusetts in the Command Management Center, Building 1606.

The Group will receive classified briefings and hold classified discussions on selected Air Force Command, Control, and Communications Programs.

The meetings concern matters listed in Section 552(b) of Title 5, U.S.C., specifically subparagraph (1) thereof, and will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 79–15568 Filed 5–17–79; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Fort Sill, Okla., Military Operational Area; Filing of Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969, the Army, on May 18, 1979, provided the Environmental Protection Agency a Draft Environmental Impact statement (DEIS) concerning the proposed Military Operational Area (MOA) at Fort Sill, Oklahoma. Interested organizations or individuals may obtain copies for cost of reproduction from the Commander, Training and Doctrine Command (TRADOC), ATTN: ATTN–FE–NR, Fort Monroe, Virginia 23651.

In the Washington area, inspection copies may be seen during normal duty hours in the Environmental Office, Office of Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, DC 20310, phone (202) 694–3434.

Bruce A. Hildebrand,

Deputy for Environment, Safety and Occupational Health, OASA (IL&FM).

[FR Doc. 79–14886 Filed 5–17–79; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Navigation Channel Improvements Authorized for Fields Landing Channel, Humboldt County, Calif.

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed project involves deepening the channel from the entrance channel to Olson Terminal to −30 feet MLLW, and widening the channel about 200 feet between Beacons 3 and 7 and about 100–130 feet between Beacons 8 and 10, and widening the turning basin 300 feet south and 250 feet west of the existing lines.

2. The alternatives that will be studied in detail are as follows:

a. No Action.

b. Widening between Beacons 3 and 7, 8 and 10, and the turning basin.

c. Deepening the entire channel including the turning basin to −30 feet MLLW and widening the channel between Beacons 3 and 7 and Beacons 8 and 10 and the turning basin.

3. In October 1977 the Corps of Engineers presented an initial array of alternatives for channel improvements in an Environmental Working Paper. A public workshop was held on 30 November 1977 to identify significant issues to be evaluated in the DEIS. These issues included loss of three (3) acres of eelgrass and ten (10) acres of intertidal mudflat and the appropriate mitigation and/or compensation for

these losses. The Fish and Wildlife Service provided the Corps of Engineers with a planning aid letter on 28 March 1978 which addressed all the alternatives identified in the working paper.

In June of 1978, the Fish and Wildlife Service submitted to the Corps of Engineers a draft letter report on the locally preferred plan and compensation measures. The Corps replied to the Fish and Wildlife Service Report in December 1978 and identified the selected plan which differed from the locally preferred plan. The final letter report form the Fish and Wildlife Service on the selected plan and compensation measures is scheduled for May of 1979.

The first meeting with the agencies to discuss mitigation and/or compensation was held on 4 May 1978. A second meeting with the agencies as well as interested parties was held on 26 January 1979 to discuss the feasibility of transplanting eelgrass in Humboldt Bay for mitigation. It was the feeling at the meeting that eelgrass could not be transplanted in Humboldt Bay and that compensation in the form of returning some diked land to salt marsh would be acceptable. The Corps and the Fish and Wildlife Service will meet in June of 1979 to survey some recommended compensation sites. In accordance with Pub. L. 92–532, the Marine Protection, Research, and Sanctuaries Act of 1972, bioassays on proposed dredged material are being conducted. The agencies were contacted in March of 1979 to discuss appropriate species for the bioassay tests. After completion of the bioassays, the agencies will meet with the Corps to discuss the results.

4. A scoping meeting was not held initially as the guidelines were not published at that time.

5. It is estimated that the DEIS will be made available to the public in early December 1979.

6. Questions about the proposed action and DEIS can be answered by Karen Daniels, U.S. Army Corps of Engineers/SPNED–ED, 211 Main Street, Room 809, San Francisco, California 94105.

Dated: May 11, 1979.

John M. Adsit,

Colonel, CE, District Engineer.

[FR Doc. 79–15569 Filed 5–17–79; 8:45 am]

BILLING CODE 3710–FS–M

Office of the Secretary

Task Force on Evaluation of Audit, Inspection and Investigative Components of the Department of Defense; Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, as amended, § 10, 5 U.S.C. app. 10 (1976), notice is hereby given that a meeting of the Task Force on Evaluation of Audit, Inspection and Investigative Components of the Department of Defense will be held on May 31, 1979, at 10:00 AM in Room 3D981, The Pentagon, Washington, D.C.

The mission of the Task Force is to advise Congress and the Secretary of Defense with respect to the effectiveness of the audit, inspection and investigative components of the Department of Defense.

The meeting will be open to the public.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

May 15, 1979.

[FR Doc. 79–15708 Filed 5–17–79; 8:45 am]

BILLING CODE 3810–70–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Michaelson Producing Co.; Revised Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Revised Proposed Remedial Order which was issued to Michaelson Producing Company, 1404 Gihls Tower West, Midland, Texas 79701. This Revised Proposed Remedial Order charges Michaelson Producing Company (Michaelson) with pricing violations in the amount of $329,560.84 caused by Michaelson's having made sales of crude oil at prices in excess of those permitted under the Federal Energy Administration (now the DOE) price rule in 10 CFR 212.73. ERA maintained that the overcharges were the result of Michaelson's characterization of certain "old" crude oil as "new," "released" and "stripper" crude oil based upon Michaelson's interpretation of the term "property."

A copy of the Revised Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P. O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before June 4, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 7th day of May 1979.

Wayne I. Tucker,

District Manager of Enforcement, Southwest District.

[FR Doc. 79–15507 Filed 5–17–79; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP79–53, et al.]

Arkansas Louisiana Gas Co.; Pipeline Rates: Louisiana First Use Tax

In the matter of Arkansas Louisiana Gas Company (Docket Nos. RP 79–53 & RP 79–54); Columbia Gas Transmission Corporation (Docket No. RP 79–42); Consolidated Gas Supply Corporation (Docket No. RP 79–47); El Paso Natural Gas Company (Docket No. RP 79–37); Michigan Wisconsin Pipe Line Company (Docket No. RP 79–43); Natural Gas Pipeline Company of America (Docket No. RP 79–38); Northern Natural Gas Company (Docket No. RP 79–41); Panhandle Eastern Pipe Line Company (Docket No. RP 79–34); Southern Natural Gas Company (Docket No. RP 79–48); Tennessee Gas Pipeline (Docket No. RP 79–52); Texas Eastern Transmission Corporation (Docket No. RP 79–40); Texas Gas Transmission Corporation (Docket No. RP 79–31); Trunkline Gas Company (Docket No. RP 79–33); Transcontinental Gas Pipe Line Corporation (Docket No. RP 79–46).

Order Accepting Revised Tariff Sheets

Issued: May 9, 1979.

In Order Nos. 10, 10–A, and 10–B,[1] the Commission amended section 154.38 of its Regulations promulgated pursuant to the Natural Gas Act, by adding a new paragraph (18 CFR 154.38(h)). Paragraph (h), as amended, establishes procedures governing pipeline recovery of the State of Louisiana First Use Tax on Natural Gas.[2] Under paragraph (h) pipelines are permitted to collect the First Use Tax, subject to refund, pursuant to a

[1] State of Louisiana First Use Tax in Pipeline Rate Cases, Docket No. RM78–23, 43 FR 45553 (October 3, 1978); 43 FR 60438 (December 28, 1978); 44 FR 13460 (March 12, 1979).

[2] 1978 La. Sess. Law Serv. 482 (Act No. 294), to be codified as La. Rev. Stat. §§ 47:1301–47:1307. Hereinafter referred to as "First Use Tax."

temporary tracking mechanism similar to a purchased gas adjustment clause.

Pursuant to Order Nos. 10, 10–A, and 10–B eighteen pipeline companies filed tariff sheets to establish provisions for tracking and deferred accounting of the First Use Tax. On March 30, 1979, the Commission issued an order [3] accepting, conditionally accepting, or rejecting the tariff sheets filed to establish provisions for tracking and deferred accounting of the First Use Tax. The thirteen pipelines listed in Appendix A have filed revised tariff sheets in accordance with the various ordering paragraphs of the March 30 Order. El Paso Natural Gas Company has filed for clarification of that order. The revised tariff sheets were made to provide for (1) tracking provisions which terminate the tracking of the First Use Tax in accordance with Order No. 10–B; (2) pressure base corrections which would more accurately indicate the actual volumes subject to the First Use Tax; (3) deferred account provisions similar to the deferred account provisions of each pipeline's PGA clause; (4) more accurately defined refund provisions under the corporate undertaking and (5) elimination of hearing and surcharge provisions. The Commission finds that the revised tariff sheets comply with the ordering paragraphs in the March 30 Order and accepts the revised tariff sheets.

El Paso filed a letter requesting clarification of Ordering Paragraph (F) of the March 30 Order. Paragraph (F) stated that El Paso, among others, should file revised tariff sheets providing deferred account provisions similar to the deferred account provisions of El Paso's PGA tariff. Since El Paso was inadvertently listed in Ordering Paragraph (F), the Commission accepts the tariff sheets filed by El Paso which are listed in the March 30 Order.

The March 30 Order required the filing of revised tariff sheets within 15 days. Transcontinental Gas Pipe Line Corporation, and Southern Natural Gas Company filed a few days after the 15 day requirement. The Commission finds good cause to waive the 15 day requirement and accept these filings.

Northern Natural Gas Company requests that the Commission correct a tariff sheet designation contained on page 3 of Appendix A of the Commission's March 30 Order. Northern states that the error may have arisen because Northern's initial filing erroneously designated the tariff sheet. In accordance with Northern's revised filing, the Commission accepts Northern's Eighteenth Revised Sheet No. 1c to Original Volume No. 2 instead of Substitute Eighteenth Revised Sheet No. 1c to Original Volume No. 2.

Waiver of the 30 day notice requirement for these initial filings is granted in accordance with paragraph E of Order No. 10–B.

This order deals only with the compliance filings of the March 30 Order. Applications for rehearing and partial stay of the March 30 order will be dealt with by separate order.

The Commission Orders:

(A) Subject to the refund provisions of § 154.38(h) of the Commission's regulations, the First Use Tax tariff sheets of the pipeline companies listed in Appendix A, except for Michigan Wisconsin Pipe Line Company, are accepted effective as of April 1, 1979.

(B) Subject to the refund provisions of § 154.38(h) of the Commission's regulations, the First Use Tax tariff sheets of Michigan Wisconsin listed in Appendix A are accepted effective as of May 1, 1979.

(C) Subject to the refund provisions of § 154.38(h) of the Commission's regulations, the tariff sheets of El Paso Natural Gas Company listed in Appendix A of the Commission's March 30 Order are accepted.

(D) Pipelines shall file revised tariff sheets if the underlying rates of the proposed tariff sheets are reduced as a result of any ongoing Commission proceeding.

(E) In accordance with paragraph (E) of Order No. 10–B, waiver of the 30 day notice requirement is granted.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix A

Company	Volume number(s)	Sheet number(s)	Date filed
Arkansas Louisiana Gas Company	1st Revised Vol. No. 1	Substitute Original Sheet Nos. 12G, 12H, and 12I.	4/13/79
	Original Vol. No. 3	Substitute Original Sheet Nos. 188E, 188F, and 188G.	4/13/79
Columbia Gas Transmission Corporation.	Original Vol. No. 1	Substitute Original Sheet No. 66	4/11/79
Consolidated Gas Supply Corporation.	3rd Revised Vol. No. 1	Substitute Original Sheet No. 75; Substitute 12th Revised Sheet No. 16.	4/9/79
Michigan Wisconsin Pipe Line Company.	Original Vol. No. 1	Original Sheet Nos. 48, 50; Substitute Original Sheet No. 49.	4/12/79 5/3/79
Natural Gas Pipeline Company of America.	3rd Revised Vol. 1	Substitute 38th Revised Sheet No. 5; Substitute Original Sheet No. 148.	4/16/79
Northern Natural Gas Company	3rd Revised Vol. No. 1	1st Substitute Original Sheet No. 74b	4/16/79
	Original Vol. No. 2	1st Substitute Original Sheet No. 1o	4/16/79
	Original Vol. No. 2	Eighteenth Revised Sheet No. 1c	3/15/79
Panhandle Eastern Pipe Line Company.	Original Vol. No. 1	1st Substitute Original Sheet No. 43–6	4/13/79
Southern Natural Gas Company	6th Revised Vol. No. 1	Substitute Original Sheet No. 45M	4/17/79
Tennessee Gas Pipeline	9th Revised Vol. No. 1	2nd Revised Sheet No. 213Q; 1st Revised Sheet Nos. 213R and 213S; and Original Sheet No. 213T.	4/16/79
Texas Eastern Transmission Corporation.	4th Revised Vol. No. 1	Substitute Original Sheet No. 119; Alternate 2nd Substitute 48th Revised Sheet Nos. 14, 14A, 14B, 14C and 14D.	4/16/79
Texas Gas Transmission Corporation.	3rd Revised Vol. No. 1	Substitute Original Sheet No. 108; Substitute 1st Revised Sheet No. 109.	4/4/79
Trunkline Gas Company	Original Vol. No. 1	1st Substitute Original Sheet Nos. 21M and 21N.	4/13/79
Transcontinental Gas Pipe Line Corporation.	2nd Revised Vol. No. 1	Substitute Original Sheet Nos. 254 and 255	4/25/79

[FR Doc. 79–15537 Filed 5–17–79; 8:45 am]

BILLING CODE 6450–01–M

[3] "Order Accepting Certain Tariff Sheets, Conditionally Accepting Certain Tariff Sheets, and Rejecting Certain Other Tariff Sheets Which Reflect the Louisiana First Use Tax in Pipeline Rates Pursuant to Order Nos. 10, 10–A, and 10–B" Arkansas Louisiana Gas Co., *et al.*, issued March 30, 1979 ("March 30 Order").

[Docket No. CP79–295]

Black Warrior Pipeline, Inc., Rayar Pipeline, Inc.; Application

May 11, 1979.

Take notice that on April 27, 1979, Black Warrior Pipeline, Inc. and Rayar Pipeline, Inc. (Applicants), 1030 Capital Towers, 125 South Congress Street, Jackson, Mississippi 39201, filed in Docket No. CP79–295 an application pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978 for approval of the transportation of natural gas, and the rate charged therefor, for Southern Natural Gas Company (Southern) for a primary term of 15 years, all as more fully set forth in the application which is on file with the

Commission and open to public inspection.

Applicants propose to transport up to 25,000 Mcf of natural gas per day to be purchased by Southern from Grace Petroleum Corp. in the Corinne Field, Monroe County, Mississippi, from field delivery points to a point of interconnection to be constructed between Applicants' proposed pipeline extension and Southern's 30-inch pipeline at the Muldon Storage Field, Monroe County, Mississippi. Applicants state that they would redeliver the quantity of gas taken for Southern's account at the field delivery points less Southern's *pro rata* share of gas used for compression and dehydration and any lost or unaccounted-for gas upstream of the redelivery point.

The application indicates that Applicants would charge Southern a two-part rate consisting of a demand charge (monthly) of $2.14 per Mcf of daily contract demand and a commodity charge of $.08 per Mcf for volumes of gas redelivered on any day up to the daily contract demand quantity and $.15 per Mcf for volumes of gas redelivered on any day in excess of daily contract demand quantity.

Applicants state that the proposed transportation service would provide Southern with the means for taking delivery of an additional source of gas without having to construct and operate additional facilities duplicative of Applicants' existing pipe line facilities which are accessible to Southern's gas supply in the Corinne Field.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 4, 1979, file with the Federal Energy regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Do. 79-15538 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-459]

Cities Service Gas Co.; Petition To Amend

May 9, 1979.

Take notice that on April 23, 1979, Cities Service Gas Company (Petitioner), P. O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP78-459 a petition to amend the order of October 16, 1978, issued in said docket pursuant to Section 7(c) of the Natural Gas Act and § 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) so as to authorize Petitioner to increase by 50 percent the total cost and single project cost of facilities constructed under its gas-purchase budget-type authorization, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that pursuant to the Commission's order of October 16, 1978, it was authorized to construct and operate gas purchase facilities under budget-type authorization for the calendar year 1979. Petitioner indicates that the total cost of facilities constructed under the budget-type authorization is limited to $7,500,000, with no single project to exceed $1,500,000. Petitioner requests waiver of Section 157.7(b)(1) of the Commission's Regulations so as to increase by 50 per cent the previously mentioned cost limitations to $2,250,000 for a single project and $11,250,000 for total budget-type expenditures. It is stated that at the time that Petitioner filed its certificate application in this docket, it did not seek a waiver of cost limitations because it expected that the Commission would take action to increase the budget cost limitation and that such action would apply across the board. Petitioner states that while the Commission has not acted as yet, the Commission has determined that waivers of the current cost limitations are appropriate and would be granted on a case-by-case basis. Petitioner bases its request for a 50 percent increase in single project and total gas-purchase budget facilities costs on the Handy-Whitman Index of Public Utility Construction Costs which indicates that for the period January 1, 1975 to January 1, 1979, inflation has increased by an average of 46 per-cent of the total transmission plant construction costs for pipelines such as Petitioner, which operate in the south central, north central and plateau regions of the country. Petitioner states that if this inflation rate is trended through April 1979 the increase in total transmission plant construction costs due to inflation since January 1975, would average 50 percent.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Keneth F. Plumb,

Secretary.

[FR Doc. 79-15539 Filed 5-17-70; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-301]

Coastal States Gas Producing Co.; Petition

May 9, 1979.

Take notice that on May 8, 1979, Coastal States Gas Producing Company (Petitioner), Five Greenway Plaza East, Houston, Texas 77046, filed in Docket No. CP79-301 a petition for emergency relief to permit temporary deliveries to LoVaca Gathering Company (LoVaca) of natural gas dedicated to Natural Gas Pipeline Company of America (Natural) while a *force majeure* condition exists on the system of Natural, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Petitioner states that it operates a joint gathering system in Duval County, Texas, to which are attached certain wells from which gas is dedicated to Natural under Petitioner's FERC Gas Rate Schedule No. 7. Certain other production in the system is said to be dedicated to LoVaca by contract. The petition states that Natural has recently informed Petitioner that Natural will be unable to accept deliveries under Petitioner's FERC Gas Rate Schedule No. 7 while its pipeline is out of service

for testing and repair. Further, it is stated, certain of the wells from which gas is dedicated to Natural are stripper wells that could be lost should they be shut in for the period indicated by Natural (several weeks).

Petitioner requests that the Commission approve continued production of these wells and delivery of the gas therefrom to LoVaca. Upon termination of Natural's *force majeure* condition volumes of gas equivalent to those diverted to LoVaca would be delivered to Natural from LoVaca dedications. Petitioner requests that the Commission permit this plan without asserting jurisdiction over any of the parties involved as a result of the proposed transaction.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 1, 1979, file with the Federal Energy Regulatory Commission, Washington, D. C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15540 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-285]

Colorado Interstate Gas Co.; Application

May 11, 1979.

Take notice that on April 24, 1979, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP79-285 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a revision of deliveries to Natural Gas Pipeline Company of America (Natural) under CIG's FERC Rate Schedules F-1 and H-1, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

CIG states that as a result of declining field pressure and deliverability in the Texas Panhandle area, it has encountered mechanical and gas supply problems that precluded CIG from delivering the required volumes under Rate Schedule F-1 at the specified delivery points. This situation has necessitated supplemental deliveries of gas to Natural at the Forgan delivery point, Beaver County, Oklahoma, to be applied to CIG's sales obligation under Rate Schedule F-1, it is further stated. CIG has made supplemental Rate Schedule F-1 deliveries at Forgan delivery point for the past five years, it is said.

Pursuant to a service agreement dated March 1, 1979, between CIG and Natural which agreement provides for an average daily contract quantity of 210,000 Mcf and a total contract quantity of 76,650,000 Mcf and would remain in effect until September 30, 1989, it is stated.

It is said that the total contract quantity of 76,650,000 Mcf represents no increase in total annual deliveries to Natural but aggregates the total contract quantities of the current H-1 and F-1 service agreements and likewise, the average daily contract quantity of 210,000 Mcf aggregates the existing daily contract quantities. The natural gas delivered on a firm basis would be purchased by Natural under CIG's FERC rate schedules F-1 and H-1, it is asserted. It is CIG's intent to deliver under rate schedule F-1 the maximum volumes that CIG can prudently make available at the F-1 delivery points up to an aggregate volume of 160,000 Mcf on any day and CIG would deliver under rate schedule H-1 at the specified delivery points each day such remaining volumes as required to achieve the total delivery obligations pursuant to the agreement, it is asserted. Actual deliveries made each fiscal year would determine the portion of the total contract quantity applicable to each rate schedule, it is said.

CIG and Natural entered into the agreement dated March 1, 1979, since both parties recognized that CIG would not be able to meet the F-1 delivery volume obligation in the future at the existing delivery points, it is said. CIG has an annual contractual obligation of 76,650,000 Mcf to Natural and the proposed agreement would allow CIG to meet that obligation by providing a more flexible delivery arrangement, it is said.

CIG states that the firm natural gas delivered to Natural would be delivered under CIG's rate schedules F-1 and H-1 and the appropriate rate schedule to be applied to deliveries is dependent upon where the gas is delivered to Natural.

Deliveries made at rate schedule F-1 delivery points would be charged at the F-1 rate, and deliveries made at rate schedule H-1 delivery point would be charged at the H-1 rate, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 4, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this appplication if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unncessary for CIG to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15541 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

Crystal Oil Co., et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 11, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Railroad Commission of Texas Oil and Gas Division

FERC Control Number: JD79–4421
API Well Number: 42–365–30605
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Holt 1
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 4,000 MMcf.

FERC Control Number: JD79–4222
API Well Number: 42–365–30621
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Gilliam 2
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 7,000 MMcf.

FERC Control Number: JD79–4223
API Well Number: 42–365–30612
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Gilliam 1
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 7,000 MMcf.

FERC Control Number: JD79–4224
API Well Number: 42–365–30593
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: E. Douglas 2
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 9 MMcf.

FERC Control Number: JD79–4225
API Well Number:
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: E. Douglas 1
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 9 MMcf.

FERC Control Number: JD79–4226
API Well Number: 42–365–30308
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Douglas Estate 7
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 55,000 MMcf.

FERC Control Number: JD79–4227
API Well Number: 42–365–30310
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Douglas Estate 6
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 55,000 MMcf.

FERC Control Number: JD79–4228
API Well Number: 42–365–30174
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Douglas Estate 5
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 55,000 MMcf.

FERC Control Number: JD79–4229
API Well Number: 42–365–30300
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Douglas Estate 4
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 55,000 MMcf.

FERC Control Number: JD79–4230
API Well Number: 42–365–30298
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Douglas Estate 2
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 55,000 MMcf.

FERC Control Number: JD79–4231
API Well Number: 42–365–30600
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Caldwell 4
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 13,000 MMcf.

FERC Control Number: JD79–4232
API Well Number: 42–365–30599
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Caldwell 3
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 13,000 MMcf.

FERC Control Number: JD79–4233
API Well Number: 42–365–30598
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Caldwell 2
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: .13 MMcf.

FERC Control Number: JD79–4234
API Well Number: 42–365–30309
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Caldwell 1
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 13,000 MMcf.

FERC Control Number: JD79–4235
API Well Number: 42–365–30789
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Anderson 1
Field: Panola
County: Panola
Purchaser: United Gas Pipeline Company
Volume: .8 MMcf.

FERC Control Number: JD79–4236
API Well Number: 42–239–31244
Section of NGPA: 103
Operator: Sovereign Exploration Company
Well Name: Sovereign No. 1 E. H. Seidel
Field: Edna East
County: Jackson
Purchaser: Tennessee Gas Pipeline
Volume: 190 MMcf.

FERC Control Number: JD79–4237
API Well Number: 42–025–30953
Section of NGPA: 103
Operator: Sovereign Exploration Company
Well Name: Sovereign No. Ella May
Field: Blanconia
County: Bee
Purchaser: United Gas Pipeline Company
Volume: 55 MMcf.

FERC Control Number: JD79–4238
API Well Number: 42–365–30282
Section of NGPA: 103
Operator: Pennzoil Producing Company
Well Name: Hull A–13L
Field: Carthage Cotton Valley
County: Panola
Purchaser: United Gas Pipeline Company
Volume: 240 MMcf.

FERC Control Number: JD79–4239
API Well Number: 42–365–30274
Section of NGPA: 103
Operator: Pennzoil Producing Company
Well Name: Mangham Unit No. 3
Field: Carthage Cotton Valley
County: Panola
Purchaser: United Gas Pipe Line Company
Volume: 450 MMcf.

FERC Control Number: JD79–4240
API Well Number:
Section of NGPA: 103
Operator: Key Production Company
Well Name: Longino, et al 79380
Field: Carthage Cotton Valley
County: Panola
Purchaser: Arkansas Louisiana Gas Company
Volume:

FERC Control Number: JD79–4241
API Well Number:
Section of NGPA: 103
Operator: Key Production Company
Well Name: Ruby Dodd 1 78938
Field: Carthage Cotton Valley
County: Panola
Purchaser: Arkansas Louisiana Gas Company
Volume:

FERC Control Number: JD79–4242
API Well Number: 42–495–30908
Section of NGPA: 103
Operator: Bass Enterprises Production Company
Well Name: J. B. Walton No. 74
Field: Keystone
County: Winkler
Purchaser: Transwestern Pipeline Company
Volume: 98 MMcf.

FERC Control Number: JD79–4243
API Well Number: 42–495–30917
Section of NGPA: 103
Operator: Bass Enterprises Production Company
Well Name: J. B. Walton "E" No. 76
Field: Keystone
County: Winkler
Purchaser: Transwestern Pipeline Company
Volume: 59 MMcf.

FERC Control Number: JD79–4244
API Well Number: 42–495–30969
Section of NGPA: 103
Operator: Bass Enterprises Production Company
Well Name: Gulf Jenkins No. 10
Field: Keystone
County: Winkler
Purchaser: Transwestern Pipeline Company

Volume: 11 MMcf.

FERC Control Number: JD79–4245
API Well Number: 42–495–30915
Section of NGPA: 103
Operator: Bass Enterprises Production Company
Well Name: M. J. Bashara No. 59
Field: Keystone
County: Winkler
Purchaser: Transwestern Pipeline Company
Volume: 90 MMcf.

FERC Control Number: JD79–4246
API Well Number: 42–335–31227
Section of NGPA: 103
Operator: Sun Oil Company
Well Name: H. McKinney No. 1
Field: Jameson North Strawn
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 3 MMcf.

FERC Control Number: JD79–4247
API Well Number: 42–335–31182
Section of NGPA: 103
Operator: Sun Oil Company
Well Name: Frankie Stubblefield No. 7
Field: Jameson North Strawn
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 57 MMcf.

FERC Control Number: JD79–4248
API Well Number: 42–335–31168
Section of NGPA: 103
Operator: Sun Oil Company
Well Name: Frankie Stubblefield No. 6
Field: Jameson North Strawn
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 6 MMcf.

FERC Control Number: JD79–4249
API Well Number: 42–335–30853
Section of NGPA: 103
Operator: Sun Oil Company
Well Name: Frankie Stubblefield No. 4
Field: Jameson North Strawn
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 157 MMcf.

FERC Control Number: JD79–4250
API Well Number: 42–335–31235
Section of NGPA: 103
Operator: Sun Oil Company
Well Name: F. Stubblefield "A" No. 2
Field: Jameson North Strawn
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 25 MMcf.

FERC Control Number: JD79–4251
API Well Number: 42–335–30835
Section of NGPA: 103
Operator: Sun Oil Company
Well Name: F. Stubblefield No. 2
Field: Jameson North Strawn
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 35 MMcf.

FERC Control Number: JD79–4252
API Well Number: 42–335–30900
Section of NGPA: 103
Operator: Sun Oil Company
Well Name: F. Stubblefield "A" No. 1
Field: Jameson North Strawn
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 123 MMcf.

FERC Control Number: JD79–4253
API Well Number: 42–335–30902
Section of NGPA: 103
Operator: Sun Oil Company
Well Name: Dortha Rannefeld No. 1
Field: Jameson North Strawn
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 39 MMcf.

FERC Control Number: JD79–4254
API Well Number: 42–165–31243
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: H & J Sec. 127–B No. 7
Field: GMK SO (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Company
Volume: 6.5 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 4, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–15552 Filed 5–17–79; 8:45 am]

BILLING CODE 6450–01–M

Dalport Oil Corp.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 11, 1979.

On April 28, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Oil Conservation Division

FERC Control Number: JD79–4133
API Well Number:
Section of NGPA: 108
Operator: Dalport Oil Corporation
Well Name: Annie L. Christmas B–1
Field: Jalmat Tansill 7 Rivers Gas
County: Lea
Purchaser: El Paso Natural Gas Company
Volume: 5 MMcf.

FERC Control Number: JD79–4134
API Well Number: 30–025–25658
Section of NGPA: 103
Operator: John Yuronka
Well Name: Thomas No. 2
Field: Langlie Mattix
County: Lea
Purchaser: El Paso Natural Gas Company
Volume: 19 MMcf.

FERC Control Number: JD79–4135
API Well Number: 30–025–25831
Section of NGPA: 103
Operator: John Yuronka
Well Name: Thomas No. 3
Field: Langlie Mattix
County: Lea
Purchaser: El Paso Natural Gas Company
Volume: 108 MMcf.

FERC Control Number: JD79–4136
API Well Number: 30–025–26060
Section of NGPA: 103
Operator: John Yuronka
Well Name: Harrison No. 1
Field: Langlie Mattix
County: Lea
Purchaser: El Paso Natural Gas Company
Volume: 144 MMcf.

FERC Control Number: JD79–4137
API Well Number: 30–045–22684
Section of NGPA: 103
Operator: Manana Gas, Inc.
Well Name: Betty Hartman No. 1
Field: Basin Dakota
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: MMcf.

FERC Control Number: JD79–4138
API Well Number: 30–045–22869
Section of NGPA: 103
Operator: Manana Gas, Inc.
Well Name: Charlie No. 1
Field: Aztec Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: MMcf.

FERC Control Number: JD79–4139
API Well Number: 30–045–08931
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: Aztec Com A No. 4
Field: Aztec
County: San Juan
Purchaser: Northwest Pipeline Corporation
Volume: 5 MMcf.

FERC Control Number: JD79–4140
API Well Number: 30–045–22683
Section of NGPA: 103
Operator: Manana Gas, Inc.
Well Name: Annie B No. 1
Field: Basin Dakota
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: MMcf.

FERC Control Number: JD79–4141
API Well Number: 30–045–21321
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: SJ 32–7 Unit No. 43
Field: Basin
County: San Juan
Purchaser: Northwest Pipeline Corporation
Volume: 6 MMcf.

FERC Control Number: JD79–4142
API Well Number: 30–039–NA
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: Rosa Unit No. 26

Field: Blanco
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 19 MMcf.

FERC Control Number: JD79–4143
API Well Number: 30–045–20858
Section of NGPA: 103
Operator: Northwest Pipeline Corporation
Well Name: Stewart A Com B No. 3
Field: Aztec
County: San Juan
Purchaser: Northwest Pipeline Corporation
Volume: 18 MMcf.

FERC Control Number: JD79–4144
API Well Number: 30–045–21533
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: Jacques Com No. 1
Field: Harris Mesa
County: San Juan
Purchaser: Northwest Pipeline Corporation
Volume: 16 MMcf.

FERC Control Number: JD79–4145
API Well Number:
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: Davis No. 1
Field: Gavilan
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 11 MMcf.

FERC Control Number: JD79–4146
API Well Number: 30–039–06144
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: Highsmith D No. 4
Field: Gavilan
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 2 MMcf.

FERC Control Number: JD79–4147
API Well Number:
Section of NGPA: 108
Operator: Warren Petroleum Corporation
Well Name: H. T. Orcutt Well No. 1
Field: Monument Tubb Drinkard
County: Lea
Purchaser: El Paso Natural Gas Company
Volume: 6 MMcf.

FERC Control Number: JD79–4148
API Well Number:
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: Fee No. 3
Field: Gavilan
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 8 MMcf.

FERC Control Number: JD79–4149
API Well Number:
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: Koon No. 1
Field: Gavilan,
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 5 MMcf.

FERC Control Number: JD79–4150
API Well Number: 30–045–11453
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: SJ 32–7 Unit No. 3
Field: Los Pinos North
County: San Juan
Purchaser: Northwest Pipeline Corporation
Volume: 9 MMcf.

FERC Control Number: JD79–4151
API Well Number: 30–039–07756
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: S/J 30–5 Unit No. 16
Field: Blanco
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 9 MMcf.

FERC Control Number: JD79–4152
API Well Number: 30–039–82388
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: S/J 31–6 Unit No. 15
Field: Blanco
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 17 MMcf.

FERC Control Number: D79–4153
API Well Number: 30–039–07929
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: S/J 31–06 Unit No. 10
Field: Blanco
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 12 MMcf.

FERC Control Number: JD79–4154
API Well Number: 30–039–07472
Section of NGPA: 108
Operator: Northwest Pipeline Corporation
Well Name: S/J 29–5 Unit No. 38
Field: Blanco
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 14 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 4, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–15549 Filed 5–17–79; 8:45 am]

BILLING CODE 6450–01–M

El Paso Natural Gas Co. and Jerome P. McHugh; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On May 1, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

United States Department of the Interior, Geological Survey

FERC Control Number: JD79–3370
API Well Number: 30–045–22365
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Roelofs 3A (Pictured Cliffs)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 64 MMcf.

FERC Control Number: JD79–3371
API Well Number: 30–045–22365
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Roelofs 3–A (Mesaverde)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 236 MMcf.

FERC Control Number: JD79–3372
API Well Number: 30–045–22817
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Neil #9A (Pictured Cliffs)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 180 MMcf.

FERC Control Number: JD79–3373
API Well Number: 30–045–22817
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Neil #9A (Mesaverde)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 440 MMcf.

FERC Control Number: JD79–3374
API Well Number: 30–045–22509
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Mudge 5A (Pictured Cliffs)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 83 MMcf.

FERC Control Number: JD79–3375
API Well Number: 30–045–22509
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Mudge 5A (Mesaverde)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 545 MMcf.

FERC Control Number: JD79–3376
API Well Number: 30–045–22363
Section of NGPA: 103

Operator: El Paso Natural Gas Company
Well Name: Vandewart A #5–A (Mesaverde)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 169 MMcf.

FERC Control Number: JD79–3377
API Well Number: 30–045–22363
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Vandewart A #5—A (Pictured Cliffs)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 30 MMcf.

FERC Control Number: JD79–3378
API Well Number: 30–045–22361
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Vandewart A #1A (Pictured Cliffs)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 117 MMcf.

FERC Control Number: JD79–3379
API Well Number: 30–045–22361
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Vandewart A #1A (Mesaverde)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 384 MMcf.

FERC Control Number: JD79–3380
API Well Number: 30–045–22488
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Riddle D 4A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 39 MMcf.

FERC Control Number: JD79–3381
API Well Number: 30–045–22487
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Barrett 3A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 359 MMcf.

FERC Control Number: JD79–3382
API Well Number: 30–045–22481
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Barrett 4A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 281 MMcf.

FERC Control Number: JD79–3383
API Well Number: 30–045–22822
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Barnes #15
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 260 MMcf.

FERC Control Number: JD79–3384
API Well Number: 30–045–22824
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Fields #11
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 120 MMcf.

FERC Control Number: JD79–3385
API Well Number: 30–045–22843
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Niel #6A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 360 MMcf.

FERC Control Number: JD79–3386
API Well Number: 30–045–22837
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Base 6A (Pictured Cliffs)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 105 MMcf.

FERC Control Number: JD79–3387
API Well Number: 30–045–22837
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Case 6A (Mesaverde)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 290 MMcf.

FERC Control Number: JD79–3388
API Well Number: 30–045–22713
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Day #3–A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 314 MMcf.

FERC Control Number: JD79–3389
API Well Number: 30–045–22712
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Day A #1–A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 240 MMcf.

FERC Control Number: JD79–3390
API Well Number: 30–045–22711
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Day #1-a
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 191 MMcf.

FERC Control Number: JD79–3391
API Well Number: 30–045–22505
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Lucerne A 4A (Pictured Cliffs)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 132 MMcf.

FERC Control Number: JD79–3392
API Well Number: 30–045–22505
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Lucerne A 4A (Mesaverde)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 230 MMcf.

FERC Control Number: JD79–3393
API Well Number: 30–045–22400
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Barnes #4A (Pictured Cliffs)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 314 MMcf.

FERC Control Number: JD79–3394
API Well Number: 30–045–22400
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Barnes #4A (Mesaverde)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 286 MMcf.

FERC Control Number: JD79–3395
API Well Number: 30–045–22825
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Fields #3a
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 544 MMcf.

FERC Control Number: JD79–3396
API Well Number: 05–067–6025
Section of NGPA: 108
Operator: Jerome P. McHugh
Well Name: Ute #4
Field: Ignacio Blanco Dakota
County: La Plata
Purchaser: Western Slope Gas Company
Volume: 18 MMcf.

FERC Control Number: JD79–3397
API Well Number: 05–067–6022
Section of NGPA: 108
Operator: Jerome P. McHugh
Well Name: Ute #1
Field: Ignacio Blanco Dakota
County: La Plata
Purchaser: El Paso Natural Gas Company
Volume: 8 MMcf.

The applications for determination in these proceedings together with a copy or description of other minerials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations, may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 4, 1979. Please reference the FERC Control Number in any

correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15553 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-290]

Equitable Gas Co.; Application

May 11, 1979.

Take notice that on April 30, 1979, Equitable Gas Company (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP79-290 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale, on a firm basis, of an annual volume of 120,000 Mcf of natural gas to Revere Natural Gas Company (Revere), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Equitable states that it has provided gas service to Revere under Emergency Service Rate Schedule E-1 since 1952 for resale by Revere to customers in Pennsylvania.

Equitable futher states that it delivers natural gas to Revere at or near Thistlethwaite, Moredock, and Revere, Greene County, Pennsylvania and all gas delivered to Revere from Equitable since 1952 has been emergency services since Equitable and Revere have no contract for firm deliveries.

In 1978, Equitable made emergency deliveries to Revere of 108,481 Mcf, it is said. Equitable indicates in the application that it recognizes that Revere is dependent upon it for a major portion of its total gas supply and, therefore, Equitable proposes to provide such service on a firm basis. No additional facilities would be required to be constructed as Equitable would make such deliveries at the existing delivery points of Thistlethwaite, Moredock, and Revere, Greene County, Pennsylvania, it is indicated.

Therefore, Equitable proposes (1) to make deliveries to Revere for resale to residential and small commercial customers in Greene County; (2) to establish initial rates for the gas sold to Revere under a firm service contract; (3) to include a purchased gas adjustment clause in its FERC Gas tariff; (4) to operate three existing delivery points in Greene County, and (5) to withdraw its Emergency Service Rate Schedule E-1.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 4, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Equitable to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15542 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

Exxon Corp. et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 11, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Railroad Commission of Texas, Oil and Gas Division

FERC Control Number: JD79-3579
API Well Number: 42-103-31900
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb AC 1 Well 164L
Field: Sand Hills (McKnight)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 42 MMcf.

FERC Control Number: JD79-3580
API Well Number: 42-003-31145
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit No. 1233
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 18 MMcf.

FERC Control Number: JD79-3581
API Well Number: 42-211-30950
Section of NGPA: 103
Operator: Philcon Development Co.
Well Name: Kelley No. 1-B
Field: Glazier N.W. (Morrow, Upper)
County: Hemphill
Purchaser: El Paso Natural Gas Company
Volume: 45 MMcf.

FERC Control Number: JD79-3582
API Well Number: 42-103-31510
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb A/C-1, Well No. 130L
Field: Sand Hills (Tubb)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 70 MMcf.

FERC Control Number: JD79-3583
API Well Number: 42-103-31754
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb A/C-1, Well No. 141L
Field: Sand Hills (Tubb)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 7 MMcf.

FERC Control Number: JD79-3584
API Well Number: 42-165-31211
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: P. G. Northrup No. 3
Field: GMK, So. (San Andres)
County: Graines
Purchaser: Phillips Petroleum Company
Volume: 3.0 MMcf.

FERC Control Number: JD79-3585
API Well Number: 42-165-31180
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Tom May No. 26
Field: GMK, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Company
Volume: 40.0 MMcf.

FERC Control Number: JD79-3586
API Well Number: 42-165-30631
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: P. G. Northrup No. 2
Field: GMK, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroeum Company
Volume: 4.0 MMcf.

FERC Control Number: JD79-3587
API Well Number: 42-211-30873
Section of NGPA: 103
Operator: Philcon Development Co.
Well Name: Ike No. 1
Field: Glazier N. W. (Morrow, Upper)
County: Hemphill

Purchaser: Diamond Shamrock Corporation
Volume: 72 MMcf.

FERC Control Number: JD79-3588
API Well Number: 42-165-31199
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Tom May No. 29
Field: GMK, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Company
Volume: 5.0 MMcf.

FERC Control Number: JD79-3589
API Well Number: 42-165-31201
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Tom May No. 29
Field: GMK, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Company
Volume: 15.0 MMcf.

FERC Control Number: JD79-3590
API Well Number: 42-165-30605
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Tom May No. 8
Field: GMK, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 4.0 MMcf.

FERC Control Number: JD79-3591
API Well Number: 42-165-30606
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Tom May No. 7
Field: G-M-K, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Company
Volume: 13.5 MMcf.

FERC Control Number: JD79-3592
API Well Number: 42-165-31232
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: H & J Sec. 127-B No. 6
Field: G-M-K, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 5.0 MMcf.

FERC Control Number: JD79-3593
API Well Number: 42-165-31206
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: H & J Sec. 127-B, No. 4
Field: GMK, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 5.5 MMcf.

FERC Control Number: JD79-3594
API Well Number: 42-165-31268
Section of NGPA: 103
Operator: Mibil Oil Corporation
Well Name: Patrick J. Donahue No. 1
Field: Homann (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Company
Volume: 14.0 MMcf.

FERC Control Number: JD79-3595
API Well Number: 42-165-31190
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: John Braddock No. 4
Field: G-M-K, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Company
Volume: 7.0 MMcf.

FERC Control Number: JD79-3596
API Well Number: 42-165-30597
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: P. G. Northrup No. 1
Field: GMK, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 3.0 MMcf.

FERC Control Number: JD79-3597
API Well Number: 42-165-31242
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: H. & J Sec. 127-B #8
Field: GMK, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 6.5 MMcf.

FERC Control Number: JD79-3598
API Well Number: 42-165-31363
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: H & J Sec. 127-B, #9
Field: GMK, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 4.4 MMcf.

FERC Control Number: JD793599
API Well Number: 42-165-31428
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: H & J Sec. 127-B, #12
Field: GMK, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 7.3 MMcf.

FERC Control Number: JD79-3600
API Well Number: 42-165-31324
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Tom May, No. 21
Field: GMK So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 4.0 MMcf.

FERC Control Number: JD79-3601
API Well Number: 42-165-31319
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Tom May, No. 23
Field: DMK, So. (San Andres)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 3.0 MMcf.

FERC Control Number: JD79-3602
API Well Number: 42-227-31542
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Douthit Unit 514
Field: Howard-Glasscock
County: Howard
Purchaser: Phillips Petroleum Co.
Volume: 0.6 MMcf.

FERC Control Number: JD79-3603
API Well Number: 42-227-31198
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Douthit Unit 513
Field: Howard-Glasscock
County: Howard
Purchaser: Phillips Petroleum Co.
Volume: 5 MMcf.

FERC Control Number: JD79-3604
API Well Number: 42-165-31184
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Robertson Clfk Unit, Well No. 9602
Field: Robertson, N. (Clearford 7100)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 7 MMcf.

FERC Control Number: JD79-3605
API Well Number: 42-165-30638
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Robertson (Clfrk) Unit #5802
Field: Robertson, N. (Clearford 7100)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 1 MMcf.

FERC Control Number: JD79-3606
API Well Number: 42-003-31684
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit #1476
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Co.
Volume: 3 MMcf.

FERC Control Number: JD79-3607
API Well Number: 42-003-31540
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit #1464
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Co.
Volume: 1 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 4, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15550 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

Exxon Corp.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 11, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18

CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Railroad Commission of Texas, Oil and Gas Division

FERC Control Number: JD79-3672
API Well Number: 42-247-30822
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Nicefero Pena Well No. 9-F
Field: Kelsey, Deep (Zone 20-A, SW, III)
County: Jim Hogg
Purchaser: Trunkline Gas Company
Volume: 50 MMcf.

FERC Control Number: JD79-3673
API Well Number: 42-247-30806
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Mrs. A.M.K. Bass Well No. 35-C 79656
Field: Kelsey, Deep (Zone 18-A, W)
County: Jim Hogg
Purchaser: Trunkline Gas Company
Volume: 300 MMcf.

FERC Control Number: JD79-3674
API Well Number: 42-495-30980
Section of NGPA: 103
Operator: Bass Enterprises Production Co.
Well Name: J. B. Walton #84
Field: Keystone
County: Winkler
Purchaser: Transwestern Pipeline Company
Volume: 145 MMcf.

FERC Control Number: JD79-3675
API Well Number:
Section of NGPA: 103
Operator: Texas Oil & Gas Corp.
Well Name: Heyne "C" Well No. 1
Field: Bonus (Yegua 7300')
County: Wharton
Purchaser: Columbia Gas Transmission Corp.
Volume: 110 MMcf.

FERC Control Number: JD79-3676
API Well Number: 42-081-30677
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: I.A.B. Unit Well #514
Field: I.A.B. (Menielle Penn)
County: Coke
Purchaser: Sun gas Company
Volume: 47 MMcf.

FERC Control Number: JD79-3677
API Well Number: 42-081-30690
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: I.A.B. Unit, Well #515
Field: I.A.B. (Menielle Penn)
County: Coke
Purchaser: Sun Gas Company
Volume: 14 MMcf.

FERC Control Number: JD79-3678
API Well Number: 42-081-31619
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: I.A.B. Unit, Well No. 371
Field: I.A.B. (Menielle Penn)
County: Coke
Purchaser: Sun Gas Company
Volume: 2 MMcf.

FERC Control Number: JD79-3679
API Well Number: 42-335-31311
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe No. 9
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 8 MMcf.

FERC Control Number: JD79-3680
API Well Number: 42-335-31319
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe No. 17
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 101 MMcf.

FERC Control Number: JD79-3681
API Well Number: 42-227-31140
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: Rob, Well #13
Field: Howard Glassock
County: Howard
Purchaser: Phillips Petroleum Co.
Volume: 3 MMcf.

FERC Control Number: JD79-3682
API Well Number: 42-227-31560
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: Rob, Well #14
Field: Howard-Glasscock (Glorieta)
County: Howard
Purchaser: Phillips Petroleum Co.
Volume: 1 MMcf.

FERC Control Number: JD79-3683
API Well Number: 42-335-31183
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "A" No. 4
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 215 MMcf.

FERC Control Number: JD79-3684
API Well Number: 42-335-31210
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "A" No. 5
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 112 MMcf.

FERC Control Number: JD79-3685
API Well Number: 42-335-31280
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "A" No. 6
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 133 MMcf.

FERC Control Number: JD79-3686
API Well Number: 42-335-3129
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "A" No. 7
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 48 MMcf.

FERC Control Number: JD79-3687
API Well Number: 42-335-31358
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "A" No. 8
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume:

FERC Control Number: JD79-3688
API Well Number: 42-335-31357
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "A" No. 9
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 9 MMcf.

FERC Control Number: JD79-3689
API Well Number: 42-335-31396
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "A" No. 11
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 53 MMcf.

FERC Control Number: JD79-3690
API Well Number: 42-335-31355
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "B" No. 30
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 18 MMcf.

FERC Control Number: JD79-3691
API Well Number: 42-335-31211
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "C" No. 5
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 8 MMcf.

FERC Control Number: JD79-3692
API Well Number: 42-335-31226
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "C" No. 6
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 25 MMcf.

FERC Control Number: JD79-3693
API Well Number: 42-335-31272
Section of NGPA: 103
Operator: Sun Oil Company
Well Name: V. T. McCabe "C" No. 8
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 61 MMcf.

FERC Control Number: JD79-3694
API Well Number: 42-335-31296
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "C" No. 10
Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 80 MMcf.

FERC Control Number: JD79-3695
API Well Number: 42-335-30866
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: V. T. McCabe "D" No. 9

Field: Jameson, North (Strawn)
County: Mitchell
Purchaser: Lone Star Gas Company
Volume: 34 MMcf.

FERC Control Number: JD79-3696
API Well Number: 42-165-31442
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Robertson (Clfrk) Unit #4102
Field: Robertson, N. (Clearfork 7100)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 30 MMcf.

FERC Control Number: JD79-3697
API Well Number:
Section of NGPA: 108
Operator: Suburban Propane Gas Corp.
Well Name: Mayer et al. No. 2
Field: Mayer Canyon Sand
County: Sutton
Purchaser: Northern Natural Gas Co.
Volume: 20.77 MMcf.

FERC Control Number: JD79-3698
API Well Number: 42-007-30583
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Aransas Bay State Tract #168 Well No. 1 9081
Field: Nine Mile Point, West (P-1)
County: Aransas
Purchaser: Natural Gas Pipeline
Volume: 23 MMcf.

FERC Control Number: JD79-3699
API Well Number: 42-261-30233
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Mrs. S. K. East #86-F 77138
Field: Rita (8-A, II)
County: Kenedy
Purchaser: Natural Gas Pipeline Co. of Am.
Volume: 146 MMcf.

FERC Control Number: JD79-3700
API Well Number: 42-047-30622
Section of NGPA: 102
Operator: Exxon Corporation
Well Name: San Fe Ranch #39-D 79965
Field: Santa Fe (G-30)
County: Brooks
Purchaser: Natural Gas Pipeline Co. of Am.
Volume: 300 MMcf.

FERC Control Number: JD79-3701
API Well Number: 42-261-30411
Section of NGPA: 102
Operator: Exxon Corporation
Well Name: Sarita Fld O & G Unit 138-F 09167
Field: Sarita (7-B, NW)
County: Kenedy
Purchaser: Natural Gas Pipeline Co. of Am.
Volume: 3 MMcf.

FERC Control Number: JD79-3702
API Well Number: 42-247-30834
Section of NGPA: 102
Operator: Exxon Corporation
Well Name: Mrs. A. M. K. Bass "B" 17-F 80262
Field: Kelsey, Deep (6340)
County: Jim Hogg
Purchaser: Trunkline Gas Co.
Volume: 300 MMcf.

FERC Control Number: JD79-3703
API Well Number: 42-261-30430
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: C. M. Armstrong 43-D 80349
Field: Candelaria (J-18-34)
County: Kenedy
Purchaser: Natural Gas Pipeline Co. of Am.
Volume: 433 MMcf.

FERC Control Number: JD79-3704
API Well Number: 42-195-30304
Section of NGPA: 102
Operator: H & L Operating Company
Well Name: Etling "A" #1
Field: Bernstein (Cherokee)
County: Hansford
Purchaser: Phillips Petroleum Company
Volume: 50 MMcf.

FERC Control Number: JD79-3705.
API Well Number: 42-409-31232.
Section of NGPA: 103.
Operator: Cities Service Company.
Well Name: Jones H-1 79067.
Field: Midway, S. (Shell Deep).
County: San Patricio.
Purchaser:
Volume: 350 MMcf.

FERC Control Number: JD79-3706.
API Well Number: 42-227-31528.
Section of NGPA: 103.
Operator: Wes-Tex Drilling Company.
Well Name: J. L. Jones Heirs No. 2.
Field: Vincent (Clear Fork, Lower).
County: Howard.
Purchaser: Getty Oil Company.
Volume: 9.125 MMcf.

FERC Control Number: JD79-3707.
API Well Number: 42-227-31437.
Section of NGPA: 103.
Operator: Wes-Tex Drilling Company.
Well Name: J. L. Jones Heirs No. 1.
Field: Vincent (Clear Fork, Lower).
County: Howard.
Purchaser: Getty Oil Company.
Volume: 9.125 MMcf.

FERC Control Number: JD79-3708.
API Well Number: 42-165-30661.
Section of NGPA: 103.
Operator: Mobil Oil Corporation.
Well Name: Tom May No. 18.
Field: GMK, So. (San Andres).
County: Gaines.
Purchaser: Phillips Petroleum Company.
Volume: 4.7 MMcf.

FERC Control Number: JD79-3709.
API Well Number: 42-165-30630.
Section of NGPA: 103.
Operator: Mobil Oil Corporation.
Well Name: Tom May #11.
Field: GMK So. (San Andres).
County: Gaines.
Purchaser: Phillips Petroleum Company.
Volume: 5.8 MMcf.

FERC Control Number: JD79-3710.
API Well Number: 42-393-30639.
Section of NGPA: 102.
Operator: Deep Reef Industries.
Well Name: Hodges #1-39.
Field: Hodges, Morrow Upper.
County: Roberts.
Purchaser: Northern Natural Gas Co.
Volume: 304 MMcf.

FERC Control Number: JD79-3711.
API Well Number:
Section of NGPA: 108.
Operator: Summit Energy, Inc.
Well Name: Parsell No. 1 (Texas RRC ID No. 45935).
Field: Parsell (Morrow Lower).
County: Roberts.
Purchaser: Transwestern Pipeline Company.
Volume: 13.53 MMcf.

FERC Control Number: JD79-3712.
API Well Number: 42-003-31664.
Section of NGPA: 103.
Operator: Exxon Corporation.
Well Name: Means SA Unit #2668.
Field: Means.
County: Andrews.
Purchaser: Phillips Petroleum Co.
Volume: 5 MMcf.

FERC Control Number: JD79-3713.
API Well Number: 42-272-31272.
Section of NGPA: 103.
Operator: Texas Oil & Gas Corp.
Well Name: Yeary Gas Unit Well No. 1.
Field: Yeary (Walsh).
County: Kleberg.
Purchaser: Tx. Eastern Transmission Corp.
Volume: 185 MMcf.

FERC Control Number: JD79-3714.
API Well Number: 42-481-31499.
Section of NGPA: 103.
Operator: Texas Oil & Gas Corp.
Well Name: Boettcher Gas Unit #1 Well #3.
Field: Bonus (Yegua 7500').
County: Wharton.
Purchaser: Tx. Eastern Transmission Corp.
Volume: 75 MMcf.

FERC Control Number: JD79-3715.
API Well Number: 42-505-30880.
Section of NGPA: 103.
Operator: Texas Oil & Gas Corp.
Well Name: Vergara #3.
Field: Los Mogotes, North (Wilcox 5100').
County: Zapata.
Purchaser: Natural Gas Pipeline Co. of Am.
Volume: 185 MMcf.

FERC Control Number: JD79-3716.
API Well Number:
Section of NGPA: 103.
Operator: Texas Oil & Gas Corp.
Well Name: Reynolds Well No. 2.
Field: Bonus (Yegua 7300').
County: Wharton.
Purchaser: Columbia Gas Transmission Corp.
Volume: 145 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of these final determinations, may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 4, 1979. Please reference the FERC Control Number in any

correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15551 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-289]

Michigan Wisconsin Pipe Line Co.; Application

May 11, 1979.

Take notice that on April 30, 1979, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-289 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 6.5 miles of loop line and appurtenant facilities necessary to provide increased peak day service commencing September 1, 1979, to those of Michigan Wisconsin's customers requesting an increase, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Michigan Wisconsin states that because of conservation efforts of its customers and the shifting of some industrial loads to alternate fuels, some of Michigan Wisconsin's customers are unable to utilize fully the annual gas supplies available to them under their service agreements with Michigan Wisconsin. Some of them have requested an increase in peak day deliveries to meet growth in their peak day requirements, it is said. Twenty out of Michigan Wisconsin's 52 customers requested increased contract demand volumes amounting to 42,428 Mcf, it is further said.

The requested increase in peak day entitlements would allow Michigan Wisconsin's customers to serve new residential hook-ups and other high priority consumers desiring to switch from fuel oil to gas, it is asserted.

The increase, from the existing aggregate contract demand of 3,776,779 Mcf to the proposed 3,819,207 Mcf, represents the full increase in contract demand for which Michigan Wisconsin's customers desire to contract and would result in an increase of only 1.1 percent in the peak day entitlements of its customers, it is stated.

Michigan Wisconsin can meet these minor increase requirements through expanding use of its authorized underground storage and the installation of a pipeline loop to transport the increased peak day volumes, it is asserted. Michigan Wisconsin proposes to install 6.5 miles of 42-inch main line loop near Joliet, Illinois, at an estimated cost of $6,114,500, it is further asserted. The cost would be financed from funds on hand, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 4, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisidiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Michigan Wisconsin to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15543 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

Midlands Gas Corp.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 11, 1979.

On April 24, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

The Montana Board of Oil and Gas Conservation

FERC Control Number: JD79-4160
API Well Number: 25-071-21591
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 1261 1-1261 Scott
Field: Bowdoin
County: Phillips
Purchaser: Kansas Nebraska Natural Gas Co., Inc.
Volume: 120 MMcf.

FERC Control Number: JD79-4161
API Well Number: 25-071-21490
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 1370- 1-13 Rex Burwell
Field: Bowdoin
County: Phillips
Purchaser: Kansas Nebraska Natural Gas Co., Inc.
Volume: 36 MMcf.

FERC Control Number: JD79-4162
API Well Number: 25-005-21780
Section of NGPA: 108
Operator: Tricentrol United States, Inc.
Well Name: Roberts 15-14-31-19
Field: Tiger Ridge
County: Blaine
Purchaser: Northern Natural Gas Company
Volume: 14.4 MMcF.

FERC Control Number: JD79-4163
API Well Number: 25-005-21918
Section of NGPA: 103
Operator: Tricentrol United States, Inc.
Well Name: Blackwod 34-9-31-18
Field: Tiger Ridge
County: Blaine
Purchaser: Northern Natural Gas Company
Volume: 187.7 MMcf.

FERC Control Number: JD79-4164
API Well Number: 25-071-21590
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 1060 No. 1 Hellie
Field: Bowdoin
County: Phillips
Purchaser: Kansas Nebraska Natural Gas Co., Inc.
Volume: 12 MMcf.

FERC Control Number: JD79-4165
API Well Number: 25-071-21539
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 0270 1-2 Brown
Field: Bowdoin
County: Phillips
Purchaser: Kansas Nebraska Natural Gas Co., Inc.
Volume: 19 MMcf.

FERC Control Number: JD79-4166
API Well Number: 25-071-21563
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 0161 No. 1-1 F. Anderson
Field: Bowdoin
County: Phillips
Purchaser: Kansas Nebraska Natural Gas Co., Inc.
Volume: 84 MMcf.

FERC Control Number: JD79-4167

API Well Number: 25-083-21224
Section of NGPA: 103
Operator: UV Industries, Inc.
Well Name: Obergfell 1-34
Field: Southeast Putnam
County: Richland
Purchaser: Montana Dakota Utilities Company
Volume: 86.768 MMcf.

FERC Control Number: JD79-4168
API Well Number: 25-071-21538
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 2460 No. 1-24 White
Field: Bowdoin
County: Phillips
Purchaser: Kansas Nebraska Natural Gas Co., Inc.
Volume: 36 MMcf.

FERC Control Number: JD79-4169
API Well Number: 25-071-21586
Section of NGPA: 108
Operator: Midlands Gas Corporation
Well Name: 2271 1-22 Lewis Miller
Field: Bowdoin
County: Phillips
Purchaser: Kansas Nebraska Natural Gas Co., Inc.
Volume: 8 MMcf.

FERC Control Number: JD79-4170
API Well Number: 25-083-21239
Section of NGPA: 102
Operator: UV Industries, Inc.
Well Name: Obergfell 2-23
Field: Southeast Putnam
County: Richland
Purchaser: Montana Dakota Utilities Company
Volume: 9.250 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 4, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15548 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER78-425]

Minnesota Power & Light Co.; Extension of Time

May 3, 1979.

On April 25, 1979, Minnesota Power & Light Company filed a motion for extension of time to comply with the Commission's Order of March 26, 1979. The motion states that a settlement has been agreed to by all active parties and will be filed shortly.

Upon consideration, notice is hereby given that an extension for complying with Ordering Paragraph (B) of the order of March 26, 1979, is granted to and including June 25, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15544 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP75-151]

Southern Natural Gas Co.; Amendment

May 11, 1979.

Take notice that on April 24, 1979, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP75-151 an amendment to its application filed in said docket pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for United Gas Pipe Line Company (United), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.[1]

Applicant states that in its initial application in said docket, it misdescribed the nature of the service proposed to be rendered for United and inadvertently and erroneously requested authorization to exchange gas for United. Applicant further states that it does not desire or need authorization to exchange gas with United in order to be able to perform the transportation service contemplated in this docket, and, accordingly, presents said amendment to clarify its description of the nature of the proposed service and to delete from its request for certificate authorization all references to the exchange of gas with United.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 4, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15545 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. CP79-286]

Southwest Gas Corp.; Application

May 9, 1979.

Take notice that on April 24, 1979, Southwest Gas Corporation (Applicant), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP79-286 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas pipeline facilities on its Northern Nevada transmission system, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to construct and operate 4.7 miles of 12-inch pipeline between its Reno City Gate No. 1 and Reno City Gate No. 2 in Washoe County, Nevada, and proposes to use such pipeline to transport a mixture of propane-air and natural gas between the two points. Applicant also requests authorization to construct 2.1 miles of 10-inch pipeline which pipeline would perform the same function as the 12-inch pipeline between the Carson City Gate Nos. 1 and 2 in Carson City County, Nevada. Further, Applicant proposes to modernize and reactivate an existing propane-air plant presently owned by Sierra Pacific Power Company at Reno City Gate No. 1. Between Carson City Gate Nos. 1 and 2, Applicant intends to construct and operate a propane-air peak shaving plant, it is stated. It is further stated that Applicant intends to construct and operate propane-air plants at Carson City Gate No. 3 and at the Elk City Gate.

These two pipelines would parallel in part Applicant's existing transmission system in northern Nevada and are needed in conjunction with two of the four propane-air plants to be attached on Applicant's system, it is said.

Applicant indicates that it is necessary for it to construct and operate the above-designated propane facilities in order for it to meet the peak period high priority requirements of its customers. Consequently, Applicant requests authorization to amend the Purchased Gas Cost Adjustment provisions of its FERC Gas Tariff, Original Volume No. 1, so as to include therein the cost to be incurred by Applicant in purchasing propane supplies.

Applicant asserts that it believes that it only needs a certificate authorizing the construction and operation of the proposed pipeline facilities in Washoe and Carson City Counties, but that in the event the Commission determines that a certificate is needed for the total project, Applicant requests any necessary waiver and a certificate authorizing the construction and operation of 4 liquid propane plants and all appurtenant equipment including necessary pipelines to inject propane-air at all injection points.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15546 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-268]

United Gas Pipe Line Co.; Application

May 9, 1979.

Take notice that on April 12, 1979, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP79-268 an application pursuant to Section 7(c) of the Natural Gas Act and § 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission for and approval of the abandonment, during the 12-month period commencing the date of issuance of an order herein, and operation of field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open to public inspection

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in the construction and abandonment of facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant requests waiver of the single and total project cost limitations as set forth in subparagraph (iii) of Section 157.7(g) of the Regulations in order to permit an increase in the single project limitation of $500,000 to $750,000 and an increase in the total project limitation of $3,000,000 to $5,000,000. Applicant states that waiver of the Commission's Regulations in this instance is appropriate because issuance of a certificate in the amounts authorized by such rules would not compensate for the effects of inflation.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10), and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15547 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

Bradco Oil & Gas Co.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 11, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of Louisiana, Department of Natural Resources, Office of Conservation

FERC Control Number: JD79-3617
API Well Number: 1705721396
Section: 103
Operator: Bradco Oil & Gas Co.
Well Name: Nicholls RA SUA; Boudreaux No. 1
Field: Rousseau

County: Lafourche
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 900 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 4, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15559 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

Dallas Bond; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 9, 1979.

On April 11, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Ohio Department of Natural Resources

FERC Control Number: JD79-5651
API Well Number: 34 121 2 1916**14
Section of NGPA: 108
Operator: Dallas Bond
Well Name: D. Secrest W-7
Field: N/A
County: Noble
Purchaser: None
Volume: 3.5 MMcf.

FERC Control Number: JD79-5652
API Well Number: 34 121 2 1922**14
Section of NGPA: 108
Operator: Dallas Bond
Well Name: Bates-Bond W11
Field: N/A
County: Noble
Purchaser: None
Volume: 18 MMcf.

FERC Control Number: JD79-5653
API Well Number: 3405320230**14
Section of NGPA: 103
Operator: Cameron & Kincaid
Well Name: James Baird No. 4
Field: N/A
County: Gallia
Purchaser: None
Volume: 3.5 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 4, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15558 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-70]

Detroit Edison Co.; Order on Rehearing—Electric Rates

Issued May 9, 1979.

On April 9, 1979, Detroit Edison Company (Edison or company) submitted an application for rehearing of the Commission's order issued in this docket on March 9, 1979. Edison sets forth two arguments in support of its application. According to the company: (1) the Commission erroneously decided to summarily exclude from Edison's Period II cost of service any annualizing adjustments associated with the company's Greenwood No. 1 Plant which was scheduled to become operational some three or four months after the beginning of the test period; and (2) the Commission exceeded its statutory authority in designating an August 11, 1979, effective date for the proposed rate increase.

Our March 9 order explained that the so-called "Greenwood adjustment" represented an effort by Edison to annualize the investment and costs related to a generating plant that actually was projected to be in service only for the last eight or nine months of the test year. The proposed annualization was opposed by the intervenors on a number of grounds, while Edison urged that its treatment of the Greenwood plant and related expense items served to provide a more representative cost of service for purposes of assessing rates which would extend into a future period. The Commission construed the future test year Regulations, particularly Section 35.13(b)(4)(iii), as precluding such adjustments to Period II cost of service estimates. Accordingly, we required Edison to revise its cost of service and rates by eliminating any annualizing adjustments associated with the Greenwood plant.

We shall not address the various contentions advanced in Edison's application for rehearing of our summary disposition with respect to this issue. Upon reconsideration, we believe that Edison should be permitted to present evidence and argument in support of its position. By enabling Edison to pursue the annualization issue at hearing, we do not intend to endorse such modifications to Perioid II estimates in this or any other proceeding. However, it is apparent that the annualization proposed by Edison is not proscribed *per se* by Commission precedent or our current Regulations and that summary disposition therefore would unduly jeopardize the rights of the company. In light of this determination, we shall reverse the March 9 order to the extent that it required revision of the proposed rates based upon the "Greenwood adjustment."

In directing Edison to refile its cost of service and rates based upon elimination of the "Greenwood adjustment," the March 9 order further required the Company to exclude its EPRI and LMFBR contributions from the revised wholesale rates. In view of the foregoing reversal of our determination concerning the "Greenwood adjustment", we shall also vacate our directive that Edison revise its filed rates to reflect our summary disposition with respect to the EPRI and LMFBR contributions. It does not appear that the magnitude of this issue alone, as compared to the overall rate increase, warrants interim revision of the rates.

As indicated above, the second of Edison's arguments or rehearing concerns the Commission's designation of an effective date for the proposed rates. The rates subject to investigation in this proceeding were originally tendered for filing on November 20, 1978. Edison was notified by letter dated December 20, 1978, that its filing was incomplete with respect to a number of specific requirements enumerated in Section 35.13(b)(4)(iii) of the Commission's Regulations. The company was further advised that no filing date would be assigned to the submittal pending receipt of the information that was specified in detail in the deficiency letter. Subsequently, on January 10, 1979, Edison supplemented

the materials that originally had been submitted.

Over protests by the intervenors, our March 9, 1979 order concluded that Edison had responded to the deficiency letter in a satisfactory manner and that its filing, *as completed on January 10, 1979,* was in substantial compliance with the Regulations. Based upon our review of the proposed rates, the supporting data, the pleadings before us, and all attendant circumstances, we determined that the maximum five-month suspension period was appropriate. Accordingly, we designated Janaury 10, 1979 as the "filing date" and we ordered the rates to become effective, subject to refund, on August 11, 1979, or five months after the date upon which they otherwise would have become effective (sixty days after the filing date).

Edison submits that the foregoing course of action was improper in several respects. In each instance we find Edison's contentions to be without merit. For example, the company challenges the fact that our March 9 order did not elaborate on the underlying bases upon which the company's original filing was deemed deficient. However, the deficiency letter clearly identified the nature of the deficiencies and further informed Edison of the consequent deferral of a filing date. There was no need to express any additional findings concerning the deficiencies in later evaluating the completed filing.

Edison asserts that the Commission was obliged to act upon the incomplete filing within the sixty-day statutory notice period. According to Edison, the Commission relinquished its suspension authority by failing to suspend the effectiveness of the rate increase within sixty days of the deficient filing. Contrary to the company's argument, the Commission, through its delegated representative, acted upon the rate proposal within thirty days of the original submittal by informing the company that its filing was inadequate. Our filing Regulations are designed to provide for meaningful notice of proposed rate changes. In view of Edison's substantial failure to comply with the Regulations, neither the Commission nor the public was supplied with sufficient information upon which to make informed judgments with respect to the proposed rates. In other words, prior to completion of the filing, Edison had not provided the notice contemplated by Section 205(d) of the Federal Power Act [1]or by our Regulations.

The Commission's treatment of Edison's filing was fully consistent with the provisions of the Federal Power Act and the Regulations promulgated thereunder. Section 35.13 of the Regulations identifies the materials which must accompany proposed rate schedule changes. The "filing date" for such rate changes is defined by Section 35.2(c) as "the date on which a rate schedule filing is completed by receipt * * * of all supporting cost and other data required to be filed * * *." Unless otherwise ordered by the Commission, the "effective date" of a rate schedule is measured by reference to the "filing date" (sixty days thereafter). *See* Section 35.2(e). In addition, the Regulations provide for the refusal to accept for filing rate schedules which are substantially incomplete or deficient. *See* Sections 1.14 (a)(2), 3.5(g)(14) and (15), 35.2(c), and 35.5. The Commission's authority to issue such Regulations and to enforce them as we have done in this proceeding has been judicially recognized. *E.g., Municipal Light Boards* v. *FPC,* 450 F. 2d 1341 (D.C. Cir. 1971).

Edison has identified no departure from the Commission's established procedures. Therefore, with respect to the August 11, 1979 effective date previously established, the company's application for rehearing will be denied.

The Commission orders:

(A) Edison's application for rehearing of the Commission's order of March 9, 1979, in this docket is hereby granted in part and denied in part.

(B) Ordering Paragraph (D) of the March 9, 1979 order is hereby vacated insofar as it summarily disposes of the annualizing adjustments associated with the Greenwood No. 1 plant and insofar as it requires Edison to refile its rates.

(C) In all respects other than those stated in Paragraph (B) above, the March 9, 1979 order is hereby affirmed.

(D) The Secretary shall cause prompt publication of this order to be made in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15554 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[1] As amended by Section 207 of the Public Utilities Regulatory Policies Act.

Enserch Exploration, Inc.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 11, 1979.

On April 25, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State Oil and Gas Board of Alabama

FERC Control Number: JD79-4155
API Well Number: 01-057-20107
Section of NGPA: 103
Operator: Enserch Exploration, Inc.
Well Name: T. Rowland No. 1
Field: Fayette West (Carter)
County: Fayette
Purchaser: Coronado Transmission Company
Volume: 40 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 10426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 4, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 15560 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP70-6, et al.]

Lawrenceburg Gas Transmission Corp.; Report of Refunds

May 11, 1979.

Take notice that on April 27, 1979 Lawrenceburg Gas Transmission Corporation (Lawrenceburg) filed a Report of Refunds, pursuant to Article VI of its Stipulation and Agreement at Docket No. RP70-6, et. al., approved by Commission Order issued August 25, 1972. Lawrenceburg states that on April 23, 1979 it made gas refunds to its two (2) jurisdictional wholesale customers, Lawrenceburg Gas Company, in the amount of $1,601.48, and The Cincinnati Gas & Electric Company, in the amount of $653.65, for a total refund of $2,255.13.

Lawrenceburg states that this refund, applicable to various periods between November 1, 1959 and July 13, 1972, constitutes a flow through of the allocated jurisdictional portion of a refund it received from Texas Gas Transmission Corporation dated March 22, 1979.

Lawrenceburg states that copies of its refund report have been mailed to its two jurisdictional customers and to the two interested State Commissions for the States of Indiana and Ohio.

Any person desiring to be heard or to protest said filing should file a petition to intervene (unless such intervention has previously been granted) or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 June 6, 1979. Protests will be considered by the Commisson in determining the appropriate action 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. 79-15555 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-288]

Mountain Fuel Supply Co.; Application

May 11, 1979.

Take notice that on April 26, 1979, Mountain Fuel Supply Company (Mountain Fuel), P.O. Box 11368, Salt Lake City, Utah 84139, filed in Docket No. CP79-288 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and exchange of up to 20,000 Mcf per day of natural gas with Natural Gas Pipeline Company of America, (Natural), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Mountain Fuel states that it and/or Colorado Interstate Gas Company (CIG) have the optional purchase right of up to a combined total of 25 percent of the natural gas delivered to Mountain Fuel pursuant to a letter agreement between Natural, CIG and Mountain Fuel dated January 26, 1979.

Mountain Fuel states that Natural has under contract or otherwise owns or controls certain natural gas reserves in the Bonanza area of eastern Utah, which is a considerable distance from Natural's existing transmission system. Mountain Fuel has intrastate natural gas gathering and transmission facilities in the Bonanza area and would be willing to transport and exchange natural gas with Natural, it is further stated.

A gas purchase and transportation agreement dated October 3, 1978, provides for the transportation and exchange of Natural's supply of natural gas from the Bonanza area to an existing exchange point between Mountain Fuel and CIG, it is said.

Natural, pursuant to said agreement, would deliver to Mountain Fuel for transportation all volumes of natural gas obtained by Natural in the Bonanza area of Uintah County, Utah, it is asserted. Mountain Fuel would redeliver equivalent volumes subject to Mountain Fuel's and CIG's option to purchase up to 25 percent of the volumes delivered for transportation, at an existing point of interconnection known as the Kanda Exchange Point, in Sweetwater County, Wyoming, it is further asserted.

The said agreement is for a primary term of five years commencing on the first day of the month following the initiation of deliveries and on a year-to-year basis thereafter. Mountain Fuel estimates the initial volumes of gas to be delivered would be approximately 10,000 Mcf per day of which Mountain Fuel and CIG would have the option to purchase up to 25 percent. All natural gas received by Mountain Fuel from Natural for transportation and exchange would be ultimately consumed by Mountain Fuel's existing intrastate distribution system, it is said.

Mountain Fuel states that it proposes to charge CIG and Natural a cost of service based transportation rate of 13.22 cents per Mcf for gas delivered to it for transportation and 5.0 cents per Mcf for compression through the Kanda Exchange Point in addition to reimbursement for CIG's and Natural's share of compressor fuel. The transportation rate differs from the rate specified in the agreement dated October 3, 1978, because the calculated transportation rate is lower than the negotiated rate, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 4, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (19 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Mountain Fuel to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15556 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-228]

Transcontinental Gas Pipe Line Corp.; Intent To Act

May 9, 1979.

In this docket, the Commission has before it an application by Transcontinental Gas Pipe Line Corporation (Transco) for a limited term certificate of public convenience and necessity permitting interruptible service to enable transportation in interstate commerce of certain natural gas which Consolidated Edison Company of New York, Inc. (Con Ed) has agreed to purchase from Consolidated Gas Supply Corporation (Con Gas). The application also requests the granting of a temporary certificate. By this order, the Commission hereby gives notice of its intention to act on this application at its regularly scheduled meeting of May 16, 1979.

The Commission notes that on May 7, 1979, Con Ed filed a request for the immediate issuance of a temporary certificate. Con Ed alleges that the prospective seller, Con Gas, a natural gas company regulated by this Commission, intends to cancel the underlying gas sales contract unless the Commission acts affirmatively on the applied for certificate this week. Con Ed further argues that immediate action of this Commission is therefore required in order that the Commission's failure to act not "render this national interest matter moot".[1] Con Ed then notes various reasons attempting to demonstrate emergency need for the gas.

General Motors Corporation (GM) has filed in opposition to Con Ed's request for immediate issuance of a temporary certificate.[2] GM argues that the amounts of interstate gas supplies involved in this transaction may be substantial. It further notes that if Con Ed faces actual deficiencies in fuel oil supplies such that its service reliability would be jeopardized it would not object to the authorization of emergency deliveries. GM contends, however, that Con Ed has not made such a showing as would justify the granting of emergency relief.

Con Ed recognizes in its petition that several motions to intervene and requests for hearing have been filed in this docket. Substantial questions of law and fact underlie the Commission's consideration of this matter. In its request for comments on the proposed rule to displace fuel oil usage in Docket No. RM79-34, the Commission stated its intent to expeditiously consider applications which conformed to the provisions of that rule. This application, however, is not so conforming and instead raises additional policy questions which the Commission must consider. In recognition of these circumstances, the Commission hereby gives notice of its intention to act on this matter by May 16, 1979. Should Con Gas terminate the transaction now (as is represented by Con Ed), the Commission believes that Con Gas will have determined the matters at issue by its own action and must bear responsibility for it.

[1]Request of Consolidated Edison Company of New York, Inc. for Immediate Issuance of Temporary Certificate, Convening of Prehearing Conferences, and for Early Hearing Date, filed May 7, 1979, at pg. 2.

[2]Answer of General Motors Corporation to Request for Temporary Certificate, filed May 9, 1979.

By Direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-15557 Filed 5-17-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1230-1]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of May 7 to May 11, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from May 18, 1979 and will end on July 2, 1979. The 30-day wait period for final EIS's will be computed from the date of receipt by EPA and commenting parties.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathi Weaver Wilson, Office of Environmental Review A-104, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-0780.

SUMMARY OF NOTICE: Appendix I sets forth a list of EIS's filed with EPA during the week of May 7 to May 11, 1979 the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the **Federal Register** and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: May 15, 1979.

William Dickerson,

Acting Director, Office of Environmental Review.

Appendix I

EIS's Filed With EPA During the Week of May 7 to May 11, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447-3965.

Forest Service

Draft

Hayden-Wolf Lodge Planning Unit, Land Mgmt. Plan, Kootenai County, Idaho, May 10: Proposed is a land management plan for the Hayden-Wolf Lodge Planning Unit in the Coeur d'Alene National Forest, of the Idaho Panhandle National Forests in Kootenai County, Idaho. The plan includes a preferred alternative with a mix of land uses with emphasis on timber management, wildlife, fisheries, recreation and esthetic values. National forest land comprises 53,890 acres of the 74,580 acres within the unit. Four alternatives are considered. (DES-01-04-79-07). (EIS Order No. 90482).

National Forest System Planning, Regulations, Regulatory, May 8: Proposed is the issuance of regulations to guide land and resource management planning in the National Forest system. These rules require an integration of planning for National Forests and grasslands, including timber, range, fish and wildlife, water, wilderness, and recreation resources, together with resource protection activities and coordinated with fire management and the use of other resources, such as minerals. The proposed rules will implement provisions of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976. (EIS Order No. 90469).

Final

Pitch Project, Mining and Milling, Gunnison NF, Saguache County, Colorado, May 8: The proposed action is the issuance of approvals, permits, and licenses to the Homestake Mining Company for the implementation of the Pitch Project located in Gunnison National Forest, Saguache County, Colorado. The project will consist of mining and milling operations involving uranium are deposits which will take place over an estimated period of 20 years. A mill will be constructed and operated as long as ore is available. Waste materials will be buried onsite at the head end of a natural valley. (USDA–FS–R2–FES–(ADM)–FY–78–03). Comments made by: DOI, COE, HEW, EPA, HUD, DOE, USDA, AHP, State and local agencies, groups, individuals and businesses. (EIS Order No. 90472).

Ashland Land Management Plan, Custer NF, Rosebud, and Powder River Counties, Mont., May 11: Proposed is the selection and implementation of a land management plan for the Ashland Division Planning Unit, Custer National Forest, Rosebud and Powder River Counties, Montana. The unit contains 502,152 acres of Federal and other owned land, six management alternatives are considered, which in addition to consideration of population, provide emphasis on: 1) Partial accommodation of local livestock range demand with restriction of other resources; 2) National and local demands for beef and timber output; 3) Population increase; 4) Roadless and undeveloped areas; 5) Energy and population growth; and 6) Livestock range, recreation and timber management. (USDA–FS–ADM–FES–01–08–79–01). Comments made by: DOI, DOC, USDA, TREA, FERC, State agencies, groups, individuals and businesses. (EIS Order No. 90485).

Ochoco NF Timber Management Plan, several counties in Oregon, May 5: Proposed is the implementation of a revised, ten year timber management plan for the Ochoco National Forest in Crook, Harney, Grant and Wheeler Counties, Oregon. This statement deals with various levels of intensive timber management on those lands (545,098 acres) which have been classified as commercial forest land available for timber production. It also reflects the changes of land allocation as a result of land management planning. Five alternatives are considered. (USDA–FS–R6–FES–(ADM)–77–7). Comments made by: USDA, DOI, HUD, State and local agencies, groups, individuals and businesses. (EIS Order No. 90466).

Final

Western Spruce Budworm, Boise and Payette NFs, Several counties in Idaho, May 11: This statement replaces final EIS, No. 80373, filed 4–18–78 concerning the control of the Western Spruce Budworm in the Boise and Payette National Forests in the counties of Boise, Valley, Idaho, Adams and Gem of the State of Idaho. This statement considers short and long term management objectives and the consequent economic implications of alternative courses of action. The alternatives considered are chemical treatment and accelerated host type timber harvest. (USDA–FS–R4–AFES (Adm)–R4–78–2). Comments made by: DOI, EPA, AHP, HUD, USDA, state and local agencies, individuals and businesses. (EIS Order No. 90488.)

U.S. Army Corps of Engineers

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314 (202) 693–6795.

Draft

Louisa Generating Station, Permit, Transmission, Louisa, Iowa, Muscatine County, May 10: Proposed is the construction and operation of a 650,000 kilowatt, coal-fired, steam electric generating station adjacent to the Mississippi River in Louisa and Muscatine Counties, Iowa, to be known as Louisa generating station, included on the 1655 acre site will be a main building complex housing the steam boiler, a 650,000 kilowatt turbine generator, air pollution control facilities, coal and material handling and storage areas; a 610 foot stack; cooling tower; 4 wells; electric substation; river discharge structure; spur rail line; and ash storage ponds. The project will also require three 345kV transmission lines. (Rock Island District.) (EIS Order No. 90481.)

Verdigris River Fleeting Area Development, Permit, Rogers and Wagoner Counties, Okla., May 8: Proposed is the issuance of a permit for the construction, operation and maintenance of a fleeting area on the Verdigris River in Rogers and Wagoner Counties, Oklahoma. The fleeting area would provide storage for both empty and loaded barges and would consist of 21 deadmen capable of mooring 38 barges. The fleeting area would be located in the river cutoff on the right descending bank at mile 37.1 of the Verdigris River one-quarter mile upstream of the applicant's existing docking facility. (Tulsa District.) (EIS Order No. 90468.)

Final

South Fork Zumbro River Watershed, (S–2), Rochester, Minn., Olmsted County, May 9: This statement supplements a final EIS filed in May 1973 concerning flood control of the Zumbro River Basin located in Rochester and Olmsted Counties, Minnesota. The proposed plan is a combination of structural and nonstructural measures including channel modification, levees, insurance, reservoirs, and other measures. The COE filed a draft EIS on this project in 1972 followed by a final EIS, No. 31524, filed 9–19–73. The COE then replaced the original 1972 draft with revised draft, No. 61553, filed 10–26–76, which was then replaced by a second revised draft, No. 80797, filed 7–24–78. This final statement replaces the original final EIS (No. 31524). (Chief of Engineers.) Comments made by: EPA, USDA, DOE, DOI, HEW, HUD, DOT, DOC, FPC, state agencies. (EIS Order No. 90477.)

Final Supplement

Charleston Breakwater Extension, Coos Bay, Coos County in Oregon, May 7: This statement supplements a final EIS (No. 61676) filed in November 1976 concerning the operation and maintenance of Coos Bay, Coos County, Oregon. Proposed is: (1) construct an 800–foot breakwater extension north from the end of the present breakwater paralleling channel alignment; (2) raise the top elevation of the existing breakwater; and (3) construct a 400–foot long groin on the east side of the Charleston Channel to control channel shoaling. (Portland District.) Comments made by: EPA, USDA, DOC, FERC, AHP, DOT, state and local agencies. (EIS Order No. 90465.)

DEPARTMENT OF DEFENSE

Contact: Col. Charles E. Sell, Chief of the Environmental Office, Headquarters DAEN–ZCE, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310, (202) 694–4269.

Army

Draft

Fort Sill Military Operational Area (MOA), Comanche, Kiowa, and Caddo Counties, Okla., April 13. Proposed is the establishment of Fort Sills Military Operation Areas (MOA) located at Fort Sills, in Comanche, Kiowa, and Caddo Counties, Oklahoma. This action would permit fighter squadrons in this area to accomplish their assigned missions and missions required in support of army training. The Specified Areas are needed to comply with FAA regulations for operation of aircraft at speeds 250 knots at altitudes below 10,000 feet. On navigation charts the areas will be shown where high performance aircraft activity will occur so that other aircraft traveling low altitudes can avoid the area. (EIS Order No. 90476.)

Navy

Contact: Mr. Ed Johnson, Head, Environmental Impact Statement RDT&E Branch, Office of the Chief of Naval Operations, Department of the Navy, Washington, D.C. 20350, (202) 697–3689.

Final

COSO Geothermal Development, NWC China Lake, Inyo, Kern, and San Bernardino Counties, Calif., May 8: The proposed action is the award of a contract to develop geothermal power as an alternative to conventional power sources at the Naval Weapons Center (NWC), China Lake, Kern.

Inyo and San Bernardino Counties, California. Under the contract, the contractor will be responsible for implementing a COSO geothermal development program on approximately 3½ square miles of 4½ square miles of Navy fee acquired land within the COSO known geothermal resource area (COSO KGRA). Successful completion of this project will provide the Navy with energy self-sufficiency at its NWC facility. Energy in excess will be made available to other West Coast DOD facilities. Comments made by: DOI, USN, EPA, State and local agencies, individuals and businesses. (EIS Order No. 90471.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets, NW., Washington, D.C. 20405, (202) 566–1416.

Final

NRC Headquarters, Relocation and Consolidation, District of Columbia and Montgomery County, May 11: Proposed is the relocation and consolidation of the Nuclear Regulatory Commission headquarters. The GSA is presently considering two locations in the District of Columbia and three locations in Montgomery County, Maryland. NRC is presently housed in nine separate facilities, one of which is in downtown Washington, and eight in Montgomery County, Maryland. The proposed action will require that GSA lease approximately 600,000 square feet of occupiable space in a building to be constructed. Comments made by: EPA, COE, USDA, FERC, NCPC, State and local agencies, groups and individuals. (EIS Order No. 90487.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality Room 7274, Department of Housing and Urban Development, 451 7th Street, SW., Washington D.C. 20410, 202–755–6306.

Final

Sundown Subdivision, Mortagage Insurance, Harris County, Tex., May 8: Proposed is the issuance of HUD Home Mortgage Insurance for the Sundown Subdivision in Harris County, Tex. When completed, the subdivision, which encompasses approximately 349 acres, is expected to consist of approximately 837 single family and 590 multi-family dwelling units. Due to the relationship of the project to a floodplain, HUD has also incorporated the "Notice" required by Executive Order 11988, as an addendum to this EIS. (HUD-RO6-IES-79-15F). Comments made by: USDA, COE, DOE, DOI, DOT, State agencies. (EIS Order No. 90473.)

Section 104(H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Final

Marina/Columbia Residential Development, San Diego County, Calif., May 8: Proposed is the Marina/Columbia Residential Development in the core of downtown San Diego in San Diego County, California. The project is currently being planned as a residential community, containing between 2,000 and 3,000 multilevel, multi-family dwelling units. Neighborhood Convenience and commercial development will be incorporated into the development. (13-79-MC-06-0542). Comments made by: COE, EPA, State agencies, groups, individuals and businesses. (EIS Order No. 90474.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240. 202–343–3891.

Bureau of Land Management

Draft

Little Lost-Birch Creek Range Management, several Counties in Idaho, May 11: Proposed is the implementation of a range management program for 332,570 acres of public land and 65,673 acres of DOE withdrawn land located in the Little Lost-Birch Creek Planning Unit, Butte, Clark, Lemhi, and Custer Counties, Idaho. Use of the area will include 27,164 aums for livestock and 10,453 aums for wildlife, grazing treatments would be implemented on 398,243 acres of public and withdrawal land consisting of rest-rotation on 181,232 acres, deferred rotation on 183,883, and seasonal grazing on 33,128 acres. (DES-79-24). (EIS Order No. 90484.)

Boise District Agricultural Development, Elmore, Owyhee, and Twin Falls, Counties, Idaho, May 11: Proposed is the development of 11,015 acres of public land for farming under the Desert Land Act and the Carey Act. The project is located in Elmore, Owyhee, and Twin Falls Counties, Idaho. In addition, about 37,00 acres of public land adjacent to farm locations would be reserved for public purposes such as wildlife habitat tracts, gravel sites, air strips, sanitary landfills, and other uses. This development would occur from 1980 through 1984 at about 22,000 acres per yer. Six alternatives are considered. (DES-79-28). (EIS Order No. 90486.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S Department of Transportation, 400 7th Street SW., Washington D.C. 20590, 202–426–4357

Federal Aviation Administration

Draft

Falcon Field, Expansion of Facilities, Mesa, Maricopa County, Ark., May 11: Proposed is a master plan for the orderly short, intermediate and long term expansion and development of Falcon Field located in the city of Mesa, Maricopa County, Arizona, the first phase of development will include: land acquisition, construction of a runway with associated taxiway system, construction of a shop maintenance and a fixed-base operator (FBO) hangar, expansion of terminal and administration building, and others. The second (intermediate and long range) phase includes construction of additional ramp and tie down areas, hangars, vehicle parking areas and FBO areas, additional underground utilities to serve the improved areas, and other features. (EIS Order No. 90483.)

Federal Highway Administration

Draft

Route 15 (Norco Reach) Magnolia Avenue to CA–60, Riverside, San Bernardino, Counties, Calif., May 8: Proposed is the construction of Route 15 between Magnolia Avenue in the city of Corona and CA–60 near the city of Norco in Riverside and San Bernardino Counties, California. The Facility would be either a freeway/conventional highway facility, or an 8-lane freeway, and would be approximately 11.2 to 19.1 miles in length, depending upon the alternatives, the alternatives include: A) No-build, B) A combination freeway/conventional highway, and C) Four freeway alternates. (FHWA-CA-EIS-79-03-D). (EIS Order No. 90467.)

Draft

U.S. 50/301, MD–70 to Chesapeake Bay Bridge, Anne Arundel County, Md., May 8: Proposed is the upgrading of seven miles of existing U.S. 50/301 from MD–70 to the toll plaza of the Chesapeake Bay Bridge in Anne Arundel County, Maryland. The facility would become a 6 to 8 lane divided freeway with full control of access. Included are increases in roadway capacity by the addition of through traffic lanes and frontage roads, and the provision for safety improvements with median barriers and vehicle recovery areas. Also proposed are interchanges at Old Mill Bottom Road and relocated St. Margaret's Road, and major improvements to the existing Severn River Bridge. (FHWA–MD–EIS–79–01–D). (EIS Order No. 90475.)

Final

U.S. 71 relocation, Fayetteville to McKissick Creek, Benton and Washington Counties, Ark., May 10: Proposed is the construction of a four-lane freeway-type facility on new location in northwest Arkansas. The facility will connect the Fayetteville bypass with U.S. Highway 71 at McKissick Creek and will extend 25 miles in length. The project is located in the counties of Benton and Washington, Arkansas. Six alternatives were considered. (FHWA–ARK–EIS–75–02–F). Comments made by: USDA, DOT, EPA, local agencies, groups and individuals. (EIS Order No. 90480.)

U.S. 50 Study Improvements, Vienna, Dorchester and Wicomico Counties, Md., May 10: Proposed is a study of the location and type of highway improvements required on U.S. 50 to provide improved traffic service for the local communities of Cambridge, Vienna, and Salisbury, in Dorchester and Wicomico Counties, Maryland. The recommended alternative involves the construction of a four-lane divided highway, with two 24-foot roadways separated by a graded median which requires a maximum right-of-way width of 300 feet. These right-of-

way widths include provisions for control of access, frontage roads and drainage requirements. The project begins in the town of Vienna from the end of the dual highway to Old Bradley Road. Also included will be removal of Nanticoke River Bridge. Comments made by: USDA, DOI, EPA, DOT, COE, HEW, DOC, State agencies. (EIS Order No. 90479.)

Final

Robert E. Lee Bridge and Approaches, Virginia, May 10: The proposed project is the replacement of the Robert E. Lee Bridge across the James River in the city of Richmond, Virginia, along with improvements to the north and south approaches to handle expected future traffic flows. The southern terminus for the project is the intersection of Decatur Street and Jefferson Davis Highway (Route 1–301) one block south of U.S. Route 360 (Hull street) while the northern terminus is the intersection of Idlewood Avenue and Belvidere Street (Route 1–301) at the south end of the new bridge over the downtown expressway. The existing bridge would be demolished. (FHWA–VA–EIS–77–02–F). Comments made by: AHP, DOT, DOI, COE, State and local agencies, businesses. (EIS Order No. 90478.)

EIS's Filed During the Week of May 7 to 11, 1979

(Statement Title Index—By State and County)

State	County	Status	Statement title	Accession No.	Date filed	Orig. agency No.
Arkansas	Benton	Final	U.S. 71 Relocation, Fayetteville to McKissick Creek	90480	05–10–79	DOT
	Maricopa	Draft	Falcon Field, Expansion of Facilities, Mesa	90483	05–11–79	DOT
	Washington	Final	U.S. 71 Relocation, Fayetteville to McKissick Creek	90480	05–10–79	DOT
California	Inyo	Final	COSO Geothermal Development, NWC China Lake	90471	05–08–79	USN
	Kern	Final	COSO Geothermal Development, NWC Chins Lake	90471	05–08–79	USN
	Riverside	Draft	Route 15 (NORCO Reach) Magnolia Avenue to CA–60.	90467	05–08–79	DOT
	San Bernardino	Draft	Route 15 (NORCO Reach) Magnolia Avenue to CA–60.	90467	05–08–79	DOT
		Final	COSO Geothermal Development, NWC China Lake	90471	05–08–79	USN
	San Diego	Final	Marina/Columbia Residential Development	90474	05–08–79	HUD
Colorado	Saguache	Final	Pitch Project, Mining and Milling, Gunnison NF	90472	05–08–79	USDA
Distict of Columbia		Final	NRC Headquarters, Relocation and Consolidation	90487	05–11–79	GSA
Idaho	Several	Draft	Little Lost-Birch Creek Range Management	90484	05–11–79	DOI
	Elmore	Draft	Boise District Agricultural Development	90486	05–11–79	DOI
	Kootenai	Draft	Hayden-Wolf Lodge Planning Unit, Land Mgmt Plan.	90482	05–10–79	USDA
	Owyhee	Draft	Boise District Agricultural Development	90486	05–11–79	DOI
	Twin Falls	Draft	Boise District Agricultural Development	90486	05–11–79	DOI
	Several	Final	Western Spruce, Budworm, Boise and Payette NFs.	90488	05–11–79	USDA
Iowa	Louisa	Draft	Louisa Generating Station, Permit, Transmission	90481	05–10–79	COE
	Muscatine	Draft	Louisa Generating Station, Permit, Transmission	90481	05–10–79	COE
Maryland	Montgomery	Final	NRC Headquarters, Relocation and Consolidation	90487	05–11–79	GSA
	Anne Arundel	Draft	U.S. 50/301, MD–70 to Chesapeake Bay Bridge	90475	05–08–79	DOT
	Dorchester	Final	50 U.S. Study Improvements, Vienna	90479	05–10–79	DOT
	Wicomico	Final	U.S. 50 Study Improvements, Vienna	90479	05–10–79	DOT
Minnesota	Olmsted	Final	South Fork Zumbro River Watershed, (S–2)	90477	05–09–79	COE
	Rochester	Final	South Fork Zumbro River Watershed, (S–2)	90477	05–09–79	COE
Montana	Powder River	Final	Ashland Land Management Plan, Custer NF	90485	05–11–79	USDA
	Rosebud	Final	Ashland Land Management Plan, Custer NF	90485	05–11–79	USDA
Oklahoma	Caddo	Draft	Fort Sill Military Operational Area (MOA)	90476	05–09–79	USA
	Comanche	Draft	Fort Sill Military Operational Area (MOA)	90476	05–09–79	USA
	Kiowa	Draft	Fort Sill Military Operational Area (MOA)	90476	05–09–79	USA
	Rogers	Draft	Verdigris River Fleeting Area Development, Permit	90468	05–08–79	COE
	Wagoner	Draft	Verdigris River Fleeting Area Development, Permit	90468	05–08–79	COE
Oregon	Several	Final	Ochoco N.F. Timber Management Plan	90466	05–07–79	USDA
	Coos	Supple	Charleston Breakwater Extension, Coos Bay	90465	05–07–79	COE
Regulatory		Draft	National Forest System Planning, Regulations	90469	05–08–79	USDA
Virginia		Final	Robert E. Lee Bridge & Approaches	90478	05–10–79	DOT
Texas	Harris	Final	Sundown Subdivision, Mortgage Insurance	90473	05–08–79	HUD

Appendix II.—*Extension/Waiver of Review Periods on EIS's Filed With EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminates
DEPARTMENT OF INTERIOR					
Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Building, Department of the Interior, Washington, D.C. 20240 (202) 343–3891.	North Loup/Pick Sloan, Missouri River Basin, Nebraska.	Final Supplement 90390	4/20/79	Extension	6/3/79

Appendix III.—*EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—*Notice of Official Retraction*

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—*Availability of Reports/Additional Information Relating To EIS's Previously Filed With EPA*

Federal agency contact	Title of report	Date made available to EPA	Accession No.
None.			

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
DEPARTMENT OF COMMERCE				
Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230.	Reef Fish Resources of the Gulf of Mexoco.	Draft 90342	4-13-79	Notice of retraction was published in the FEDERAL REGISTER 5/11/79. The date of official refiling was incorrectly listed as 4/2/79 in Appendix IV. The correct date is 5/1/79. Comments are due 6/15/79.

[FR Doc. 79-15639 Filed 5-17-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 79-92, File No. 118-C2-P-70; CC Docket No. 79-93, File No. 285-C2-MP-70]

Mobile Telephone Co. of New Jersey, et al.; Designating Applications for Consolidated Hearing on Stated Issues, Memorandum Opinion and Order

Adopted: April 24, 1979.

Released: May 10, 1979.

In Re applications of Mobile Telephone Co. of New Jersey; For a Construction Permit to establish a new two-way station to operate on frequency 454.175 MHz in the Domestic Public Land Mobile Radio Service at North Bergen, New Jersey. Beep Communication Systems, Inc.; For a Construction Permit to establish additional facilities for two-way Station KEK287 to operate on frequency 454.175 MHz in the Domestic Public Land Mobile Radio Service at New York, New York.

1. Presently before the Chief, Common Carrier Bureau, pursuant to delgated authority are the applications of Mobile Telephone Company of New Jersey, File No. 118-C2-P-70, for a Construction Permit to establish a new two-way station to operate on frequency 454.175 MHz in the Domestic Public Land Mobile Radio Service at North Bergen, New Jersey and the application of Beep Communication Systems, Inc. for a Construction Permit to add the frequency 454.175 MHz to two-way Station KEK287 at New York, New York.

2. Because the above-referenced applications request use of the same frequency in the same geographic area they are electrically mutually exclusive. Accordingly, a comparative hearing must be held to determine which applicant would better serve the public interest, convenience and necessity. *Ashbacker Radio Corp.* v. *FCC*, 326, U.S. 327 (1945). Except to the extent indicated in Paragraph 4 below, we find the applicants to be legally, technically, financially and otherwise qualified to construct and operate the proposed facilities.[1]

3. Accordingly, it is ordered, That the application of the Mobile Telephone Company of New Jersey, File No. 118-C2-P-70, and the application of Beep Communication Systems, Inc., File No. 285-C2-MP-70, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine, on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine, on a comparative basis, the areas and populations that each applicant will serve within the prospective 39 dBu contours, based upon the standards set forth in Section 21.504(a) of the Commission's Rules,[2] and to determine the need for the proposed services in said areas; and

c. To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the above-referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, That any authorization which may be issued to the Mobile Telephone Company of New Jersey will be expressly subject to whatever conditions may be appropriate as a result of the Commission's decision

[1] It is noted that Mr. Robert L. Starer is the principal of the Mobile Telephone Company of New Jersey. Mr. Starer is also involved in the proceeding initiated by *Arizona Mobile Telephone Company*, 66 FCC 2d 691 (1977). In that proceeding potentially disqualifying issues were specified against Mr. Starer.

[2] Section 21.504(a) of the Commission's Rules and Regulations describes a field strength contour of 39 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service on frequencies in the 450MHz band. Propagation data set forth in § 21.504(b) are the proper bases for establishing the location of service contours (F 50, 50) for the facilities involved in this proceeding.

in the proceeding initiated in *Arizona Mobile Telephone Company*, 66 FCC 2d 691 (1977).

5. It is further ordered, That the hearing shall be held at the Commission offices in Washington, D.C., at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

6. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

7. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221(c) of the Rules within 20 days of the release date hereof, a written notice stating an intention to appear on the date for the hearing and present evidence on the issues specified in this Memorandum Opinion and Order.

Larry F. Darby,

Chief, Common Carrier Bureau.

[FR Doc. 79-15461 Filed 5-17-79; 8:45 am]

BILLING CODE 6712-01-M

[FCC 79-299]

New Financial Qualifications Standard for Broadcast Television Applicants

May 11, 1979.

The Commission has modifided the financial qualifications standard for parties applying for new television stations and for transferees of "bare" television construction permits for stations not yet built or in operation. This action follows a similar revision in the financial requirement for aural applicants which was adopted July 27, 1978. The new television standard requires that applicants demonstrate sufficient capital to construct the station and then operate for 90 days without advertising or other broadcast revenue.

This new standard replaces the current financial requirement for construction and operating costs for one year without revenues which was first announced in *Ultravision Broadcasting Company, FCC 65-581, 1 FCC 2d 544 (1965) and an associated Public Notice (1 FCC 2d 550). The one year Ultravision test was orginally adopted to deal with UHF applications at a time when UHF development had not progressed very far and thus the viability of UHF stations was considered unsure.*

Based on recent economic developments in the television industry, especially in the UHF sector, and the changing desire of the Commission to ease barriers to entry for minorities and others, we believe that the one year standard is no longer necessary or desirable for television. The economic developoment of UHF television has progressed to a point where many of the uncertainties that once characterized the viability of individual stations are no longer present. The conservative standard also conflicts with Commisson policies favoring minority ownership and diversity because its stringency may inhibit potential applicants from seeking broadcast licenses and permits.

Our decision to adopt the 90 day standard is based on the conclusion that an applicant must demonstrate sufficient capital to cover construction costs and operation costs in the initial start-up period between commencement of broadcast operations and the point in time where advertising accounts begin to remit payments. We believe that the 90 day standard will adequately serve this purpose.

The new construction costs plus 90 day operating capital requirement will apply to all applications for new television stations now pending before the Commission as well as to those filed on and after the date of this Notice.

Action by the Commission May 10, 1979. Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty, Brown and Jones.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-15460 Filed 5-17-79; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval, if required, 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 the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW, Room 10423; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before May 29, 1979. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Agreement No.: T-1887-A.

Filing party: Frank A. Fleischer, Regualtory Services, Sea-Land Service, Inc., 10 Parsonage Road, P.O. Box 900, Edison, New Jersey 08817.

Summary: Agreement No. T-1887-A, between Sea-Land Service, Inc. (Sea-Land) and I.T.O. Corporation of Ameriport, Inc. (ITO), provides for the sublease of terminal space at the Port of Philadelphia, subject to the conditions set forth in main lease agreement T-1887. According to the terms of the sublease, Sea-Land agrees to lease 7.08 acres of Pier 179 at the foot of Allegheny Avenue in the Port of Philadelphia for the monthly rental of $6,425.08.

By Order of the Federal Maritime Commission.

Dated: May 15, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 79-15598 5-17-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, June 7, 1979,
Thursday, June 21, 1979,

The meetings will convene at 10 a.m., and will be held in Room 5A06a, Office of Personnel Management Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5

U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C., section 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW, Washington, D.C. 20415 (202–632–9710).

Jerome H. Ross,

Chairman, Federal Prevailing Rate Advisory Committee.

May 14, 1979.

[FR Doc. 79–15509 Filed 5–17–79; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 79D–0124]

Drug Master Files; Availability of Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces availability of a guideline for drug master files (DMF). The guideline sets forth a preferred format for DMF's submitted in support of a notice of claimed investigational exemption for a new drug (IND), a new drug application (NDA), and an antibiotic Form 5 or 6. The guideline also provides information about how DMF's are classified and recommends ways to prepare a DMF to ensure that the information submitted to the agency meets the requirements of the regulations.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Harold Krcma, Bureau of Drugs (HFD–102), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4330.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) announces the availability of "Guidelines for Drug Master Files," prepared by the Bureau of Drugs, which provides information on how DMF's are classified and describes a format for DMF's submitted in support of a notice of claimed investigational exemption for a new drug (21 CFR Part 312), a new drug application (21 CFR Part 314), and an antibiotic Form 5 or 6 (21 CFR Parts 430 through 460). The guideline will help interested persons prepare DMF's so that the information submitted to the agency will meet the requirements of the regulations.

A DMF is a compilation of information about a specific facility, process, or article used in manufacturing, processing, packaging, or holding a substance that is the subject of a notice of claimed investigational exemption for a new drug, a new drug application, or an antibiotic Form 5 or 6. DMF's are currently subject to certain regulatory provisions (21 CFR 314.11) regarding their confidentiality. A DMF is submitted to FDA by a holder and is maintained by the agency. It is not, however, a substitute for an IND, an NDA, or an antibiotic Form 5 or 6.

A DMF is used when the DMF holder wants to incorporate by reference the content of the DMF to support a current application, or when a drug applicant/sponsor who is not the DMF holder receives proper authorization from the holder to incorporate by reference the content of the holder's master file to support an application, notice, or form. Because the information contained in a DMF may be used to support various submissions, a DMF must be well organized and coherent. The guideline is intended to assist persons submitting DMF's to the agency to meet these objectives.

The agency plans to review this guideline approximately every 2 years in the absence of specific requests that it do so or other circumstances warranting review.

This notice of availability is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline is assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternative procedures even though they are not provided for in the guideline. A person who chooses to do so may discuss the matter further with the agency to prevent expenditure of money and effort for work that the agency may later determine to be unacceptable. If a person chooses to depart from a guideline, he or she may discuss the matter further with the agency to prevent such expenditure.

The guideline is available for public examination between 9 a.m. and 4 p.m., Monday through Friday, in the office of the Hearing Clerk (address below). Copies of the guideline can be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402, for $1.00 per copy. Orders for copies should include the GPO stock number, 017–012–00270–6.

Interested persons may submit written comments on the guidleine to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. Such comments will be considered in determining whether further amendments to or revisions of the guideline are warranted. Comments should be in four copies (except that individuals may submit single copies), identified with the Hearing Clerk docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 11, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–15489 Filed 5–17–79; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 79N-0134]

Leukapheresis and Donor Safety Workshop; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency announces that a public meeting will be held to discuss centrifugal leukapheresis procedures and their relationship to donor safety. A discussion panel will answer questions regarding the safety and protection of leukocyte donors.

MEETING DATE: June 4, 1979.

ADDRESS: The meeting will be held in Rm. 115, Bldg. 29, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205.

FOR FURTHER INFORMATION CONTACT: John Edgar French, Bureau of Biologics (HFB-210), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-2577.

SUPPLEMENTARY INFORMATION: Centrifugal leukapheresis is the separation of leukocytes by centrifugation from whole blood with the leukocyte-poor blood returned to the donor during the procedure. Leukapheresis is an experimental procedure under development and is known to carry some risk to the leukocyte donor. The agency's Bureau of Biologics will hold a public meeting so that interested persons may present current information on centrifugal leukapheresis procedures employing steroids and sedimenting agents and their relationship to donor safety. Summaries of recent adverse reaction reports will be presented. A discussion panel will answer questions concerning donor safety.

The workshop will be held from 8:30 a.m. to 4 p.m., June 4, 1979, in Rm. 115, Bldg. 29, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205. Persons planning to attend must contact John Edgar French, Bureau of Biologics (address above), by May 28, 1979.

Dated: May 10, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-15176 Filed 5-17-79; 8:45 am]

BILLING CODE 4110-03-M

[FDA-225-79-4009]

Oysters, Clams, and Mussels; Memorandum of Understanding With Mexico

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the Secretariat of Health and Welfare, United States of Mexico. The purpose of the understanding is to set forth cooperative working arrangements regarding fresh and frozen oysters, clams, and mussels exported to the United States of America.

DATES: The agreement became effective March 7, 1979.

FOR FURTHER INFORMATION CONTACT: Gary Dykstra, Compliance Coordination and Policy Staff (HFC-13), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3470.

SUPPLEMENTARY INFORMATION: Pursuant to the notice published in the **Federal Register** of October 3, 1974 (39 FR 35697) stating that future memoranda of understanding and agreements between FDA and others would be published in the **Federal Register** (See 21 CFR 20.108(c)), the agency is publishing the following memorandum of understanding:

Memorandum of Understanding To Control the Sanitary Quality of Fresh or Fresh Frozen Bivalve Mollusca Destined for Exportation to the United States of America

Between the Food and Drug Administration, Department of Health, Education, and Welfare, United States of America, and the Secretariat of Health and Welfare of the United States of Mexico

The Secretariat of Health and Welfare of the United States of Mexico (SSA) and the Food and Drug Administration (FDA) of the Department of Health, Education and Welfare of the United States of America affirm by this document their intention to cooperate in assuring that fresh and fresh frozen oysters, clams and mussels exported to the United States of America are safe, wholesome and have been harvested, transported, processed and labeled in accordance with the provisions of the National Shellfish Sanitation Program (NSSP) and requirements of the Federal Food, Drug, and Cosmetic Act of the United States of America.

I. *Terms*

For purposes of this Memorandum, both parties agree to the following definitions:

Lot—A number of shellfish from no more than one day's harvest, from a single growing area, produced under conditions as nearly uniform as possible, placed in a collection of primary containers or units of the same size, type and style, and identified by a common container code or marking.

Central file—The location where shellfish control program information, data, and reports are stored and maintained.

Shellfish—All edible species of molluscan bivalves except scallop species from the family Pectinidae. Only shellfish that are offered for entry into the United States of America as fresh or fresh frozen products are covered under this Memorandum of Understanding.

Marine biotoxins—Natural toxins produced by marine dinoflagellates such as *Gonyaulax catenella, Gonyaulax tamarensis,* and *Gymnodinium breve* and concentrated by shellfish during the feeding process.

II. *Food and Drug Administration and the Secretariat of Health and Welfare*

A. Both parties agree to provide information concerning proposed changes in the following:

1. Methods and procedures for sampling.
2. Methods of analysis.
3. Methods of confirmation.
4. Administrative guidelines, tolerances, specification standards and nomenclature.
5. Reference standards.
6. Inspectional procedures.

B. Both parties agree to inform each other on a timely basis of the fundamentals of the following:

1. Proposed modification of existing Federal or local regulations.
2. Proposed new Federal regulations.
3. Proposed new legislation.
4. Proposed modifications to the national shellfish sanitation programs.

C. Both parties agree to name a liaison officer who will coordinate all operational matters relating to this Memorandum. The liaison officers will be responsible for facilitating exchanges of information and expeditiously informing other interested parties within their respective countries on shellfish control problems requiring prompt attention. Each party agrees to provide notification of any changes in liaison officer appointments. Such notification shall constitute a formality and does not require a revision of this agreement.

The Secretariat of Health and Welfare liaison officer is the *C. Director General de Coordinacion y Control Ambiental.*

The Food and Drug Administration liaison officer is the *Director, Mexican Liaison Staff.*

D. Both parties agree that the language used for the documents which are interchanged within this Memorandum is that of the country of origin, accompanied by a first (rough) draft translation in the language of the country [to which] it is destined.

III. *The Secretariat of Health and Welfare agrees To:*

A. Classify its shellfish harvesting waters in accordance with the procedures and standards set forth in the NSSP.

B. Assure that only shellfish harvested from areas which meet NSSP approved water quality and marine biotoxin standards and processed according to NSSP guidelines will be exported to the United States of America.

C. Inspect the harvesting, transporting and processing of shellfish at sufficient frequency to assure compliance with NSSP sanitary control practices.

D. Issue sanitation quality certificates for harvesting areas, only to those shellfish exporting firms and cooperatives that comply with NSSP recommended practices and to notify FDA of the name, location and certification number of these firms or cooperatives on Form FD–3038b "Shellfish Certification". To cancel a firm's certification, the SSA will send a completed Form FD–3038c "Certification Cancellation" to FDA.

E. Require that all containers or units of all lots of shellfish exported to the United States of America be identified by lot number and certification number, together with all other information required by the U.S. Federal Food, Drug and Cosmetic Act.

F. Invite technical observers of the FDA to visit the firms or cooperatives which have certificates, as well as the shellfish growing areas. Such visits will be made on an annual basis or at a frequency deemed appropriate by both parties to observe the operation of the Mexican Bivalve Mollusca Sanitation Program.

G. Make travel arrangements for the FDA technical observers and provide the necessary facilities for carrying out their observations within Mexico.

H. Participate in FDA's laboratory quality assurance programs.

These include:

1. Participation in the analysis of split samples of:

a. Seawater or shellfish meats to determine indicator bacteria or pathogens.

b. Shellfish meats to determine heavy metals and other chemical or radionuclide substances as may be deemed necessary.

2. The evaluation of new methods and procedures, including reagents, media, or other materials as well as instruments and equipment performance.

I. The establishment of a central office that will maintain a central file of laboratory results, including routine monitoring data and data from quality assurance programs. Standard formats for collecting and reporting data should be used and these will be printed in English and Spanish.

J. Promulgation and enforcement of sanitation laws and regulations governing the growing, harvesting, processing and shipment of shellfish to the United States of America are the sole responsibility of the SSA.

IV. *Food and Drug Administration (FDA) Agrees To:*

A. Publish the names, locations and certification numbers of firms or cooperatives submitted by the SSA. These will appear in the monthly INTERSTATE CERTIFIED SHELLFISH SHIPPERS LIST.

B. Upon request of the SSA, the FDA will provide training to technical personnel on administrative procedures, inspection and laboratory procedures, and classification of shellfish growing areas.

C. Whenever shellfish are detained by FDA due to noncompliance with recommended NSSP practices, FDA will inform SSA of the reason or reasons for the detention.

This information includes:

1. Commodity, lot and certification number.
2. Name and address of the shipper.
3. Reason for the detention.
4. Sampling procedure.
5. Methods of analysis and confirmation.
6. Administrative procedures.

D. FDA agrees to make travel arrangements for, and pay round trip transportation expenses of, its observation team between the United States of America and Mexico. FDA will also pay all per diem of the observation team.

V. *National Shellfish Sanitation Program (NSSP) of the United States of America*

The SSA may participate in workshops of the United States of America, cooperative research programs, seminars, training courses and other activities designed for the timely interchange of technical information, assistance and joint resolution of problems confronting the NSSP. The SSA may participate in a joint evaluation of the United States of America's program as it pertains to shellfish imports from Mexico.

The SSA may also:

A. Make recommendations for changes and improvements in NSSP procedures, methods and standards.

B. Be advised by FDA in case of questions by state or local food control officials regarding the certification, safety and wholesomeness of shellfish imported from Mexico. FDA will, if so requested, seek to determine the reason for the problem and inform the SSA of any action taken relative to United States of America state and local laws governing such shellfish imports.

This document will become effective on the date it is signed by both parties and shall remain in effect until one of the parties gives 60 days notice to the other of its intention to terminate or modify it.

In witness whereof, both parties sign this Memorandum of Understanding in the City of Mexico, on the 7th day of the month of March of 1979.

For the SSA, Mexico:

Ing. Humberto Romero Alvarez,

Subsecretario de Mejoramiento del Ambiente.

Dr. Ramon Alvarez Gutierrez,

Director General de Asuntos Internacionales.

For the FDA, United States of America

Sherwin Gardner,

Deputy Commissioner.

Effective date. This Memorandum of Understanding became effective March 7, 1979.

Dated: May 10, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-15488 Filed 5-17-79; 8:45 am]

BILLING CODE 4110-03-M

Office of Education

Community Education Advisory Council Meeting

AGENCY: Office of Education, HEW, Community Education Advisory Council

ACTION: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Community Education Advisory Council. It also describes the functions of the Council. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92–634. This document is intended to notify the general public of their opportunity to attend.

DATES: Meeting: June 7 and 8, 1979.

ADDRESS: U.S. Office of Education, 400 Maryland Avenue, Federal Office Building No. Six, Room 4003, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret Beavan, Office of Education, Department of Health, Education, and Welfare, Regional Office Building No. Three, Room 5622, 7th and D Streets, S.W., Washington D.C. 20202. Telephone: (202) 245–0691.

SUPPLEMENTARY INFORMATION: The Community Education Advisory Council is authorized under Pub. L. 93–380. The Council is established to advise the Commissioner of Education on policy matters relating to the interest of community schools.

All sessions of this meeting will be open to the public. The meeting will begin each day at 9:00 a.m. and end at 4:30 p.m., and will be held in the Commissioner's Conference Room.

During their last meeting in Denver, Colorado on August 8 and 9, 1978, the Council devoted a large portion of time to a discussion of its mission and role and to long-range planning for Council activities. A priority goal emerging from the long-range planning was the establishment of linkages with other agencies, organizations and associations at the national, state, and local levels.

After the meeting in Denver, the terms of three members expired, leaving the Council without the necessary quorum for future meetings. Recently the Secretary of the Department of Health, Education, and Welfare, Joseph Califano, has made seven new

appointments to the Council, thus allowing the continuation of full Council meetings.

A portion of time during this upcoming meeting will focus on orientation of these new members. A major portion of time also will be spent in the continuation of long-range planning for Council activities.

The proposed agenda includes:

(1) Installation ceremony for new members;

(2) Orientation activities;

(3) Discussion of Council mission/role and long-range planning for Council activities;

(4) Discussion of strategies for public comment on the new community education regulations;

(5) Planning for Council involvement in the Commissioner's School-Community-Home Initiative;

(6) Discussion of other administrative matters and related business; and,

(7) Planning for future meetings.

Records shall be kept of all Advisory Council proceedings and shall be available for public inspection in Room 5622, Regional Office Building No. Three, 7th and D Streets, S.W., Washington, D.C. 20202.

Signed at Washington, D.C. on May 15, 1979.

Julie Englund,

Director, Community Education Program.

[FR Doc. 79-15629 Filed 5-17-79; 8:45 am]

BILLING CODE 4110-02-M

Joint Funding Simplification Act; Applications Review Procedures

AGENCY: Office of Education, HEW.

ACTION: Notice of review procedures for applications under the Joint Funding Simplification Act.

SUMMARY: The Commissioner of Education gives notice of procedures for the review of applications under the Joint Funding Simplification Act. The procedures permit the submission of applications at any time without regard to the closing date notices for particular programs. The procedures are designed to facilitate joint applications and to ensure that joint applications are funded only if they are competitive with other applications under the programs from which they request assistance.

EFFECTIVE DATE: These provisions are expected to take effect 45 days after their transmission to the Congress. They were transmitted to the Congress several days before their publication in the **Federal Register.** The effective date is changed by statute if the Congress disapproves the provisions or takes certain adjournments. If you want to know the effective date of these provisions, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Executive Assistant to the Executive Deputy Commissioner for Educational Programs, Room 4015, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-8011.

SUPPLEMENTARY INFORMATION: 1. *Purpose.* This notice establishes procedures for the submission and review of preapplications and applications for Office of Education grants awarded under the Joint Funding Simplification Act of 1974 (Pub. L. 93-510). It supplements requirements and guidance contained in OMB Circular No. A-111 on how to submit a joint application.

The Act enables State and local governments or nonprofit private organizations to seek Federal funds from more than one program or agency source in a single application. It simplifies administration of a jointly awarded grant by providing for designation of a single Federal agency to act as liaison with the applicant or grantee. The Act authorizes joint funding of an application only if—

(a) A relationship exists—"through a commonality of purpose or ability to support a single goal or closely related goals"—among the programs from which funds are sought; and

(b) The specific activities to be supported are part of an overall strategy to achieve a common stated objective "consistent with the functional purposes of the applicant organization, and the general intent of the specific assistance programs requested." (Attachment B of OMB Circular No. A-111)

2. *Scope.* (a) This notice applies to the review by the Office of Education of preapplications and applications that seek joint funding of a grant from (1) an Office of Education program and (2) one or more other Office of Education programs, one or more other Federal agencies, one or more State agencies, or a combination of these programs or agencies.

(b) This notice applies only to the review of preapplications or applications for joint funding by the Office of Education for the purpose of determining whether programs in which it awards discretionary grants will participate in funding the joint project. These programs are listed in 45 CFR 100a.10.

(c) This notice does not apply to the review by State agencies of joint applications that seek subgrants under State-administered programs funded by the Office of Education.

(d) The provisions of this notice eventually will be made part of the final version of the Education Division General Administrative Regulations (EDGAR), which will replace the General Provisions for Office of Education Programs regulations. The Commissioner expects that this will occur in Fiscal Year 1980.

3. *Definitions.* as used in this notice—

(a) "Act" means the Joint Funding Simplification Act of 1974 (Pub. L. 93-510); and

(b) "Commissioner" means the U.S. Commissioner of Education or an employee of the Office of Education to whom the Commissioner delegates authority.

4. *Submission of preapplications and applications.* (a) Applicants that seek assistance for a jointly funded project from the Office of Education shall comply with all of the requirements in OMB Circular No. A-111 concerning preapplications and applications. That circular was published in the **Federal Register** on July 30, 1976 (41 FR 32040). Copies may be obtained by writing to the Office of Education's contact person whose name appears in this notice.

(b) Notwithstanding any published closing dates applicable to a program from which funding is sought for a jointly funded project, the Commissioner accepts preapplications and applications under the Act at any time.

(c) However, the Commissioner encourages an applicant for joint funding to submit its preapplication *prior to* or at the beginning of the fiscal year in which it seeks to have a grant awarded to it. If it does not do so, it may find that funds under Office of Education programs that might have supported its project have already been expended for other projects. The Commissioner does not reserve any program funds for joint projects.

5. *Review of preapplications and applications.* With regard to a preapplication or application subject to this notice, the Commissioner uses the following review procedures, in addition to those specified in Attachments A and B of OMB Circular No. A-111:

(a) The Commissioner assembles a board to review the preapplication or application.

(b)(1) The board consists of—

(i) An Office of Education program officer from each program under which the applicant seeks assistance;

(ii) An Office of Education employee who does not work for any of these programs, but who is well qualified to

review the preapplication or application; and

(iii) An Office of Education grants officer.

(2) The board may also include outside application readers who are knowledgeable about the programs from which funds are requested.

(c)(1) The board reviews the preapplication or application under the review criteria in OMB Circular No. A–111, Attachment A, Paragraph 5.

(2) In applying the criterion under paragraph 5a.(3) of attachment A (concerning the competitiveness of the proposed project with other applications), the board—

(i) Rates the preapplication or application under the published evaluation criteria for each OE program from which funds are requested; and

(ii) Compares the proposed project's rating with the ratings of any other pending applications for that program and with the ratings of projects funded by that program in the last grant competition.

(3) The board also reviews the preapplication or application to decide whether assisting the proposed project will have an adverse impact on the budget of the program.

(d) The board forwards the results of its review to the Commissioner.

(e) The Commissioner considers the board's results and decides, as appropriate at the preapplication or application stage, whether the project merits joint funding and which programs will fund it.

6. *Duration of jointly funded project.* (a) Notwithstanding any restrictions in particular program regulations on the duration of projects, the Commissioner may fund projects under the Act for a period of up to five years.

(b) Grants to continue a project are made on a non-competitive basis, subject to the availability of appropriations and a review showing that the applicant has made significant progress toward meeting the stated objectives.

(c) During the third quarter of each fiscal year for which an award has been made, the Commissioner assesses the applicant's progress toward meeting the stated objectives.

(d) In cooperation with any other participating Federal agencies, the Commissioner determines the frequency and scope of reports necessary to assure proper monitoring of the grant.

(20 U.S.C. 1221e–3(a)(1); 42 U.S.C. 4251–61)

Dated: March 23, 1979.

Ernest E. Boyer,

U.S. Commissioner of Education.

Approved: May 13, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

[FR Doc. 79–15593 Filed 5–17–79; 8:45 am]

BILLING CODE 4110–02–M

National Advisory Council on Extension and Continuing Education; Meeting

AGENCY: National advisory Council on Extension and Continuing Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Extension and Continuing Education. It also describes the functions of the Council. Notice of the meeting is required under the Federal Advisory Committee Act (5 U.S.C., Appendix 1, 10(a)(2). This document is intended to notify the general public of their opportunity to attend the meeting.

DATE: June 13, 14, and 15, 1979.

ADDRESS: The Denver Hilton Hotel, 1550 Court Place, Denver, Colorado.

FOR FURTHER INFORMATION: William G. Shannon, Executive Director, National Advisory Council on Extension and Continuing Education, 425 Thirteenth Street, N.W., Suite 529, Washington, D.C. 20004, Telephone: (202) 376–8888.

The National Advisory Council on Extension and Continuing Education is authorized under Public Law 89–329. The Council is required to report annually to the President, the Congress, the Secretary of HEW, and the Commissioner of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Part A of Title I (HEA) including policies and procedures governing the approval of State plans under section 105; and to advise the Assistant Secretary of HEW on Part B (Lifelong Learning activities) of the title. The Council is required to review the administration and effectiveness of all Federally supported extension and continuing education programs.

The meetings of the Council are open to the public. However, those who are interested in attending any meeting are asked to call the Council's office beforehand. Limited seats will be assigned on a first-come basis.

The Council's meeting will begin on June 13, 1979 at 6:30 p.m., recessing at 9:00 p.m. It will resume on June 14 at 9:00 a.m., recessing at 5:00 p.m., and continue on June 15 at 9:00 a.m., adjourning at 12:30 p.m.

The agenda for the meeting will include the following items:

1. Report of the Chairperson
2. Report of the Executive Director
3. Approval of Minutes of Previous Council Meeting
4. Budget Review
5. Federal/State Relations
6. Report of International Committee
7. Evaluation of Federal Title I (HEA) administration
8. The Council's Special Report to the President and Congress
9. Current Legislative Developments
10. Future Council Activities

All records of the Council proceedings are available for public inspection at the Council's staff office, located in Suite 529, 425 Thirteenth Street, N.W., Washington, D.C.

Dated: May 11, 1979.

William G. Shannon,

Executive Director.

[FR Doc. 79–15571 Filed 5–17–79; 8:45 am]

BILLING CODE 4110–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6667–A through AA–6667–C]

Alaska Native Claims Selection

On July 4, 1974, Sta-Keh Corporation, for the Native village of Gulkana, filed selection application AA–6667–A, on November 29, 1974, filed selection application AA–6667–B and on December 4, 1974, filed selection application AA–6667–C under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands in the vicinity of Gulkana and Gakona.

The village corporation selected lands which were withdrawn by Secs. 11(a)(1) and 11(a)(2) of ANCSA. Section 11(a)(2) specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by Sec. 11(a)(1) that had been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6 (1976)).

Section 12(a)(1) of ANCSA provides that village selections shall be made from lands withdrawn by Sec. 11(a). Section 12(a)(1) further provides that no village may select more than 69,120 acres from lands withdrawn by Sec. 11(a)(2).

The lands described below are State selected and, in part, tentatively approved lands which have been properly selected under village selection applications AA–6667–A, AA–6667–B or AA–6667–C. Accordingly, the tentative approvals given June 9, 1964 and November 26, 1965 are hereby rescinded and State selection application A–056792 rejected as to the following described lands:

Copper River Meridian, Alaska (Surveyed)

T. 5 N., R. 1 W.
Sec. 20, SE¼SE¼SW¼NE¼, S½NE¼ SE¼NE¼, E½SW¼SE¼NE¼, SW¼SW¼SE¼NE¼, SE¼SE¼NE¼, SW¼SE¼NE¼SW¼, E½SE¼, NE¼Nw¼SE¼, S½NW¼NW¼SE¼, S½NW¼SE¼;
Sec. 29, E½, S½NE¼NW¼, E½NW¼ NW¼, E½W½SW¼NW¼, E¼SW¼ NW¼,SE¼NW¼;
Sec. 32, NE¼, E½SE¼;
Those portions of Tract A more particularly described as: (protracted)
Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, all;
Sec. 17, excluding Native allotment application AA–7068;
Sec. 18, all;
Secs. 21, 22, 27, 28, 33, all.

Containing approximately 11,033 acres.

This includes approximately 6,351 acres which were tentatively approved to the State on June 9, 1964 or November 26, 1965.

Community grant State selection application A–061160 filed March 12, 1964, pursuant to Sec. 6(a) of the Statehood Act is rejected as to the following lands which were also properly selected by Sta-Keh Corporation:

Copper River Meridian, Alaska (Surveyed)

T. 6 N., R. 1 W.
Sec. 14, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, N½NE¼, SW¼NE¼, N½SE¼NE¼, W½SW¼NE¼SE¼, W½SE¼, N½SE¼SE¼, N½S½ SE¼SE¼.

Containing approximately 496 acres.

On December 16, 1968, the State filed general purposes grant selection application AA–4790, and on January 3, 1969, filed general purposes grant selection applications AA–5445, AA–5446 and AA–5448. These selection applications are also rejected as to the lands selected by 8 Gulkana. Public Land Order 4582, dated January 17, 1969, withdrew "all public lands in Alaska which are unreserved or which would otherwise become unreserved . . . from all forms of appropriation and disposition under the public land laws . . . including selection by the State of Alaska pursuant to the Alaska Statehood Act (72 Stat. 339). . . ." This reservation became effective prior to the date the selection applications were filed, when the telegram notifying the Alaska State Office of the proposed withdrawal was received on December 12, 1968, and the records were noted.

Paragraph 4 of PLO 4582 permitted the State to complete its selection of lands "which at the time of such filing were embraced in leases, licenses, permits, or contracts issued pursuant to the Mineral Leasing Act of 1920 or the Alaska Coal Leasing Act of 1914. . . ."

As there were oil and gas leases on the lands described below when the State selection applications were filed, the selections were valid as to these lands, and the acreage contained therein will also count against the 69,120 acres permitted by Sec. 12(a)(1) of ANCSA:

Copper River Meridian, Alaska (Surveyed)

State Selection AA–5448

U.S. Survey 4861, Tr. A, Tr. B and Tr. C.
Containing 346.26 acres.

T. 6 N., R. 1 W.
Sec. 1, all;
Sec. 2, Lots 1, 2, 7, 9, 10, 14, S½NE¼, N½SE¼, N½SW¼SE¼;
Sec. 3, lying West of East bank of the Gulkana River;
Sec. 10, all;
Sec. 11, Lots 3, 6, 9, 10, 11, 12, 13, 14, W½SW¼, E½SE¼;
Sec. 12, all;
Sec. 13, N½, SE¼, N½NE¼SW¼, SE¼NE¼SW¼, NE¼SE¼SW¼, and all of W½SW¼NE¼SW¼, E½W½SW¼, S½NW¼SW¼SW¼, SW¼SW¼SW¼, W½SE¼SW¼, excluding trade and manufacturing site A–054480.
Sec. 15, all;
Sec. 23, Lots 2, 3, 7, E½E½E½NW¼NE¼, S½NE¼SE¼NE¼, S½NW¼, NW¼NE¼SW¼, S½NE¼SW¼, NW¼SW¼, N½S½SW¼, SW¼SW¼SW¼, N½SE¼SW¼SW¼, N½S½SE¼SW¼, SW¼SW¼SE¼ SW¼, S½N½NE¼SE¼, S½NE¼SE¼, S½NE¼NW¼SE¼, S½NW¼SE¼, N½SW¼SE¼, N½SW¼SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
Sec. 24, Lots 2, 4, 5, N½NW¼NW¼ excluding trade and manufacturing site A–054480, SW¼NW¼SW¼, and lands lying East of the Copper River;
Sec. 26, Lot 1, NE¼NE¼, E½NW¼NE¼, E½NE¼NW¼NW¼, N½NW¼ NW¼NW¼, SE¼NW¼NW¼, N½NE¼ SW¼NW¼;
Sec. 33, Lots 1, 3, S½NE¼NE¼, W½NE¼, SE¼NE¼, W¼, N½SE¼, SW¼SE¼;
Sec. 34, Lots 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, SE¼NE¼NE¼NW¼, E½SW¼ NE¼NW¼, SE¼NE¼NW¼, W½NW¼NW¼, NW¼SW¼NW¼, W½SW¼SW¼NW¼, N½SE¼NW¼, N½SE¼, SW¼SE¼;
Sec. 35, all.

Containing approximately 6,556 acres.

State Selection AA–5447

T. 6 N., R. 2 W. (Protracted)
Secs. 11, 12, 13, 14, 15, 16, all.

Containing approximately 3,840 acres.

State Selection AA–5446

T. 7 N., R. 1 W.
Secs. 26 and 27, all;
Sec. 34, Lots 1, 2, 3, 4, and all lands lying West of East bank of 'Gulkana River;
Sec. 35, E½, E½W½, W½NW¼, NW¼SW¼.

Containing approximately 2,474 acres.

The total amount of lands within valid State selections herein rejected to permit conveyance to Sta-Keh Corporation is approximately 24,745 acres which is less than the 69,120 acres permitted by Sec. 12(a)(1) of ANCSA.

There were no mineral leases, etc., on the lands described below when the State applications were filed, so none of these lands were available for State selection. The following State selection applications are therefore rejected, but this acreage will not count against the 69,120 acres permitted by Sec. 12(a)(1) of ANCSA:

Copper River Meridan, Alaska (Surveyed)

State Selection AA–4790

T. 5 N., R. 2 W. (protracted),
Secs. 1, 2, 11, 12, 13, 14, 23, 24, all;
Sec. 25, excluding Native allotment application AA–5929.

Containing approximately 5,723 acres.

State Selection A–5448

T. 6 N., R. 1 W.
Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, all;
Sec. 20, excluding Native allotment application AA–6231;
Secs. 21, 22, 25, all;
Sec. 27, Lots 2, 3, 4, 8, 19, 11, W½NW¼, N½NW¼SW¼, SE¼NW¼SW¼, NE¼SW¼SW¼, N½NE¼SE¼SW¼, NW¼SE¼SW¼;
Sec. 28, N½, SW¼, NW¼NW¼NW¼, SE¼, SW¼NW¼SE¼, W½SW¼SE¼;
Secs. 29, 30, 31, 32, 36, all.

Containing approximately 12,545 acres.

State Selection AA–5446

T. 7 N., R. 1 W.,
Sec. 3, Lots 1, 2, 3, 4, 5, 6, SE¼NE¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 4, all;
Secs. 7, 8, 9, 10, 11, all;
Sec. 14, E½, E½E½NW¼, SW¼;
Sec. 15, W½E½NE¼, W½NE¼, NW¼, S½;
Secs. 21, 22, 23, 28, 29, 30, 31, 32, 33, all.

Containing approximately 11,083 acres.

State Selection AA–5445

T. 7 N., R. 2 W. (protracted),
Secs. 12, 13, 25, 26, 35, 36, all.

Containing approximately 3,840 acres.

The invalid State selection applications rejected above aggregate approximately 33,191 acres.

Lands Proper for Village Selection

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant

thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 79,785 acres, is considered proper for acquisition by Sta-Keh Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

U.S. Survey 3672, Lot 2, situated at the northerly end of Ewan Lake approximately 30 miles north of Glennallen, Alaska.

Containing 0.10 acres.

U.S. Survey 4861, Tr. A, Tr. B and Tr. C, situated at the village of Gulkana, Alaska.

Containing 346.26 acres.

Copper River Meridian, Alaska (Surveyed)

T. 5 N., R. 1 W.,
Sec. 19, N½NE¼SE¼;
Sec. 20, SE¼SE¼SW¼NE¼, S½NE¼SE¼NE¼, E½SW¼SE¼NE¼, SW¼SW¼SE¼NE¼, SE¼SE¼NE¼, SW¼SE¼NE¼SW¼, E½SE¼NE¼SW¼, N½NW¼SW¼, E½SE¼, NE¼NW¼SE¼, S½NW¼NW¼SE¼, S½NW¼SE¼, SW¼SE¼;
Sec. 29, E½, S½NE¼NW¼, E½NW¼NW¼, E½W½SW¼NW¼, E½SW¼NW¼, SE¼NW¼;
Sec. 32, NE¼, E½SE¼.

Containing 897.50 acres.

T. 6 N., R. 1 W.,
Sec. 1 Lots 1, 2, 3, 4, S½N½, S½;
Sec. 2, Lots 1, 2, 7, 9, 10, 14, S½NE¼, N½SE¼, N½SW¼SE¼;
Sec. 11, Lots 3, 6, 9, 10, 11, 12, 13, 14, W½SW½, E½SE¼;
Sec. 12, all;
Sec. 13, Lots 1, 2, 3, 4, 5, N½, N½NE¼SW¼, SE¼NE¼SW¼, NE¼SE¼SW¼, N½NW¼SE¼;
Sec. 14, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, N½NE¼, SW¼NE¼, N½SE¼NE¼, W½SW¼NE¼SE¼, W½SE¼, N½SE¼SE¼, N½S½SE¼SE¼;
Sec. 22, Lots 1, 2, 3, 4, and 5;
Sec. 23, Lots 2, 3, 7, S½NE¼SE¼NE¼, E½E½E½NW¼NE¼, S½NW¼, NW¼NE¼SW¼, S½NE¼SW¼, NW¼SW¼, N½S½SW¼, SW¼SW¼SW¼, N½SE¼SW¼SW¼, N½S½SE¼SW¼, SW¼SW¼SE¼SW¼, S½N½NE¼SE¼, S½N½SE¼, S½NE¼NW¼SE¼, N½SW¼SE¼, N½SW¼SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
Sec. 24, Lots 2, 4, 5, SW¼NW¼SW¼;
Sec. 25, Lots 1 and 2;
Sec. 26, Lot 1, NE¼NE¼, E½NW¼NE¼, E½NE¼NW¼NW¼, N½NW¼NW¼NW¼, SE¼NW¼NW¼, N½NE¼SW¼NW¼;
Sec. 27, Lots 2, 3, 4, 8, 10, 11, W½NW¼, N½NW¼SW¼, SE¼NW¼SW¼, NE¼SW¼SW¼, N½NE¼SE¼SW¼, NW¼SE¼SW¼;
Sec. 28, N½, SW¼, NW¼NW¼NW¼SE¼, SW¼NW¼SE¼, W½SW¼SE¼;
Sec. 33, Lots 1 and 3, S½NE¼NE¼, NW¼NE¼, S½NE¼, W½, NE¼SE¼, W½SE¼;
Sec. 34, Lots 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, SE¼NE¼NE¼NW¼, E½SW¼NE¼NW¼, SE¼NW¼, SE¼NE¼NW¼, W½NW¼NW¼, NW¼SW¼NW¼, W½SW¼SW¼NW¼, N½SE¼NW¼, N½SE¼, SW¼SE¼;
Sec. 35, Lots 1, 2, 3, and 4.

Containing 5,517.76 acres.

T. 7 N., R. 1 W.,
Sec. 3, Lots 1, 2, 3, 4, 5, 6, SE¼NE¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 4, Lots 1, 2, 3, 4, 5, 6, and 7;
Sec. 10, Lots 1, 2, 3, 4, 5, E½, E½NW¼;
Sec. 11, Lots 1, 2, 3, S½NE¼, W½, SE¼;
Sec. 14, Lots 1, 2, E½, E½E½NW¼, N½SW¼;
Sec. 15, Lots 1, 2, 3, 4, 5, 6, and 7;
Sec. 22, Lots 1, 2, and 3;
Sec. 23, Lots 1, 2, 3, 4, 5, E½, SE¼NW¼, E½SW¼;
Sec. 26, all;
Sec. 27, Lots 1, 2, 3, 4, 5, E½SE¼;
Sec. 34, Lots 1, 2, 3, and 4;
Sec. 35, E½, NW¼, N½SW¼, SE¼SW¼.

Containing 4,503.35 acres.

T. 8 N., R. 1 W.,
Sec. 5, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 6, Lots 1, 2, 3, 4, 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1, 2, 3, 4, 5, N½NE¼, SE¼NE¼, NE¼NW¼;
Sec. 8, Lot 1, E½, NW¼, N½SW¼, SE¼SW¼;
Sec. 9, all;
Sec. 16, Lots 1, 2, E½, N½NW¼, SW¼NW¼, E½SE¼NW¼, N½NW¼SE¼NW¼, SE¼NW¼SE¼NW¼, E½SW¼SE¼NW¼, SW¼SW¼SE¼NW¼, E½SW¼;
Sec. 17, Lots 1, 2, 3, 4, 5, 6, 7, 8, NE¼NE¼;
Sec. 20, Lot 1;
Sec. 21, Lots 1, 2, 3, 4, NE¼, E½SE¼;
Sec. 28, Lots 1, 2, 3, 4, 5, E½SE¼;
Sec. 33, Lots 1, 2, 4, E½NE¼;
Sec. 34, N½, E½SW¼, SE¼.

Containing 5,192.89 acres.

Aggregating 16,457.76 acres.

Lands Requiring Additional Survey, Copper River Meridian, Alaska

T. 5 N., R. 1 W.,
Those portions of Tract "A" more particularly described as (protracted);
Sec. 3, excluding the Copper River;
Secs. 4, 5, 6, 7, 8, 9, all;
Secs. 10 and 15, excluding the Copper River;
Sec. 16, all;
Sec. 17, excluding Native allotment application AA–7068;
Sec. 18, all;
Secs. 21, 22, 27, all excluding the Copper River.
Sec. 28, all;
Sec. 33, excluding the Copper River.
The bed of the Gulkana River in Secs. 3, 4, 9, 10, 15.

Containing approximately 10,236 acres.

T. 5 N., R. 2 W.,
Those portions of the surveyed township more particularly described as (protracted);
Secs. 1, 2, 11, 12, 13, 14, 23, 24, all;
Sec. 25, excluding Native allotment application AA–5929.

Containing approximately 5,723 acres.

T. 6 N., R. 1 W.,
Sec. 13, W½SW¼NE¼SW¼, E½W½SW¼, S½NW¼SW¼SW¼, SW¼SW¼SW¼, W½SE¼SW¼, all excluding trade and manufacturing site A–054480;
Sec. 24, N½NW¼NW¼ excluding trade and manufacturing site A–054480;
The bed of the Gulkana River in Secs. 2, 11, 14, 23, 33, and in Secs. 27 and 34 excluding U.S. Survey 4861;
Tract A, including the bed of the Gulkana River and excluding Native allotment application AA–6231;
Tract B, excluding the Copper River.

Containing approximately 14,364 acres.

T. 6 N., R. 2 W.,
Those portions of the surveyed township more particularly described as (protracted);
Secs. 11, 12, 13, 14, 15, 16, all.

Containing approximately 3,840 acres.

T. 7 N., R. 1 W.,
Sec. 11, that portion of the unnamed lake lying within surveyed section 11;
Those portions of Tr "A" more particularly described as (protracted);
Secs. 3, 4, lying West of East bank of Gulkana River;
Secs. 7, 8, all;
Secs. 9, 10, 14, 15, lying West of East bank of Gulkana River;
Sec. 21, all;
Secs. 22, 23, 27, lying West of East bank of Gulkana River;
Secs. 28, 29, 30, 31, 32, 33, all;
Sec. 34, lying West of East bank of Gulkana River.

Containing approximately 9,053 acres.

T. 7 N., R. 2 W.,
Those portions of surveyed township more particularly described as (protracted);
Secs. 12, 13, 25, 26, 35, 36, all.

Containing approximately 3,840 acres.

Aggregating approximately 47,658 acres.

Copper River Meridian, Alaska (Unsurveyed)

T. 8 N., R. 1 W.,
Secs. 4, 18, 19, 29, 30, 31, 32, all;
The unsurveyed land lying south and west of the East bank of the Gulkan River in Secs. 7, 8, 16, 17, 20, 33 and Secs. 21 and 28, excluding U.S. Survey 4910.
The bed of the Gulkana River except through U.S. Survey 4910.

Containing approximately 6,490 acres.

T. 8 N., R. 3 W.,
Secs. 10, 11, 12, 13, 14, 15, 21, 22, all;
Sec. 23, excluding U.S. Survey 3672 and Ewan Lake;
Sec. 24, excluding U.S. Survey 3672;
Sec. 25, all;
Secs. 26, 27, 28, 29, 32, 35, excluding Ewan Lake;
Sec. 36, all.

Containing approximately 9,180 acres.

Aggregating approximately 79,439 acres to be conveyed.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. the subsurface estate therein, and all rights, privileges, immunities, and

appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976));

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in casefile AA–6667–EE, are reserved to the United States. All easements are subject to aplicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsleds, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles and four-wheel drive vehicles.

One Acre site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 8 C5, D9) An easement for an existing access trail twenty-five (25) feet in width from the Richardson Highway in Sec. 33, T. 8 N., R. 1 W., Copper River Meridian, westerly to site easement EIN 8a C5, D9 on the Gulkana River. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 8a C5, D9) A site easement upland of the ordinary high water mark in Sec. 33, T. 8 N., R. 1 W., Copper River Meridian, on the left bank of the Gulkana River. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the river along the entire waterfront of the site. The uses allowed are those listed above for a one (1) acre site easement.

c. (EIN 11 C5) An easement for an existing access trail twenty-five (25) feet in width from the Richardson Highway in Sec. 28, T. 8 N., R. 1 W., Copper River Meridian, southeasterly to public lands in Sec. 27, T. 8 N., R. 1 W., Copper River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

d. (EIN 11a C5) An easement for a proposed access trail twenty-five (25) feet in width from the Richardson Highway in Sec. 14, T. 7 N., R. 1 W., Copper River Meridian, easterly to public land in Sec. 13, T. 7 N., R. 1 W., Copper River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

e. (EIN 12 C5, D9) An easement for an existing access trail twenty-five (25) feet in width from the Richardson Highway in Sec. 10, T. 7 N., R. 1 W., Copper River Meridian, southwesterly to site easement EIN 12a C5, D9 of the Gulkana River. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

f. (EIN 12a C5, D9) A site easement upland of the ordinary high water mark in Sec. 15, T. 7 N., R. 1 W., Copper River Meridian, on the left bank of the Gulkana River. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the river along the entire waterfront of the site. The uses allowed are those listed above for a one (1) acre site.

g. (EIN 12b C5, D9) An easement for a proposed access trail twenty-five (25) feet in width from site easement EIN 12a C5, D9, on the left bank of the Gulkana River in Sec. 15, T. 7 N., R. 1 W., Copper River Meridian southwesterly to public land in Sec. 16, T. 7 N., R. 1 W., Copper River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

h. (EIN 16 C5, D9) An easement for an existing access trail twenty-five (25) feet in width from the Richardson Highway in Sec. 14, T. 6 N., R. 1 W., Copper River Meridian, westerly to site easement EIN 16a C5, D9 on the Gulkana River. The use allowed are those listed above for a twenty-five (25) foot wide trail easement.

i. (EIN 16a C5, D9) A site easement upland of the ordinary high water mark in Sec. 14, T. 6 N., R. 1 W., Copper River Meridian, on the left bank of the Gulkana River. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the river along the entire waterfront of the site. The uses allowed are those listed above for a one (1) acre site.

j. (EIN 17 C5, D1, D9) An easement for an existing access trail fifty (50) feet in width from the south border of Sec. 36, T. 8 N., R. 3 W., Copper River Meridian, northerly and northwesterly between Ewan Lake and Middle Lake to public lands in Sec. 9, T. 8 N., R. 3 W., Copper River Meridian. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

k. (EIN 17b C5, D1, D9) An easement for a proposed access trail twenty-five (25) feet in width from the north shore of Ewan Lake in Sec. 23, T. 8 N., R. 3 W., Copper River Meridian, northerly to trail EIN 17 C5, D1, D9. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

l. (EIN 23 C5, D9) An easement for an existing access trail fifty (50) feet in width from the Richardson Highway in Sec. 32, T. 5 N., R. 1 W., Copper River Meridian, easterly to site easement EIN 23a C5, D9 on Copper River. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

m. (EIN 23a C5, D9) A one (1) acre site easement upland of the ordinary high water mark in Sec. 33, T. 5 N., R. 1 W., Copper River Meridian, on the right bank of the Copper River. The uses allowed are those listed above for a one (1) acre site.

n. (EIN 30 E) An easement for an existing access trail fifty (50) feet in width from trail easement EIN 17, C5, D1, D9 in Sec. 24, T. 8 N., R. 3 W., Copper River Meridian, northeasterly to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

o. (EIN 31 C5, L) An easement one hundred (100) feet in width for an existing telephone line and powerline roughly paralleling the Richardson Highway from Sec. 32, T. 5 N., R. 1 W., Copper River Meridian, northerly to the southern terminus of right-of-way application A–062297 (EIN 31c C5, L), in Sec. 12, T. 6 N., R. 1 W., Copper River Meridian. The uses allowed are those activities associated with the operation and maintenance of the telephone and powerline.

p. (EIN 31a C5, L) An easement one hundred (100) feet in width for an existing telephone line and powerline roughly paralleling the Tok Cutoff from the junction with the Richardson Highway in Sec. 23, T. 6 N., R. 1 W., Copper River Meridian, easterly to Sec. 18, T. 6 N., R. 1 E., Copper River Meridian. The uses allowed are those activities associated with the operation and maintenance of the lines.

q. (EIN 31b C5, L) An easement one hundred (100) feet in width for existing telephone lines and powerlines from EIN 31 C5, L in Sec. 14, T. 6 N., R. 1 W., Copper River Meridian, easterly to Sec. 18, T. 6 N., R. 1 E., Copper River Meridian. The uses allowed are those associated with the operation and maintenance of the lines.

r. (EIN 31c C5, L) An easement fifty (50) feet in width for an existing

telephone line and powerline roughly paralleling the Richardson Highway from EIN 31 C5, L in Sec. 12, T. 6 N., R. 1 W., Copper River Meridian, northerly to the southern terminus of right-of-way grant AA–11182 in Sec. 2, T. 6 N., R. 1 W., Copper River Meridian. The uses allowed are those activities associated with the operation and maintenance of the telephone and powerline.

s. (EIN 32 C4) An easement sixty (60) feet in width for an existing road from the Richardson Highway in Sec. 20, T. 5 N., R. 1 W., Copper River Meridian, westerly to the FAA withdrawal in Sec. 20, T. 5 N., R. 1 W., Copper River Meridian. The uses allowed are those listed above for a sixty (60) foot wide road easement. The use of this road is limited to government-related use only.

The grant of the above-described lands shall be subject to:

1. Those rights for pipeline purposes, and related facilities, granted to Amerada Hess Corporation, ARCO Pipeline Company, Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Pipeline Company, and Union Alaska Pipeline Company, their successors and assigns, by the Agreement and Grant dated January 23, 1974, as modified April 27, 1979, pursuant to Sec. 28, of the Mineral Leasing Act (30 U.S.C. 185), as amended November 16, 1973 (87 Stat. 576), more specifically identified as follows:

a. As to E½ Sec. 1, E½ Sec. 12, E½ Sec. 13, E½ Sec. 24, E½ Sec. 25, T. 5 N., R. 2 W., Copper River Meridian, E½ Sec. 12, E½ Sec. 13, T. 6 N., R. 2 W., Copper River Meridian, NW¼NW¼NW¼ Sec. 7, T. 7 N., R. 1 W., Copper River Meridian, E½ Sec. 12, E½ Sec. 13, E½ Sec. 25, E½ Sec. 36, T. 7 N., R. 2 W., Copper River Meridian, oil transportation pipeline AA–5847;

b. As to Sec. 35, T. 7 N., R. 1 W., Copper River Meridian, communciations site AA–6240;

c. As to Sec. 12, T. 6 N., R. 2 W., Copper River Meridian, communications site AA–8501 and equipment site AA–8621;

d. As to SE¼ Sec. 13, T. 5 N., R. 2 W., Copper River Meridian, communications site AA–8503 and main line equipment site AA–8623.

2. Those access road rights-of-way 50 feet in width granted to Alyeska Pipeline Service Company pursuant to Sec. 28 of the Mineral Leasing Act (30 U.S.C. 185), as amended November 16, 1973 (87 Stat. 576):

a. As to Sec. 35, T. 7, N., R. 1 W., Copper River Meridian, AA–9209;

b. As to Secs. 27, 28, 29, 30, T. 6 N., R. 1 W., Copper River Meridian, AA–9189;

c. As to Secs. 31, 32, 33, T. 6 N., R. 1 W., Copper River Meridian, AA–8864.

3. Those rights for pipeline purposes as have been issued to the owners of the Trans-Alaska Pipeline, their successors and assigns, pursuant to Sec. 28 of the Mineral Leasing Act (30 U.S.C. 185), as amended November 16, 1973 (87 Stat. 576), for construction zone permit AA–9149.

4. An easement for highway purposes, including appurtenant protective, scenic and service areas, extending 150 feet on each side of the centerline of the Richardson and the Glenn Highways, as established by Public Land Order 1613 (23 F.R. 2376), pursuant to the Act of August 1, 1956, (70 Stat. 898) and transferred to the State of Alaska pursuant to the Alaska Omnibus Act. P.L. 86–70 (73 Stat. 141), as to Secs. 4, 5, 8, 17, 20, 29, T. 5 N., R. 1 W., Secs. 2, 11, 12, 13, 14, 23, 24, 26, 27, 33, T. 6 N., R. 1 W., Secs. 3, 10, 11, 14, 23, 26, 35, T. 7 N., R. 1 W., and Secs. 6, 7, 8, 9, 16, 17, 21, 28, 33, T. 8 N., R. 1 W., Copper River Meridian.

5. The following rights-of-way for Federal Aid Highways, granted to the State of Alaska under the act of August 7, 1958, as amended (72 Stat. 885, 23 U.S.C. 317), as to:

a. Sec. 4, T. 5 N., R. 1 W., and Secs. 23, 26, 27, 33, T. 6 N., R. 1 W., Copper River Meridian, Serial No. AA–7047 (Richardson Highway);

b. Secs. 13, 23, 24, T. 6 N., R. 1 W., Copper River Meridian, Serial No. A–067583 (Glenn Highway-Tok Cutoff).

6. Rights-of-way for material sites granted under the Federal Aid to Highways, act of August 27, 1958, as amended (72 Stat. 885, 23 U.S.C. 317) as to:

a. Secs. 11, 14, T. 6 N., R. 1 W., Copper River Meridian, Serial No. A–060339;

b. Sec. 10, T. 7 N., R. 1 W., Copper River Meridian, Serial No. A–060162.

7. Right-of-way for a riprap and bank protection site on the Copper River, granted under the Federal Aid to Highways, act of August 27, 1958, as amended (72 Stat. 885, 23 U.S.C. 317) as to Sec. 13, T. 6 N., R. 1 W., Copper River Meridian, Serial No. A–058051.

8. Rights-of-way for electrical transmission lines granted under the act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961) to the Copper Valley Electric Association, Inc.

a. Those lines running parallel to the Richardson Highway and the Tok Cutoff as to Secs. 4, 5, 8, 17, 20, 29, T. 5 N., R. 1 W., Copper River Meridian, and Secs. 2, 11, 12, 13, 14, 23, 24, 26, 27, 33, T. 6 N., R. 1 W., Copper River Meridian, Serial No. A–042054, 100 feet in width (50 feet on each side of the centerline);

b. That line running parallel to Richardson Highway, as to N½ Sec. 2 T. 6 N., R. 1 W., and W½ Sec. 35, T. 7 N., R. 1 W., Copper River Meridian, Serial No. AA–11182, 30 feet in width (15 feet on each side of the centerline);

c. As to Secs. 27, 28, 29, 30, T. 6 N., R. 1 W., Secs. 1, 12, 13, T. 5 N., R. 2 W., Secs. 12, 13, T. 6 N., R. 2 W., Sec. 7, T. 7 N., R. 1 W., and Secs. 12, 13, 25, 36, T. 7 N., R. 2 W., Copper River Meridian, Serial No. AA–9906, 30 feet in width (15 feet on each side of the centerline).

9. An easement and right-of-way 50 feet in width (25 feet on each side of the centerline), conveyed to RCA Alaska Communications, Inc. by Easement Deed dated January 10, 1971, Serial No. AA–6188, pursuant to the Alaska Communications Disposal Act (81 Stat. 441) (40 U.S.C. 771 et seq.) as to Secs. 4, 5, 8, 17, 20, 29, T. 5 N., R. 1 W., Copper River Meridian and Secs. 13, 23, 24, 26, 27, 33, 34, T. 6 N., R. 1 W., Copper River Meridian.

10. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands.

11. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1976))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

12. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Sta-Keh Corporation is entitled to conveyance of 92,160 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is 79,183 acres. The remaining entitlement of approximately 12,977 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to AHTNA, Inc. when the surface

estate is conveyed to Sta-Keh Corporation, and shall be subject to the same conditions as the surface conveyance.

Within the above described lands, only the following inland water bodies are considered to be navigable:

The Copper River and Ewan Lake.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES and the TUNDRA TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until June 18, 1979, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501.
Sta-Keh Corporation, Gakona, Alaska 99587.
AHTNA, Inc., Drawer G, Copper Center, Alaska 99573.

Sue Wolf,

Chief, Branch of Adjudication.

[FR Doc. 79-15413 Filed 5-17-79; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. A 11644]

Arizona; Application

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended, by the Act of November 6, 1973 (87 Stat. 576), El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978, filed an application for a right-of-way to construct a cathodic protection site consisting of a rectifier pole, low voltage, underground cable and annode pipe bed adjacent to their existing gas pipeline right-of-way on the following described National Resource Lands:

GSR Mer., Arizona

T. 6 S., R. 16 E.,
Sec. 21, NE¼NE¼.

The cathodic protection site is necessary to the preservation and reliability of service of the natural gas pipeline.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applicaton should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their view on this matter should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 2929 W. Clarendon, Phoenix, Arizona 85017.

Dated: May 9, 1979.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-15493 Filed 5-17-79; 8:45 am]

BILLING CODE 4310-84-M

[Wyoming 67926]

Wyoming; Application

May 10, 1979

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Cities Service Gas Company of Oklahoma City, Oklahoma filed an application for a right-of-way to construct a 4½ inch pipeline and appurtenant facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 21 N., R. 94 W.,
Sec. 20, SE¼SW¼ and SW¼SE¼.

The proposed pipeline will transport natural gas from the Amoco R–1 well located in the SE¼SW¼ of section 20, T. 21 N., R. 94 W., to a point of connection with an existing pipeline located in the SW¼SE¼ of section 20, T. 21 N., R. 94 W., all within Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-15494 Filed 5-17-79; 8:45 am]

BILLING CODE 4310-84-M

[Wyoming 67938]

Wyoming; Application

May 10, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Marathon Pipe Line Company of Casper, Wyoming filed an application for a right-of-way to construct six 4 inch pipelines and related facilities for the purpose of transporting oil and other synthetic liquid fuels across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 46 N., R. 91 W.,
Sec. 7, lots 8, 7, 8, 9, 10, NW¼NE¼ and E½NW¼.
T. 46 N., R. 92 W.,
Sec. 1, SE¼SW¼;
Sec. 12, lots, 1, 2, 4, SW¼NE¼, NE¼SW¼ and NW¼SE¼.

The proposed pipelines will transport oil and other synthetic liquid fuels from Altus 7–1 March, Altus 7–1 Nowater, Altus 7–2 March, Altus 12–2, Altus 12–4, and Tenneco 2–1 Well Extensions to points of connection with existing pipelines, all located within T. 46 N., Rs. 91 and 92 W., Washakie County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Box 119, 1700 Robertson Avenue, Worland, Wyoming 82401.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-15495 Filed 5-17-79; 8:45 am]

BILLING CODE 4310-84-M

[Wyoming 67642]

Wyoming; Application

May 8, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 6⅝ inch O.D. buried pipeline and related meter and dehydration facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 38 N., R. 89 W.,
Sec. 6, lots 1, 2, 9 and SW¼NE¼.
T. 39 N., R. 89 W.,
Sec. 31, SE¼SE¼;
Sec. 32, W½NE¼, NE¼NE¼, SE¼NW¼, N½SW¼ and SW¼SW¼.

The proposed pipeline will transport natural gas from the No. 1-32 Vail Well located in the NE¼NE¼ of section 32, T. 39 N., R. 89 W., to a point of connection with an existing pipeline located in lot 9, section 6, T. 38 N., R. 89 W., all within Fremont County, Wyoming. The proposed meter and dehydration facilities will be located within the proposed pipeline right-of-way boundary in the NE¼NE¼ of section 32, T. 39 N., R. 89 W., Fremont County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-15496 Filed 5-17-79; 8:45 am]

BILLING CODE 4310-84-M

[Wyoming 67643]

Wyoming; Application

May 8, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½ inch O.D. buried pipeline and meter dehydration facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 18 N., R. 92 W.,
Sec. 6, lots 6 and 7, E½SW¼.
T. 18 N., R. 93 W.,
Sec. 2, lot 5.

The proposed pipeline will transport natural gas from the Baumgartner-Federal No. 1-16-18-92 well located in the SE¼SW¼ of section 6, T. 18 N., R. 93 W., to a point of connection with an existing pipeline located in the SW¼SE¼ of section 35, T. 19 N., R. 93 W., all within Carbon County, Wyoming. The proposed meter and dehydration facilities will be located within the proposed pipeline right-of-way boundary in the SE¼SW¼ of section 6, T. 18 N., R. 92 W., Carbon County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-15570 Filed 5-17-79; 8:45 am]

BILLING CODE 4310-84-M

U.S. Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: Zoological Society of Philadelphia, 34th St. & Girard Ave., Philadelphia, Pennsylvania 19104. PRT 2-4197.

The applicant requests a permit to purchase in interstate commerce one male and two female Asiatic lions *(Panthera leo persica)* from the Cheyenne Mountain Zoological Park, Colorado Springs, Colorado, for zoological exhibition and enhancement of propagation.

Applicant: Arthur Heine, 412 Foster Rd., Staten Island, New York 10309. PRT 2-4199.

The applicant requests a permit to purchase in interstate commerce one female scarlet-chested parakeet *(Neophema splendida)* from H. Frey, Pittsburgh, Pennsylvania, for exhibition and enhancement of propagation.

Applicant: Henry Vilas Park Zoo, 702 S. Randall Ave., Madison, Wisconsin 53715. PRT 2-4200.

The applicant requests a permit to purchase in interstate commerce one male Bactrian camel *(Camelus bactrianus)* from African Lion Safari, Port Clinton, Ohio, for zoological exhibition and enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: May 10, 1979.

Larry La Rochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-15454 Filed 5-17-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

The applicants listed below wish to be authorized to conduct the specified

activity with the indicated Endangered Species:

Applicant: Henry Doorly Zoo, Riverview Park, Omaha, Nebraska 68102. PRT 2–4189.

The applicant requests a permit to purchase in interstate commerce one captive-born male mandrill (*Papio sphinx*) from the Gladys Porter Zoo, Brownsville, Texas, for zoological exhibition and enhancement of propagation.

Applicant: St. Louis Zoological Park, Forest Park, St. Louis, Missouri 63110. PRT 2–4191.

The applicant requests a permit to import two female Bactrian camels (*Camelus bactrianus*) from the Kristiansand Dyre Park, Norway, for zoological exhibition and enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: May 9, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–15455 Filed 5–17–79; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: Alan R. Harmata, Montana State University, Bozeman, Montana 59714. PRT 2–4164.

The applicant requests a permit to capture and band immature bald eagles (*Haliaeetus leucocephalus*) within the Yellowstone National Park and the Grand Teton National Park for scientific research.

Applicant: Terrence N. Ingram, Eagle Valley Environmentalists, Inc., Apple River, Illinois 61001. PRT 2–4174.

The applicant requests a permit to capture, band, color-mark, and radio-tag and release bald eagles within the states of Wisconsin, Illinois, Missouri, Iowa, and Kentucky for scientific research.

Applicant: Dr. Bern M. Levine, 6000 SW 118 Ave., Miami, Florida 33183. PRT 2–4182.

The applicant requests a permit to purchase in interstate commerce one male sub-adult organutan (*Pongo pygmaeus*) from the Oklahoma City Zoo, Oklahoma, for enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: May 8, 1979.

Larry La Rochelle,

Acting Chief, Permit Branch Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–15456 Filed 5–17–79; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: John W. Twente, Dalton Research Center, University of Missouri, Columbia, Missouri 65211.

The applicant requests a permit to capture 30 hibernating Gray bats (*Myotis grisescens*) per year for 3 years for hibernation research. Bats will be released at the place where taken at the end of each season's research.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2–3421. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: May 4, 1979

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–15457 Filed 5–17–79; 8:45 am]

BILLING CODE 4310–55–M

Threatened Species Permit; Receipt of Application

Applicant: John A. Chatfield, Dept. of Mathematics, South West Texas State University, San Marcos, Texas 78666.

The applicant wishes to apply for a Captive-Self Sustaining Population permit authorizing the purchase and sale in interstate commerce, for the purpose of propagation, all species of pheasants listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2–4190. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: May 9, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–15458 Filed 5–17–79; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is claculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Administrator, Employment and Training

Administration, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 14th day of May 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

Applications Received During the Week Ending May 11, 1979

Name of applicant and location of enterprise	Principal product or activity
Arroyo Pharmaceutical Corp., Arroyo, P.R.	Manufacture and fabrication of drugs in pharmaceutical preparations for human or veterinary use.
Crestpark Retirement Inns, Inc., West Helena, Ark.	Nursing home.
Gibson Manufacturing Co., Inc., Brook, Ind.	Manufacture of agricultural machinery and parts.
American Gypsum Co., Delanco, N.J.	Manufacture of gypsum products.
Suzy Curtains, Inc., King, N.C. and Calexico, Calif.	Manufacture of draperies and curtains.
R. M. Henning, Inc., New Philadelphia, Ohio	Manufacture and service of hydraulic components.

[FR Doc. 79-15415 Filed 5-12-79; 8:45 am]

BILLING CODE 4510-30-M

Federal Advisory Council on Unemployment Insurance; Meeting

A meeting of the Federal Advisory Council on Unemployment Insurance will be held on June 26, 1979 from 8:30 a.m. to 5:00 p.m. and June 27 from 8:30 a.m. to noon. The meeting will be held in Room S-4215 AB&C, Main Labor Building, which is located at 200 Constitution Avenue, N.W., Washington, D.C. The major items of the meeting are: A review of the Interim Report Recommendations of the National Commission on Unemployment Compensation published in November 1978, and an analysis of how those recommendations compare with the Resolutions and Agreements reached by Federal Advisory Council; consideration of a proposal to modify the current National Trigger for Extended Benefits; and other items relating to the UI program which are pertinent at the time the meeting is held. A more detailed agenda will be published at a later date.

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 Executive Secretary 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:

Mr. Morton Rosenbaum, Executive Secretary, Federal Advisory Council on Unemployment Insurance, Room 7000, Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213.

Mr. Rosenbaum's telephone number is Area Code 202-376-7034.

Signed at Washington, D.C., this 10th day of May 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-15599 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-79-48-C]

Maynard Branch Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Maynard Branch Mining Company, Inc., Route 1, Box 121, Elkhorn City, Kentucky 41522, has filed a petition to modify the application of 30 CFR 75.1710 (canopies), to its No. 1 Mine, located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The petition concerns the use of canopies on electric face equipment in the petitioner's mine.

2. The petitioner is mining in coal seam heights ranging from 36 to 40 inches and is constantly encountering undulations in the coal bed.

3. If canopies were installed low enough to prevent possible destruction of roof support, only 22 inches of vertical space would exist in the equipment operator's compartment.

4. This restricted space would limit the vision of the equipment operator, creating hazards for the operator and other miners in the area.

5. For these reasons, the petitioner believes that the application of the standard to its mine would result in a diminution of safety to its miners.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 18, 1979. Comments must be filed

with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 8, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-15600 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

North Carolina Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On February 1, 1973, notice was published in the **Federal Register** (38 FR 3041) of the approval of the North Carolina plan and the adoption of Subpart I to Part 1952 containing the decision.

The North Carolina plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required." In response to Federal standards changes, the State has submitted by letter dated September 29, 1977 from John C. Brooks, Commissioner, North Carolina Department of Labor, to Robert A. Wendell, Regional Administrator and incorporated as a part of the State plan, State standards comparable to the following Federal Standards: 29 CFR 1910.19 Special Provisions for Air Contaminants, dated January 17, 1978; 29 CFR 1910.1000 Air Contaminants, dated January 17, 1978; 29 CFR 1910.1045 Acrylonitrile, dated January 17, 1978; 29 CFR 1910.19 Special Provisions for Air Contaminants, dated February 10, 1978; 29 CFR 1910.20 Revoked, dated February 10, 1978; 29 CFR 1910.1000 Air Contaminants, dated February 10, 1978; 29 CFR 1910.1028 Benzene, dated February 10, 1978; 29 CFR 1910.1044 1,2-dibromo-3-chloropropane, dated March 17, 1978; amendments to 29 CFR 1910.1028 Benzene, dated March 28, 1978; amendments to 29 CFR 1910.1028 Benzene, dated March 31, 1978; 29 CFR 1910.1028 Benzene correction/stay dated April 4, 1978; 29 CFR 1910.19 Special Provisions for Air Contaminants, dated May 5, 1978; 29 CFR 1910.1000 Air Contaminants, dated May 5, 1978; 29 CFR 1910.1018 Inorganic Arsenic, dated May 5, 1978; 29 CFR 1910.19 Special Provisions for Air Contaminants, dated June 23, 1978; 29 CFR 1910.1000 Air Contaminants, dated June 23, 1978; 29 CFR 1910.1043 Cotton Dust, dated June 23, 1978; 29 CFR 1910.1046(a) Cotton Dust in Cotton Gins, dated June 23, 1978; 29 CFR 1928.21 Safety and Health Standards for Agriculture, dated June 23, 1978; Amendment to 29 CFR 1910.28 Benzene, dated June 27, 1978; Amendment to 29 CFR 1910.1018 Inorganic Arsenic, dated June 30, 1978; Corrections to 29 CFR 1910.19 Special Provisions for Air Contaminants, dated June 30, 1978; Corrections to 29 CFR 1910.1043 Cotton Dust, dated June 30, 1978; Correction to 29 CFR 1910.1046 Cotton Dust in Cotton Gins, dated June 30, 1978; 29 CFR 1928.113 Exposure to Cotton Dust in Gins, dated June 30 and August 8, 1978; 29 CFR 1910.20 Preservation of Records, dated July 19, 1978; Corrections to 29 CFR 1910.1043 Cotton Dust, dated August 8, 1978; Corrections to 29 CFR 1910.1046 Cotton Dust in Cotton Gins, dated August 8, 1978; 29 CFR 1910.19 Special Provisions for Air Contaminants, dated October 3, 1978; 29 CFR 1910.1000 Air Contaminants, dated October 3, 1978; 29 CFR 1910.1045 Acrylonitrile, dated October 3, 1978.

These Standards were promulgated by filing with the North Carolina Attorney General on July 29, 1977, January 26, 1978, May 18, 1978, June 30, 1978, July 11, 1978, July 25, 1978, August 28, 1978, October 13, 1978, respectively, pursuant to the North Carolina Occupational Safety and Health Act of 1973 (Chapter 295, General Statutes).

2. *Decision.* Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards are identical to the Federal standards and are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Commissioner of Labor, North Carolina Department of Labor, 11 West Edenton, Raleigh, North Carolina 27611; Office of the Regional Administrator, Suite 587, 1375 Peachtree Street, N.E., Atlanta, Georgia 30309; and Office of the Director of Federal Compliance and State Programs, Room N3112, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplement to the North Carolina State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective May 18, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Atlanta, Georgia, this 1st day of November 1978.

R. A. Wendell,

Regional Administrator.

[FR Doc. 79-15602 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-26-M

Oregon State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision. The Notice of Approval of Revised Developmental Schedule was further

published on April 1, 1974 in the Federal Register.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that "where any alteration in the Federal program could have an adverse impact on the at least as effective as" status of the State program, a program change supplement to a State plan shall be required.

In reponse to Federal standards changes, the State has submitted by letter dated July 20, 1978 from Darrel D. Douglas to James W. Lake and incorporated as part of the plan, State standards comparable to 29 CFR Part 1910, Subpart T, Commercial Diving Operations, as published in the Federal Register (42 FR 37650) dated July 22, 1977.

These State standards which are contained in OAR 437 Division 86, Commercial Diving, were promulgated after public hearings held on April 10, 1978.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards and accordingly should be approved. The significant areas of difference are: § 1910.401, the scope of application which deletes coverage of Federal research activities; § 1910.402, the expanded definition of no-decompression limits; § 1910.421, pre-dive procedures amended to allow for inland operations; § 1910.421(h), warning signal amended to include the U.S. flag; § 1910.423(c)(2)(i), recompression capability amended by allowing the use of triple lock chamber (intent of rule is to disallow single lock chambers); § 1910.440(a), record-keeping, State does not required employer to submit records directly to NIOSH, those records are available to NIOSH through the State; §§ 1915.59, 1916.59, 1917.59, 1918.99, 1926.605(e), and 1928.21(b) now addressed by the State as OAR Chapter 437, Division 86 cover all diving operations under the jurisdiction of the State of Oregon. The detailed standards comparison is available at the locations specified below.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compenstaion Board, Labor & Industries Building, Salem, Oregon 97310; and the Techincial Data Center, Room N 2349 R, Third and Constitution Avenue, Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public particiaption would be repetitious.

This decision is effective May 18, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Seattle, Washington, this 21st day of February 1979.

James W. Lake,

Regional Administrator—OSHA.

[FR Doc. 79-15601 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-26-M

Office of the Secretary

Alma Coal Corp., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of	Location	Date received	Date of petition	Petition No.	Articles produced
Alma Coal Corp. (workers)	Clotheir, W. Va.	5/4/79	5/2/79	TA-W-5,370	Sub-contracting mining of coal.
Amherst Coal Co., Pargan Mine (U.M.W.W.)	Lundale, W. Va.	5/7/79	4/26/79	TA-W-5,371	Mining of coal.
Bergin Dyers, Inc. (workers)	Paterson, N. J.	5/7/79	4/30/79	TA-W-5,372	Dye acrylic machine knitting yarns.
Green Valley Trucking Co., Inc. (U.M.W.A.)	Greenbrier County, W. Va.	5/4/79	5/1/79	TA-W-5,373	Transports coal from mine to the cleaning plant.
Kay Windsor, Inc. (workers)	North Dartmouth, Mass.	5/7/79	4/26/79	TA-W-5,374	Ladies' dresses & sportswear.

Petitioner: Union/workers or former workers of	Location	Date received	Date of petition	Petition No.	Articles produced
Pandora Industries, Inc., North View Division (workers).	Manchester, N.H.	5/7/79	5/1/79	TA-W-5,375	Children's, Jr's & women's sportswear.
Samco Sportswear, Inc. (ACTWU)	St. Paul Minn.	5/4/79	4/26/79	TA-W-5,376	Insulated underwear & ski wear.
Samco Sportswear of Crosby, Inc. (ACTWU)	Crosby, Minn.	5/4/79	4/26/79	TA-W-5,377	Snow mobile, ski & hunting wear.
Tempo Golf & Tennis, Inc. (workers)	New York, N.Y.	5/7/79	5/7/79	TA-W-5,378	Two-piece warmup suits also wrist and head band.
Wallace-Murray, Corp., Simonds Cutting Tools Division (USWA).	Fitchburg, Mass.	5/4/79	5/2/79	TA-W-5,379	Circular & band saws, hacksaws, machine knives, circular cutters, and shear knives.
White & Cole, Coal Co., Inc. No. 10 Mine (company).	Herndon, W. Va.	5/9/79	4/27/79	TA-W-5,380	Mining of coal.

[FR Doc. 79-15603 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-28-M

Airline Deregulation Labor-Management Advisory Committee; Notice of Establishment

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A-63 of March 1974, and after consultation with the General Services Administration, the Secretary of Labor has determined that the establishment of the Airline Deregulation Labor-Management Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by Section 43(d)(3) of the Airline Deregulation Act of 1978.

The Committee will be instrumental in advising the Assistant Secretary for Labor-Management Relations of ways in which the possible reemployment of employees within the industry can be facilitated. The Committee will also assist the Secretary of Labor in improving the effectiveness of the employee protection program established under Section 43(d) by giving advice on the development of the program and on its administration once regulations have been adopted.

The Committee will consist of a total of eighteen individuals chosen from the airline industry on the basis of their knowledge and leadership. Nine will be from the industry's labor leaders and an equal number from the management side.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Interested persons are invited to submit comments regarding the establishment of the Airline Deregulation Labor-Management Advisory Committee on or before June 4, 1979. Such comments should be addressed to:

Mr. Lary Yud, Chief, Division of Employee Protections, Room N-5639, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. [Telephone (202) 523-6495.]

After consideration of the proposals received, the Committee's charter will be filed as required by Section 9(a)(2) of the Federal Advisory Committee Act.

Signed at Washington, D.C., this 10th day of May, 1979.

R. C. DeMarco,

Acting Assistant Secretary for Labor-Management Relations.

[FR Doc. 79-15196 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-29-M

Ark-Less Corp., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request if filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 14th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Ark-Less Corp. (workers)	Watertown, Mass.	5/9/79	4/30/79	TA-W-5,381	Electrical components and switches.
Korelle Industries (company)	Avenel, N.J.	5/9/79	5/3/79	TA-W-5,382	Plastic coated fabrics.
Logan Mohawk Coal Company, Inc. (workers)	Logan, W.Va.	5/9/79	5/4/79	TA-W-5,383	Mining of coal.
Martil Clothing (ACTWU)	Philadelphia, Pa.	5/9/79	5/2/79	TA-W-5,384	Men's suits and sportscoats.
Marva Industries (Teamsters)	Elizabeth, N.J.	5/9/79	5/3/79	TA-W-5,385	Textile goods-knitwear material.
Monroe Auto Equipment Co. (company)	Paragould, Ark.	5/9/79	4/24/79	TA-W-5,386	Shock absorbers.

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Owens Illinois, Inc. (workers)	Bridgeton, N.J.	5/9/79	5/1/79	TA-W-5,387	Glass containers.
Parflex Rubber Thread Corp. (workers)	Providence, R.I.	5/10/79	5/1/79	TA-W-5,388	Extruded latex rubber threads.
R & R Cedar Products (workers)	Cottage Grove, Oreg.	5/10/79	5/2/79	TA-W-5,389	Cedar shingles and random cedar lumber.

[FR Doc. 79-15604 Filed 5-17-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-4754]

Brookevale Manufacturing Co., Inc., Belle Vernon, Pa.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on January 29, 1979 in response to a worker petition received on January 24, 1979 which was filed on behalf of workers and former workers producing coats, sportcoats and suits at Brookevale Manufacturing Company, Incorporated, Belle Vernon, Pennsylvania. The investigation revealed that the plant produces men's sportcoats and suitcoats. In the following determination, at least one of the criteria has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of the manufacturer for which Brookevale performs contract work. The survey revealed that the manufacturer did not purchase imported suits and sportcoats or utilize foreign contractors. Total sales of the manufacturer decreased in the first quarter of 1979 compared to the same period of 1978. A survey of some customers which decreased purchases from the manufacturer indicated that these customers did not purchase imported suits or sportcoats in 1978 or the first quarter of 1979.

Conclusion

After careful review, I determine that all workers of Brookevale Manufacturing Company, Incorporated, Belle Vernon, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of May 1979.

Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-15605 Filed 5-17-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5068]

Cecil Ainsworth, Ltd., New York, N.Y.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 29, 1979 in response to a worker petition received on March 28, 1979 which was filed on behalf of workers and former workers producing girl's dresses and sportswear at Ceil Ainsworth, Limited, New York, New York.

The Notice of Investigation was published in the **Federal Register** on April 6, 1979 (44 FR 20820-21). No public hearing was requested and none was held.

The petitioner requested withdrawal of the petition in a letter. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 10th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-15606 Filed 5-17-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5088, et al.]

Continental Forest Industries, et al.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. In the following determination, at least one of the criteria has not been met.

[TA-W-5008]

Continental Forest Industries, Corrugated Group, Cambridge, Mass.

The investigation was initiated on March 30, 1979 in response to a worker petition received on March 23, 1979 which was filed on behalf of workers and former workers producing corrugated cartons and displays at Continental Forest Industries, Corrugated Group, Cambridge, Massachusetts. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Cambridge, Massachusetts plant of the Corrugated Group of Continental Forest Industries produced corrugated cartons and displays. The petition alleges that increased imports of ground paper products (recycled paper) affected production and employment at Continental Forest Industries, Corrugated Group, Cambridge, Massachusetts. Imported ground paper products cannot be considered to be like or directly competitive with corrugated cartons and displays. Imports of corrugated cartons and displays must be considered in determining import injury to workers producing corrugated cartons and displays.

Imports of corrugated boxes supply only a very small percentage of the domestic market. The ratio of imports to domestic shipments of corrugated boxes has been below three-tenths of one percent in every year since 1974.

Conclusion

After careful review, I determine that all workers of the Cambridge, Massachusetts plant of Continental Forest Industries, Corrugated Group, are denied eligibility to apply for adjustment assistance under Title 11, Chapter 2 of the Trade Act of 1974.

[TA–W–4830]

Firestone Tire & Rubber Co., Pottstown, Pa.

The investigation was initiated on February 22, 1979, in response to a worker petition received on February 12, 1979, which was filed on behalf of workers and former workers producing tires at the Pottstown, Pennsylvania plant of Firestone Tire and Rubber Company. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the Department's investigation revealed that the declines in production and employment at the Pottstown plant of Firestone Tire and Rubber Company were due to the discontinuation of one model of radial tire and its replacement by another model.

The Pottstown, Pennsylvania plant's Tire Division produced bias and radial passenger car tires, truck and tractor tires and industrial tires. Production of bias passenger car tires at Pottstown increased from 1976 to 1977 and from 1977 to 1978. Production of truck and tractor tires at Pottstown also increased from 1976 to 1977 and from 1977 to 1978. Industrial tires were an insignificant percentage of total tire production. The decline in total tire production at Pottstown from 1977 to 1978 can be attributed to the decline in radial tire production in the first, second, and third quarters of 1978 compared to the same quarters in 1977. This decline in radial tire production was caused by the recall and subsequent discontinuation of one model of radial tire and its replacement by a new radial model.

Subsequent to the shift to the new tire model, production of radial tires at Pottstown increased in the fourth quarter of 1978 both compared to the same quarter of 1977 and to the previous quarter, as the result of increased demand for the replacement model. As production increased workers were recalled. Employment began increasing on a monthly basis in the second half of 1978.

Firestone's companywide sales of all passenger car tires and sales of radial tires and bias ply tires increased from 1976 to 1977 and from 1977 to 1978. Company sales of all passenger car tires increased for seven consecutive quarters from the second quarter of 1977 through the fourth quarter of 1978 when compared to the same quarter of the previous year. Company sales of radial passenger car tires increased for eight consecutive quarters from the first quarter of 1977 through the fourth quarter of 1978, when compared to the same quarter of the previous year.

The petitioners allege that increased imports of automobiles have contributed importantly to the declines in production and employment at the Pottstown plant.

However, imports of automobiles cannot be considered to be like or directly competitive with tires.

Conclusion

After careful review, I determine that all workers of the Pottstown, Pennsylvania plant of Firestone Tire and Rubber Company are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

[TA–W–4999]

New Balance Athletic Shoes, Inc., Allston, Mass.

The investigation was initiated on March 20, 1979 in response to a worker petition received on March 16, 1979 which was filed on behalf of workers and former workers producing athletic shoes for men and women at the New Balance Athletic shoes, Incorporated, Allston, Massachusetts plants. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

The increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The two week shutdown at New Balance in February, 1979 was needed in order to adjust inventory. The lack of (any) December/January vacation slowdown in 1978/1979 and a changeover in the color of ladies' styles for spring necessitated the shutdown. Sales and employment have returned to normal levels by the beginning of the second quarter, 1979.

Sales and production of athletic shoes at New Balance increased from 1977 to 1978 and in every quarter from the first quarter of 1977 to the first quarter of 1979 compared to the same quarter of the previous year.

Employment at New Balance increased from 1977 to 1978 and in every quarter from the first quarter of 1978 to the first quarter of 1979 compared to the same quarter of the previous year.

Conclusion

After careful review, I determine that all workers of New Balance Athletic Shoes, Incorporated, Allston, Massachusetts plants are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

[TA–W–5003]

Wondermaid, Inc., Washington, Mo.

The investigation was initiated on March 20, 1979, in response to a worker petition received on March 14, 1979, which was filed on behalf of workers and former workers producing women's underwear and slips at the Washington, Missouri plant of Wondermaid, Incorporated. The investigation revealed that the plant produces women's slips. Without reard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Sales at Wondermaid, Incorporated increased absolutely in 1977 compared to 1976 and in 1978 compared to 1977. Production at the Washington, Missouri plant of Wondermaid, Incorporated increased in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978. Sales and production decreases that occurred in the first quarter of 1979 compared to the last quarter of 1978 were the result of seasonal business declines.

Conclusion

After careful review, I determine that all workers of the Washington, Missouri plant of Wondermaid, Incorporated are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of May 1979 .

Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79–15607 Filed 5–17–79; 8:45 am]

BILLING CODE 4510–28–M

[TA–W–2921]

Eagle Clothes, Inc., Brooklyn, N.Y.; Affirmative Determination Regarding Application for Reconsideration

In accordance with 29 CFR 90.18(c), on January 26, 1979, the Department of Labor issued a Notice of Negative Determination Regarding Application

for Reconsideration regarding workers and former workers of Eagle Clothes Inc., Brooklyn, New York.

The notice was published in the **Federal Register** on February 2, 1979, (44 FR 6796).

Subsequent to the publication of the Negative Determination Regarding Application for Reconsideration, as a compromise in connection with current litigation, the Department of Labor offered to administratively reconsider the subject workers' petition. The purpose of this offer was to afford the petitioner in the light of new documentation an opportunity to address the legal issues contained in the Department of Labor's Notice of Negative Determination Regarding Application for Reconsideration in Eagle Clothes, Inc., Brooklyn, New York, TA-W-2921, dated January 26, 1979.

Conclusion

After review of the application, I conclude that the circumstances are such as to justify reconsideration of the Department of Labor's earlier decision denying certification of eligibility to workers of Eagle Clothes, Inc., engaged in preparing window and store displays at retail stores. The application is, therefore, granted.

Signed at Washington, D.C., this 9th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-15608 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5072]

Elfskin Corp.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. In the following determination, at least one of the criteria has not been met.

[TA-W-5072]

Elfskin Corp., Worcester, Mass.

The investigation was initiated on March 29, 1979 in response to a worker petition received on March 27, 1979, which was filed on behalf of workers and former workers producing vinyl-coated, flocked, and sueded fabric at Elfskin Corporation, Cherry Valley, Massachusetts. The investigation revealed that Cherry Valley is a district in the city of Worcester, Massachusetts. The investigation also revealed that sueded and flocked fabric are the same product. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The petitioners allege that imports of shoes and other finished products that contain vinyl-coated and flocked fabric adversely affected production and employment levels at Elfskin Corporation. However, neither finished shoes nor other finished products that contain coated and flocked fabric can be considered to be like or directly competitive with vinyl-coated or flocked fabric. Imports of vinyl-coated and flocked fabric must be considered in determining import injury to workers producing vinyl-coated and flocked fabric.

The Department surveyed customers accounting for the decline in Elfskin's sales in 1978 compared with 1977 and in the first quarter of 1979 compared with the like period of 1978. The survey revealed that none of the customers imported vinyl-coated or flocked fabric during these periods.

Conclusion

After careful review, I determine that all workers of Elfskin Corporation, Worcester, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-15609 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4906]

Genesco, Inc.; Negative Determiniation Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. In the following determination, at least one of the criteria has not been met.

[TA-W-4906]

Genesco, Inc., Men's Apparel Sector, Ainsbrooke Division, Carmi, Ill.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 8, 1979 in response to a worker petition received on March 1, 1979 which was filed on behalf of workers and former workers producing men's screen print "T" shirts, thermal underwear and men's boxer shorts at Genesco, Incorporated, Carmi Ainsbrooks Plant, Carmi, Illinois. The investigation revealed that the petition was filed on behalf of workers and former workers at the Carmi, Illinois plant of the Ainsbrooke Division of the Men's Apparel Sector of Genesco, Incorporated. The Carmi plant produced primarily men's underwear and men's knit tops in 1978. In the following determination, at least one of the criteria has been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Department survey of Ainsbrook's customers indicated that most respondents purchased no imported men's underwear in 1977 or 1978. Customers which decreased purchases of underwear from Ainsbrooke in 1978 compared to 1977 did not increase purchases of imported underwear in the same time period.

The same survey indicated that customers which decreased purchases of knit tops form Ainsbrooke and increased purchases of imported knit shirts represented an insignificant proportion of Ainsbrooke's decline in total sales.

Further evidence developed in the course of the investigation indicates that a decline in military sales was the major factor in Ainsbrooke's overall sales decline in 1978 compared to 1977. Ainsbrooke's Florence, Alabama plant is the only company facility approved to make underwear for the military; consequently, the decline in military sales in 1978 compared to 1977 resulted in unused production capacity at that facility. Production at the Carmi plant increased in 1978 compared to 1977 but the plant was closed in November 1978 and production consolidated at Florence in order to utilize the excess production capacity created by the decline in military sales.

Conclusion

After careful review, I determine that all workers of the Carmi, Illinois plant of the Ainsbrooke Division of the Men's Apparel Sector of Genesco, Incorporated are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

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

Harry J. Gilman,

Supervisory International economist, Office of Foreign Economic Research.

[FR Doc. 79-15610 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5258]

Lorraine Foundry, Maquoketa, Iowa; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 18, 1979 in response to a worker petition received on April 10, 1979 which was filed by the International Molders and Allied Workers Union on behalf of workers and former workers producing grey ductile castings at the Lorraine Foundry, Masquoketa, Iowa.

During the course of the investigation, it was established that all workers of Lorraine Foundry were separated from employment on February 3, 1978. 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 April 4, 1979 and, thus, workers terminated prior to April 4, 1978 are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. The investigation is therefore terminated.

Signed at Washington, D.C. this 9th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-15611 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4870]

Rubber Corp. of Pennsylvania; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 22 of the Act must be met. In the following case, it is concluded that all of the requirements have been met.

[TA-W-4870]

Rubber Corp. of Pennsylvania, West Hazleton, Pa.

The investigation was initiated on February 28, 1978 in response to a worker petition received on February 22, 1978 which was filed by the United Shoe Workers of America on behalf of workers and former workers producing athletic and casual footwear at the Rubber Corporation of Pennsylvania, West Hazleton, Pennsylvania. It is concluded that all of the requirements have been met.

U.S. imports of rubber and canvas footwear increased relative to domestic production from 1976 to 1977 and then increase absolutely and relative to domestic production in 1978 compared to 1977. The ratio of imports to domestic production was 207 percent in 1978.

U.S. imports of athletic footwear increased absolutely and relative to domestic production from 1976 to 1977 and then decreased absolutely and relative to domestic production from 1977 to 1978. The ratio of imports to domestic production for athletic footwear was 280 percent in 1978.

U.S. imports of rubber/plastic flexible sandals declined absolutely form 1976 to 1977 and then increased absolutely from 1977 to 1978.

The Department surveyed the customers of the Rubber Corporation of Pennsylvania. The survey revealed that some customers decreased purchases from the Rubber Corporation of Pennsylvania from 1977 to 1978 and increased purchases of imported athletic and casual footwear during the same time period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with athletic and casual footwear for men, women and children produced at Rubber Corporation of Pennsylvania, West Hazleton, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Rubber Corporation of Pennsylvania, West Hazleton, Pennsylvania who became totally or partially separated from employment on or after July 28, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of May 1979.

Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-15612 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4910]

Slayton Manufacturing; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. In the following determination, at least one of the criteria has not been met.

[TA-W-4910]

Slayton Manufacturing, Slayton, Minn.

The investigation was initiated on March 8, 1979 in response to a worker petition received on March 2, 1979 which was filed on behalf of workers and former workers sewing sleepwear

for girls at Slayton Manufacturing, Slayton, Minnesota. Without regard to whether any of the other criteria have not met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of women's, girls' and children's nightwear (excluding sets with robes) increased from 1976 to 1977 and from 1977 to 1978. However, industry sources stated that imports of girls' and children's nightwear are neglible due to the flammability standards for domestically-sold children's sleepwear.

A Departmental investigation revealed that all sleepwear sewn by Slayton Manufacturing was marketed by Lees Manufacturing Company, which was Slayton's parent firm. A survey of customers of Lees Manufacturing revealed that imports of girls' sleepwear are low relative to domestic production due to the flammability standards for children's sleepwear. The survey results showed that only one customer decreased purchases (when adjusted for price changes) from Lees Manufacturing from 1977 to 1978 and increased purchases of imported girls' sleepwear. This customer relied on imports for only a small portion of its supply. In addition, this customer did not exert a significant influence on Lees' total sales of girls' sleepwear.

Conclusion

After careful review, I determine that all workers of Slayton Manufacturing, Slayton, Minnesota are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

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

Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-15613 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4958]

Suntogs, Inc., Miami, Fla.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 15, 1979 in response to a worker petition received on March 12, 1979 which was filed on behalf of workers and former workers producing children's clothing at Suntogs, Inc., Miami, Florida. It is concluded that all of the requirements have been met.

Imports of children's swimwear, playwear, and shorts increased in 1978 compared to 1977.

Some customers of Suntogs, Inc. who were surveyed by the U.S. Department of Commerce increased purchases of imported children's clothing in 1978 while reducing purchases from Suntogs, Inc.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with children's clothing produced at Suntogs, Inc., Miami, Florida contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Suntogs, Inc., Miami, Florida who became totally or partially separated from employment on or after March 5, 1978 are eligibile to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of May 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-15614 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4893]

U.S. Steel Corp.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. In the following determination, at least one of the criteria has not been met.

[TA-W-4893]

U.S. Steel Corp., Fairfield Works, Birmingham, Ala.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 5, 1979 in response to a worker petition received on February 22, 1979 which was filed on behalf of workers and former workers producing steel rails at the Fairfield Works of U.S. Steel Corporation in Birmingham, Alabama. In the following determination, at least one of the criteria has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A survey was conducted on the major rail customers of the Fairfield Works of U.S. Steel. The surveyed customers accounted for over 95 percent of the rail sold by the Fairfield Works in 1978. Only one of the customers surveyed purchased any imported rails in 1978 and the quantity of imported rails purchased was insignificant when compared to the total sales of rails by the Fairfield Works. None of the customers surveyed had purchased any imported rails in 1979 to date. The customers surveyed indicated that imported rails had little or no effect on purchases from domestic manufacturers.

Conclusion

After careful review, I determine that all workers engaged in the production of steel rails at the Fairfield Works of U.S. Steel Corporation in Birmingham, Alabama are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of May 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-15615 Filed 5-17-79; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL SCIENCE FOUNDATION

Ad Hoc Oversight Subcommittee for Low Temperature Physics; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Ad Hoc Oversight Subcommittee for Low Temperature Physics, Condensed Matter Advisory Subcommittee, Advisory Committee for Materials Research.

Date and time: June 7 and 8, 1979—9 a.m.–5 p.m. each day.

Place: Room 421, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: Closed both days, 9 a.m.—5 p.m.

Contact person: Dr. Herbert S. Bennett, Director, Division of Materials Research, Room 408, National Science Foundation, Washington, D.C., Telephone (202) 632-7412.

Purpose of subcommittee: To provide advice and recosmmendations concerning support for research in Low Temperature Physics.

Agenda: Thursday, June 7, 1979—9 a.m. to 5 p.m.—closed. Review and comparison of declined proposals (and supporting documentation) with successful awards including review of peer review materials and other privileged materials.

Friday, June 8, 1979—9 a.m. to 5 p.m.—closed.

9 a.m.—Further discussions of declined proposals and awards.

12 noon—Lunch.

1 p.m.—Preparation of report on subcommittee findings and recommendations.

Reasons for closing: The Subcommittee will be reviewing grants and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Director, NSF, pursuant to provisions of Section 10(d) of Pub. L. 92-463.

M. Rebecca Winkler,

Committee Management Coordinator.

May 15, 1979.

[FR Doc. 79-15515 Filed 5-17-79; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Neurobiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Neurobiology of the Advisory Committee for Behavioral and Neural Sciences.

Date and time: June 4, 5, and 6, 1979: 9 a.m. to 5 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, D.C.

Type of meeting: Closed.

Contact person: Dr. Janett Trubatch, Program Director, Neurobiology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202/634-4036.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Neurobiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18,

M. Rebecca Winkler,

Committee Management Coordinator.

May 15, 1979.

[FR Doc. 79-15516 Filed 5-17-79; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability and Probabilistic Assessment; Meeting

The ACRS Subcommittee on Reliability and Probabilistic Assessment will hold an open meeting on June 2, 1979 in Room 1046, 1717 H St., NW, Washington, DC 20555 to discuss the 1979 Review and Evaluation of the NRC Safety Research Program.

In accordance with the procedures outlined in the **Federal Register** on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Saturday, June 2, 1979—8:30 a.m. until the conclusion of business.

The Subcommittee will meet in Executive Session with any of its consultants who may be present, and with representatives of the NRC Staff and their consultants, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendation to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the chairmen's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Richard K. Major, (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EDT.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., NW, Washington, DC 20555.

Dated: May 10, 1979.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 79-15123 Filed 5-17-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-358 OL]

Cincinnati Gas & Electric Co. et al.; Evidentiary Hearing

Before the Atomic Safety and Licensing Board; in the matter of Cincinnati Gas and Electric Co., et al., (William H. Zimmer Nuclear Station).

Please take notice that, in accordance with the Licensing Board's Orders of April 6 and May 11, 1979, an evidentiary

hearing in this proceeding will commence at 9:30 a.m. on Tuesday, June 19, 1979, at a location in the Cincinnati, Ohio area to be announced in a later order. To the extent necessary, further sessions of the hearing will be held on June 20–22 and 26–29, 1979, beginning at 9 a.m.

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," and Part 2, "Rules of Practice," notice is hereby given that the said evidentiary hearing will be held to consider the application filed under the Act by the Cincinnati Gas and Electric Co. on behalf of itself, the Columbus and Southern Ohio Electric Co., and the Dayton Power and Light Co. (Applicants), to possess, use and operate the William H. Zimmer Nuclear Power Station, Unit 1, a boiling water nuclear reactor located on the Applicants' site on the eastern shore of the Ohio River, one-half mile north of Moscow and about 24 miles southeast of Cincinnati, Ohio. The hearing will be conducted by an Atomic Safety and Licensing Board designated by the Chairman of the Atomic Safety and Licensing Board Panel. The Board's membership consists of Mr. Glenn O. Bright, Dr. Frank F. Hooper, and Mr. Charles Bechhoefer, Chairman.

In 1975, the Applicants submitted their application for an operating license. A Notice of Opportunity for Hearing was published on September 24, 1975 (40 FR 43959). Petitions for leave to intervene filed by the City of Cincinnati, Dr. David B. Fankhauser, Mrs. Mari B. Leigh, and the Miami Valley Power Project were subsequently granted and a Notice of Hearing was published on March 25, 1976 (41 FR 12361). (Mrs. Leigh is now deceased.) In accordance with the provisions of 10 CFR 2.760a, the hearing will be limited to the consideration of matters put into controversy by the parties to the proceeding and which have been determined by the Board to be issues in the proceeding, together with other issues, if any, where the Board has determined that a serious safety, environmental, or common defense and security matter exists. Depending on the resolution of those matters the Director of Nuclear Reactor Regulation, after making the requisite findings, will issue, deny, or appropriately condition the sought operating license.

Any person who has not been admitted as a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715(a). A person making a limited appearance may make an oral or written statement on the record. He or she does not become a party but may state a position and raise questions which he or she would like to have answered, to the extent that the questions are within the purview of matters which may be considered in an operating license proceeding, as specified by 10 CFR 2.104(c). Limited appearances will be permitted at this evidentiary hearing, as well as at the prehearing conference on May 22 and 23, 1979 (see announcement at 44 FR 22229 (April 13, 1979) for details), within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 11th day of May, 1979.

The Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman.

[FR Doc. 79-15491 Filed 5-17-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-514, 50-515]

Portland General Electric Co., et al.; Memorandum and Order Concerning Conference Scheduled for June 20, 1979

Before the Atomic Safety and Licensing Board;

In the matter of Portland General Electric Co., et al., (Pebble Springs Nuclear Plant, Units 1 and 2).

A conference of the Parties in this proceeding is scheduled for Wednesday, June 20, 1979, at 9:00 a.m., local time at the following location:

Courtroom Number 2 (Third Floor), The Pioneer Courthouse, 555 S.W. Yamhill, Portland, Oregon 97204.

The purpose of this conference is to discuss schedules, the status of the State of Oregon proceeding, and the status in this proceeding of certain open items, namely:

(1) Alternative Sites.

(2) Financial Qualifications.

(3) Appendix I.

(4) "River Bend" Generic Safety Subjects.

(5) Need for Power.

Members of the public are invited to attend but limited appearances will not be received at this conference.

It is so ordered.

Dated at Bethesda, Maryland this 11th day of May 1979.

For the Atomic Safety and Licensing Board.

James R. Yore,

Chairman.

[FR Doc 79-15492 Filed 5-17-79; 8:45 am]

BILLING CODE 7590-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors; Meeting

The Pennsylvania Avenue Development Corporation will hold a meeting of its Board of Directors on Thursday, May 24, 1979, beginning at 9:30 a.m. The meeting will be held in the tenth floor conference room of the National Capital Planning Commission, 1325 G Street, N.W., Washington, D.C.

The Board will take up a full agenda of general business matters, including any new business or unfinished business that members of the Board propose to consider. The meeting is expected to last approximately three hours, and most of it will be open to the public. The Chairman has determined that a brief portion of the meeting will be conducted in executive session, closed to the public, for discussion of confidential financial matters arising from the Corporation's negotiations with the proposed developers of property on Square 225 (the Willard Hotel block) and Square 254 (the National Theatre block). The closed portion of the meeting will take place at the end of the session.

A complete printed agenda for the meeting will be available by Monday, May 21, 1979, and may be obtained by request to: Ms. Barbara S. Austin, Secretary to the Board, Pennsylvania Avenue Development Corporation, 425 13th Street, N.W., Suite 1148, Washington, D.C. 20004; or, by visiting the offices of the Corporation at the foregoing address.

Dated: May 15, 1979.

Peter T. Meszoly,

Assistant Director/General Counsel.

[FR Doc. 79-15573 Filed 5-17-79; 8:45 am]

BILLING CODE 7630-01-M

PRESIDENTIAL COMMISSION ON WORLD HUNGER

Meeting

The sixth meeting of the Presidential Commission on World Hunger will be held on Wednesday, June 6, 1979, in Room 2010 of the New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. The meeting will

begin at 9:30 a.m. and conclude at approximately 4:30 p.m.

The agenda for the meeting will include a presentation by Director General Edouard Saouma of the Food and Agriculture Organization of the UN and a discussion of draft portions of the Commission's Report.

The meeting will be open to observation by the public to the extent space is available. Reservations are required and requests should be addressed to Presidential Commission on World Hunger, 734 Jackson Place, N.W. Washington, D.C. 20006. Reservations will be honored on the basis of the earliest postmarks of requests.

Donald B. Harper,

Administrative Officer, Presidential Commission on World Hunger.

[FR Doc. 79-15511 Filed 5-17-79; 8:45 am]

BILLING CODE 6820-97-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

Belscot Retailers, Inc.; Order of Suspension of Trading

May 11, 1979.

It appearing to the Securities and Exchange Commission that Belscot Retailers, Inc. has failed to file with the Commission its Annual Report on Form 10-K for its fiscal year ended January 27, 1979, and that, as a result, there is a lack of current adequate and accurate public information about the operations and financial condition of Belscot Retailers, Inc. The Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Belscot Retailers, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in such securities on a national securities exchange or otherwise is suspended, for the period from 10:00 a.m. (e.d.t.) on May 11, 1979 through May 20, 1979.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-15594 Filed 5-17-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21044; 70-6300]

Consolidated Natural Gas Co. et al.; Proposed Intrasystem Financing, Issuance and Sale of Short-Term Notes to Banks and Commercial Paper by Holding Company, and Exception From Competitive Bidding

May 9, 1979.

In the matter of Consolidated Natural Gas Company, 30 Rockefeller Plaza, New York, New York 10020; CNG Coal Company; CNG Development Company Ltd.; CNG Producing Company; CNG Research Company; Consolidated Gas Supply Corportion; Consolidated Natural Gas Service Company, Inc.; Consolidated System LNG Company; The East Ohio Gas Company; The Peoples Natural Gas Company; The River Gas Company; West Ohio Gas Company.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and certain of its subsidiary companies, CNG Coal Company ("Coal Company"), CNG Development Company Ltd., CNG Producing Company ("Producing company"), CNG Research Company ("Research Company"), Consolidated Gas Supply Corporation ("Gas Supply"), Consolidated Natural Gas Service Company, Inc., Consolidated System LNG Company ("LNG Company"), The East Ohio Gas Company ("East Ohio"), The Peoples Natural Gas Company ("Peoples"), the River Gas Company ("River") and West Ohio Gas Company ("West Ohio") have filed an application-declaration with this commission pursuant to the Public Utility Holding company Act of 1935 ("Act"), designating sections 6(a), 6(b), 7, 9(a), 10, 12(b), and 12(f) of the Act and Rules 43, 45, and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Consolidated proposes, from time to time up to May 31, 1980, to make long-term loans aggregating up to $110,000,000 to five subsidary companies in the amounts set forth in the table below, for the purpose of partially financing their 1979 capital expenditures. Capital expenditures for all of Consolidated's subsidiaries are estimated at $185,025,000 in 1979. Prior to completion of Consolidated's long-term financing in 1979, such loans to said subsidiary companies will be in the form of interim open account advances, payable on or before May 31, 1980, with interest at the prime commercial rate in effect from time to time at The Chase Manhattan Bank, N.A. ("Chase Manhattan"), with a retroactive adjustment of the interest rate on the advances to conform with the effective cost of money to Consolidated from its long-term financing. Following the long-term financing by Consolidated, the Interim open account advances to subsidiary companies, subject to an amendment being filed, will be converted into long-term financing of such subsidiary companies. Thereafter, loans to subsidiary companies for capital expenditures will be evidenced by such long-term financing.

Consolidated proposes to issue and sell up to $100,000,000 of short-term notes to a group of banks during 1979. Such notes will bear interest at the prime commercial rate in effect from time to time at Chase Manhattan. Prepayments may be made in whole or in part, from time, to time, upon five days' notice without penalty or premium. There will be no closing or related charges or commitment fee, and the notes will mature not more than twelve months from the date of the first borrowing. No compensating balance requirements will be imposed. The average of deposits regularly maintained by the Consolidated companies in the participating banks for normal operating purposes amounted to approximately $25,400,000 for 1978. It is stated that based on a requirement of 10% of the proposed credit line and 10% of average borrowings thereunder, the average compensating balances would have amounted to approximately $15,800,000 for the year 1978.

Consolidated proposes to use the proceeds from said bank borrowings to make open account advances to its subsidiary companies aggregating up to $100,000,000 for gas storage inventories, payable as gas is withdrawn and sold during the 1979-80 heating season. The advances to subsidiary companies will bear interest at the same rate as the related bank borrowings by Consolidated and will be made in amounts as set forth in the table below. Also shown in the following table are $75,000,000 of open account advances which Consolidated proposes to make from time to time up to May 31, 1980, to subsidiary companies for working capital requirements from part of the proceeds of Consolidated's proposed issuance and sale (described hereinafter) of up to $50,000,000 of

commercial paper and/or notes to a bank. It is stated that these advances should not exceed $40,000,000 at any one time. The advances will be repaid not more than one year from the date of the first advance to each subsidiary with interest at substantially the same effective rate as incurred by Consolidated on the related commercial paper sale and/or bank borrowings.

Subsidiary company	Interim advances and long-term notes	Advances for seasonal increase in gas storage inventories	Advances for working capital requirements
Producing Company	$27,500,000	.....	$12,500,000
Gas Supply	55,000,000	$ 70,000,000	23,000,000
LNG Company	.....	.....	10,000,000
East Ohio	20,000,000	15,000,000	20,000,000
Peoples	7,000,000	15,000,000	8,000,000
River	500,000	.....	500,000
West Ohio	.....	.....	1,000,000
Coal Company	.....	.....	.....
Research Company	.....	.....	.....
Service Company	.....	.....	.....
Total	110,000,000	100,000,000	75,000,000

Consolidated further proposes to acquire, and the subsidiary companies set forth below propose to issue and sell to Consolidated from time to time up to May 31, 1980, capital stock up to the following amounts at the par value thereof:

	Number of shares	Aggregate par value
Coal Company	40,000 ($100 par)	$4,000,000
Producing Company	50,000 ($100 par)	5,000,000
Research Company	25,000 ($100 par)	2,500,000
Gas Supply	100,000 ($100 par)	10,000,000
River	9,000 ($100 par)	900,000
Total		22,400,000

The proceeds derived from the proposed sale of stock will be used to finance, in part, the subsidiaries' capital expenditures. The purchase of said capital stock by Consolidated will be made principally with funds from internal cash generation, and from the sale of common stock pursuant to its stockholder and employee stock plans.

As indicated above, Consolidated proposes to issue and sell commercial paper, in the form of short-term promissory notes payable to bearer, in the aggregate face amount not to exceed $50,000,000 outstanding at any one time to a dealer in commercial paper from time to time up to May 31, 1980. The commercial paper will have varying maturities of not more than 270 days after the date of issue and will be issued and sold in varying denominations of not less than $50,000 and not more than $5,000,000 directly to the dealer at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and like maturities. Consolidated proposes to sell commercial paper only so long as the effective interest cost for such commercial paper does not exceed the equivalent cost of borrowings from a commercial bank on the date of sale.

No commission or fee will be payable by Consolidated in connection with the issue and sale of such commercial paper notes. The dealer, as principal, will reoffer such notes at a discount not to exceed one-eighth of one percent per annum less than the prevailing discount rate to Consolidated. Such notes will be reoffered to not more than 200 identified and designated customers on a list (nonpublic) prepared in advance by the dealer and furnished to the Commission. It is anticipated that the commerical paper will be held by customers to maturity; however, if any commercial paper is repurchased by the dealer pursuant to a repurchase agreement, such paper will be reoffered only to others in the group of 200 customers. The issuance and sale of commerical paper is to provide $50,000,000 for working capital advances to subsidiary companies.

Consolidated proposes to the extent that it becomes impracticable to issue such commercial paper, to borrow, repay, and reborrow from Chase Manhattan, from time to time up to May 31, 1980, an aggregate principal amount not to exceed $50,000,000 outstanding at any one time, at the prime commercial rate of interest in effect on the date of each borrowing, upon the promissory note or notes of Consolidated having a maturity date not more than 90 days from the date of each borrowing, and with the right of prepayment, in whole or in part at any time or from time to time, without prior notice and without premium. The amount of commerical paper notes and said notes, if any, payable to Chase Manhattan will not collectively exceed $50,000,000 outstanding at any one time. There will be no closing or related charges and no commitment fee with respect to such bank loans, nor will there be any compensating-balance requirements.

Consolidated requests that, for the period commencing upon the date of the granting of this application-declaration and ending May 31, 1980, an exemption be allowed from the provisions of Section 6(a) of the Act pursuant to the first sentence of Section 6(b), relating to the issuance and sale of short-term notes, by increasing the 5% limitation on such notes to a maximum of 6% in order to permit Consolidated to have outstanding at any one time up to $50,000,000 principal amount of short-term notes during such period as proposed herein.

Consolidated requests exception from the competitive bidding requirements of Rule 50 with respect to the sale of commericial paper on the grounds that such commercial paper will have maturities of nine months or less, that current rates for commercial paper for prime borrowers, such as Consolidated, are published daily in financial publications, and that it is not practical to invite competitive bids for commercial paper. Consolidated also proposes that the Rule 24 certificates of notification regarding the proposed transactions be filed on a quarterly basis.

It is stated that CNG Development Company Ltd. and Consolidated Natural Gas Service Company, Inc., have no new financing requirements for 1979 at the time of filing and that if such requirements should arise, an amendment to that effect will be filed as part of this proceeding.

The application-declaration states that the Public Service Commission of West Virginia has jurisdiction over the proposed long-term and short-term borrowings and stock issuances of Gas Supply, that the Public Utilities Commission of Ohio has jurisdiction over the long-term borrowings of River and East Ohio and the stock issuance proposed by River, and that the

Pennsylvania Public Utility Commission has jurisdiction over the long-term borrowings of Peoples. It is further stated that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $12,500, including $10,000 for the system service company charges, at cost. All of such fees and expenses are to be paid by Consolidated.

Notice is further given that any interested person may, not later than June 6, 1979, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. 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 Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-15595 Filed 5-17-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 10688; 812-4461]

Massachusetts Mutual Life Insurance Co. and Massmutual Corporate Investors, Inc.; Filing of Application for Amendment of Prior Order Pursuant to Certain Joint Transactions

May 10, 1979.

In the matter of Massachusetts Mutual Life Insurance Company and Massmutual Corporate Investors, Inc., 1295 State Street, Springfiled, Massachusetts 01111.

Notice is hereby given that Massachusetts Mutual Life Insurance Company ("Insurance Company"), a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts, and MassMutual Corporate Investors, Inc. ("Fund"), registered under the Investment Company Act of 1940 ("Act") as a non-diversified, closed-end, management investment company (hereinafter, the Insurance Company and the Fund are collectively referred to as "Applicants"), filed an application on May 7, 1979, for an order amending the conditions contained in a prior order of the Commission (Investment Company Act Release No. 6690, August 19, 1971) ("1971 Order") pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, which order authorized the Insurance Company (which serves as investment adviser to the Fund) to invest concurrently for its general account in each issue of securities purchased by the Fund at direct placement. 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.

Section 17(d) of the Act and Rule 17d–1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of a registered investment company, acting as principal, to effect any transaction in which such investment company is a joint participant, without the permission of the Commission. Rule 17d–1 provides, in part, that in passing upon applications for orders granting such permission, the Commission will consider (1) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies and purposes of the Act, and (2) the extent to which such participation is on a basis different from or less advantageous than that of other participants. Section 2(a)(3)(E) of the Act includes within the definition of "affiliated person" any investment adviser of an investment company.

As noted above, on August 19, 1971, the Commission issued an order, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, permitting the Insurance Company, subject to certain conditions, to invest concurrently for its general account in each issue of securities purchased by the Fund at direct placement. The conditions require, among other things, that: (i) All securities that the Insurance Company is prepared to purchase at direct placement and that would be consistent with the investment policies of the Fund will be shared equally with the Fund (unless certain determinations are made by the Board of Directors of the Fund); (ii) the Insurance Company will invest an amount equal to the amount invested in the issue by the Fund; (iii) neither the Fund nor the Insurance Company will have any prior interest in the issuer or acquire any subsequent interest in the issuer, other than interests in all respects identical; and (iv) neither the Insurance Company nor the Fund will sell, exchange or otherwise dispose of any interest in any security of a class held by the Fund unless each makes such disposition at the same time, for the same unit consideration and in the same amount.

Applicants state that during the period in which the 1971 Order has been in operation, the Insurance Company and the Fund have filed over twenty applications with the Commission for special orders, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, permitting proposed actions that were either clearly or arguably inconsistent with the conditions contained in the 1971 Order, but which Applicants believed were consistent with the purposes of the Act and did not involve participation by the Fund on a basis less advantageous than that of any other participants. Applicants further state that these applications were filed with respect to (i) actions proposed to be taken by the Insurance Company and the Fund concurrently and on the same terms, which they considered to be in both their interests, and (ii) actions proposed to be taken solely by the Insurance Company, which it considered to be in its own interest and which both it and the Fund considered to be either in the Fund's interest or "neutral" as far as the Fund's interest were concerned.

Applicants assert that such applications have consumed significant amounts of their time and subjected the Insurance Company to substantial legal expenses. In addition, they assert that the need to obtain special orders prior to making investments, or prior to taking certain actions with respect to existing

investments, has hindered them from acting quickly in response to opportunities and market conditions which require prompt action. Therefore, Applicants request that the 1971 Order be amended to rescind all conditions contained therein, and substitute, in lieu thereof, the following conditions:

1. Each time the Insurance Company proposes to participate in a direct placement involving its purchase of securities the purchase of which would be consistent with the investment policies of the Fund, the Insurance company will offer the Fund an opportunity to purchase an amount of each class of such securities equal to the amount of such securities proposed to be purchased by the Insurance Company. The Fund may choose to purchase none of such securities or an amount of such securities up to the entire amount of securities offered to it by the Insurance Company.

2. If the Fund chooses to participate in a direct placement and share equally with the Insurance Company in each class of such securities, the Insurance Company and the Fund may purchase such securities at the same times and at the same unit prices without further order of the Commission.

3. If the Fund chooses to participate in a direct placement on a basis other than an equal basis with the Insurance Company, an application for an order of the Commission specifically permitting such unequal participation must be filed with the Commission pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder. In the event that the Commission shall not enter such an order prior to the scheduled closing date for the acquisition of such securities by the Fund, the Insurance Company will purchase the portion of such securities intended to be purchased by the Fund and will apply for an order of the Commission under Section 17(b) of the Act permitting the Insurance Company to sell such securities to the Fund at the price paid by the Insurance Company, plus accrued interest or dividends (and, in the case of any debt securities purchased by the Insurance Company for less or more than the principal amount thereof, adjusted to reflect the accrual of the original discount or the amortization of the original premium). If such order of the Commission shall be entered within three months after such closing date, then the Insurance Company shall sell to the Fund the portion of such securities which had been intended to be purchased by the Fund, such sale to be made at the price described in the preceding sentence. If such order shall not be granted within three months after such closing date, then the Insurance Company's obligation to sell such securities to the Fund will terminate.

4. If the Fund chooses not to participate in a direct placement offered to it by the Insurance Company, the Fund's decision must be approved by the Board of Directors of the Fund, including a majority of the directors of the Fund who are not "interested persons" of the Fund, as defined in the act. The Fund's determination not to participate in a direct placement and the reasons therefor will be recorded and become a part of the permanent records of the Fund.

5. Unless otherwise permitted by special order of the Commission, neither the Insurance Company nor the Fund will exercise warrants of a class held by both the Fund and the Insurance Company or conversion privileges or other rights relating to securities of a class held by both the Fund and the Insurance Company, except at the same times and in amounts proportionate to their respective holdings of such securities.

6. Unless otherwise permitted by special order of the Commission, neither the Insurance Company nor the Fund will sell, exchange or otherwise dispose of any interest in any security of a class held by both the Fund and the Insurance Company unless such dispositions are made at the same times, for the same unit consideration and in amounts proportionate to their respective holdings of such securities.

7. The expenses, if any, of the distribution of any securities registered for sale under the Securities Act of 1933 and sold by the Insurance Company and the Fund at the same time will be shared by the Insurance Company and the Fund in proportion to the respective amounts they are selling.

Applicants request that, for the purpose of this order, the term "class of securities" be defined to include any securities purchased or held by the Fund and the Insurance Company which are identical in all respects except for the fact that only the Fund's securities have voting rights. Applicants state that they would not consider securities held by the Insurance Company and the Fund to be identical and of the same class if the securities of the Insurance Company had voting rights but the securities held by the Fund did not.

Applicants submit that the foregoing conditions are adequate to ensure that the concurrent participation by the Insurance Company and the Fund in direct placements, and the subsequent exercise of warrants and conversion privileges and other rights relating to securities purchased by the Insurance Company and the Fund in such direct placements, would be consistent with the provisions, policies and purposes of the Act and would not result in the participation of the Fund being on a basis different from or less advantageous than that of the Insurance Company or any other participants.

Applicants state that the proposed conditions will give the Fund the opportunity (i) to acquire convertible securities and other securities having equity features on an equal basis with the Insurance Company and (ii) to decline to follow the Insurance Company in participating in a direct placement of such securities, depending on the best interests of the Fund. Applicants submit that there are ample safeguards to assure that any participation by the Fund in such direct placements will not be on a basis less advantageous than that of the Insurance Company. They assert that because the proposed conditions would permit the Insurance Company and the Fund to exercise warrants and conversion privileges and other rights relating to securities held by both the Insurance Company and the Fund, and to dispose of such securities, only in proportion to their respective holdings of such securities, such actions could not be taken in a manner which would be disadvantageous to the Fund as compared to the Insurance Company.

Notice is further given that any interested person may, not later than May 31, 1979, 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 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 case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 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. 79-15596 Filed 5-17-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15811; SR-NYSE-79-10]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

May 11, 1979.

On March 12, 1979, the New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, New York 10005, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which requires that each registered representative, office manager, and officer of each NYSE member firm, as a prerequisite for registration with the NYSE, sign an agreement [1] which includes a pledge to abide by the NYSE Constitution and Rules.[2]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-15660, March 19, 1979) and by publication in the Federal Register (44 FR 18309, March 27, 1979). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

[1] The text of the agreement will be submitted to the Commission by the NYSE as a new rule filing under Section 19(b)(3)(A) of the Act.

[2] The rule change, *inter alia*, expressly abrogates NYSE Rule 345.16(d)(D) which prohibits officers and registered representatives of a NYSE member organization from maintaining a cash or margin account in securities or commodities except with a member organization or a bank.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc 79-15597 Filed 5-17-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0206]

CADDO Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On November 14, 1978, a notice was published in the Federal Register (43 FR 52795) stating that an application has been filed by CADDO Capital Corporation, 214 Huntington Office Park, Shreveport, Louisiana 71109, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1978)), for a license to operate as a small business investment company (SBIC).

The company's address is now Suite 335, 2924 Knight Street, Shreveport, Louisiana 71105.

Interested parties were given until the close of business November 29, 1978, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other information; SBA issued License No. 06/06-0206 on May 1, 1979, to CADDO Capital Corporation to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 11, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-15526 Filed 5-17-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1630]

Illinois; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration I find that Brown, Bureau, Calhoun, Cass, Fulton, Green, Jersey, LaSalle, Macon, Marshall, Mason, Morgan, Peoria, Pike, Putnam, Schuyler, Scott, Tazewell and Woodford Counties and adjacent counties within the State of Illinois, constitute a disaster area because of damage resulting from severe storms and flooding, beginning on or about March 1, 1979. Applications will be processed under the provisions of Pub. L. 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 29, 1979, and for economic injury until close of business on January 30, 1980, at:

Small Business Administration, District Office, 219 South Dearborn Street, Room 437, Chicago, Illinois 60604.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated May 7, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-15523 Filed 5-17-79; 8:45 am]

BILLING CODE 8025-01-M

Declaration of Disaster Loan Area; Missouri

[Declaration of Disaster Loan Area No. 1622, Amdt. No. 1]

The above numbered Declaration (see 44 FR 26232) is amended in accordance with the President's declaration of April 21, 1979, to include the St. Louis City in the State of Missouri. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named city in Missouri. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on June 22, 1979, and for economic injury until the close of business on January 22, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 8, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-15524 Filed 5-17-79; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 16-A, Amdt. 1]

Redelegation of Minority Small Business and Capital Ownership Development Activities

Delegation of Authority No. 16-A (44 FR 23145) is hereby amended to reflect a recent organizational change. The Office of Program Assistance has been abolished and a new Office of Development Assistance established.

Accordingly, Delegation of Authority No. 16-A is amended as follows:

* * * * *

D. *Director, Office of Development Assistance.*

* * * * *

E. *Deputy Director, Office of Development Assistance (Program Manager)*

* * * * *

Dated: May 11, 1979.

William A. Clement, Jr.,

Associate Administrator for Minority Small Business and Capital Ownership Development.

[FR Doc. 79-15527 Filed 5-17-79; 8:45 am]

BILLING CODE 8025-01-M

Wisconsin; Declaration of Disaster Loan Area

[Declaration of Disaster Loan Area No. 1632]

Jefferson County and adjacent counties within the State of Wisconsin constitute a disaster area as a result of damage caused by flooding beginning on or about March 20, 1979 through April 24, 1979. Applications will be processed under provisions of Pub. L. 94-305. Interest rate is 7-⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on July 9, 1979 and for economic injury until the close of business on February 11, 1980, at:

Small Business Administration, District Office, 212 East Washington Avenue, 2nd Floor, Madison, Wisconsin 53703.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 9, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-15525 Filed 5-17-79; 8:45 am]

BILLING CODE 8025-01-M

Effects of Gasoline Shortage on Small Business: Hearing

• Pursuant to statutory authority set forth in Section 634(d) of Title 15, United States Code, the Chief counsel for Advocacy of the Small Business Administration, Milton D. Stewart, Esq., with the approval of the Administrator A. Vernon Weaver, will conduct public hearings in Los Angeles, California on June 5, 1979, on the Effects of the Gasoline Shortage on Small Business. The hearings will convene at 10:00 A.M. (P.D.T.) at the Golden State Room at the Los Angeles Hilton Hotel, 930 Wilshire Boulevard, Los Angeles, California

• The Office of the Chief Counsel for Advocacy will consider price and supply problems and the consequent effects on gasoline marketers and the small business community in general. In addition testimony will be heard relating to the development of fuel saving alternative transportation technologies and what barriers prevent their rapid commercialization.

• Participants will include gasoline marketers, small business representatives, appropriate government officials, and small business innovators.

• The hearing is open to the public. Any member of the public may make a verbal statement, but must file a written statement prior to the hearing. Any member of the public may file a written statement with the Office of the Chief Counsel for Advocacy before, during or after the hearings. All communicatons or inquiries regarding these hearings should be addressed to:

Christopher J. Burke, Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, 1441 L Street, N.W., Room 219, Washington, D.C. 20416 (202) 653-6986.

Milton D. Stewart,

Chief Counsel for Advocacy.

[FR Doc. 79-15589 Filed 5-17-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1616, Amdt. #3]

Mississippi; Declaration of Disaster Loan Area

The above numbered Declaration (See 44 F.R. 24179), amendment #1 (See 44 F.R. 26232) and amendment #2 (See 44 F.R. 27782) are amended in accordance with the President's declaration of April 16, 1979, to include Wilkinson County in the State of Mississippi. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named county, and adjacent counties within the State of Mississippi. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on June 15, 1979, and for economic injury until the close of business on January 15, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 9, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-15591 Filed 5-17-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0350]

Quidnet Capital Corp.; Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Quidnet Capital Corporation, (Quidnet) 32 Nassau Street, Princeton, New Jersey 08540, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004 (1978)), for approval of a conflict of interest transaction.

Quidnet desires to provide financing in the amount of $28,875 to JP Industries, Inc. (JPI), Suite 1001, 3001 South State Street, Ann Arbor, Michigan 48104, by purchasing 165 of 2,104 new common shares which are being offered by JPI at $175 per share to its existing shareholders, for the purpose of raising additional working capital. JPI has 15 shareholders, all of which have accepted the offer to purchase additional common shares of JPI at $175 per share. Upon completion of the financing, Quidnet will own approximately 2 percent of the total outstanding shares of JPI.

An officer, director and stockholder of Quidnet is also a director of JPI, and, consequently, JPI is an "Associate of a Licensee" as that term is defined under § 107.103 of the Small Business Administration's Regulations. Pursuant to the provisions of Section 1004(b)(1) of SBA's Regulations, this affiliation requires Quidnet to obtain an exemption from the SBA in order to provide the proposed financing to JPI.

Notice is hereby given that any person may, not late than June 4, 1979, submit written comments to SBA on the proposed financing. Any such comments should be addressed to the Deputy Associate Administrator for Finance and Investment, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published by Quidnet Capital Corporation in a newspaper of general circulation in Princeton, New Jersey.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

May 14, 1979.

[FR Doc. 79-15590 Filed 5-17-79; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of Albuquerque, New Mexico, will hold a public meeting on Friday, May 25, 1979, from 10:30 a.m. to approximately 3:00 p.m. at the Elks Club, 1642 University Boulevard, NE., Albuquerque, New Mexico, to discuss such business as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Anthony Panagakos, District Director, U.S. Small Business Administration, 5000 Marble Avenue, NE., Patio Plaza Building, Albuquerque, New Mexico 87110—(505)474-3574.

Dated: May 15, 1979.

K Drew,

Deputy Advocate for Advisory Councils.

[FR Doc. 79-15588 Filed 5-17-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1633]

Tennessee; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the following 6 counties: Crockett, Davidson, Hickman, Rutherford, Williamson and Wilson and adjacent counties within the State of Tennessee, constitute a disaster area because of damage resulting from severe storms, tornadoes, and flooding beginning on or about May 3, 1979. Applications will be processed under the provisions of Pub. L. 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on July 6, 1979, and for economic injury until close of business on February 7, 1980, at:

Small Business Administration, District Office, Parkway Towers, Room 1012, 404 James Robertson Parkway, Nashville, Tennessee 37219.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 10, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-15592 Filed 5-17-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waiver of Railroad Safety Appliance Standards

Notice is hereby given that six railroads have submitted requests for permanent waivers of compliance with certain requirements of the Railroad Safety Appliance Standards (49 CFR Part 231). Each of three petitions for waiver involves provisions of the Railroad Safety Appliance Standards that are applicable to locomotives used in road or switching service.

The Federal Railroad Administration (FRA) published a final rule on September 8, 1976 (41 FR 37782) that prescribed configurations for the handholds and uncoupling mechanisms of locomotives used in road service (49 CFR Part 231.29) and that prescribed configurations for the handholds, uncoupling mechanisms and stairways of locomotives used in switching service (49 CFR Part 231.30). These regulations are applicable to both existing locomotives and locomotives that will be constructed in the future. Full compliance for the entire locomotive fleet is scheduled for October 1, 1979.

The individual petitions for a waiver of compliance with the certain provisions of this regulation are described below. The description indicates the nature and extent of the relief requested as well as any information that has been submitted in support of the request for the waiver of compliance.

Interested persons are invited to participate in these proceedings by submitting written data, views or comments. FRA does not anticipate scheduling an opportunity for oral comment since the facts do not appear to warrant it. All communications concerning these petitions must identify the appropriate Docket Number (e.g. FRA Waiver Petition Docket No. SA-78-4) and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 2100 Second Street, SW., Washington, D.C. 20590. Communications received before June 29, 1979 will be considered by the Federal Railroad Administration before date final action is taken. Comments received after that date will be available for examination during regular business hours, both before and after the closing date for comment, in Room 4411 Trans Point Building, 2100 Second Street, SW., Washington, D.C.

[Waiver Petition Docket No. SA-78-3]

Hillsboro & North Eastern Railway

The Hillsboro & North Eastern Railway (H&NE) seeks a waiver of compliance with § 231.30 for two diesel locomotives used in switching service. One locomotive was built by Plymouth Locomotive Corporation in 1933 and the other locomotive was built by Davenport Locomotive Works in 1942.

Both locomotives were designed with a vertical ladder-like step arrangement on all four corners. The H&NE indicates that it would not be possible to modify either locomotive in view of the original design of these units. Additionally, the H&NE considers these units to be antiques and desires to retain the present configuration of the locomotives.

These locomotives are used on an infrequent basis averaging only a total of two trips in any given week. The railroad operates the locomotives over approximately five miles of track in the State of Wisconsin. The H&NE seeks a permanent waiver of compliance for these units.

[Waiver Petition Docket No. SA-78-4]

Skaneateles Short Line Railroad

The Skaneateles Short Line Railroad (SSLR) seeks a waiver of compliance with § 231.30 for two diesel locomotives used in switching service. These locomotives are a 44-ton and a 45-ton General Electric diesel electric units built between 1950 and 1959.

These locomotives were designed with a vertical ladder-like step arrangement on all four corners. SSLR indicates that the design of these units and the close clearance restrictions make modification of these units impractical. SSLR indicates that only one locomotive is in service at any given time on this railroad since it operates over only three miles of track. A permanent waiver of compliance is sought for both locomotives used by the SSLR.

[Waiver Petition Docket No. SA-78-5]

Lowville & Beaver River Railroad

The Lowville & Beaver River Railroad (L&BR) seeks a waiver of compliance with § 231.30 for two diesel locomotives used in switching service. The locomotives are 44-ton General Electric

units that were built between 1947 and 1950.

Both locomotives were designed with a vertical ladder-like step arrangement on all four corners. The L&BR indicates that it is not possible to modify these units since the original design will not provide the needed clearances.

The locomotives are operated over approximately eleven miles of track in the State of New York. The L&BR seeks a permanent waiver of compliance.

[Waiver Petition Docket No. SA–78–8]

Mount Vernon Terminal Railway

The Mount Vernon Terminal Railway (MVTR) seeks a waiver of compliance with § 231.30 for one diesel locomotive used in switching service. The locomotive was built by Plymouth Locomotive Corporation in 1943.

The locomotive was designed with a vertical ladder-like step arrangement near all four corners. Additionally, the unit was built with cast steel weights of ten-inch thickness near the step area. Consequently, MVTR believes that it is not possible to modify the unit to bring it into compliance with the regulation.

The locomotive is used exclusively within the terminal area that is located at Mount Vernon in the State of Washington. The MVTR seeks a permanent waiver of compliance for this locomotive.

[Waiver Petition Docket No. SA–78–9]

Maryland Midland Railway

The Maryland Midland Railway (MMR) seeks a waiver of compliance with § 231.30 for one diesel locomotive used in switching service. The locomotive was built by Whitcomb Locomotive Company at an undetermined date.

The locomotive was designed with a vertical ladder-like step arrangement on all four corners. Additionally, the area behind the steps is occupied by sandboxes that are flush with the steps. Consequently, MMR believes that it is not possible to modify the unit to bring it into compliance with the regulation.

The locomotive is currently being reconditioned and will be used over trackage between Walkersville, Maryland and Littlestown, Pennsylvania. The MMR seeks a permanent waiver of compliance for this locomotive.

[Waiver Petition Docket No. SA–78–10]

Warwick Railway

The Warwick Railway (WRWK) seeks a waiver of compliance with § 231.30 for two locomotives used in switching service. Both locomotives are small industrial switcher type units that were originally constructed for the Federal government and initially used on military bases during the period 1940 to 1945.

Both locomotives were designed with a vertical ladder-like step arrangement on all four corners. The WRWK indicates that it has explored several alternatives and concluded that the original design of these units makes it impossible to modify either unit to comply with the regulation.

The WRWK indicates that it basically performs industrial switching in the Edgewood area in the State of Rhode Island. The railroad operates the locomotives over approximately one mile of trackage. The WRWK seeks a permanent waiver for these units.

This notice is issued under the authority of sections 4, 6, and 12, 27 Stat. 531, as amended, section 6 (e) and (f), 80 Stat. 939; 45 U.S.C. 4, 6, 12; 49 U.S.C. 1655 and § 1.49(c) of the regulations of the Secretary of Transportation (49 CFR 1.49(c)).

Issued in Washington, D.C., on May 11, 1979.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 79-15503 Filed 5-17-79; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Portable Electric Typewriters From Japan; Antidumping Proceeding

AGENCY: U.S. Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of portable electric typewriters from Japan are being sold, or are likely to be sold, to the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Louis T. Balaban or Steven S. Lim, Operations Officers, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, telephone (202–566–5492).

SUPPLEMENTARY INFORMATION: On April 9, 1979, a petition in proper form was received pursuant to sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of the Smith-Corona Group, Consumer Products Division, SCM Corporation, New Canaan, Connecticut, alleging that portable electric typewriters from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).

For purpose of this notice, portable electric typewriters are provided for in item 676.0510, Tariff Schedules of the United States Annotated.

In the petition, foreign market value is based on prices of several models of typewriters made for the Japanese home market in the case of two Japanese manufacturers; in the case of a third, constructed value is used because that company has virtually no home market sales or sales to third countries.

The above prices have been compared with either the purchase price in the United States of the manufacturer's export model which corresponds to the one sold in Japan, or with exporter's sales price. The latter is used in those instances where the Japanese manufacturer exports typewriters for sale in the United States by a marketing subsidiary.

Based upon the information set forth in the petition, it appears that the margins of dumping range from 9 percent to 115 percent.

There is evidence on record concerning injury, or likelihood of injury, to an industry in the United States from the alleged less than fair value imports of portable electric typewriters from Japan. This information shows the share represented by Japanese merchandise of total U.S. imports of portable electric typewriters in the years 1976–1978 grew markedly. In the same period, the data indicate that Smith-Corona, the sole domestic producer of the subject merchandise, accounted for a declining portion of the U.S. market. Furthermore, capacity utilization of the petitioner diminished during these years, as did the number of workers employed by the company, a fact which is significant in light of the increase of employment in manufacturing industries on a nationwide basis. Finally, Smith-Corona experienced a decline in profits in those years, a time when profits of related companies within SCM were increasing.

Having conducted a summary investigation as required by section 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the United States Customs Service is instituting an inquiry to verify information submitted and to obtain the

facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to section 153.30, Customs Regulations (19 CFR 153.30).

Robert H. Mundheim,

General Counsel of the Treasury.

May 14, 1979.

[FR Doc. 79-15572 Filed 5-17-79; 8:45 am]

BILLING CODE 4810-22-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 87]

Assignment of Hearings

May 15, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 143978 (Sub-No. 3), Emerson Delivery, Inc., now assigned for hearing May 14, 1979 (2 days), at Chicago, IL., is canceled and application dismissed.

MC F-13763F, Crown Transport, Inc.—Purchase (Portion)—Masterson Transfer Co., MC-4484 (Sub-No. 5F), Crown Transport, Inc., now assigned for Prehearing Conference May 25, 1979 at the Office of the Interstate Commerce Commission, Washington, D.C.

MC 108633 (Sub-No. 16F), Barnes Freight Line, Inc., now assigned for Prehearing Conference June 21, 1979 at the Office of the Interstate Commerce Commission, Washington, D.C.

MC C-10245F, Purolator Courier Corp. v. Schaller Trucking Corporation and G.M.G. Express, Inc., now assigned for Prehearing Conference July 10, 1979, at the Office of the Interstate Commerce Commission, Washington, D.C.

MC 123179 (Sub-No. 5F), Arrow Freight Lines, Inc., now assigned for Prehearing Conference July 17, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 123048 (Sub-No. 418F), Diamond Transportation System, Inc., now assigned for Prehearing Conference July 18, 1979, at the Office of the Interstate Commerce Commission, Washington, D.C.

Ex Parte 352, In the Matter of Clarence William Vandergrift, now assigned for Prehearing Conference July 11, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 102616 (Sub-No. 947F), Coastal Tank Lines, Inc., now assigned for continued hearing on June 5, 1979, at the Office of the Interstate Commerce Commission, Washington, D.C.

MC 96925 (Sub-No. 9F), Crown Motor Lines, Inc., now assigned for hearing on May 21, 1979 at Tallahassee, FL, is canceled and transfered to Modified Procedure.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15577 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-22]

The Atchison, Topeka & Santa Fe Railway Co.; Passenger Train Operation

May 15, 1979.

To: The Atchison, Topeka and Santa Fe Railway Company. *It appearing,* That the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between New Orleans, Louisiana, and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks between Houston, Texas, and Rosenberg, Texas, are temporarily out of service because of a derailment. An alternate route is available via The Atchison, Topeka and Santa Fe Railway Company.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, (a) Pursuant to the authority vested in me by order of the Commission served March 6, 1978, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 USC § 562 (c)), The Atchison, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between a connection with Southern Pacific Transportation Company at Houston, Texas, and Rosenberg, Texas.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Commission Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(d) *Effective date.* This order shall become effective at 3:30 a.m., May 1, 1979.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 2, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

This order shall be served upon The Atchison, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and that it be filed with the Director, Office of the Federal Register.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc 79-15583 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

[Revised I.C.C. Order No. 38 Under Service Order No. 1344]

Burlington Northern, Inc., and CP Rail; Rerouting Traffic

May 15, 1979.

To: All Railroads. In the opinion of Joel E. Burns, Agent, Burlington Northern Inc. and CP Rail are unable to transport promptly all traffic offered for movement to and from points in Canada, because of flooding.

It is ordered, (a) *Rerouting traffic.* Burlington Northern Inc. and CP Rail being unable to transport promptly all traffic offered for movement to and from points in Canada and routed via Noyes, Minnesota-CP Rail, and via Winnipeg, Manitoba, Canada-CP Rail, because of flooding, those lines and their connections are authorized to divert or reroute such traffic via Minot, North Dakota-Soo Line Railroad Company-Portal, North Dakota-CP Rail to expedite the movement. This rerouting applies only to the movement within the United

States. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to the order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:00 a.m., May 1, 1979.

Expiration date. This order shall expire at 11:59 p.m., May 15, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 1, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-15585 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. 38 Under Service Order No. 1344]

Burlington Northern, Inc., and Soo Line Railroad Co.; Rerouting Traffic

May 15, 1979.

To: Burlington Northern Inc. and Soo Line Railroad Company. In the opinion of Robert S. Turkington, Agent, Burlington Northern Inc. is unable to transport promptly all traffic offered for movement to points in Canada, because of flooding.

It is ordered, (a) *Rerouting traffic.* Burlington Northern Inc. being unable to transport promptly all traffic offered for movement to points in Canada and routed via Noyes, Minnesota-CP Rail, and via Winnipeg, Manitoba, Canada-CP Rail, because of flooding, that line and its connections are authorized to divert or reroute such traffic via Minot, North Dakota-Soo Line Railroad Company-Portal, North Dakota-CP Rail to expedite the movement. This rerouting applies only to the movement within the United States. CP Rail has agreed to this handling of the traffic. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to the order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force. Those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 1:00 p.m., April 27, 1979.

Expiration date. This order shall expire at 11:59 p.m., May 15, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 27, 1979.

Interstate Commerce Commission.

Robert S. Turkington,

Agent.

[FR Doc. 79-15586 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. 37 Under Service Order No. 1344]

CP Rail; Rerouting Traffic

May 15, 1979.

To: CP Rail. In the opinion of Robert S. Turkington, Agent, CP Rail is unable to transport promptly all traffic offered for movement to and from points in the United States routed via Noyes, Minnesota-Burlington Northern, Inc.

It is ordered, (a) *Rerouting traffic.* CP Rail being unable to transport promptly all traffic offered for movement to and from points in the United States, routed via Noyes, Minnesota-Burlington Northern Inc. (BN), because of flooding, that line is authorized to divert or reroute such traffic via any available route to expedite the movement. This rerouting applies only to the movement within the United States. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall

carry a reference to the order as authority for the rerouting.

(b) *Acceptance of traffic in interchange.* In the event CP Rail cannot accept traffic in interchange from Burlington Northern Inc. at Noyes, BN, after establishing such condition, may reroute or divert the traffic via Soo Line Railroad Company.

(c) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(d) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(e) Inasmuch as the diversion or reouting of traffic is deemed to be due to carrier disability, the rate applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(f) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(g) *Effective date.* This order shall become effective at 11 a.m., April 26, 1979.

Expiration date. This order shall expire at 11:59 p.m., April 30, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the director, Office of the Federal Register.

Issued at Washington, D.C., April 26, 1979.

Interstate Commerce Commission.

Robert S. Turkington,

Agent.

[FR Doc. 79-15584 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 57]

Decision-Notice

Decided: May 3, 1979.

The following applications filed on or before February 28, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). For applications filed before March 1, 1979, these rules provide, among other things, that a protest 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.** Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed.

Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest 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. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

Section 247(f) provides, in part, that an applicant which does not intend timely to 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 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 administratively 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 exceptions of those applications involving duly noted problems (e.g., 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 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 protestant, 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 conditions 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 protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authortity 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 this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

H. G. Homme, Jr.,

Secretary.

MC 2229 (Sub-204F), filed February 26, 1979. Applicant: RED BALL MOTOR FREIGHT, INC., 3177 Irving Blvd., Dallas, TX 75247. Representative: Jackie Hill (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, 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 Waco and San Antonio, TX, over Interstate Hwy 35, serving all intermediate points and serving the off-route points of Killeen, TX, (2) between Houston and San Antonio, TX, over Interstate Hwy 10, serving no intermediate points, (3) between Houston and Austin, TX, over U.S. Hwy 290, serving no intermediate points, (4) between San Antonio, TX, and Los Angeles, CA, from San Antonio over Interstate Hwy 10 to junction U.S. Hwy 290, then over U.S. Hwy 290, (or Interstate Hwy 10), to junction U.S. Hwy 80, then over U.S. Hwy 80 (or Interstate Hwy 10) to Phoenix, AZ, then over U.S. Hwy 60 (or Interstate Hwy 10) to Los Angeles, CA, and return over the same route, serving no intermediate points, and (5) between Austin, TX, and junction U.S. Hwy 290 and Interstate 10, over U.S. Hwy 290, serving no intermediate points. (Hearing site: San Antonio or Austin, TX.)

MC 144709 (Sub-7F), filed February 13, 1979. Applicant: MINERAL CARRIERS, INC., P.O. Box 110, Bound Brook, NJ 08805. Representative: Paul J. Keeler, P.O. Box 253, South Plainfield, NJ 07080. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *activated carbon*, in dump vehicles, from Neville Island, PA, and Catlettsburg, KY, to points in CT, RI, NY, NJ, PA, DE, MD, VA, WV, OH, MI, IN, IL, KY, TN, NC, and DC; and (2) *spent carbon*, in dump vehicles, in the reverse direction, under continuing contract(s) in both (1) and (2) above, with Calgon Corporation, of Pittsburgh, PA. (Hearing site: Newark, NJ, or New York, NY.)

MC 144859 (Sub-3F), filed February 23, 1979. Applicant: SCOTT PALLETS, INC., Box 341 Amelia, VA 23002. Representative: Calvin F. Major, 200 West Grace Street, Suite 415, Richmond, VA 23220. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wire and nails*, from points in OH, PA, and MD, to points in MO, under continuing contract(s) with American Nail Corporation, of Earth City, MO. (Hearing site: Richmond, VA.)

MC 146288 (Sub-2F), filed February 21, 1979. Applicant: AIR-SERVICE CONSOLIDATORS TRANSPORT, INC., P.O. Box 8714, Rochester, NY 14624. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NY 07006. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *copying and duplicating machines*, and *materials, equipment, and supplies* for copying and duplicating machines, in containers, between Rochester, NY, on the one hand, and, on the other New York, NY, restricted to the transportation of traffic having a prior or subsequent movement by air or water, and (2) *accessories, materials, and supplies* used in the manufacture, installation, lease, sale, and distribution of copying and duplicating machines, in containers, in the reverse direction, under continuing contract(s) in (1) and (2) above, with Xerox Corporation, of Webster, NY. (Hearing site: Rochester, NY.)

MC 146469F, filed January 24, 1979. Applicant: THOMAS & HOWARD COMPANY OF HICKORY, INC., P.O. Drawer 159, Hickory, NC 28601. Representative: Bruce E. McRoy, P.O. Drawer 2427, Rocky Mount, NC 27801. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *malt beverages and nonalcoholic beverages*, from Williamsburg, VA, and Detroit, MI, to Hickory, Newton, and Conover, NC, under continuing contracts with (a) Best of Beers, Inc., and (b) Quality Beers, Inc., both of Hickory, NC. Conditions: The carrier shall conduct separately its contract carrier operation and its other business activities. Carrier shall maintain separate accounting systems for each such business. Carrier shall not transport property as both a private and for-hire carrier at the same time and in the same vehicle. (Hearing site: Hickory or Charlotte, NC.)

[FR Doc. 79-15579 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

Fourth Section Application for Relief

May 15, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of this notice.

FSA No. 43699, Southwestern Freight Bureau, Agent's No. B-2, rates on plasticizers or solvents, in tank carloads, from Taft, La., and Bayport, East Baytown, Houston, Nadeau and Texas City, Tex., to Newark and North Bergen, N.J., in Supplement 60 to its tariff ICC SWFB 3038-E, and Supplement 42 to ICC SWFB 3355-D, to become effective June 13, 1979. Grounds for relief—market competition.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15578 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. 39 Under Service Order No. 1344]

Louisiana Midland Railway Co.; Rerouting Traffic

TO: Louisiana Midland Railway Company. In the opinion of Joel E. Burns, Agent, the Louisiana Midland Railway Company is unable to transport promptly all traffic offered for movement over its lines between Georgetown, Louisiana, and Packton, Louisiana, because of washouts.

It is ordered, (a) *Rerouting traffic.* The Louisiana Midland Railway Company, being unable to transport promptly all traffic offered for movement over its lines between Georgetown, Louisiana, and Packton, Louisiana, because of washouts, is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall

receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification of shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 3:00 p.m., May 4, 1979.

(g) *Expiration date.* This order shall expire at 11:59 p.m., May 11, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 4, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-15587 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 57]

Motor Carrier Temporary Authority Applications

May 8, 1979.

Important Notice: The following are notices of filing of applications for temporary authority under Section 210(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted. NOTE: All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 29642 (Sub-13TA), filed February 23, 1979, and published in the **Federal Register** issue of April 3, 1979, and republish as corrected this issue. Applicant: FIVE TRANSPORTATION COMPANY, 5505 Community Road, P.O. Box 1635, Brunswick, GA 31520. Representative: James M. Fiveash (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, 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 commodities requiring special equipment, between Millen, GA, and Lyons, GA, serving all intermediate points, from Millen over US Hwy 25 to the junction of GA Hwy 121, then over GA Hwy 121 to Cobbtown, then over GA Hwy 152 to Lyons, and return over the same route; between Millen, GA, and Savannah, GA, serving all intermediate points, from Millen over GA Hwy 121 to Savannah, and return over the same route; between Millen, GA, and junction of GA Hwy 17 and US Hwy 80, serving all intermediate points, from Millen over GA Hwy 17 to the junction of US Hwy 80, and return over the same route; between Pembroke, GA, and Springfield, GA, serving all intermediate points, from Pembroke over GA Hwy 119 and SC Hwy 119 to Springfield, GA, and return over the same route; between Claxton, GA, and Sylvania, GA, serving all intermediate points, from Claxton over US Hwy 301 to Sylvania, and return over the same route; between Savannah, GA, and junction of Interstate 16 and GA Hwy 121, serving all intermediate points, from Savannah over Interstate 16 to the junction of GA Hwy 121 and return over the same route; between Blichton, GA, and junction of US Hwy 25 and GA Hwy 121, serving all intermediate points, from Blichton over US Hwy 80 to Statesboro, then over US Hwy 25 to the junction of GA Hwy 121, and return over the same route; between Pembroke, GA, and junction of GA Hwy 67 and US Hwy 25, serving all intermediate points, from Pembroke over GA Hwy 67 to the junction of US Hwy 25, and return over the same route, for 180 days. An underlying ETA seeks 90 days of authority. Supporting shipper(s): There are 22 shippers filed with this application which may be examined at the office listed below and Headquarters. Send protests to: G. H. Fauss, Jr., DC, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202. The purpose of this republication to completely show the territorial description as requested.

MC 107103 (Sub-10TA), filed February 23, 1979, and published in the **Federal Register** issue of April 3, 1979, and republished as corrected this issue. Applicant: ROBINSON CARTAGE COMPANY, 2712 Chicago Drive SW, Grand Rapids, MI 47509. Representative: Ronald J. Mastej, 900 Guardian Building, Detroit, MI 48226. Iron and steel, iron and steel articles and materials, equipment and supplies used or useful in the manufacture and distribution of the aforenamed commodities, between points on the International Boundary line between the United States and Canada located at Sault Ste. Marie, MI and points in MI, for 180 days. Supporting Shipper(s): The Algoma Steel Corporation Limited, Sault Ste. Marie, Ontario P6A 5P2. Send Protests to: C. R.

Flemming, DS, ICC, 225 Federal Building, Lansing, MI 48933. The purpose of this republication is to show the territorial description which was previously omitted.

MC 110683 (Sub-138TA), filed March 20, 1979, and published in the Federal Register issue of April 24, 1979, and republished as corrected this issue. Applicant: SMITH'S TRANSFER CORPORATION, PO Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, motor vehicle, over regular routes, transporting *general commodities*, except those of unusual value, household goods as defined by the Commission, Classes A and B explosives, commodities in bulk, and those requiring special equipment, between Cincinnati, OH, and Mitchell, TN, serving all intermediate points, from Cincinnati over U.S. Hwy 42 to its junction with U.S. Hwy 31W, then over U.S. Hwy 31W to Mitchell and return over the same route, and serving points in Gallatin, Carroll, Henry, Trimble, Oldham, Shelby, Jefferson, Bullitt, Meade, Spencer, Hardin, Larue, Nelson, Breckinridge, Grayson, Hart, Green, Edmonson, Barren, Metcalfe, Monroe, Allen, Warren Butler, Logan, and Simpson Counties, KY, as off route points; between Lexington, KY, and Wickliffe, KY, serving all intermediate points, from Lexington over U.S. Hwy 60 to Wickliffe, and return over the same route serving points in Fayette, Scott, Jessamine, Woodford, Franklin, Anderson, Shelby, Spencer, Oldham, Jefferson, Bullitt, Hardin, Meade, Breckinridge, Hancock, Ohio, Daviess, McLean, Henderson, Grayson, Webster, Union, Crittenden, Livingston, Lyon, Marshall, Hopkins, Caldwell, McCracken, Graves, Ballard, and Carlisle Counties, KY, as off route points; between Versailles, KY, and Paducah, KY, serving all intermediate points, from Versailles over U.S. Hwy 62 to Paducah, and return over the same route, serving all points in Woodford, Anderson, Mercer, Spencer, Washington, Nelson, Bullitt, Larue, Hardin, Meade, Hart, Edmonson, Grayson, Butler, Ohio, McLean, Daviess, Muhlenberg, Hopkins, Todd, Christian, Caldwell, Trigg, Lyon, Livingston, Marshall, Calloway, Graves, and McCracken Counties, KY, as off route points; between Lexington, KY, and Columbus, KY, serving all intermediate points, from Lexington over U.S. Hwy 68 to its junction with KY Hwy 80, then over KY Hwy 80 to Columbus, and return over the same route, serving all points in Fayette, Jessamine, Woodford, Garrard, Mercer, Anderson, Washington, Larue, Marion, Taylor, Casey, Green, Adair, Russell, Hart, Metcalfe, Cumberland, Monroe, Barren, Edmonson, Allen, Warren, Butler, Simpson, Logan, Muhlenberg, Todd, Christian, Hopkins, Trigg, Caldwell, Lyon, Marshall, Calloway, McCracken, Graves, Ballard, Carlisle, Hickman, and Fulton Counties, KY, as off route points; between Russellville, KY, and Williamsburg, KY, serving all intermediate points, from Russellville over KY Hwy 100 to its junction with KY Hwy 90, then over KY Hwy 90 to its junction with KY Hwy 92, then over KY Hwy 92 to Williamsburg, and return over the same route, serving all points in Logan, Butler, Warren, Simpson, Edmonson, Barren, Allen, Metcalfe, Monroe, Adair, Cumberland, Russell, Clinton, Wayne, Pulaski, McCreary, Laurel, and Whitley Counties, KY, as off route points; between Edmonton, KY, and London, KY, serving all intermediate points, from Edmonton over KY Hwy 80 to London and return over the same route, serving points in Metcalfe, Green, Monroe, Adair, Taylor, Cumberland, Casey, Russell, Clinton, Lincoln, Pulaski, Wayne, McCreary, Laurel, Rockcastle, and Whitley Counties, KY, as off route points; between Elizabethtown, KY, and Static, KY, serving all intermediate points, from Elizabethtown over KY Hwy 611 to its junction with KY Hwy 210, then over KY Hwy 210, to its junction with KY Hwy 55 to its junction with U.S. Hwy 127, then over U.S. Hwy 127 to Static, Ky, and return over the same route, serving all points in Hardin, Nelson, Larue, Hart, Marion, Washington, Green, Metcalfe, Adair, Casey, Russell, Cumberland, Clinton, Pulaski, and McCreary Counties, KY, as off route points; between Paducah, KY, and Fulton, KY, serving all intermediate points, from Paducah over U.S. Hwy 45 to Fulton and return over the same route, serving all points in McCracken, Ballard, Livingston, Marshall, Calloway, Graves, Carlisle, Hickman, and Fulton Counties, KY, as off route points; between Henderson, KY, and Oak Grove, KY, serving all intermediate points, from Henderson over U.S. Hwy 41 to its junction with U.S. Hwy 41–A, then over U.S. Hwy 41–A to Oak Grove, and return over the same route, serving all points in Henderson, Union, Daviess, Webster, McLean, Caldwell, Hopkins, Muhlenberg, Trigg, Christian, and Todd Counties, KY, as off route points; between Owensboro, KY, and Adolphus, KY, serving all intermediate points, from Owensboro over U.S. Hwy 231 to Adolphus, and return over the same route, serving all points in Henderson, Daviess, Hancock, McLean, Ohio, Grayson, Muhlenberg, Butler, Edmonson, Logan, Warren, Simpson, Allen, Barrne, and Monroe Counties, KY, as off route points, for 180 days. Note: To the extent that any of the authority sought duplicates that presently held, applicant will accept a condition that only one operating authority will result and duplicating authorities may not be served by sale or otherwise. The purpose of this application is to eliminate the Cincinnati, Ohio gateway and to convert irregular route authority to regular routes. Restrictions: The above authority is restricted against the transportation of shipments between points in Kentucky. An underlying ETA seeks 90 days authority. Supporting Shipper(s): There are 160 supporting statements to this application which may be examined at the office listed below or at the Commission headquarters in Washington, DC. Send Protests to: Paul Collins, DS, ICC, Rm. 10–502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240. The purpose of this republication is to show the territorial description which was previously omitted.

MC 114273 (Sub-551TA), filed February 16, 1979, and published in the **Federal Register** issue of April 3, 1979, and publish as corrected this issue. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same as applicant). Paper and paper products, from Clinton, IA, to Eden and Greensboro, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): International Paper Company, 200 Harrison Dr., Clinton, IA 52732. Send Protests To: Herbert W. Allen, DS, ICC, 518 Federal Building, Des Moines, IA 50309. The purpose of this republication is to correctly show the destination as "Greensboro, NC" in lieu of "Breensboro, NC" which was previously published.

MC 114273 (Sub-570TA), filed March 8, 1979, and published in the **Federal Register** issue of April 24, 1979, and republish as corrected this issue. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Flour, N.O.I., corn meal, macaroni products from Lincoln, NE to Fogelsville, PA and Bridgeport, NJ for 180 days. Note: Common control may be involved and this application will substitute single-line service for existing

joint-line service. Supporting shipper: Gooch Willing & Elevator Company, 540 South Street, Lincoln, NE 68501. Send Protests To: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309. The purpose of this republication is to correctly show the destination of "Bridgeport, NJ" in lieu of "Bridgeport, NC" which was previously published.

MC 115162 (Sub-452TA), filed January 26, 1979, and published in the Federal Register issue of March 5, 1979, and publish as corrected this issue. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate, P.O. Drawer 500, Evergreen, AL 36401. *Aluminum and aluminum articles,* from the facilities of Kaiser Aluminum & Chemical Corporation at or near Ravenswood, WV to AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI and DC. Supporting shipper: Kaiser Aluminum & Chemical Corporation; P.O. Box 98; Ravenswood, WV 26164. Send protests to: Mable Holston, Transportation Assistant: 1616–2121 Building; 2121 Eighth Avenue, North; Birmingham, AL 35203. The purpose of this republication is to include MA in the territorial description.

MC 115213 (Sub-7TA), filed March 16, 1979, and published in the Federal Register issue of April 24, 1979, and republished as corrected this issue. Applicant: ELLIOTT & FIKES TRUCK LINE, P.O. Box 8827, Pine Bluff, AR 71611. Representative: Horace Fikes, Jr., 414 National Building, Pine Bluff, AR 71601. *Iron and steel fence tubing, articles, materials and supplies* used in manufacture of fence tubing, from the facilities of Century Tube Corporation, Jefferson County, AR, to all points and places in the United States except Alaska and Hawaii, and from all points and places in the United States except Alaska and Hawaii to facilities of Century Tube Corporation, Jefferson County, AR, for 180 days. Supporting Shipper(s): Century Tube Corporation, P.O. Box 7612, Pine Bluff, AR 71611. Send Protests To: William H. Land, JR, DS, ICC, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, AR 72201. The purpose of this republication is to completely show the territorial description.

MC 139743 (Sub-6TA), filed February 20, 1979, and published in the Federal Register issue of April 3, 1979, and republished as corrected this issue. Applicant: GEORGIA CARPET EXPRESS, INC., P.O. Box 1680, Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Carpets, carpeting and carpet samples from the facilities of Galaxy Carpet Mills, Inc., at or near Chatsworth, GA, and the facilities of E. T. Barwick Industries, Inc., at or near Lafayette, GA, to points in AZ, NV, and NM, for 180 days. An underlying ETA seeks 90 days of authority. Supporting Shipper(s): Galaxy Carpet Mills, Inc., Chatsworth, GA 30705. E. T. Barwick Industries, Inc., P.O. Box 441, Lafayette, GA 30728. Send Protests To: Sara K. Davis, TS, ICC, Rm. 300, 1252 West Peachtree, NW, Atlanta, GA 30309. The purpose of this republication is to show the correct destination as "AZ" in lieu of "AR", as previously published.

MC 141932 (Sub-7TA), filed February 28, 1979. Applicant: POLAR TRANSPORT INC., 176 King Street, Hanover, MA 02339. Representative: A. C. Gardener (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Paper Articles, Paper dishes, plates and trays and packaging materials; Horticultural Products, peat pots and growing blocks; Plastic Articles, and materials, equipment and supplies used in the manufacture, sales and distribution of these products (except commodities in bulk and commodities the transportation of which, because of size and weight require the use of special equipment).* Between Albertville and Gadsden, AL; Gary and Hammond, IN; New Iberia, LA; Bangor, Lewiston, Portland and Waterville, ME; Kansas City, MO; Troy, OH; Memphis, TN and Carrollton, TX, on the one hand, and on the other, points in the United States in and east of ND, SD, NE, CO, OK and TX. For 180 days. Restricted to shipments originating at or destined to the facilities or warehouses used by Keyes Fibre Company, and its subsidiary Huntsman Container Corporation. Supporting shipper(s) Keyes Fibre Company, Waterville, ME 04901. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114.

MC 142672 (Sub-49TA), filed February 9, 1979, and published in the Federal Register issue of March 27, 1979, and publish as corrected this issue. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Box Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 159 Rogers, AR 72756. (1) *Floor and wall covering materials; and (2) vacuum cleaners;* and (3) *materials, equipment and supplies used in the installation and maintenance of the commodities named in (1) and (2) above,* from points in the state of GA to the facilities of Dean's Discount Carpet, Inc., at or near Fort Smith AR, for 180 days. Supporting Shipper(s): Dean's Discount Carpet, Inc., 4200 Kelly Highway, Fort Smith, AR 72904. Send Protests To: William H. Land, Jr., DS, ICC, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, AR 72201. The purpose of this republication is to show the territorial description which was previously omitted.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15581 Filed 5-17-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 80]

Motor Carrier Temporary Authority Applications

May 15, 1979.

Important Notice: The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also

in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 908 (Sub-4TA), filed March 22, 1979. Applicant: CONSOLIDATED CARTAGE CO., INC., 7240 West 61st Place, Argo, IL 60501. Representative: Eugene L. Cohn, One North LaSalle Street, Chicago, IL 60602. Funnels, viz.: Bulb or Tube Subassemblies (necks and funnels without face plates) electric or electronic glass, without metal fittings, greatest dimension over 7 inches; plates, face or implosion, television or television tube; Boxes, fibreboard without wooden frames, KD Flat or folded flat, corrugated: Glassware, NOI, actual value exceeding 35¢ per pound but not exceeding $1.50 per pound; Glassware, NOI, released to a value not to exceed 35¢ per pound, and materials, equipment and supplies used in the manufacture and distribution of the aforementioned products: between the facilities of Corning Glass Works, Bluffton, IN and points in IL, for 180 days. An underlying ETA seeking 90 days authority has been filed. *Restricted:* against the transportation of commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, articles of unusul value, dangerous explosives, and household goods as defined by the Commission. Supporting shipper(s): Corning Glass Works, P.O. Box 158, Corning, NY 14830. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 2229 (Sub-206TA), filed April 16, 1979. Applicant: RED BALL MOTOR FREIGHT, INC., 3177 Irving Blvd., Dallas, TX 75247. Representative: Jackie Hill (address same as applicant). Common carrier, regular routes, *general commodities (except Classes A and B explosives, articles of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between Winslow, AZ and Nogales, AZ as follows: from Winslow over I.S. Hwy 40 to junction with I.S. Hwy 17, then over I.S. 17 to junction I.S. Hwy 10, then over I.S. Hwy 10 to junction I.S. Hwy 19, then over I.S. Hwy 19 to Nogales, and return over the same route, serving the intermediate points of Phoenix and Tucson, AZ, restricted against the transportation of traffic between Phoenix, Tucson and Nogales, AZ, for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): There are seventy-five (75) supporting shippers. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 7228 (Sub-44TA), filed April 17, 1979. Applicant: COAST TRANSPORT, INC., 1906 S.E. 10th Avenue, Portland, OR 97214. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. *Bananas and agricultural commodities exempt from regulation under Section 10526(a)(6) of the Interstate Commerce Act when transported in mixed loads with bananas.* Restricted to the transportation of traffic having a prior movement by water. A corresponding ETA was granted April 2, 1979 for 30 + 2. A permanent will be filed within 30 days. Supporting shipper(s): Del Monte Banana Company, 1201 Brickell Ave., Miami, FL 33101. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oregon 97204.

MC 25798 (Sub-374TA), filed April 12, 1979. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). *Animal* and *poultry feed, fish feed* and *corn products* (1) from Brimingham and Decatur, AL to points in FL and GA, and (2) from Springfield, TN to points in AL, FL and GA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Jim Dandy Company, P.O. Box 10687, Birmingham, AL 35202. Send protests to: Donna M. Jones, T/A, ICC–BOp, Monterey Bldg., Suite 101, 8410 N.W. 53rd Ter., Miami, Fl 33166.

MC 30089 (Sub-8TA), filed April 16, 1979. Applicant: FRANK W. LILLY, INC., P.O. Box 111, Turtle Creek, PA 15145. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. *Contract Carrier,* irregular routes: *Dry sweetener and bouillon* from the facilities of Foodways National, Inc. at or near New Paltz, NY to the facilities of Heinz USA, Division of H. J. Heinz Co. at or near Mechanicsburg and Pittsburgh, PA, restricted to traffic orginating at and destined to the named origin and destinations, and further restricted to the transportation performed under a continuing contract with Heinz USA, Division of H. J. Heinz Co., Pittsburgh, PA for 180 days. Supporting shipper(s): Heinz USA, Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: J. J. England, DS, ICC, 2111 Federal Bldg., Pittsburgh, PA 15222.

MC 48958 (Sub-178TA), filed April 16, 1979. Applicant: ILLINOIS-CALIFORNIA EXPRESS, INC., 510 E. 51st Avenue, Denver, CO 80216. Respresentative: Lee E. Lucero, same. *Common Carrier:* Regular Route: *General Commodities, except those of unusal value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* Between Kansas City, MO and Oklahoma City, OK: from Kansas City, MO over U.S. Hwy 50 to junction U.S. Hwy 81 to Wichita, KS (also over Interstate Hwy 35 to Wichita, KS), then over Interstate Hwy 35 to Oklahoma City, OK, and return over same route, serving intermediate points of Wichita and Emporia, KS for 180 days. Applicant will task & interline. An underlying ETA seeks 90 days authority. Supporting shippers(s): 59 supporting shippers. Send protests to: District Supervisor R.L. Buchanan, Interstate Commerce Commission, 492 U.SA. Customs House, 721 19th Street, Denver, CO 80202.

MC 52579 (Sub-179TA), filed April 17, 1979. Applicant: GILBERT CARRIER CORP., One Gilbert Drive, Secaucus, NJ 07094. Representative: Julius Saltzman, One Gilbert Drive, Secaucus, NJ 07094. *Wearing apparel on hangers and in packages in mixed loads.* From: Points in TN to points in IL, NJ, & NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(S): I, Appel, 99 Madison Avenue, New York, NY. Send protests to: Robert E. Johnston, D/S ICC 9 Clinton St. Newark, NJ 07102

MC 52579 (Sub-180TA), filed April 20, 1979. Applicant: GILBERT CARRIER CORP., One Gilbert Drive, Secaucus, NJ 07094. Representative: Julius Saltzman, One Gilbert Drive, Secaucus, NJ 07094. Wearing apparel on hangers and in packages, along with uncut material and wearing apparel accessories, supplies and equipment used in the conduct of apparel manufacturing. Between Hamburg, AR and New York, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Stanley Michael, 114 West 26th Street, New York, NY 10001. Send protests to: Robert E. Johnston, D/S, ICC, 9 Clinton St., Newark, NJ 07102.

MC 59668 (Sub-13TA), filed April 17, 1979. Applicant: HAROLD G. CLINE, INC., Harding Highway & DuPont Road, Penns Grove, N.J. 08069. Representative: Glenn F. Morgan, Jr., 104 Azar Bldg. Glen Burnie, MD 21061. *Contract carrier:*

irregular routes: *Such commodities as are dealt in or used by distributors or manufacturers of chemicals, dyes, and motor anti-knock compounds*, between points in NJ, DE and PA, on the one hand, and, on the other, the plant site of E. I. DuPont de Nemours & Company located at or near Old Hickory and New Johnsville, TN, for 180 days. Supporting shipper(s): E. I. Dupont de Nemours & Company, 1007 Market Street, Wilmington, DE 19898. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N.J. 08608.

MC 72069 (Sub-20TA), filed April 16, 1979. Applicant: BLUE HEN LINES, INC., P.O. BOX 280, Milford, DE 19963. Representative: Chester A. Zyblut, 1030 15th St. NW, Washington, DC 20005. *Canned goods*, from Sussex County, DE; Accomac and Northampton Counties, VA, and Caroline, Dorchester and Queen Anne Counties, MD to points in PA, WV, OH, IN, MI, WI, IL, MN, LA, MO, AR, OK, KS, NE, SD and ND, for 90 days. An underlying ETA for 90 days was granted. Supporting shipper(s): There are 5 supporting shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 78228 (Sub-117TA), filed April 17, 1979. Applicant: J. MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., Esquire, 2310 Grant Bldg., Pittsburgh, PA 15219. *Coke and coke breeze*, in bulk, in dump vehicles, from the facilities of Koppers Company, Inc., at Erie, PA and Toledo, OH to all points in ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, DC, VA, WV, PA, OH, KY, IN, MI, IL, WI, MN, IA, and MO, for 180 days. Supporting shipper(s): Koppers Company, Inc., 850 Koppers Building, Pittsburgh, PA 15219. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 78228 (Sub-118TA), filed April 23, 1979. Applicant: J. MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., Esq., 2310 Grant Bldg., Pittsburgh, PA 15219. *Iron and steel articles*, from the facilities of Doolan Industries, Inc., and Doolan Steel Company in Martins Ferry, OH to Philadelphia, PA and Camden, NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Doolan Industries, Inc., 303 Harper Drive, Moorestown, NJ 08057. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 88619 (Sub-1TA), filed April 26, 1979. Applicant: MARVIN JAY HUTCHINSON, d.b.a. HUTCHINSON TRANSFER, 309 EAst 3rd Street, Thief River Falls, MN 56701. Representative: William J. Gambucci, 414 Gate City Building, P.O. Box 1680, Fargo, ND 58107. *Lumber, wood products and fence posts*, from ports of entry on the International Boundary Line between the United States and Canada located in ND and MN to points in IL, IA, MN, NE, ND, SD and WI, and from points in SD and MT to ports of entry on the International Boundary Lines between the United States and Canada located in ND and MN, for 180 days. Supporting shipper(s): P. H. Barnett Lumber, 165 Ryan Street, Winnipeg, Manitoba, Canada, R2R Prendiville Wood Preserves, 165 Ryan Stret, Winnipeg, Man., Can., ROJ. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 99408 (Sub-6TA), filed April 17, 1979. Appliant: CITY DELIVERY SERVICE, INCORPORATED, 1 Passan Drive, Laflin Borough, Wilkes-Barre, PA 18702. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. *General commodities* (except Classes A and B explosives, household goods as described by the Commission, such commodities as require special equipment or handling, and commodities in bulk), between the facilities of Valley Distributing and Storage Co., at or near Scranton and Wilkes-Barre, PA, on the one hand, and, on the other, points in MI, OH, CT, MA and VA. Restricted to transportation having an origin or destination at the facilities of Valley Distributing and Storage Co., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Valley Distributing and Storage Co., 1 Passan Drive, Laflin Borough, Wilkes-Barre, PA 18702. Send protests to: ICC, William J. Green, Jr., Federal Bldg., 600 Arch St., Philadelphia, PA 19106.

MC 103498 (Sub-59TA), filed April 19, 1979. Applicant: B & L TRUCK LINES, INC., 339 East 34th Street, Lubbock, TX 79404. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. *Petroleum products* and *lubricating oils* (except in bulk), in packages and containers, from the facilities of Mobil Oil Corporation at or near Beaumont, TX to points in AR, KS, LA, MO, NM, OK, and TX, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Mobil Oil Corporation, 8350 N. Central Expressway, Dallas, TX 75206. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 103798 (Sub-34TA), filed April 2, 1979. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. *Foodstuffs* from the facilities of Land O'Lakes, Inc. at Hudson, IA and points in MN and WI to AZ CA, CO, ID, MT, NE, NM, ND, OR, SD, UT, WA and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Land O'Lakes, Inc., 614 McKinley Place, Northeast, Minneapolis, MN 55413. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 103798 (Sub-35TA), filed April 24, 1979. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. *(1) Cheese, cheese products and synthetic cheese; and (2) Equipment, materials and supplies used in the manufacture of commodities in (1) above* from points in MN and WI to Logan, UT and points in MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): L. D. Schreiber Cheese Co., Inc., P.O. Box 610, Green Bay, WI 54305. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 104149 (Sub-207TA), filed April 20, 1979. Applicant: OSBORNE TRUCK LINE, INC., P.O. box 10727, Birmingham, AL 35202. Representative: Maurice F. Bishop, 603 Frank Nelson Building, Birmingham, AL 35203. *Aluminum and aluminum articles and materials, equipment and supplies used in the manufacture and distribution* thereof; from New Orleans, LA and its commercial zone to the facilities of Reynolds Metals Company at or near Listerhill and Sheffield, AL. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Reynolds Metals Company, P.O. Box 910, Sheffield, AL 35660. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 106398 (Sub-881TA), filed April 20, 1979. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). *Steel pipe, tubing and accessories*, (1) from the facilities of the Oxylance Corporation at Atlanta, GA, to points in AL, AZ, AR, CA, DE, IL, IN, MI, NM, OH, OK, PA,

and TX; and (2) from Trussville, AL, to Atlanta, GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Oxylance Corporation, 2400 Tower Place, 3340 Peachtree Rd. NE, Atlanta, GA 30326. Send protests to: District Supervisor, Interstate Commerce Commission, Room 240 Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 106398 (Sub-882TA), filed April 20, 1979. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). *Iron and steel articles,* between the facilities of Kirby Building Systems, located at Spanish Fork, UT, Houston, TX, and Portland, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kirby Building Systems, P.O. Box 36425, Houston, TX 77036. Send protests to: District Supervisor, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 107478 (Sub-46TA), filed April 17, 1979. Applicant: OLD DOMINION FREIGHT LINE, INC., P.O. Box 2006, High Point, NC 27261. Representative: Harry J. Jordan, Esquire, 1000 16th Street, N.W., Washington, DC 20036. *Particleboard, fibreboard and built up woods, including faced or finished* from the facilities of Masonite Corporation at Towanda, PA to points in DE, DC, GA, KY, MD, NJ, NC, OH, SC, TN, VA, and WV for 180 days. An underlying ETA seeks 90 days authority has been filed. Supporting shipper(s): Masonite Corporation, P.O. box 378, Waverly, VA 23890. Send protests to: Mr. Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 108119 (Sub-147TA), filed April 4, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. *Lumber, lumber mill products and wood products* from the facilities of Potlatch Corporation located at or near Coeur d'Alene, St. Maries, Potlatch, Lewiston, Kamiah, Spalding, Jaype (near Pierce), Santa and Post Falls, ID to all points in IN, MI, MO and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Potlatch Corporation, P.O. Box 1016, Lewiston, ID 83501. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 108119 (Sub-148TA), filed April 6, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. *Dry hydro desulfurization catalyst, in drums,* from points at or near Pasadena, TX to points in NJ, IL and CA, for 180 days. Supporting shipper(s): ARMAK, Catalyst Division, 13000 Bay Park Road, Pasadena, TX 77507. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 109449 (Sub-27TA), filed April 2, 1979. Applicant: KUJAK TRANSPORT, INC., Junction Avenue, Winona, MN 55987. Representative: Gary Huntbatch, same address as applicant. *Foodstuffs* from the plantsites and facilities utilized by Land O'Lakes, Inc. in MN and WI to points in OK, TX, AR, LA and MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Land O'Lakes, Inc., 614 McKinley Place, Northeast, Minneapolis, MN 55413. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 109449 (Sub-28TA), filed April 5, 1979. Applicant: KUJAK TRANSPORT, INC., Junction Avenue, Winona, MN 55987. Representative: Gary Huntbatch, same address as applicant. *Fertilizer* from Pine Bend, MN to points in IA and WI, and from LaCrosse, WI to points in MN and IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): N-ReN Corporation, P.O. Box 418, South St. Paul, MN 55075. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 111289 (Sub-10TA), filed April 26, 1979. Applicant: RICHARD D. FOLTZ, 613 Hillcroft Avenue, Cressona, PA 17929. Representative: S. Berne Smith, Esq., NcNees, Wallace & Nurick, P.O. Box 1166, Harrisburg, PA 17108. *Contract carrier: irregular routes: Foodstuffs,* in vehicles equipped with mechanical refrigeration (except commodities in bulk), (1) from the facilities of Y & S Candies, Inc. and Hershey Foods Corporation in East Hempfield Township, Lancaster County, PA and the facilities of Dauphin Distribution Services Co. in Hampden Township, Cumberland County, PA to New Castle County, DE; Washington, DC; points in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem Counties, NJ; points in NY on and west of Interstate 87; Baltimore, MD; points in Montgomery and Howard Counties, MD, on and east of Maryland Hwy 97 and those in Anne Arundel and Prince Georges Counties, MD, on and west of Maryland Hwy 3 and north of Maryland Hwy 4; points in Ohio south and east of a line beginning at the Ohio-Indiana state line and extending along Interstate 70 to its junction with U.S. Hwy 68; then along U.S. Hwy 68 to the Ohio-Kentucky state line; and Louisville, KY.; (2) from the facilities of San Giorgio Macaroni, Inc. in Louisville, KY and Auburn, NY, to the facilities of Dauphin Distribution Services Co. in Hampden Township, Cumberland County, PA. Restricted to transportation to be performed under continuing contracts with Hershey Foods Corporation, Hershey, PA, San Giorgio Macaroni, Inc., Lebanon, PA and Y & S Candies, Inc., Lancaster, PA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s) Hershey Foods Corporation; San Giorgio Macaroni, Inc.; and Y & S Candies, Inc., 19 East Chocolate Avenue, Hershey, PA 17033. Send Protests to: ICC, Federal Reserve Bank Bldg., 101 N. Seventh Street, Room 620, Philadelphia, PA 19106.

MC 111548 (Sub-18TA), filed April 11, 1979. Applicant: SHARPE MOTOR LINES, INC., P.O. Box 517, Hildebran, NC 28537. Representative: Edward G. Villalon, 1032 Penn Bldg., Penn. Ave & 13th St. NW, Washington, DC 20004. *Canned goods (except in bulk and frozen)* (1) from the facilities of Joan of Arc Company at Hoopeston and Princeville, IL to points in NC and SC; (2) from the facilities of Foell Packing Company at Chicago, IL to points in NC and SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Joan of Arc Company, 2231 W. Altorfer Dr., Peoria, IL 61615, and Foell Packing Company, 3117 West 47th St., Chicago, IL. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd., Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 111548 (Sub-19TA), filed April 13, 1979. Applicant: SHARPE MOTOR LINES, INC., P.O. Box 517, Hildebran, NC 28537. Representative: Edward G. Villalon, 1032 Penn Bldg., Penn. Ave & 13th St. NW, Washington, DC 20004. *Foodstuffs* from points in Jacksonville, IL to points in NC and SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Anderson Clayton Foods, Inc., P.O. Box 226165, Dallas, TX 75236. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Building, Charlottte, NC 28205.

MC 112908 (Sub-10TA), filed April 11, 1979. Applicant: KINGSWAY TRANSPORTS LIMITED, 123 Rexdale Blvd., Rexdale, Ontario M9W 1P3. Representative: John W. Bryant, 900 Guardian Bldg., Detroit, MI 48226. *Commodities, the transportation of which, because of size or weight requires the use of special equipment,* between Detroit, MI, and points in its commercial zone, on the one hand, and, on the other, ports of entry on the International boundary line between the United States and Canada at Detroit, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers: Euclid Canada Limited, 200 Woodlawn Road West, Guelph, Ontario N1H 1B6. International Transport, Inc., 2450 Marion Road, S.E., Rochester, MN 55901. Peter Kiewit Sons Co. Limited, 1183 Finch Avenue West, Downsview, Ontario M3J 2G2. Send protests to: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 West Huron Street, Buffalo, NY 14202. An underlying ETA seeks 90 days authority.

MC 112989 (Sub-96TA), filed April 10, 1979. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr., 85647 Highway 99 South, Eugene, OR 97405. *Lumber, lumber mill products and millwork* from points in Oregon and Washington to points in Utah, for 180 days. Supporting shipper(s): Dant & Russell, Inc., 1221 S. W. Yamhill, Portland, OR 97205, Champion International Corporation, Knightsbridge Dr., Hamilton, Ohio 45020. Send protests to: A. E. Odoms, DS., ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 113678 (Sub-799TA), filed April 9, 1979. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same address as above). *Bananas and agricultural commodities* exempt from regulation under Section 10526(a)(6) of the Interstate Commerce Act when transported in mixed loads with bananas, from Del Monte Banana Co., Port Hueneme, CA to points in CO, NE, ND, SD, and WY. Restricted to transportation of traffic having a prior movement by water. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Banana Company, 1201 Brickell Avenue, Miami, Florida 33101. Send protests to: Herbert C. Ruoff, District Supervisor, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 113678 (Sub-800TA), filed April 9, 1979. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same address as above). *Meats, meat products, meat by-products, and articles distributed by packinghouses,* from Chicago, IL, and its commercial zone to Wichita, KS; and from facilities of Dold Foods, Inc., to points in AZ, CA, CO, ID, MT, NV, OR, UT, WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dold Foods, Inc., 2929 No. Ohio, Wichita, KS. Send protests to: Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202

MC 113678 (Sub-801TA), filed April 9, 1979. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same address as above). *Meat, meat products, meat by-products, and articles distributed by meat packinghouses,* from facilities of Thies Packing Co., at Great Bend, Topeka and Wichita, KS, to points in AL, AZ, AR, CA, CO, FL, GA, ID, KY, MS, NV, NC, OK, OR, SC, TN, UT, WA, WY, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thies Packing Co., Inc., Box 49, South Main, Great Bend, KS 67530. Send protests to: Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80292.

MC 113678 (Sub-802TA), filed April 9, 1979. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same address as above). *Glues, adhesives, caulks, specialty chemicals,* in containers packaged in cartons, 3-gal. pails and 55-gal. drums. Empty plastic containers, 1-gal. or less, in reshipper & bulk packs, from Franklin Chemical Industries, Inc., Columbus, OH to points in CO, MO, UT and TX, for 180 days. An underlying ETA filed for 90 days. Supporting shipper(s): Franklin Chemical Industries, Inc., 2020 Bruck Street, P.O. Box 07802, Columbus, Ohio 43207. Send protests to: Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, Colorado 80202.

MC 113678 (Sub-803TA), filed April 11, 1979. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same as address as above). *Foodstuffs, meats, meat products and meat by-products,* from Rocky Ford, CO to points in the United States (except AK, CO and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Frozen Foods, P.O. Box 31, Rocky Ford, CO 81067. Send protests to: Herbert C. Ruoff, District Supervisor, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 114028 (Sub-28TA), filed April 11, 1979. Applicant: ROWLEY INTERSTATE TRANSPORTATION, 2010 Kerper Blvd., Dubuque, IA 52001. Representative: Wilmer B. Hill, Attorney at Law, Suite 805, 666 11th St. NW, Washington, D.C. 20001. *Water treatment chemicals, in drums,* from Frisco, PA (near Ellwood City) to points in IA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Calgon Corporation, P.O. Box 1346, Pittsburgh, PA 15230. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 114028 (Sub-29TA), filed April 11, 1979. Applicant: ROWLEY INTERSTATE TRANSPORTATION COMPANY, INC., 2010 Kerper Blvd., Dubuque, IA 52001. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603. *Pig skins* from Detroit, MI to Dubuque, IA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Keystone Gelatin Company, 2350 Kerper Blvd., Dubuque, IA 52001. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Blvd. Des Moines, IA 50309.

MC 114028 (Sub-30TA), filed April 16, 1979. Applicant: ROWLEY INTERSTATE TRANSPORTATION COMPANY, INC., 2010 Kerper Blvd., Dubuque, IA 52001. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603. *Petroleum and petroleum products in packages* from Reno and Rouseville, PA to IL, IN and WI for 180 days. An underlying ETA seeks 90 days Authority. Supporting shipper(s): Pennzoil Company, 108 Duncomb St., Oil City, PA 16301. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 114829 (Sub-20TA), filed March 29, 1979. Applicant: GENERAL CARTAGE COMPANY, INC., West Route 30, Rock Falls, IL 61071. Representative: Bernard J. Kompare, 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. *Contract Carrier:* irregular route: (1) *Paper and paper products,* and (2) *equipment, materials and supplies used in the manufacture and distribution of the commodities named in (1) above,* except commodities in bulk, between Cedar Rapids, IA on the one hand, and, on the other, points in IL, KS, MN, MO, NE, SD and WI for 180 days. An underlying ETA for 90 days authority was granted. Supporting shipper(s): Weyerhaeuser Company, 100 South Wacker Drive, Chicago, IL 60606. Send protests to: Annie Booker, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 116628 (Sub-25TA), filed April 23, 1979. Applicant: SUBURBAN TRANSFER SERVICE, INC., P.O. Box 168, Rutherford, NJ 07070. Representative: Thomas F. X. Foley, Esq., State Hwy 34, Colts Neck, NY 07722. Contract irregular. Such merchandise as dealt in by retail department stores, and materials and supplies used in the operation of such stores. Between New York, NY on the one hand, and, on the other, Chicago, IL and Troy, MI under a continuing contract or contracts with Bonwit Teller of New York, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bonwit Teller, Inc., 721 Fifth Avenue, New York, NY 10022. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Newark, NJ 07102.

MC 117119 (Sub-735TA), filed April 19, 1979. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same as applicant). Plastic liquid, NOI, plastic film and sheeting, NOI, chemicals, NOI, cleaning and scouring compounds, defoaming compounds, laminating machinery or parts, ink solvents, pallets, and empty containers (except commodities in bulk), from the facilities of Thiokol/Dynachem Corporation in Orange, County, CA, to Elmhurst, IL, Indianapolis and Terre Haute, IN, Tampa, FL, Woburn and South Hadley Falls, MA, Kearny, NJ, Farmingdale, NY, Charlotte and Matthews, NC and Herndon, VA, for 180 days as a common carrier over irregular routes. Supporting Shipper(s): Thiokol/ Dynachem Corporation, P.O. Box 12047, Santa Ana, CA 92711. Send Protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 117589 (Sub-61TA), filed March 22, 1979. Applicant: PROVISIONERS FROZEN EXPRESS, INC., 3801 7th Avene S., Seattle, WA 98108. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104. *Inedible meats and pet food related products,* (in vehicles equipped with mechanical refrigeration) from points in UT to points in OR and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tyrrells, Inc., 155 North 35th St., Seattle, WA 98103. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 118159 (Sub-329TA), filed April 19, 1979. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson, Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Drugs or pharmaceuticals,* from the facilities of Hoechst-Roussel Pharmaceuticals, Inc., at or near Somerville, NJ, to the facilities of Hoechst-Roussel Pharmaceuticals, Inc., at or near Dallas, TX, for 180 days. Supporting shipper(s): Hoechst-Roussel Pharmaceuticals, Inc., Route 202–206 North, Somerville, NJ 08876. Send protests to: District Supervisor, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 118838 (Sub-48TA), filed April 12, 1979. Applicant: GABOR TRUCKING, INC., Rural Route #4, Box 124B, Detroit Lakes, MN 56501. Representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, MN 55402. *Metal rolling mill machinery, parts and supplies,* from Salem, OH to points in MN and IL, and St. Louis and Bridgeton, MO, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper(s): Paxson Machine, Company, 300 Benton Road, Salem, OH 44460. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 118959 (Sub-213TA), filed April 19, 1979. Applicant: JERRY LIPPS, INC., 130 S. Frederick St., Cape Girardeau, MO 63701. Representative: Donald B. Levine, 39 S. LaSalle ST., Chicago, IL 60603. *Paper and paper products,* and materials and supplies used in the manufacture, sale, or distribution thereof from the facilities of Proctor & Gamble Paper Products Company at or near Cheybogan, MI to Mehoopany, PA; and *paper and paper products* and *articles* distributed by manufacturers of paper and paper products from the facilities of Proctor & Gamble Paper Products Company at or near Mehoopany, PA to the State of MI, for 180 days. Supporting shipper(s): The Proctor & Gamble Paper Products Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th ST., St. Louis, MO 63101.

MC 118959 (Sub-214TA), filed January 4, 1979. Applicant: JERRY LIPPS, INC., 130 S. Frederick Street, Cape Girardeau, MO 63701. Representative: Donald B. Levine, 39 S. LaSalle Street, Chicago, IL 60603. *Canned and Preserved Foodstuffs* from the facilities of H. J. Heinz Co., at or near Iowa City, IA to points in MO and points in IL on and south of Interstate 70. An underlying ETA seeks 90 days authority. Supporting shipper(s): H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA. Send protests to: Peter E. Binder, ADS, Room 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 119789 (Sub-575TA), filed March 26, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr., same address as above. *(1) Foodstuffs (except in bulk) in mechanically refrigerated equipment; (2) restaurant furniture, fixtures and supplies, in mixed shipments with foodstuffs,* from Dallas, TX to Doraville, GA for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): NORCO Mfg. & Distributing Company, 2566 West Commerce, Dallas, TX 75212. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, TX 752142.

MC 119789 (Sub-576TA), filed March 28, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. Address same as above. *Meats, meat products, and meat by-products, and articles distributed by meat packinghouses, 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),* from the facilities of Thies Packing Company at Great Bend, Topeka and Wichita, KS to KY, OH, PA, NJ, and NY for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Thies Packing Company, P.O. Box 49, Great Bend, KS 67530. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 119789 (Sub-587TA), filed March 29, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. Same as above. *Foodstuffs (other than frozen),* from Akron, OH to AR, OK, KS, and TX for 180 days. Underlying ETA filed for 90 days. Supporting shipper(s): Ohio Pure Foods, 1680 E. Market St., Akron, OH 44305. Send protest to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 119789 (Sub-578TA), filed March 29, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. Same as above. *Alcoholic Beverages,* from CA to Pensacola, FL for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Standard

Beverage Co., P.O. Box 1630, Pensacola, FL 32597. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 119789 (Sub-579TA), filed April 3, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr., P.O. Box 226188, Dallas, TX 75266. *Foodstuffs (except in bulk)*, from Chicago, IL and Van Wert, OH to AZ, CA, LA, OR, TX, UT, and WA for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Borden Foods, Division of Borden, Inc., 180 E. Broad St., Columbus, OH 43215. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 119789 (Sub-580TA), filed April 4, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. Address same as above. *Frozen Foods, except in bulk*, from North East, PA to points in CA for 180 days. Underlying ETA filed. Supporting shipper(s): Rich Products Corp., 1145 Niagara St., Buffalo, NY 14213. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 119789 (Sub-581TA), filed April 6, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr., P.O. Box 226188, Dallas, TX 75266. *Drugs and medicine*, from (1) Michigan City, IN to Burlington, MA; and (2) Michigan City, IN to Somerset, NJ for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): E. R. Squibb & Sons, Inc., 5 Georges Road, New Brunswick, NJ 08903. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 124078 (Sub-960TA), filed April 18, 1979. Applicant: SCHWERMAN TRUCKING CO., 611 S. 28th St., Milwaukee, WI 53215. Representative: Richard H. Prevette (same address as applicant). *Crude corn oil, in bulk, in tank vehicles*, from Milwaukee, WI to Chicago, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Krause Milling Co., 611 E. Wisconsin Ave., Milwaukee, WI 53202. Send protests to: Gail Daugherty, TA, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 124408 (Sub-14TA), filed April 13, 1979. Applicant: THOMPSON BROS., INC., 3604 Hoveland Drive, Sioux Falls, SD 57101. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. (1) *Sewer pipe fittings*, (2) *materials and supplies (except liquid commodities in bulk, in tank vehicles), used in the manufacture of the commodities named in (1)* above from (1) the facilities of GPK Products, Inc., at Fargo, ND to points in CO, FL, IL, IN, KS, MO, MT, OH, OK, OR, SD, TX, WA and WY and (2) from Richardson, TX; Albertville, AL, Cleveland and Middlefield, OH, McPherson, KS; Grand Island, NE and San Clemente and Brea, CA to the facilities of GPK Products, Inc., at Fargo, ND for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): GPK Products, Inc., 1720—3rd Avenue North, Fargo, ND 58102. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, SD 57501.

MC 125368 (Sub-55TA), filed April 9, 1979. Applicant: CONTINENTAL COAST TRUCKING COMPANY, INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C. W. Fletcher (same address as applicant). *Meats, meat products, meat by-products and articles distributed by meat packinghouses* as described in Motor Carrier Certificates 61 MCC 209 and 766 (except hides and commodities in bulk) between the facilities of Galaxy International, Inc., at or near MA, NY, NJ, PA, DE, VA, SC, FL, and LA, on the one hand, and, on the other, points in MN, IA, MO, KS, AR, OK, TX, LA, MS, AL, GA, SC, FL, NC, TN, KY, IL, IN, OH, WI, MI, WV, VA, DE, MD, DC, PA, NY, NJ, CT, RI, MA, VT, NH, and ME for 180 days. An underlying ETA has been filed seeking 90 days authority. Supporting shipper(s) Galaxy International, 1717 Penn Avenue, Pittsburgh, PA 15221. Send protests to: Mr. Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 125368 (Sub-56TA), filed April 9, 1979. Applicant: CONTINENTAL COAST TRUCKING COMPANY, INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C. W. Fletcher (same address as applicant). *Meats, meat products and supplies used in the manufacture of meat products* between the facilities of White Packing Company, North Bergen, NJ on the one hand, and, on the other, points in AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MO, NE, NH, NY, NC, OH, OK, PA, SC, SD, TN, TX, WV, and WI for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): White Packing Company, Inc., P.O. Box 95, King George, VA 22485. Send protests to: Mr. Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 126118 (Sub-149TA), filed April 9, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). *Animal food (except in bulk), materials, supplies, and ingredients used in the manufacture, distribution, and sale of animal food (except in bulk), and pet supplies (except in bulk)*, (1) Between Saline, York, and Lancaster Counties, NE, on the one hand, and, on the other, Billings, MT, and points in NY, OR, and WA; (2) Between York County, NE, on the one hand, and, on the other, points in AL, AR, AZ, CA, CO, DE, FL, GA, ID, IL (except Chicago), IN, IA, KS, KY, LA, MD, MI, MN (except St. Paul), MS, MO, MT (except Billings), NC, ND, NM, NV, OH, OK, SC, SD, TN, TX, UT, VA, WI, and WY; (3) Between Lancaster County, NE, on the one hand, and, on the other, points in AL, CA, DE, FL, GA, ID, IL (except Chicago), IN, KY, MD, MI, MS, MT (except Billings), NC, NV, OH, SC, TN, UT, VA, WI, and WY; and (4) from points in AR, AZ, CO, IA, KS, LA, MN, MO, ND, NM, OK, SD and TX to Lancaster County, NE. An underlying ETA seeks 90 days authority. Supporting shipper(s): Allen Products Company, P.O. Box 2187, Allentown, PA 18001. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 126118 (Sub-150TA), filed April 9, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). Such commodities as are dealt in or used by manufacturers and distributors of plastic articles, from Wooster, OH, and its commercial zone to AZ, CA, CO, NV, NM, OK, OR, TX and WA. Supporting shipper(s): Rubbermaid, Incorporated, 1147 Akron Road, Wooster, OH 44691. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 126899 (Sub-126TA), filed April 19, 1979. Applicant: USHER TRANSPORT, INC., P.O. Box 3156, 3925 Old Benton Road, Paducah, KY 42001. Representative: William P. Whitney, Jr., 708 McClure Building, Frankfort, KY 40601. *Malt beverages, in containers,*

and related advertising materials, from Evansville, IN to points in KY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): G. Heileman Brewing Company, Inc., 925 South Third Street, La Crosse, WI 54601. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 127539 (Sub-75TA), filed March 23, 1979. Applicant: PARKER REFRIGERATED SERVICE, INC., 1108 54th Ave. E., Tacoma, WA 98424. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104. *Bananas and agricultural commodities exempt from regulation under Section 10526(a)(6) of the Interstate Commerce Act when transported in mixed loads with bananas,* from Port Hueneme, CA to points in OR, UT and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Banana Company, 1201 Brickell Ave., Miami, FL 33101. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 127539 (Sub-76TA), filed March 21, 1979. Applicant: PARKER REFRIGERATED SERVICE, INC., 1108 54th Ave. E., Tacoma, WA 98424. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104. *Chemicals, prepared food and beverage mixes (except in bulk, in tank vehicles),* between points in CA, OR and WA, restricted to traffic originating at or destined to facilities of Foremost-McKesson, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Foremost-McKesson, Inc., Crocker Plaza, One Post Street, San Francisco, CA 94104. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 127938 (Sub-4TA), filed April 12, 1979. Applicant: MAXKER & SON LUMBER CO., 1798 South Yellowstone, Idaho Falls, ID 83401. Representative: Steven E. Ker (same address as above). *Brick and processed clay products,* from Boulder, Denver and Pueblo, CO to Burley and Boise, ID; from Ogden and Salt Lake City, UT to Burley and Boise, ID for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Pullman Brick Co., 5657 Warm Springs Ave., Boise, ID 83706. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706 An underlying ETA seeks 90 days authority.

MC 133689 (Sub-270TA), filed April 24, 1979. Applicant: OVERLAND EXPRESS, INC., 719 First Street, Southwest, New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Foodstuffs (except in bulk)* from Fargo, ND to points in those states in and east of MN, IA, MO, AR, MS, TN, IL, IN, WI, MI, KY, AL, FL, GA, NC, SC, VA, OH, DC, DE, PA, NY, NJ, MA, NH and ME, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Roman Meal Company, 2101 South Tacoma Way, Tacoma, WA 98409. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 133689 (Sub-271TA), filed April 24, 1979. Applicant: OVERLAND EXPRESS, INC., 719 First Street, Southwest, New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Paper, paper products and cellulose products* from the facilities of Proctor & Gamble at or near Cheboygan, MI, Green Bay, WI and Neelys Landing, MO to points in and east of ND, SD, NE, KS, OK, AR and LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Proctor & Gamble Co., Cincinnati, OH. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 134349 (Sub-26TA), filed April 23, 1979. Applicant: B.L.T. CORPORATION, 405 Third Avenue, Brooklyn, NY 11215. Representative: Eugene M. Malkin, Suite 6193—5 World Trade Center, New York, NY 10048. *Contract carrier,* irregular routes: *Such merchandise as is dealt in or used by a manufacturer and distributor of laboratory furniture, fixtures and supplies (except commodities in bulk and those which because of size or weight require the use of special equipment).* between the facilities of Duralab Equipment Corp. at or near Brooklyn, NY, on the one hand, and, on the other, points in AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NC, SC, TN, TX and WI, under a continuing contract(s) with Duralab Equipment Corp. of Brooklyn, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Duralab Equipment Corp., 107–23 Farragut Rd., Brooklyn, N.Y. 11236. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 134369 (Sub-15TA), filed March 28, 1979. Applicant: CARLSON TRANSPORT, INC., P.O. Box R, Byron, IL 61010. Representative: Allan C. Zuckerman, 39 South LaSalle Street, Chicago, IL 60603. *Sand,* in bulk, from Troy Grove, IL, and Bridgman, MI to points in IN, IL, and Louisville, KY for 180 days. An underlying ETA was granted for 90 days authority. Supporting shipper(s): Manley Bros., P.O. Box 538, Chesterton, IN 46304. Send protests to: Annie Booker, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 135078 (Sub-49TA), filed April 16, 1979. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" St., Omaha, NE 68127. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19250, Kansas City, MO 64141. *Motor vehicle parts, tools and related advertising materials,* from the facilities of Moog Automotive, Inc., at or near St. Louis, MO to points in AL, CT, DC, DE, GA, IN, KY, MA, MD, NH, NJ, NY, OH, PA, RI, TN, and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Moog Automotive, Inc., P.O. Box 7224, St. Louis, MO 63177. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St, Omaha, NE 68102.

MC 135208 (Sub-4TA), filed April 23, 1979. Applicant: GEORGE L. BIGELOW TRUCKING, INC., P.O. Box 421, 135 Wright St., Delavan, WI 53115. Representative: Richard Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Sheet steel* (1) from points in the Chicago, IL and Minneapolis-St. Paul Commercial Zones, as defined by the Commission, to the facilities of Dalco Metal Products, Inc. at or near Walworth, WI and (2) from the facilities of Dalco Metal Products, Inc. at or near Walworth, WI to points in IL, IN, IA, MI, MN & NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dalco Metal Products, Inc., P.O. Box 808, Walworth, WI 53184. Send protests to: Gail Daugherty, TA, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 136818 (Sub-70TA), filed April 10, 1979. Applicant: SWIFT TRANSPORTATION CO., INC., 335 W. Elwood Rd., Phoenix, AZ 85030. Representative: Donald Fernaays, 4040 E. McDowell Rd., Phoenix, AZ. *Iron and steel grinding rods,* from Geneva, UT to Twin Buttes Mine, AZ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Twin Buttes Mine, P.O. Box 127, Sahuarita, AZ 85629.

Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Pheonix, AZ 85025.

MC 138279 (Sub-11TA), filed April 11, 1979. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Robert L. Baker, United American Bank Building, Suite 618, Nashville, TN 37219. *Contract Carrier:* irregular routes: *Part I:* (1) *Copper, copper products, copper sulfate, and chemicals* (except commodities in bulk, in tank or hopper vehicles), and (2) *commodities used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk, in tank or hopper vehicles),* between Maspeth, NY on the one hand, and, on the other, points in the US (except AK and HI), under a continuing contract with Phelps Dodge Refining Corporation. *Part II:* (1) *Copper, copper products and cable,* and (2) *commodities used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles),* (a) between Los Angeles, CA on the one hand, and, on the other, points in the US in and east of IA, KS, MN, NE, OK and TX, and (b) between DuQuoin, IL, Starkville, MS, Elizabeth, NJ and Yonkers, NY on the one hand, and, on the other, points in the US (except AK and HI), under a continuing contract with Phelps Dodge Industries, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): (1) Phelps Dodge Refining Corporation, 300 Park Avenue, New York, NY; (2) Phelps Dodge Industries, Inc., 300 Park Avenue, New York, NY. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building—Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 138308 (Sub-67TA), filed April 12, 1979. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *New furniture parts* from the facilities of Basic Wood Products, Inc. at or near Pontotoc, MS to the facilities of Kroehler Mfg. Co. at or near Binghamton, NY, for 180 days. Supporting shipper(s): Kroehler Mfg. Co., 222 East Fifth Avenue, Naperville, Ill. 60540. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 138308 (Sub-68TA), filed April 23, 1979. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. *Plastic materials,* other than expanded, except in bulk, in tank vehicles, from Florence, MA and Wallingford, CT to the facilities of National Home Products, Inc. at or near Port Gibson, MS, for 180 days. Supporting shipper(s): National Home Products, Inc., P.O. Box 568, Port Gibson, MS 39150. Send protests to: Alan C. Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 138308 (Sub-69TA), filed April 24, 1979. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representive: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. *Foodstuffs* (except in bulk) from the facilities of Welch Foods, Inc. at or near Kennewick, WA to points in AR, CA, CO, ID, NV and UT, for 180 days. Supporting shippers(s): Welch Foods, Inc., 2 South Portage St., Westfield, NY 14787. Send protests to: Alan Tarrant, D/S, ICC, Rm, 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 138438 (Sub-45TA), filed April 19, 1979. Applicant: D. M. BOWMAN, INC., Rt. 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *Gypsum and gypsum products, and materials and supplies used in the installation thereof,* (1) from Wilmington, DE, and its commercial zone, to points in MD, PA, VA, WV, and DC, and (2) from Milford, VA, and its commercial zone, to points in DE, MD, NJ, PA, WV, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Georgia Pacific Corporation, Gypsum Division, 1062 Lancaster Ave., Rosemont, PA 19010. Send protests to: T. M. Esposito, TA, ICC, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 138469 (Sub-139TA), filed April 6, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: William J. Green (same address as applicant). *Wooden furniture stock,* from the facilities of Triangle Pacific Corporation, at Jackson, TN, to the facilities of Triangle Pacific Corporation, at or near McKinney, TX, Atlanta, GA, Union City, IN, Nashau, NH, Lakeland, FL, Lodi, CA, and Carbondale and Thompsontown, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Triangle Pacific Corporation, 4255 L.B.J. Freeway, Dallas, TX 75234. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138469 (Sub-140TA), filed April 23, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: William J. Green (same address as applicant). *Chemicals and materials, equipment and supplies used in the manufacture and distribution of chemicals,* except commodities in bulk, from the facilities of National Starch and Chemical Corporation, located at or near Bloomfield, Finderne, and Plainfield, NJ, to points in CA, IL, IA, KS, MN, MO, NE, OK, TX, & WI, restricted to the transportation of traffic originating at the above named origins and destined to the above named destinations, for 180 days. Supporting shipper(s): National Starch and Chemical Corporation, P.O. Box 6500, Bridgewater, NJ 08807. Send protests to: District Supervisor, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138869 (Sub-20TA), filed March 23, 1979. Applicant: W. T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Attorney-at-Law, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Contract Carrier, irregular routes, (1) plumbers fittings, fixtures and supplies, vanities and vanity cabinets and plastic articles, and (2) materials, equipment and supplies used in the manufacture of distribution of commodities named in (1) above (except commodities in bulk),* between the facilities of Universal-Rundle Corporation located at or near Ottumwa, IA, on the one hand, and, on the other, points in IL, IN, KS, MI, MN, MO, NE, and WI. An underlying ETA seeks 90 days authority. Supporting shipper(s): Universal-Rundle Corporation, 217 N. Mill St., New Castle, PA 16101. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 138869 (Sub-21TA), filed March 23, 1979. Applicant: W. T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Attorney-at-Law, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Contract Carrier, irregular routes, (1) plumbers fittings, fixtures and supplies, vanities and vanity cabinets and plastic articles, and (2) materials, equipment and supplies used in the manufacture of distribution of commodities named in (1) above (except commodities in bulk),* between the facilities of Universal-Rundle Corporation located at or near New Castle, PA, on the one hand, and, on the other, points in DE, GA, IL, IN, IA, KY, MD, MI, MO, NE, NJ, TN and WI. An underlying ETA seeks 90 days authority. Supporting shipper(s): Universal-Rundle Corporation, 217 N. Mill St., New Castle, PA 16101. Send protests to: Sara K.

Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 140389 (Sub-53TA), filed April 11, 1979. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 12566, Atlanta, GA 30315. *Canned foodstuffs,* (except commodities in bulk), from the facilities of Pilgrim Farms, Inc., at Plymouth, IN, to points in KY and TN. For 180 days. Supporting shipper(s): Pilgrim Farms, Inc., 1430 Western Avenue, Plymouth, IN 46563. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 140389 (Sub-54TA), filed April 19, 1979. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 12566, Atlanta, GA 30315. *Sugar, condiments, and flavoring compounds,* except in bulk, from points in LA on and west of the Mississippi River and in and east of Terrebonne, Assumption, and St. James Parishes to points in AL, GA, NC, SC and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The South Coast Corp., P.O. Box 8036, Houma, LA 70361; Supreme Sugar Company, Inc., Suite 320, One Shell Square, New Orleans, LA 70139; Southdown Sugars, Inc., Canal LaSalle Building, P.O. Box 52, New Orleans, LA 70112; Amstar Corporation, 7417 North Peters St., Arabi, LA 70032. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 140389 (Sub-55TA), filed April 20, 1979. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 12566, Atlanta, GA 30315. (1) *Foodstuffs* (except in bulk), from points in FL to points in AL, AZ, CA, CO, ID, KS, LA, MS, MT, NE, NV, NM, ND, OR, SD, UT, WA, and WY. For 180 days. Supporting shipper(s): Adams Packing Company, P.O. Box 37, Auburndale, FL 33823; The Coca-Cola Co. Food Div., P.O. Box 247, Auburndale, FL 33823. Doric Foods Corporation, P.O. Box 986, Mount Dora, FL 32757; Lydes Pasco Packing Co., P.O. Box 97, Dade City, FL 33525. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham. AL 35203.

MC 146938TA, filed February 15, 1979. Applicant: TRI–J TRUCKING, INC., 2480 Baumann Avenue, San Lorenzo, CA 94580. Representative: Jack Leong (same as applicant). *Contract* carrier, irregular routes: (1) *General commodities* (except those of unusual value, Class A & B Explosives, Household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between the facilities of Executive Warehouse & Distribution at or near San Lorenzo, CA and points in Alameda, Contra Costa, Marin, Monterey, Napa, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus and Yolo counties, CA under continuing contract with Executive Warehouse & Distribution of San Lorenzo, CA; (2) *Foods or foodstuffs, frozen,* in vehicles equipped with mechanical refrigeration, and *Foods or foodstuffs, other than frozen* (except commodities in bulk in tank vehicles), from the facilities, of General Foods Corporation in Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara counties, CA to steamship docks or wharves, rail loading ramps or interstate truck terminals located in Alameda, Contra Costa, Marin, Monterey, Napa, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus and Yolo counties, CA under continuing contaract with General Foods Corporation of San Leandro, CA; and (3) *Bakery goods,* NOI, other than frozen, from the facilities of Pepperidge Farms, Inc. at or near San Lorenzo, CA to points in Alameda, Contra Costa, Marin, Monterey, Napa, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus and Yolo counties, CA under continuing contract with Pepperidge Farms, Inc. of San Lorenzo, CA, for 180 days. Supporting shipper(s): Executive Warehouse & Distribution, 2480 Baumann Avenue, San Lorenzo, CA 94580; General Foods Corporation, 100 Halcyon Drive, San Leandro, CA 94578; and Pepperidge Farms, Inc., 746 Bockman Road, San Lorenzo. CA 94580. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 146959TA, filed February 28, 1979. Applicant: JAMES W. CROWE, INC., 307 Brennan Road, Columbus, GA 31902. Representative: C. E. Walker, P.O. Box 1085, Columbus, GA 31902. *Contract carrier:* irregular routes: *Liquid fertilizers and fertilizer materials, in tank vehicles,* from Holy Trinity, AL to points in FL and GA for 180 days. An ETA for 90 days seeks authority. Supporting shipper(s): United Sttes Steel Corporation, USS Agri-Chemicals Division, 233 Peachtree Street, N.E., Atlanta, GA 30303. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79–15562 Filed 5–17–79; 8:45 am]

BILLING CODE 7035–01–M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 98
Friday, May 18, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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[M-218, Amdt. 4; May 15, 1979]

CIVIL AERONAUTICS BOARD.

Notice of deletion of items from the May 17, 1979, meeting agenda.

TIME AND DATE: 1:30 p.m., May 17, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

16. Dockets 34336 and 35210, Finalization of Show-Cause Order 79-3-97, tentatively adding Providence as an intermediate point on Air New England's Route 172 (Docket 34336) and proposing to grant the Providence authority at issue to applicants whose fitness can be established by officially noticeable material. (BPDA).

17. Dockets 34513, 26681 and 34565—Petition of the Port of Astoria for determination of essential air transportation and Hughes Airwest Petition for modification of orders granting temporary suspension and notice of intent to terminate service at Astoria/Seaside, Oregon (BPDA).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Additional staff work is needed on Items 16 and 17 so these items will be deleted from the May 17, 1979 agenda. Accordingly, the following Members have voted that agency business requires the deletion of these items from the May 17, agenda and that no earlier announcement of this change was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1007-79 Filed 5-16-79; 3:24 pm]

BILLING CODE 6320-01-M

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[M-218, Amdt. 3; May 15, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of items to the May 17, 1979, meeting agenda.

TIME AND DATE: 1:30 p.m., May 17, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

16a. Docket 34650, Proposed rules establishing guidelines and procedures for essential air service determinations under the Small Community Air Service Program (BPDA).

25a. Pan American's proposed fuel-cost related fare increases in international Pacific and Latin American markets.

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Chairman Cohen has requested that Item 16a be placed on the May 17 agenda for consideration by the Board so that the questionnaire may be mailed to all local and state officials as soon as possible. Item 25a is being added to the May 17 agenda because the draft order suspends tariffs, and should be submitted to the President no later than May 18, 1979. The item was not submitted to the Board earlier because staff analysis was delayed pending receipt of revised information from the carrier. Accordingly the following Members have voted that Items 16a and 25a be added to the May 17, 1979 agenda and that no earlier announcement of these additions was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1006-79 Filed 5-16-79; 3:24 pm]

BILLING CODE 6320-01-M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., May 22, 1979.

PLACE: 2033 K Street NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Aggregation.
Fiscal year 1979: Second Quarter Review.
Foreign Traders.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-996-79 Filed 5-16-79; 10:06 am]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:30 a.m., May 22, 1979.

PLACE: 2033 K Street NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Discussion of offer of settlement and proposed public administrative proceedings.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-997-79 Filed 5-16-79; 10:06 am]

BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., May 25, 1979.

PLACE: 2033 K Street NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-998-79 Filed 5-16-79; 10:06 am]

BILLING CODE 6351-01-M

6

May 16, 1979.

COUNCIL ON ENVIRONMENTAL QUALITY.

TIME AND DATE: 11:30 a.m., May 24, 1979.

PLACE: Conference Room, 722 Jackson Place, N.W.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Old Business.
2. Report on Committee on the Challenges of Modern Society meeting in Brussels.
3. Briefing on Status of Alasks Lands Legislation.
4. Briefing on status of Integrated Pest Management Report.
5. Report on Meeting of Environmental Ministers of the Organization for Economic Cooperation.
6. Report on State Progress to Preserve Farmlands.

CONTACT PERSON FOR MORE INFORMATION: Foster Knight, 395-4616.

[S-1003-79 Filed 5-16-79; 11:37 am]

BILLING CODE 3125-01-M

7

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9 a.m. (Eastern Time), Tuesday, May 22, 1979.

PLACE: Commission Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open to the Public

1. Proposed Regulations to Implement Age Discrimination in Employment Act Amendments of 1978.
2. Proposed Amendments to Regulations to Provide for Awarding of Attorneys' Fees in Connection with Federal EEO Complaints.
3. Proposed Delegation of Authority to Merit System Production Board to Decide Certain Cases.
4. Freedom of Information Act Appeal No. 79-2-FOIA-50, concerning a Request by a Respondent's Attorney for Access to the Commission's Investigative File.
5. Freedom of Information Act Appeal No. 79-2-FOIA-62, concerning Request by an Attorney for Statistical and Charge Information on a City Government.
6. Freedom of Information Act Appeal No. 79-3-FOIA-72, in regard to a Request for Documents concerning the Memorandum of Understanding between EEOC and the Federal Communications Commission.
7. Proposed Contract for Computer Analysis and Expert Witness Services from Charles R. Mann, Associates.
8. Report on Commission Operations by the Executive Director.

Closed to the Public

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluced may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued May 15, 1979.

[S-1005-79 Filed 5-16-79; 3:24 pm]

BILLING CODE 6570-06-M

8

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., Wednesday, May 15, 1979, Cancelled and Rescheduled for May 17, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Open Commission Meeting, Wednesday, May 15, 1979, Cancelled and Rescheduled for May 17, 1979 at 9:30 a.m.

CHANGES IN THE MEETINGS: Common Carrier Items 1, 3 and 4 (See Public Notice No. 17451) Previously scheduled for May 17, 1979 will now be considered at the Special Open Meeting of May 31, 1979. Common Carrier Item 2 and General Item 1 will remain on the schedule for May 17, 1979.

The revised Agenda for the Special Open Meeting for May 17, 1979 is as follows:

Agenda, Item No., and Subject

Common Carrier—1—Docket No. 20828: "Second Computer Inquiry".
Common Carrier—2—Notice of Inquiry and Proposed Rulemaking pertaining to ratemaking guidelines for the offering of competitive common carrier services.
Common Carrier—3—Petitions for Reconsideration of First Report and Order in CC Docket No. 78-144, setting forth procedural rules for CATV pole attachment regulation; and Second Report and Order, containing substantive guidelines and rules for the resolution of pole attachment complaints.
General—1—Rule changes to expand the CARS band from 12.7-12.95 to 12.7-13.20 GHz.

The Special Closed Meeting Private Radio Bureau item previously announced for Thursday, May 17, 1979 will be taken up following the Special Open Meeting this date.

The Regular Agenda Open Meeting scheduled for Thursday, May 31, 1979 has been rescheduled for Thursday, June 7, 1979.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

[S-1004-79 Filed 5-16-79; 2:11 pm]

BILLING CODE 6712-01-M

9

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, May 23, 1979 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel and labor/management relations.

DATE AND TIME: Thursday, May 24, 1979 at 10 a.m.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

Setting of dates for future meetings.
Correction and approval of minutes.
Advisory opinion 1979-18, Ms. Kelly Davall, Mr. Kurt Burkhart ("FEC-FEC").
Advisory opinion 1979-19, Mr. Kirby Cunningham, Cattleman's Action Legislative Fund ("CALF").
Senior Executive Service.
1980 Elections and related matters.
Earmarked contributions.
1976 Presidential audits.
Pending legislation.
Appropriations and budget.
Classification actions.
Routine administrative matters.

Portions Closed to the Public

Any matters not concluded on May 23, 1979.

PERSONS TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone 202-523-4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S-1009-79 Filed 5-16-79; 3:45 pm]

BILLING CODE 6715-01-M

10

FEDERAL MARITIME COMMISSION.

TIME AND DATE: May 23, 1979, 10 a.m.

PLACE: Room 12126—1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public.

The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Report of the Secretary on Notation Items disposed of during April, 1979.
2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during April, 1979.
3. Report of the Secretary on Applications for Admission to Practice approved during April, 1979, pursuant to delegated authority.
4. Assignment of Informal Dockets by the Secretary during April, 1979.
5. Interisland Intermodal Lines, Inc., general rate increase of five percent in the Puerto Rico/Virgin Islands trades.
6. Stute International, Inc.—Application for an independent ocean freight forwarder license.
7. Proposed revision of General Order No. 6—Rules Governing the Right of Independent Action in Agreements.
8. Agreement No. 10320-1: Modification of a cargo revenue pooling and sailing arrangement in the trade from Brazil to the United States Gulf to provide for participation of nonnational flag lines.
9. Agreements Nos. 9902-10 and 9902-11: Modifications of the Euro-Pacific joint Service Agreement to conform with Commission Order in Docket No. 77-4 and to add Intercontinental Transport as a party.
10. Docket No. 79-6: Puerto Rico Maritime Shipping Authority (PRMSA) and Trailer Marine Transport Corporation (TMT)—Proposed Reduced Rates—Appeal of denial of motion to discontinue.

Portions Closed to the Public

1. Docket No. 78-44: Pierpoint Management Company and Retla Steamship Company v. Holt Hauling & Warehousing System, Inc.—Review of order of discontinuance.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

[S–1002–79 Filed 5–16–79; 10:06 am]

BILLING CODE 6730–01–M

11

FEDERAL RESERVE SYSTEM.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 25584, May 1, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Friday, May 4, 1979.

CHANGES IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

[S–1008–79 Filed 5–16–79; 3:30 pm]

BILLING CODE 6210–01–M

12

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: May 16, 17 and 18, 1979 (Revised).

PLACE: Commissioners' Conference Room, 1717 H St. NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Wednesday, May 16, 1:30 p.m.

1. Meeting with UCS on Petition for Reconsideration (Approximately 1½ hours—Public meeting—as announced).

Thursday, May 17, 9:30 a.m.

1. Briefing on Facts of TMI Operational Sequence (Approximately 1½ hours—Public meeting—as announced).

2. Affirmation Session (Approximately 10 minutes—Public meeting—as announced): (a) PRM–50–22—Bonding to Ensure Decommissioning; (b) Petition to Defer Implementation of Security Personnel Qualification and Equipment.

Thursday, May 17, 2 p.m.

1. Staff Briefing on Oconee Order (Approximately 1 hour—Public meeting—rescheduled from May 16).

2. Discussion of Personnel Matter (Approximately 1½ hours—Closed—Exemption 6—as announced).

Friday, May 18, 9:30 a.m.

1. Continuation of Discussion of Uranium Mill Tailings Act (Approximately 1 hour—Public meeting—postponed from May 16).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

Walter Magee,

Office of the Secretary.

May 15, 1979.

[S–1000–79 Filed 5–16–79; 10:06 am]

BILLING CODE 7590–01–M

13

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of May 21, 1979.

PLACE: Commissioners' Conference Room, 1717 H St., N.W., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Monday, May 21, 2 p.m.

1. *Briefing on Mark I Containment* (Approximately 1 hour—Public meeting).

2. *Briefing on Physical Protection of Irradiated Fuel Shipments* (Approximately 1½ hours—Public meeting).

Tuesday, May 22, 9:30 a.m.

1. *Discussion of Proposed Executive Branch Format for Analysis of Export Applications* (Approximately 1½ hours—Public meeting—Portions will be Closed—Exemption 1).

2. *Discussion of Personnel Matter* (Approximately 1 hour—Closed—Exemption 6).

Tuesday, May 22, 3:30 p.m.

1. *Briefing by Executive Branch on International Safeguards Matters* (Approximately 1½ hours—Closed—Exemption 1).

Thursday, May 24, 9:30 a.m.

1. *Briefing by Oak Ridge on Soviet Reactor Safety Experience* (Approximately 1½ hours—Public meeting).

2. *Affirmation Session* (Approximately 10 minutes—Public meeting: (a) NRDC Petition for Rule Making, (b) Physical Protection of Category II and III Material, (c) Fialka FOIA Appeal.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, 202–634–1410.

Walter Magee,

Office of the Secretary.

May 14, 1979.

[S–1001–79 Filed 5–16–79; 10:06 am]

BILLING CODE 7590–01–M

14

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 940–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 21, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Wednesday, May 23, 1979, at 10:00 a.m. A closed meeting will be held on Thursday, May 24, 1979, at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, Pollack and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, May 23, 1979, at 10:00 a.m., will be:

1. Consideration of whether to adopt amendments to Rule 17f–1 (17 CFR 240.17f–1) and modifications to the Lost and Stolen Securities Program, established thereunder. For further information, please contact Gregory C. Yadley at (202) 376–8129.

2. Consideration of applications of A. G. Edwards & Sons Inc. and Thomson McKinnon Securities Inc. for exemptions from the confirmation delivery requirements of Securities Exchanges Act Rule 10b–10 (17 CFR 240.10b–10) for certain transactions in securities of a "money market" investment company. For further information, please contact Arnold Dean at (202) 755–4372.

3. Consideration of a request by the National Association of Investment Clubs for an exemption from the broker-dealer registration requirement of Section 15(a)(1) of the Securities Exchange Act of 1934. For further information, please contact Jeffrey L. Steele at (202) 755–7587.

4. Consideration of a proposed amendment to 17 CFR 200.410(a), the Commission's rule regarding the electronic recording and photographing of Commission meetings, to allow private persons to record Commission meetings if the Commission's Secretary is notified 48 hours in advance of the meeting that the proceedings will be recorded. At the present time, the rule provides that the Secretary's permission must be obtained before a meeting may be recorded. For further information, please contact James H. Schropp or Theodore S. Bloch at (202) 376–3561.

The subject matter of the closed meeting scheduled for Thursday, May 24, 1979, at 10:00 a.m., will be:

Formal order of investigation.

Access to investigative files by Federal, State, or Self-Regulatory Authorities.

Settlement of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings and settlement of injunctive action.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Subpoena enforcement action.

FOR FURTHER INFORMATION, CONTACT: Beverly Rubman at (202) 755–1103.

May 15, 1979.

[S–999–79 Filed 5–16–79; 10:06 am]

BILLING CODE 8010–01–M

federal register

Friday
May 18, 1979

Part II

Department of Health, Education, and Welfare

Food and Drug Administration

Medical Devices—Establishment of Procedures To Make a Device a Banned Device

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 895

[Docket No. 77N-0144]

Medical Devices; Establishment of Procedures To Make a Device a Banned Device

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The agency is issuing final regulations setting forth procedures by which a device intended for human use that presents substantial deception or an unreasonable and substantial risk of illness or injury can be made a banned device. This final rule is issued under expanded authority of the Commissioner of Food and Drugs to protect the American public from dangerous or fraudulent medical devices.

EFFECTIVE DATE: July 17, 1979.

FOR FURTHER INFORMATION CONTACT: Dan R. Beardsley, Bureau of Medical Devices (HFK-114), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7218.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 19, 1977 (42 FR 42000, the FDA proposed to establish, in new Part 895 (21 CFR Part 895), procedures for making a device a banned device. Interested persons were given until October 17, 1977 to comment. Twenty-five comments were received on the proposal.

The issues raised most often by these comments concerned the authority of the agency to require persons other than manufacturers to comply with the rule, the use and frequency of consultation with classification panels in the banning process, the use of the special effective date requirements, and questions on procedural matters such as notification and hearings.

In general, the final regulation is adopted as proposed, although several changes have been made in response to comments and to clarify the language of the regulation. The following discussion summarizes the comments received and the agency's responses to them:

General

1. Three comments on proposed § 895.1(d) suggested that there may be situations in which a single device is intended for use in both humans and animals. The comments stated that for such a device the veterinary use may not represent a substantial deception or an unreasonable or substantial risk of illness or injury even though such risk may exist for the device when used to treat humans. In those circumstances, the comments argued, relabeling should be permitted so that the product may continue to be marketed for veterinary purposes.

The agency agrees that proposed § 895.1(d) should be clarified so that a bona fide veterinary device that can be properly labeled for veterinary use does not come within the scope of a banned-device regulation. Proposed § 895.1(d) was intended to prevent a banned device from being relabeled for veterinary use as a subterfuge to permit its continued marketing. If, however, before being banned, a device was intended for both human and veterinary use, its continued marketing for veterinary use will be permitted under the following conditions: (1) the device must comply with all requirements under the Federal Food, Drug, and Cosmetic Act and the FDA regulations applicable to veterinary devices; and (2) the label for the device must bear the following statement: "For Veterinary Use Only. Caution: Federal law prohibits the distribution of this device for human use."

There may also be instances in which a manufacturer can demonstrate a bona fide veterinary use for a device that, before the banning order, was intended only for human use. Such a device may be permitted to be relabeled and marketed for veterinary use under the conditions noted above.

Accordingly, § 895.1(d) has been revised to allow for the bona fide veterinary use of an otherwise banned medical device. The Commissioner emphasizes, however, that § 895.1(d) has also been amended to state that banned devices labeled for veterinary use that are found to be intended for human use will be considered to be banned devices notwithstanding veterinary use labeling. The agency may consider the ultimate destination of a device in determining whether it is "intended for human use" within the meaning of § 895.1(d).

2. Numerous comment objected to use of the terms "owner" and "distributor" in the proposed regulations, specifically to "owner" in proposed § 895.22 on submission of data and information (the term was also used in proposed § 895.21 (a)(3) and (d)(3)), and to "owner" and "distributor" in proposed § 895.25 on labeling (which are also used in §§ 895.1(d) and 895.30(f)).

Comments regarding the submission of data and information under proposed § 895.22 argued that the term "owner" means the ultimate user or purchaser (e.g., physicians, hospitals, consumers, etc.) and that such persons cannot be required to submit data. Moreover, the comments assert that owners are not within the scope of section 519 of the act (21 U.S.C. 360i), which concerns the records and reports that the Commissioner may by regulation require only of manufacturers, importers, or distributors. Additionally, the comments claimed that the agency cannot require disclosure of the identity of patients who may be "owners." Another comment suggested that Congress never intended reporting requirements to be imposed on device owners. One comment argued to the contrary: Owners are in a better and particularly unique position to provide valuable, first-hand information on hazards associated with the use of a particular device, and the term "owners" should be included throughout the rule.

Comments regarding labeling stated that an "owner" such as a physician, hospital, or private user would not be in a position to relabel the device. One comment suggested that the term "distributor" has been used synonymously with "manufacturer" throughout the proposal where parallel obligations and responsibilities are inappropriate. The comment argued that the responsibility for halting production and marketing of a banned device, or for making label changes, should remain with the manufacturer or other party who introduced the device into commerce, and that in cases where the banning of a device is not sufficient to protect the public, other provisions of the act give the Secretary of Health, Education, and Welfare adequate authority to require customer notification, repair, replacement, and refund. The comment further suggested that the word "distributor" be deleted.

The agency emphasizes that section 516 of the act (21 U.S.C. 360f) requires that a finding of substantial deception or an unreasonable and substantial risk of illness or injury associated with the device be based on "all available data and information." No details are given in section 516 of the act regarding the method of obtaining these data and information. The Report by the Committee on Interstate and Foreign Commerce (94-853, Feb. 29, 1976, p. 19) states that the data and information may include information obtained under other provisions of the act and may include information supplied by the manufacturer. Section 519 of the act,

which provides the authority for the Commissioner to require reports of device manufacturers, importers, and distributors, does not, however, include "owners" within its terms. Therefore, the agency is deleting the term "owner" from § 895.22 and from associated § 895.21 (a)(3) and (d)(3). However, under section 519(a)(4) of the act, the identity of any patient may be required to be disclosed in records, reports, or information required from manufacturers, distributors, or importers to determine the safety and effectiveness of the device or to verify a record, report, or information submitted under § 895.22.

Because the agency must be in the position to obtain such other information as is necessary to make a finding based on "all available data and information," the agency intends to allow any interested person who may have an interest in the device to provide such data and information either for or against the proposal to ban. Therefore, owners, users, physicians, and hospitals, who would not generally be subject to the requirements of the act, may be requested to make voluntary submissions, and they may also do so on their own initiative. Accordingly, in § 895.21 (a)(3) and (d)(3), the agency has replaced the term "owner" with the statement "and information voluntarily submitted by any other interested persons."

The agency believes that Congress intended that the person responsible for the labeling of the device, usually the manufacturer, should also be the person responsible for any necessary relabeling of the device. Because persons other than the manufacturer may be responsible for the labeling of a device, FDA expanded the provision to include other likely parties, including importers, distributors, and owners. To clarify the agency's intent not to single out any individual, and to show that in most cases owners would not be responsible for labeling the device, the agency has replaced the term "owner" with the term "or any other person(s) responsible for the labeling of the device" in § 895.25 and in associated §§ 895.1(d) and 895.30(f). Comparable changes have been made in §§ 895.21(a)(2) and 895.30(a), which are the only other sections where the term "owner" appeared. Also, the terms "distributor" and "importer," which are referenced throughout proposed § 895.25, were inadvertently omitted from proposed § 895.25(b). These terms, therefore have been added to that section. The agency is not deleting the term "distributor" from any of the above-referenced sections in the final regulation because many distributors purchase products manufactured domestically, or import products, and then provide their own labeling, therefore often becoming the person most responsible for relabeling the device.

Procedures for a Banning Device

3. Two comments suggested that proposed § 895.21(a)(1) should include the term "unreasonable" in addition to "substantial" to conform to the statutory language relating to determination of risk of illness or injury.

The agency disagrees with the comments. Proposed § 895.21(a)(1) provides only an explanation of the basis by which the Commissioner determines whether deception or risk of illness or injury associated with a device is "substantial." This language is based on the Report by the Committee on Interstate and Foreign Commerce (p. 19).

4. One comment expressed concern about the failure to define "unreasonable risk" in § 895.21(a)(1) and the resulting potential for excessive FDA inspections and reporting requirements. Any medical procedure, it was argued, presents an element of risk to the patient. If excessive inspections occur, hospitals may be faced with exceptionally expensive reporting requirements that would transfer staff time from patient care activities to administrative duties.

The agency believes that the term "unreasonable risk" should apply both to the device and to the medical procedure. For the purpose of this regulation, the agency will conduct a careful analysis of risks associated with the use of the device relative to the state of the art and the potential hazard to patients and users. Inspections and requests for data and information will be made only when necessary to determine the need for banning a particular device.

5. Three comments expressed concern that the language in proposed § 895.21(a)(2) may lead to an arbitrary determination of whether to ban a device because proof of actual deception is not necessary. The comments argued that proof of deception should be required.

The agency disagrees with the comments. The Report by the Committee on Interstate and Foreign Commerce (p. 19) states that actual proof of deception of, or injury to, an individual is not required, and that a finding need be made only that a device presents the requisite degree of deception or risk on the basis of all available data and information (as provided in § 895.21(a)(3)). Therefore, no change in proposed § 895.21(a)(2) has been made.

6. One comment suggested that the Commissioner should consider whether the users of the device would be deceived or otherwise harmed. The comment suggested that § 895.21(a)(2) be expanded to require that the Commissioner take into consideration the sophistication and/or medical background of the user.

The agency advises that proposed § 895.21(a)(2) states that the Commissioner will consider whether users of the device may be deceived or otherwise harmed. However, the agency does not enumerate in the final rule all the possible elements that might be considered in making such a determination because such an enumeration could limit unduly the possibly relevant and useful information that interested persons would submit in response to a proposal to ban a device. The Commissioner will take into consideration the sophistication and medical background of the user, but only in the context of the entire banning process, and would not likely make the decision on that basis alone.

7. One comment suggested that before any public disclosure, the agency should resolve with the manufacturer all questions regarding safety, effectiveness, and reliability of the device. The comment suggested that the Commissioner should offer the manufacturer an opportunity to review, with the Food and Drug Administration (FDA), the details on the basis of which the agency is acting and as to which a public disclosure will be made. If the manufacturer does not act within a specified period of time, the agency could then proceed to make a device a banned device.

The agency disagrees that a mechanism should be put into these regulations dealing with prior contact with the manufacturer. The general operating procedures of the agency normally lend themselves to bringing these matters to the attention of the manufacturer by sending an information letter or regulatory letter to the firm to provide it with an opportunity to correct the problem. The initiation of other actions, such as seizing the device, enjoining the firm, or banning the device, may than be used in instances in which the manufacturer, distributor, importer, or other responsible person has not corrected the problem.

8. Six comments argued that proposed § 895.21(b) does not provide for the proper utilization of classification panels before initiating a proposal to

ban a device. One comment suggested that oral communications with panel members be recorded in written memorandums. Another comment argued that telephone communication with individual panel members is inadequate and does not constitute consultation with the panel as required by the statute. At the very least, the comment continued, the Commissioner should, in lieu of consulting with the panel through correspondence, be required to make a conference call, in which all members of a panel could participate. Another comment argued that consultation with the panels should take place only in the context of full-scale panel meetings, except for emergencies, in which case it would be appropriate for the Commissioner to elicit written comments from individual panel members. Two comments urged that the Commissioner supply the panel with all information, both favorable and unfavorable, and that whatever information the Commissioner uses as the basis for the decision be made available to the panel. In addition, the comments suggested that all nonconfidential information supplied to the panel be available for inspection by the company or firm to which the information relates.

The agency is aware that section 516 of the act calls for consultation with the appropriate panel without specifying the method. The Report by the Committee on Interstate and Foreign Commerce (p. 19) states that the consultation is not to delay the banning process, and therefore no time period for panel review or a requirement that a panel approve a proposed action was established. Consequently, depending on the urgency or timeliness of the proposed banning, the Commissioner should have the flexibility to consult with the panel through a meeting, written correspondence, appropriate telephone conversations, or other means of communications, whichever may be the most practical and appropriate for a given situation. In most cases, before proposing to ban a device, attempts will be made to consult with the greatest number of available panel members. The agency does not believe, however, that Congress intended the term "consultation" to be limiting. The agency agrees that all telephone conversations and other forms of oral communication with the panel or its members should be recorded and has modified § 895.21(b) in the final rule accordingly. In conducting consultations, the agency will also seek to obtain, wherever reasonably possible, the benefit of the panel's collegial discussion and views rather than the views of individual members separately. In view of the legislative history, however, it would not be appropriate for the agency to delay the proceeding to prepare a ban in order to obtain collegial rather than separate views.

The Commissioner agrees in principle with the idea that information on which a decision is based should also be available to panel members. In some instances, however, when the data are cumbersome (for example, a large volume of computer printouts), only summaries need be provided. The actual data, of course, must be available to the Commissioner since a decision must a made on the basis of "all available data and information." Moreover, information on a firm's failure to relabel under § 895.25 would not be presented to the panel because such information normally would develop after the panel consultation. If the Commissioner were required to provide the panel with literally "all data and information" received, and the Commissioner did not provide all information such as computer printouts, information which may have been received after panel consultation, or any noncritical information, a procedural defect might result and prevent or delay the banning of the device. This is clearly not what Congress intended. Therefore, § 895.21(b) has not been changed in this regard.

The agency does not believe that any special mechanism is necessary to ensure the confidentiality of information because mechanisms to protect confidentiality are well established in the agency's public information regulation (21 CFR Part 20). The handling of requests for nonconfidential information is also covered in that regulation (see also paragraphs 12 and 22 of this preamble).

9. Five comments interpreted proposed § 895.21(c) to mean that the Commissioner has an option of choosing to ban a device or to require a labeling change. The comments stated that this is contrary to section 516(a)(2) of the act, which requires a labeling change if the change could correct the problem.

The agency intended that proposed § 895.21(c) be read in context, i.e., in reference to proposed § 895.25, which is cited in proposed § 895.21(c) and which discusses in detail the requirement for any necessary labeling changes under the law. However, to avoid confusion, language in proposed § 895.21(c) has been changed to provide that if the deception or risk can be corrected by labeling or changes in labeling, the Commissioner will require responsible persons to make such changes in accordance with § 895.25. If such action is not take in accordance with § 895.25, however, the Commissioner may initiate a proceeding to ban the device.

10. One comment suggested that § 895.21(c) be changed to require the Commissioner to consult with the panel before requiring a labeling change.

The agency disagrees that a change in the regulation is necessary. The question of labeling would be an issue that the panel or individual panel members could consider when the question of deception or risk of illness or injury is raised. In addition, the Commissioner may ask the panel whether the deception or risk of illness or injury presents an unreasonable, direct, or substantial danger to the health of individuals that might call for a special effective date as provided in proposed § 895.30. The agency agrees that, though not a prerequisite, consultation with the panel regarding the special effective date under § 895.30 may be a useful procedure to substantiate the need for such a measure. The agency cannot specify every instance, however, in which the panel would be consulted. The agency has attempted to make the proposed regulation brief while providing flexibility in the use of panel expertise on matters relating to a section 516 action.

11. One comment suggested that with regard to proposed § 895.21(d), the 30-day period within which interested persons may request an informal regulatory hearing after the date of publication of the proposed regulation may be too short, owing to communication delays in the postal system and internal mail systems of large companies. The comment suggested that 45 days be allowed for requesting an informal hearing.

The agency disagrees with the comment. Congress intended to allow the Commissioner to move quickly to protect the public from fraudulent or hazardous medical devices. To allow any more time than is necessary to forward such a request could compromise this intent.

12. One comment argued that the notice under proposed § 895.21(d) should not merely reference all the reasons for initiating a proposal to ban a device, but should include the substance of the findings, including the substance of the panel consultation.

The Commissioner agrees in part with the comment and has changed the word "reference" to "briefly summarize" in § 895.21(d). The information published will be adequately detailed to inform the public of the basis for the

Commissioner's decision. Also, to be more specific, the agency is amending § 895.21(d)(1) to include any determination made by the Commissioner under § 895.30 that the deception or risk of illness or injury presents an unreasonable, direct, and substantial danger to the health of individuals. A statement has also been added to provide that all nonconfidential information upon which the proposed finding is based, including the recommendations of the panel, will be available for public review (see also paragraphs 8 and 22 of this preamble). The agency disagrees, however, with the concept of publishing all the findings in the **Federal Register** because this would be cumbersome. Except for those that are confidential, such findings can be and will be made available for public review at the office of the Hearing Clerk, FDA.

13. Several comments suggested that the notice in proposed § 895.21(d) include an affirmative finding that labeling changes would be inadequate to ensure the safety and effectiveness of the device.

The agency agrees and has made the appropriate change in § 895.21(d).

14. Several comments suggested that the notice in proposed § 895.21(d) specify, with reasons, whether the proposed regulation would apply to devices already in commercial distribution and/or those already sold to the untimate user.

The agency agrees and has made the appropriate change in § 895.21(d). This provision supplements § 895.21(f), which requires that a final regulation specify whether devices already in commercial distribution or already sold to the ultimate user are banned.

Finally, the agency is amending proposed § 895.21(d) to provide that the Commissioner may include in the notice any other information believed pertinent to the matter of initiating a proceeding to ban a device.

15. Three comments on § 895.21(d) argued that all interested persons who request a hearing have a right to a hearing rather than merely an opportunity to request a hearing.

The agency agrees with the comment and has changed § 895.21(d) accordingly to conform to the requirement to afford all interested persons an opportunity for an informal hearing as set forth in section 516(a)(2) of the act.

16. One comment suggested deleting from proposed § 895.21(e) the option that would allow the Commissioner to list in a final regulation only a description of the device. The comment argued that listing only a description might reflect unfairly on devices that are similar to, or resemble, the banned device but are not hazardous, fraudulent, or deceptive.

The agency disagrees with the comment. In most cases, the Commissioner will list the name of the specific device along with its description. However, in certain situations, the Commissioner may wish to ban a class of devices that may be known under a number of brand names or for which the brand names are unknown, or have been recently changed. Under such circumstances, providing a description of these devices may be the only practicable means to ensure that the banning reaches the intended devices. For similar devices that may not be subject to the ban, the final regulation to ban a device might include specific exempting provisions to distinguish them from the affected device. To meet such situations, the Commissioner intends to keep the banning process as flexible as possible within the requirements of the act. Section 895.21(e)(1) has been clarified, however, to provide that a final regulation banning a device add "the name or the description of the device, or both" to the list of banned devices.

17. One comment suggested that a statement be added to proposed § 895.21(e)(1) to require the Commissioner to consult with the classification panel if additional information was obtained after the original consultation.

The agency disagrees that this should be a requirement. Under section 516(a) of the act, there is no mandate that the Commissioner, after initiating a proceeding to promulgate a regulation to ban a device, consult with the panel. Congress considered it important that the process of imposing a ban be an expeditious one. The banned device provisions are designed to allow the Commissioner to move quickly against potentially hazardous or deceptive devices. No device manufacturer should be concerned that the banning of a device will be treated lightly by the Commissioner. Neither basic principles of administrative law nor these regulations would permit such treatment. If the Commissioner believes that further consultation with a panel is appropriate, as suggested in paragraph 10 of this preamble, such consultation is not barred. The Commissioner will decide whether the additional information is of such a nature that it would warrant review and consultation with the panel. There is no justifiable reason, however, to require this procedural step only because additional information has become available.

18. One comment on proposed § 895.21(f) argued that the effective date of a banning provision should not be the date of publication of the final regulation but should be 30 days thereafter.

The agency disagrees with the comment. The protection of the public health requires the imposition of an effective date immediately upon publication in all situations in which there is unreasonable and substantial risk of illness or injury. In cases of substantial deception, the Commissioner may, as a matter of discretion, decide to delay the effective date, but no requirement to do so is included in the final rule.

19. One comment suggested that if a banned device is already on the market, a manufacturer should be given 2 weeks after the final order is effective to remove the device from channels of distribution.

The agency disagrees with the comment. A decision to grant a delay may be made if granting a delay is feasible and in accord with public health considerations. A decision to delay the effective date will include consideration of the nature of the device, the quantity of the device in commercial distribution, and the risk to the public health of allowing it to remain on the market beyond the effective date of the regulation.

Submission of Data and Information

20. One comment suggested that before requesting data and information under proposed § 895.22, the Commissioner should make a preliminary finding that the statutory basis for banning a device has been met.

There is no requirement in the statute for such a preliminary finding. Moreover, it may not be feasible to make such a finding before the submission of data and information because the reason why the Commissioner is requesting data and information is that field reports, letters from consumers, or other sources may not be sufficient to warrant "preliminary findings" but may be sufficient to warrant a request for data and information.

21. Many comments were concerned with the scope of proposed § 895.22, which allows the Commissioner to obtain all available data and information relevant to a proposal to ban a device. Some comments suggested that proposed § 895.22(a) exceeded the authority granted by section 516 of the act by contravening the requirements of

particularity set forth in section 519 of the act, dealing with records and reports. Five comments argued that determining whether a device is "otherwise misbranded or adulterated" without applying the criteria established in section 516 is not relevant to the decision to ban a device, and that a device may be adulterated or misbranded without presenting a substantial deception or an unreasonable and substantial risk of illness or injury. Consequently, according to the comments, the manufacturer of an "otherwise misbranded or adulterated" device should not be required to submit data and information unless all the requirements of proposed § 895.21 are met. The comments contended that data requests beyond what are contemplated in section 516 of the act should be made in accordance with the requirements of section 519. One comment suggested that all requests for information should be in writing specifying precisely the information needed and the purpose for which it is to be used (essentially a section 519 requirement). The comment urged that the agency demand information only to fill gaps in information after considering data already on hand. The comment further argued that proposed § 895.22 should require only the data and information necessary to enable the Commissioner to make the determinations required by section 516 of the act and that the additional necessary data or information be identified to the fullest extent practicable under the then-prevailing circumstances.

The agency is aware of the requirements of section 519 of the act, but has determined that section 516 supplements section 519 for the purpose of banning a device. Congress recognized the importance of swift action in banning devices and gave the Commissioner a great deal of flexibility in obtaining necessary information. Section 895.22(b) states that any such request will be in writing, that the purpose of the request will be given, and that the identification of the required information will be given whenever possible. The Commissioner will make every effort to identify with particularity the information sought and will attempt to narrow the scope of the inquiry in such a manner as to obtain all relevant available data and information (i.e., the information the Commissioner is required by statute to consider) while not unduly burdening the person who may have the information.

The agency agrees that proposed § 895.22 should be revised to indicate that the decision to ban a device will be based on section 516 criteria. However, the data and information that the Commissioner may require in making a decision may relate to adulteration and misbranding. In response to a comment suggesting that the agency not limit its consideration to data required to be submitted, the agency advises that any information a person may have relevant to the inquiry may be submitted and will be reviewed even if it is not requested. Proposed § 895.22(a) has been revised to clarify both of these points. In view of the critical public health issues that may be involved, the agency is not foreclosing in advance consideration of any type of information that may be elicited to determine whether to make a device a banned device.

22. Three comments expressed concern over the confidentiality of submitted information in that trade secrets, marketing information, and internal audits may be made available under the Freedom of Information Act and that, as a result, submitters will be less than candid in what they submit.

As noted in response to a previous comment, there is no basis for the argument that confidential information will not be properly protected and will be made public. The Federal Food, Drug, and Cosmetic Act (sec. 301(j) (21 U.S.C. 331j)), the Freedom of Information Act, and the FDA public information regulations all preclude the release of trade secret or confidential commercial information. Therefore, there is no need for separate provisions in these regulations (see also paragraphs 8 and 12 of this preamble).

23. Several comments suggested that if a manufacturer cannot submit the requested data in 30 days as required under proposed § 895.22(c), an additional 30 to 90 days should be provided because 30 days is often insufficient time to organize and prepare the required information and data.

The agency disagrees with the comment. In most instances, the information will be in existence and readily available. The 30-day period is not a period to conduct initial or additional studies or analyses to support safety and effectiveness claims. Banning is designed to be an expeditious process, especially in instances involving risk of illness or injury, or unreasonable, direct, and substantial danger to health.

24. Four comments argued that failure to submit information, submission of insufficient information, or failure to submit within a prescribed time period under proposed § 895.22(e) should not alone allow the Commissioner to initiate a proceeding to ban a device. Another comment on proposed § 895.22(e) argued that failure to submit required data within a prescribed period of time should not be used as an exclusive reason for banning a product. The comment pointed out that some data may not be available at all, some may be available in a form not easily obtainable or transferable, and some may be available only from a foreign country in the case of importers, and that other mitigating circumstances (vacations, factory shutdowns, strikes, litigation, and acts of God) may prevent a timely submission of the data. The comment further argued that the Commissioner should independently determine whether a device presents a deception or risk and rely on failure to receive requested data only as part of the basis for a ban. The comment contended that proposed § 895.22(e) shifts the burden of proof from the Commissioner to the manufacturer, and that FDA should be required to give the manufacturer or other submitters of information notice of the agency's intended next steps. According to the comment, there may be situations in which the insufficiencies could be corrected; for example, a manufacturer could have materials on file that would be relevant in overcoming FDA's determination of insufficiency but were not submitted to the agency in response to a request because the manufacturer did not understand their importance at the time the information was submitted. In addition, two comments suggested that the affected persons should be so notified in writing if their submission is insufficient, specifying what is required and giving them time to comply.

The agency agrees that proposed § 895.22(e) needs clarification. Insufficiency of submitted information or the failure to submit will not be the exclusive basis for a decision to initiate a proceeding to ban a device. The agency is obligated to sustain the burden of proof and to provide substantial evidence to sustain that burden. The agency will consider insufficient data or failure to submit data in making any decision. The agency does not agree that additional time should be permitted to submit supplemental data if the first submission is inadequate. Affected persons may submit "all available data and information" regarding safety and effectiveness, labeling, etc., of the device. If the data submitted are not sufficient and the Commissioner has information that the device meets the statutory criteria for banning, a banning proceeding will be initiated. Upon

publication of a notice to ban, all interested persons are afforded further opportunity to submit written comments and to request a hearing to present evidence for consideration by the FDA before issuing a final order banning the device.

Labeling

25. Two comments noted that proposed § 895.25(a) refers to "unreasonable or substantial" risk, while the statute requires the finding of "unreasonable and substantial" risk.

The Commissioner agrees and has revised the wording of the phrase to read "unreasonable and substantial."

26. One comment on proposed § 895.25(a) pointed out that this section refers to the elimination or correction of "the unreasonable, direct, and substantial danger to the health of individuals" by labeling or labeling changes as part of the basis on which the agency may make a banning regulation effective on publication. However, the comment noted, there is nothing in the statute to require a labeling change to eliminate the type of danger couched in the terms of the quoted phrase. The comment asserted that the quoted phrase should be deleted from § 895.25.

The agency disagrees with the comment. Section 516(a) of the act allows a device to be relabeled to correct any deception or risk of illness or injury associated with its use. The unreasonable, direct, and substantial danger to the health of individuals referred to in section 516(b) of the act is caused by the deception or risk of illness or injury associated with the use of the device referred to in section 516(a). Although the provision to allow the relabeling of a device that presents a deception or risk of illness or injury is not repeated in section 516(b), the relabeling provision still applies. Section 516(b) is a special case under section 516(a), requiring expedited proceeding due to the additional hazard to health. It was not the intent of Congress to ban a device if such a condition could be corrected or eliminated by change in labeling. In this respect, § 895.25(a) remains unchanged.

27. Several comments objected to the corrective labeling requirements in proposed § 895.25(b), on the ground that there is no statutory authority or legislative history to support such requirements. The comments maintained that once the relableing is accomplished, the deception or risk is removed and any further necessary notification could be accomplished under section 518 of the act. In addition, the recall procedures set forth in § 7.40 (21 CFR 7.40) could be used for devices on the market that still has uncorrected labeling. Another comment argued that a person required to declare the previous labeling to be deceptive may be subject to private actions for damages and product liability; from a declaration that prior labeling was improper, an intent to deceive could be inferred, and under the law intent is not a prerequisite to initiating a relabeling procedure. Another comment indicated that the corrective labeling section should be deleted, and, if it is not, that the manufacturer should be allowed to include in the labeling a statement reserving the legal right to contest any findings relating to deception or risk of illness or injury.

The agency believes that corrective labeling is authorized by the statute and that the legislative history does not, as claimed, prohibit a corrective labeling procedure. Section 516 of the act directs the Commissioner to specify the labeling or labeling change to correct the deception or eliminate or reduce the risk of illness or injury. Accordingly, the labeling specified may be corrective or remedial in nature when necessary to accomplish the statutory purpose—correction of substantial deception or elimination or reduction of unreasonable and substantial risk. For example, when a device has long been on the market, users may no longer pay close attention to the labeling and fail to notice additions, deletions, or other changes in labeling. In instances involving risk of illness or injury or danger to health, a separate statement, warning, or notice in a specified format indentifying the risk may be necessary to fully alert all users. Congress did not intend to preclude a requirement for corrective statements when they are found to be necessary to avoid a ban. The extent to which the corrective labeling is used will depend on the nature and extent of the deception or risk caused by the previous labeling.

The notification process provided in section 518 of the act may be used by FDA to eliminate unreasonable risk of substantial harm only when "no more practicable means is available" under the act. In many instances, corrective labeling established under this regulation may be the more practicable means to protect the public and, therefore, section 518 would not apply. Also, section 518 does not apply in situations involving deception where there is no risk of harm. The corrective labeling procedures set forth in the final rule would be the appropriate regulatory action in such circumstances. In addition to the corrective labeling provided in this regulation, FDA may, in appropriate circumstances, use the procedures provided in section 518 or the recall procedures set forth in § 7.40, or both. Because a recall under § 7.40 is not mandatory, however, the corrective labeling section of the final rule will be used when conditions warrant such action.

The agency believes that intent to deceive is not a prerequisite to initiating the banning process or to requiring corrective labeling. The impression the corrective action leaves on the public cannot be predetermined, nor can the possibility of private lawsuits be eliminated.

The agency does not believe that labeling that includes a statement reserving legal rights to contest the findings is proper because it may confuse the message of the corrective labeling and thereby defeat its purpose. Individuals may contest the required labeling at any hearing provided by § 895.21(d) or § 895.30(c), or may refuse to relabel. If the device is then banned under section 516 of the act, the action could be appealed, because banning under section 516 is subject to judicial review under section 517 of the act (21 U.S.C. 360g).

The agency believes that the description of the required statement in proposed § 895.25(b) may be too specific and therefore may not be flexible enough. In addition, proposed § 895.25(b) does not state that such a statement would be required only for a specified period of time or list the basis upon which the period of time would be determined. Therefore, § 895.25(b) has been revised to provide that the Commissioner may require in the labeling for a device, and, if the device is a restricted device, in advertising, a statement, notice, or warning, prescribed in a manner and form identifying the deception, risks, or danger to health associated with the device as previously labeled. The warning may be required for a specified period of time, depending on the degree of deception or risk. The frequency of sale of the device, the length of time the device has been on the market, the intended uses of the device, the method of its use, and other factors that the Commissioner considers pertinent will be considered in determining the type and duration of labeling required. For clarification, FDA has replaced the phrase "risk or danger" in proposed § 895.25(b) with the phrase "risk of illness or injury or danger to health."

28. Several comments stated that with respect to proposed § 895.25(c), the

Commissioner is not authorized under section 516 of the act to prohibit devices from being introduced into interstate commerce until required labeling, change in labeling, or change in advertising has been made. The comments claimed such a prohibition would amount to banning the device without observing the procedural requirements for banning set forth in other sections of the proposed regulation and in the act itself.

The agency agrees that the Commissioner is not authorized by the statute to prohibit introduction of devices into interstate commerce until a labeling or advertising change has been made. However, the Commissioner may request that no additional devices be introduced into commerce until such changes have been made. If devices are introduced into commerce before such voluntary action is taken, the Commissioner may take action under other sections of the act, i.e., seizure for adulteration or misbranding and administrative detention. Section 895.25(c) has been changed accordingly.

29. Several comments relating to proposed § 895.25(d) suggested that failure to accomplish required labeling changes should not be used in itself as a basis for initiating a proceeding to ban a device or for activating the special effective date provision of proposed § 895.30. The comments argued that the word "failure" should be changed to "refusal." One comment suggested that the proposal be changed to provide that before requesting a change in labeling the Commissioner must make a separate finding of substantial deception or unreasonable and substantial risk of illness or injury as required under section 516 of the act.

The agency advises that such a separate finding will be made before requesting any change in labeling. Section 895.25(a) is very specific in this regard. Section 895.25(b) provides additional information regarding what may be required in the referenced labeling change, and § 895.25(c) provides information regarding the time period within which the change in labeling must be accomplished. Proposed § 895.25(d), which is questioned by the comments, then states that the failure to accomplish the required change in labeling in accordance with "this section" (meaning § 895.25 (a), (b), and (c)) may serve as a basis for initiating a proceeding to make a device a banned device in accordance with § 895.21(d) or to establish a special effective date in accordance with § 895.30.

Both section 516 of the act and the Report by the Committee on Interstate and Foreign Commerce (p. 19) specifically state that if the required change in labeling is not accomplished within the specified time period, the Commissioner may initiate a proceeding to ban the device whether the failure to change labeling occurs because of inaction or refusal on the part of the responsible party. Consequently, no clarification is needed in proposed § 895.25(d).

Special Effective Date

30. One comment argued that either the banning process should not be expedited as provided in proposed § 895.30, or the manufacturer, distributor, or importer should be warned at least 10 days before publication that the special effective date will be imposed.

The agency disagrees with both suggestions. Section 516(b) of the act authorizes the special effective date, and, in section 516(b)(2), provides only that before the date of the publication of the regulation, the Commissioner notify the device manufacturer that the regulation is to be made effective upon publication. Notice and an opportunity for hearing under section 516 of the act provide adequate procedural safeguards to the manufacturer.

31. One comment suggested that the manufacturer must be notified before the special effective date of a banning provision. The comment pointed out that as proposed § 895.30(a) is phrased, the Commissioner has the option of notifying any one of four concerned individuals.

The agency agrees with the comment. Section 516(b) of the act requires notification of the manufacturer. However, in instances where the device is not manufactured domestically, the Commissioner would notify the importer of record and attempt to notify the foreign manufacturer when the name and address of the foreign manufacturer are readily available. The Commissioner may also notify the distributor or other responsible persons. Accordingly, § 895.30(a) has been clarified to reflect the statutory mandate and the concerns of the comment.

32. One comment argued that the special effective date should be imposed only if the danger is imminent, not merely if there is a possibility of long-term risk.

The Commissioner disagrees with this comment. The Report by the Committee on Interstate and Foreign Commerce (p. 20) states, under the discussion of the special effective date, that such danger need not be imminent and may involve a serious long-term risk, and that what is relevant is the degree of danger, not whether injury is likely to occur immediately. Therefore, no substantive changed in proposed § 895.30(c) has been made.

33. One comment suggested that in proposed § 895.30(c), the notice of hearing be referenced in proposed § 895.30(e) and that proposed § 895.30(a) be amended to allow for an opportunity for hearing, not merely the opportunity to request a hearing.

The agency agrees with this comment and has made the appropriate changes in § 895.30 (c) and (e). The notice referenced in proposed § 895.30(e) is in paragraph (c) and not in paragraph (b) as proposed, and § 895.30(e) has been changed accordingly.

34. One comment suggested that the language in proposed § 895.30(d) would more adequately reflect the requirement in section 516(b) of the act if the Commissioner were required to affirm, modify, or revoke the proposed regulation as expeditiously as possible after the hearing, if any, and after considering all comments and data.

The agency agrees with this comment and has revised § 895.30(d) accordingly.

35. One comment stated that under proposed § 895.30(d), publication merely of a device's description would likely prejudice similar devices not subject to the ban.

The agency disagrees for the same reasons given in paragraph 16 of this preamble, regarding a similar comment on proposed § 895.21(e). Accordingly, the agency has made the same clarifications in proposed § 895.30(d) as in proposed § 895.21(e)(1) concerning the published listing of a banned device or its description.

36. Two comments stated that proposed § 895.30(d) and (e) should provide for consultation with the appropriate classification panel before making a final decision on the special effective date. One comment argued that the Commissioner should not be allowed to base the decision, either on or after publication of the proposal, on new information or reconsideration of existing information without consulting the panel and, in addition, without the other safeguards set forth in the proposed procedures.

The agency disagrees with the comment. There is no statutory requirement that panels be consulted under the circumstances addressed in either proposed § 895.30(d) or (e). However, the Commissioner may consult with a panel if it is desirable to do so (see paragraph 8 of this preamble).

Action based in new information, however, should follow a positive finding regarding the unreasonable or direct or substantial danger involved with the device.

37. One comment suggested that merely referencing section 518 of the act (21 U.S.C. 360h) in proposed § 895.30(f) does not provided the agency with sufficient authority to invoke these provisions when it considers banning a device. The comment argued that section 518 requires separate hearings and different findings and should therefore be deleted from proposed § 895.30(f).

The agency disagrees with the comment. There is no implication in proposed § 895.30(f) that, if section 518 of the act were employed as a supplement to section 516, all the safeguards and requirements of section 518 would not be rigorously adhered to. As a matter of practicality, if a device has been banned, the section 518 criteria would likely also be met regarding such elements as design and manuafacture relative to the state of the art, and regarding the question of risk caused by user error rather than by the manufacturer, importer, distributor, or retailer of the device. Therefore, the agency has not deleted the reference to section 518 or further elaborated upon section 518 in the final regulations.

38. One comment argued that the only types of device that should be subject to section 516 of the act are those manufactured after the effective date of publication.

The agency disagrees because, to protect the public health, it is imperative that deceptive devices or devices presenting a risk of illness or injury that have already entered commerce be subject to regulatory action. The agency is aware of situations where data and information about device problems that would warrant taking the device off the market have been developed years after a device is first marketed.

39. One comment objected to allowing these proposed regulations to be used as interim guidelines before finalization.

During the pendency of this rulemaking, FDA did not initiate any proceedings to ban a device. Thus, upon the effective date of this regulation, the issue raised in the comment will be moot. Two additional points, however, must be made. Because section 516 of the act is self-executing, FDA could have initiated a proceeding to ban a device even if the procedures set forth in this regulation were not in place. Therefore, it is immaterial whether the procedures are guidelines or regulations. More importantly, however, the FDA regulations relating to guidelines (21 CFR 10.90) authorize the procedure followed here. The agency advises that the use and effect of FDA guidelines, and their relationship to FDA advisory opinions (see 21 CFR 10.85), were explained in detail in the preamble to the proposed FDA administrative practices and procedures regulations, published in the **Federal Register** of September 3, 1975 (40 FR 40682).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502(r), 516, 518, 519, 701(a), 52 Stat. 1055, 90 Stat. 560, 562–65, 577–578 (21 U.S.C. 352(r), 360f, 360h, 360i, 371)) and under authority delegated to the Commissioner (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended by adding new Part 895 to read as follows:

PART 895—BANNED DEVICES

Subpart A—General Provisions

Sec.

Subpart B—Listing of Banned Devices [Reserved]

Authority.—Secs. 502(r), 516, 518, 519, 701(a), 52 Stat. 1055, 90 Stat. 560, 562–565, 577–578 (21 U.S.C. 352(r), 360f, 360h, 360i, 371).

Subpart A—General Provisions

§ 895.1 Scope.

(a) This part describes the procedures by which the Commissioner may institute proceedings to make a device intended for human use that presents substantial deception or an unreasonable and substantial risk of illness or injury a banned device.

(b) This part applies to any "device", as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (act) that is intended for human use.

(c) A device that is made a banned device in accordance with this part is adulterated under section 501(g) of the act. A restricted device that is banned may also be misbranded under section 502(q) of the act.

(d) Although this part does not cover devices intended for animal use, the manufacturer, distributor, importer, or any other person(s) responsible for the labeling of the device that is banned cannot avoid the ban by relabeling the device for veterinary use. A device that has been banned from human use but that also has a valid veterinary use may be marketed for use as a veterinary device only under the following conditions: The device shall comply with all requirements applicable to veterinary devices under the Federal Food, Drug, and Cosmetic Act and this chapter, and the label or the device shall bear the following statement: "For Veterinary Use Only. Caution: Federal law prohibits the distribution of this device for human use." A device so labeled, however, that is determined by the Food and Drug Administration to be intended for human use, will be considered to be a banned device. In determining whether such a device is intended for human use, the Food and Drug Administration will consider, among other things, the ultimate destination of the device.

§ 895.20 General.

The Commissioner may initiate a proceeding to make a device a banned device whenever the Commissioner finds, on the basis of all available data and information, and after consultation with the appropriate device panel, that the device presents substantial deception or an unreasonable and substantial risk of illness or injury that the Commissioner determines cannot be, or has not been, corrected or eliminated by labeling or by a change in labeling, or by a change in advertising if the device is a restricted device.

§ 895.21 Procedures for banning a device.

(a) Before initiating a proceeding to make a device a banned device, the Commissioner shall find that the continued marketing of the device presents a substantial deception or an unreasonable and substantial risk of illness or injury.

(1) In determining whether the deception or risk of illness or injury is substantial, the Commissioner will consider whether the deception or risk posed by continued marketing of the device, or continued marketing of the device as presently labeled, is important, material, or significant in relation to the benefit to the public health from its continued marketing.

(2) In determining whether a device is deceptive, the Commissioner will consider whether users of the device may be deceived or otherwise harmed by the device. The Commissioner is not required to determine that there was an intent on the part of the manufacturer, distributor, importer, or any other responsible person(s) to mislead or otherwise harm users of the device or that there exists any actual proof of deception of, or injury to, an individual.

(3) In determining whether a device presents deception or risk of illness or injury, the Commissioner will consider all available data and information, including data and information that the Commissioner may obtain under other provisions of the act, data and information that may be supplied by the manufacturer, distributor, or importer of the device under § 895.22, and data and information voluntarily submitted by any other interested persons.

(b) Before initiating a proceeding to make a device a banned device, the Commissioner will consult with the classification panel established under section 513 of the act that has expertise with respect to the type of device under consideration. The consultation with the panel may occur at a regular or specially scheduled panel meeting or may be accomplished by correspondence or telephone conversation with panel members. The Commissioner may request that the panel submit in writing any advice on the device under consideration. The Commissioner will record in written memorandums any oral communications with the panel or its members.

(c) If the Commissioner determines that any substantial deception or unreasonable and substantial risk of illness or injury or any unreasonable, direct, and substantial danger to the health of individuals presented by a device can be corrected or eliminated by labeling or change in labeling, or change in advertising if the device is a restricted device, the Commissioner will notify the responsible person of the required labeling or change in labeling or change in advertising in accordance with § 895.25. If such required relabeling or change in advertising is not accomplished in accordance with § 895.25, the Commissioner may initiate a proceeding to ban the device in accordance with § 895.21(d) and, when appropriate, may establish a special effective date in accordance with § 895.30.

(d) If the Commissioner decides to initiate a proceeding to make a device a banned device, a notice of proposed rulemaking will be published in the **Federal Register** to this effect. The notice will briefly summarize—

(1) The Commissioner's finding under paragraph (a) of this section that the device presents substantial deception or an unreasonable and substantial risk of illness or injury, and, when appropriate, the Commissioner's determination under § 875.30 that the deception or risk of illness or injury presents an unreasonable, direct, and substantial danger to the health of individuals;

(2) The reasons why the Commissioner initiated the proceeding;

(3) The evaluation of data and information obtained under other provisions of the act, submitted by the manufacturer, distributer, or importer of the device, or voluntarily submitted by any other interested persons under paragraph (a)(3) of this section, if any;

(4) The consultation with the classification panel under paragraph (b) of this section;

(5) The determination as to whether the deception or risk of illness or injury or the danger to the health of individuals could be corrected by labeling or change in labeling, or change in advertising if the device is a restricted device;

(6) The determination of whether the required labeling or change of labeling, or change in advertising if the device is a restricted device, if any, has been made in accordance with paragraph (c) of this section;

(7) The determination as to whether, and the reasons why, the banning should apply to devices already in commercial distribution or those already sold to the ultimate user, or both; and

(8) Any other data and information that the Commissioner believes are pertinent to the proceeding.

The notice will afford all interested persons an opportunity to submit written comments and request an informal hearing, as defined in section 201(y) of the act, before the Food and Drug Administration within 30 days after the date of publication of the proposed regulation. If a request for an informal hearing is granted, the hearing will be conducted as a regulatory hearing under the applicable provisions of Part 16 of this chapter. All nonconfidential information upon which the proposed finding is based, including the recommendations of the panel, will be available for public review in the office of the Hearing Clerk, Food and Drug Administration.

(e)(1) If, after reveiwing the administrative record of the regulatory hearing before the Food and Drug Administration, if any, the written comments received on the proposed regulation, and any additional available data and information, the Commissioner determines to ban a device, a final regulation to this effect will be published in the **Federal Register**. The final regulation will amend Subpart B by adding the name or description of the device, or both, to the list of banned devices.

(2) If the Commissioner determines not to ban the device, a notice of withdrawal and termination of rulemaking proceedings and reasons therefor will be published in the **Federal Register**.

(f) The effective date of a final regulation to make a device a banned device, promulgated under paragraph (e) of this section, will be the date of publication of the final regulation in the **Federal Register** unless the Commissioner, for reasons stated, determines that the effective date should be later than the date of the publication and specifies that date in the notice. Each such regulation will specify whether devices already in commercial distribution or sold to the ultimate user or both are banned.

(g) A regulation promulgated under paragraph (e) of this section is final agency action, subject to judicial review under section 517 of the act.

(h) Upon petition of any interested person submitted in accordance with § 10.30 of this chapter, or as a matter of discretion, the Commissioner may institute proceedings to amend or revoke a regulation that made a device a banned device if the Commissioner finds that the conditions that constituted the basis for the regulation banning the device are no longer applicable. When appropriate, the procedures in this section will be employed in such proceedings.

§ 895.22 Submission of data and information by the manufacturer, distributor, or importer.

(a) A manufacturer, distributor, or importer of a device may be required to submit to the Food and Drug Administration all relevant and available data and information to enable the Commissioner to determine whether the device presents substantial deception, unreasonable and substantial risk of illness or injury, or unreasonable, direct, and substantial danger to the health of individuals. The data and information required by the Commissioner may include scientific or test data, reports, records, or other information, including data and information on whether the device is safe and effective for its intended use or when used as directed, whether the device performs according to the claims made for the device, and information on adulteration or misbranding. Any relevant information that is voluntarily submitted will also be reviewed.

(b) A manufacturer, distributor, or importer of a device required to submit data and information as provided in paragraph (a) of this section will be notified in writing by the Food and Drug Administration that such data and information shall be submitted. The

written notification will advise the manufacturer, distributor, or importer of the device that the purpose for the request is to enable the Commissioner to determine whether any of the conditions listed in paragraph (a) of this section or § 895.30(a)(1) exists with respect to the device such that a proceeding should be initiated to make the device a banned device. When the required data and information can be identified by the Food and Drug Administration at the time of the notification, the agency will provide such identification to the manufacturer, distributor, or importer of the device.

(c) The required data and information shall be submitted to the Food and Drug Administration no more than 30 days after the date of receipt of the request, unless the Commissioner determines that the data and information shall be submitted by some other date and so informs the manufacturer, distributor, or importer, in which case the data and information shall be submitted on the date specified by the Commissioner.

(d) If the data or information submitted to the Food and Drug Administration is sufficient to persuade the Commmissioner that the deception or risk of illness or injury or the danger to the health of individuals presented by a device could be corrected or eliminated by labeling or change in labeling, or change in advertising if the device is a restricted device, the Commissioner will proceed in accordance with § 895.25.

(e) If the data or information submitted to the Food and Drug Administration is insufficient to show that the device does not present a substantial deception or an unreasonable and substantial risk of illness or injury, or an unreasonable, direct, and substantial danger to the health of individuals, or if the manufacturer, distributor, or importer fails to submit the required information, the Commissioner may rely upon this insufficiency or failure to submit the required information in considering whether to initiate a proceeding to make the device a banned device under § 895.21(d) and, when appropriate, to establish a special effective date in accordance with § 895.30. The Commissioner may also initiate other regulatory action as provided in the act or this chapter.

§ 895.25 Labeling.

(a) If the Commissioner determines that the substantial deception or unreasonable and substantial risk of illness or injury or the unreasonable, direct, and substantial danger to the health of individuals presented by a device can be corrected or eliminated by labeling or a change in labeling, or change in advertising if the device is a restricted device, the Commissioner will provide written notice to the manufacturer, distributor, importer, or any other person(s) responsible for the labeling or advertising of the device specifying (1) The deception or risk of illness or injury or the danger to the health of individuals, (2) The labeling or change in labeling, or change in advertising if the device is a restricted device, necessary to correct the deception or eliminate or reduce such risk or danger, and (3) The period of time within which the labeling, change in labeling, or change in advertising must be accomplished.

(b) In specifying the labeling or change in labeling or change in advertising to correct the deception or to eliminate or reduce the risk of illness or injury or the danger to the health of individuals, the Commissioner may require the manufacturer, distributor, importer, or any other person(s) responsible for the labeling or advertising of the device to include in labeling for the device, and in advertising if the device is a restricted device, a statement, notice, or warning. Such statement, notice, or warning shall be in the manner and form prescribed by the Commissioner and shall identify the deception or risk of illness or injury or the unreasonable, direct, and substantial danger to the health of individuals associated with the device as previously labeled. Such statement, notice, or warning shall be used in the labeling and advertising of the device for a time period specified by the Commissioner on the basis of the degree of deception, risk of illness or injury, or danger to health; the frequency of sale of the device; the length of time the device has been on the market; the intended uses of the device; the method of its use; and any other factors that the Commissioner considers pertinent.

(c) The Commissioner will allow a manufacturer, distributor, importer, or any other person(s) responsible for the labeling or advertising of the device a reasonable time, considering the deception or risk of illness or injury or the danger to the health of individuals presented by the device, within which to accomplish the required labeling, change in labeling, and, if the device is a restricted device, any change in advertising. The Commissioner may, however, request that no additional devices be introduced into commerce until the labeling or change in labeling, or change in advertising is accomplished by the manufacturer, distributor, importer, or other person(s) responsible for the labeling or advertising of the device.

(d) If such voluntary action is not taken, the Commissioner may take action under other sections of the act to prevent the introduction of the devices into commerce. The Commissioner may consider the failure of a manufacturer, distributor, importer, or any other person(s) responsible for the labeling or advertising of the device to accomplish the required labeling or change in labeling, or change in advertising in accordance with this section as a basis for initiating a proceeding to make a device a banned device in accordance with § 895.21(d) and when appropriate to establish a special effective date in accordance with § 895.30.

§ 895.30 Special effective date.

(a) The Commissioner may declare a proposed regulation under § 895.21(d) to be effective upon its publication in the **Federal Register** and until the effective date of any final action taken respecting the regulation if (1) The Commissioner determines, on the basis of all available data and information, that the deception or risk of illness or injury associated with use of the device that is subject to the regulation presents an unreasonable, direct, and substantial danger to the health of individuals, and (2) Before the date of the publication of such regulation, the Commissioner notifies the domestic manufacturer and importer, if any, of the device that the regulation is to be made so effective. If necessary, the Commissioner may also notify the distributor or any other responsible person(s). In addition, the Commissioner will attempt to notify any foreign manufacturer when the name and address of the foreign manufacturer are readily available.

(b) This procedure may be used when the Commissioner determines that the potential or actual injury involved is a serious one that the Commissioner believes will endanger the health of individuals who have been, or will be, exposed to the device. In assessing the degree of danger, the Commissioner need not find that the danger is immediate, and it shall be sufficient for the Commissioner to determine that the danger may involve a serious long-term risk.

(c) If the Commissioner makes a proposed regulation effective in accordance with this section, the Commissioner will, as expeditiously as possible, give interested persons prompt notice of this action in the **Federal Register** and will provide an opportunity

for an informal hearing in accordance with Part 16 of this chapter.

(d) After the hearing, if any, and after considering any written comments submitted on the proposal and any additional available information and data, the Commissioner will as expeditiously as possible either affirm, modify, or revoke the proposed regulation making the device a banned device. If the Commissioner decides to affirm or modify the proposed regulation to make a device a banned device, the Commissioner will amend Subpart B by adding the name or description of the device, or both, to the list of banned devices. If the Commissioner decides to revoke a proposed regulation making a device a banned device, a notice of termination of rulemaking proceedings and reasons therefor will be published in the **Federal Register.**

(e) The Commissioner may declare the special effective date provided by this section to be in effect after the publication of a proposed regulation under § 895.21(d), if, based on new information, or upon reconsideration of previously available information, the Commissioner makes the determination and provides the appropriate notices and an opportunity for a hearing in accordance with paragraphs (a) and (c) of this section.

(f) Those devices that have been named banned devices under § 895.30 and that have already been sold to the public may be subject to relabeling by the manufacturer, distributor, importer, or any other person(s) responsible for the labeling of the device or may be subject to the provisions of section 518(a) or (b) of the act.

Subpart B—Listing of Banned Devices [Reserved]

Effective date. This regulation shall be effective July 17, 1979.

(Secs. 502(r), 516, 518, 519, 701(a), 52 Stat. 1055, 90 Stat. 560, 562–565, 577–578 (21 U.S.C. 352(r), 360f, 360h, 360i, 371).)

Dated: May 7, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-15076 Filed 5-17-79; 8:45 am]

BILLING CODE 4110-03-M

federal register

Friday
May 18, 1979

Part III

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Government Contract Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original general wage determination decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Connecticut	
CT79–2010; CT79–2011	Apr. 6, 1979.
Indiana	
IN78–2162	Dec. 8, 1978.
IN78–2163	Dec. 1, 1978.
Louisiana	
LA79–4001; LA79–4002	Jan. 5, 1979.
Nebraska	
NE79–4028	Feb. 16, 1979.
New Jersey	
NJ78–3009	Apr. 21, 1978.
Pennsylvania	
PA78–3054	Aug. 11, 1978.
PA79–3009	May 4, 1979.
Texas	
TX79–4003; TX79–4004; TX79–4011	Jan. 5, 1979.
TX79–4050	Mar. 16, 1979.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Colorado	
CO78–5132(CO79–5116)	Nov. 17, 1978.
Iowa	
IA78–4027(IA79–4064)	Apr. 7, 1978.
Mississippi	
MS75–1077(MS79–1084)	Aug. 22, 1975.
New York	
NY78–3007 (NY79–3011)	Mar. 10, 1978.
North Carolina	
NC76–1073(NC79–1085)	July 9, 1976.
Pennsylvania	
PA78–3090(PA79–3012)	Oct. 27, 1978

Cancellation of General Wage Determination Decisions

General Wage Determination Decision No. IN79–2002, as it applies to Carroll County, Indiana only, is cancelled. Agencies with building construction projects pending in Carroll County should utilize the project determination procedure by submitting form SF–308. See Regulations Part 1 (29 CFR), Section 1.5. Contracts for which bids have been opened shall not be affected by this notice, and consistent

with 29 CFR 1.7 (b) (2), the incorporation of Decision No. IN79–2002 in specifications the opening of bids for which is within ten (10) days of this notice need not be affected.

Signed at Washington, D.C., this 11th day of May 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO. CT79-2011 - MOD #3
(44 FR 20921 April 6, 1979)
Hartford, Middlesex, New Haven, New London and Tolland Counties, Connecticut

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELEVATOR CONSTRUCTORS	$10.79	.895	.56	a&b	.025
ELEVATOR CONSTRUCTORS HELPERS	7.55	.895	.56	a&b	.025
ELEVATOR CONSTRUCTORS HELPERS (PROB.)	50%JR				
PAINTERS:					
New London Co.: Norwich Brush	10.30	.60	.70		.01
LABORERS (Building Construction)					
Blasters	8.90	.60	.80		.10

DECISION NO. CT79-2010 - MOD #3
(44 FR 20913 - April 6, 1979)
Fairfield, Litchfield and Windham Counties, Connecticut

CHANGE:					
IRONWORKERS:					
Ornamental; Reinforcing; Structural and Precast Concrete Erection	$12.25	.90	1.45	1	.08
PLUMBERS:					
Windham Co. Windham	10.96	1.10	1.39		.01
LABORERS: (Building Construction)					
Blasters	8.90	.60	.80		.10
POWER EQUIPMENT OPERATORS:					
Class 2	11.83	1.05	.95	a	.15

MODIFICATIONS P. 2

DECISION NO. IN78-2162 - MOD #3
(43 FR 57789 - December 8, 1978)

	Lake Counties	Remaining Counties				
Lake, LaPorte, Porter & St. Joseph Counties Indiana	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:						
LABORERS:						
HEAVY & HIGHWAY CONSTRUCTION						
GROUP 1	$ 9.00	$ 8.30	.70	.70		.09
GROUP 2	9.15	8.45	.70	.70		.09
GROUP 3	9.20	8.50	.70	.70		.09
GROUP 4	9.30	8.60	.70	.70		.09
GROUP 5	9.85	9.15	.70	.70		.09

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADD:					
TRUCK DRIVERS					
Heavy & Highway Construction St. Joseph Co.					
GROUP A	$ 9.805	31.00a	37.00a		
GROUP B	9.755	31.00a	37.00a		
GROUP C	9.705	31.00a	37.00a		
GROUP D	9.655	31.00a	37.00a		
GROUP E	9.605	31.00a	37.00a		
GROUP F	9.555	31.00a	37.00a		
GROUP G	9.505	31.00a	37.00a		
GROUP H	9.455	31.00a	37.00a		
GROUP I	9.405	31.00a	37.00a		
GROUP J	9.355	31.00a	37.00a		
GROUP K	9.305	31.00a	37.00a		
GROUP L	9.205	31.00a	37.00a		

DECISION NO. IN78-2162 (Cont'd)

CLASSIFICATIONS

GROUP A - Acey Wagons over 3 Buckets
GROUP B - Acey Wagons to and including 3 Buckets
GROUP C - Tandem-tandem Semi-Trucks; Truck Mechanics and Welders; Heavy Equipment Type Water Wagon over 5,000 Gallons; Tri-Axle Trucks pulling Tilt-Top Trailers; Low Boys, Tandem-tandem Axle
GROUP D - Tri-Axle Trucks; Tandem Axle Trucks; Equipment not self loaded or pusher loaded such as Koehring or similar Dumpster, Track Truck, Euclid Bottom Dump and Hug Bottom Dump, Tournatrailers, Tournarockers, Athey Wagons, or similar equipment over 12 cu. yd.; Tandem Axle Trucks pulling Tilt-Top Trailers; LowBoys; Tandem Axle Tri-Axle Batch
GROUP E - Tandem "Dog-Legs" Trucks; Semi-Water Trucks; Sprinkler Trucks; Heavy Equipment Type Water Wagons 5,000 Gallons & Under
GROUP F - Truck Mounted Pavement Breakers; Tandem Trucks over 15 Ton Payload; Single Axle Semi-Trucks; Farm Tractors hauling material; Equipment not self loaded or Pusher loaded such as Koehring or similar Dumpster; Track Truck, Euclid Bottom Dump and Hug Bottom Dump, Tournatrailers, Tournarockers, Athey Wagons or similar equipment 12 cubic yds. & under; Mixer Trucks, All Types; Single Axle Trucks pulling Tilt-Top Trailer; Lowboys, Single Axle
GROUP G - Tandem Axle Fuel Trucks; Tandem Axle Water Trucks; Bituminous Distributor (one man)
GROUP H - Single Axle Dog-Legs; Tandem Trucks or Dog Legs; Winch Trucks or A Frames used for Transportation; Batch Trucks Wet or Dry over 3 (34E) Batches-Grease and Maintenance Truck Servicing Tandem Axle Trucks
GROUP I - Single Axle Fuel Trucks; Single Axle Water Trucks; Bituminous Distributors, (two man)
GROUP J - Single Axle Straight Trucks; Wet or Dry 3 (34E) Batches or less; Grease & Maintenance Trucks servicing Single Axle Trucks
GROUP K - Helpers; Greasers; Tire men; Batch Board Tenders
GROUP L - Pick-Up trucks

FOOTNOTE: a-PER WEEK PER EMPLOYEE

DECISION NO. IN78-2163 - MOD #3
(43 FR 56382 - December 1, 1978)
Statewide, except Lake, LaPorte, Porter and St. Joseph Counties, Indiana

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CEMENT MASONS:					
Daviess, Gibson, Knox, Martin & Pike Cos.	$11.05	.80	.80		
PAINTERS:					
Adams, Allen, DeKalb, Grant, Huntington, LaGrange, Noble, Steuben, Wabash, Whitley & Wells (Northern ½ of Co. to & incl. Bluffton):					
Brush; Paperhangers; Rollers; & Tapers	9.90	.60	.85		.12
Sandblasters; Spray	10.90	.60	.85		.12
Blackford, Cass, Delaware, Fulton, Howard, Jay, Madison, Miami, Tipton, & Wells (to the south city limits of Bluffton) Cos.:					
Brush	9.95		.70		
Spray	10.95		.70		
Dearborn, Ohio, Ripley & Switzerland Cos.:					
Brush; Roller; Wallwashing; Drywall Taping & Finish; Paperhanging & Vinyl; Seamless Floors & Finishing Floors; Sanding	11.00				
Sandblasting & Steam Clean	11.75				
Spray; Epoxy	11.50				
Tanks, Elevators, Bridges, Steeples over 40 ft.	12.10				
Fayette, Franklin, Henry, Randolph, Rush, Union & Wayne Cos.:					
Brush	9.35				
Sandblasting; Spray	10.35				
Structural Steel; Scaffold over 30 ft.	9.60				

DECISION NO. IN78-2163 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: HEAVY & HIGHWAY CONSTRUCTION					
GROUP 1	8.30	.70	.70		.09
GROUP 2	8.45	.70	.70		.09
GROUP 3	8.50	.70	.70		.09
GROUP 4	8.60	.70	.70		.09
GROUP 5	9.15	.70	.70		.09
POWER EQUIPMENT OPERATORS:					
TUNNEL AND SEWER CONSTRUCTION:					
Adams, Allen, Blackford, DeKalb, Huntington, Jay, Steuben, Wells, & Whitley Counties					
GROUP I	11.57	.75	.65		.10
GROUP II	10.23	.75	.65		.10
GROUP III	9.65	.75	.65		.10
GROUP IV	8.59	.75	.65		.10
OMIT:					
POWER EQUIPMENT OPERATORS (Heavy & Highway Construction)					
ADD:					
CEMENT MASONS: Hamilton (Northern ½ of Co.), Hancock (Eastern ½ of Co.), Henry, Madison & Tipton Cos.	$10.61	.65	.50		
POWER EQUIPMENT OPERATORS (Heavy & Highway Construction)					
TRUCK DRIVERS Schedule					

DECISION NO. IN78-2163 (Cont'd)

POWER EQUIPMENT OPERATORS (Heavy & Highway Construction)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Adams, Allen, Benton, Blackford, Carroll, Cass, Clinton, Dekalb, Delaware, Fayette, Grant, Hamilton, Hancock, Henry, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Randolph, Rush, Shelby, Steuben, Tippecanoe, Tipton, Union, Wabash, Wayne, Wells, White, & Whitley Counties:					
GROUP I	$11.57	.75	.65		.10
GROUP II	10.23	.75	.65		.10
GROUP III	9.65	.75	.65		.10
GROUP IV	8.59	.75	.65		.10
Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Marshall, Newton, Noble, Pulaski, & Starke, Cos.:					
GROUP I	10.79	1.10	1.10		.08
GROUP II	9.45	1.10	1.10		.08
GROUP III	8.87	1.10	1.10		.08
GROUP IV	7.81	1.10	1.10		.08
Bartholomew, Brown, Clark, Crawford, Dearborn, Decatur, Dubois, Floyd, Franklin, Gibson, Harrison, Jackson, Jefferson, Jennings, Lawrence, Martin, Ohio, Orange, Perry, Pike, Posey, Ripley, Scott, Spencer, Switzerland, Vanderburgh, Warrick, & Washington Counties:					
GROUP I	11.69	.50	.80		.08
GROUP II	10.35	.50	.80		.08
GROUP III	9.77	.50	.80		.08
GROUP IV	8.71	.50	.80		.08
Boone, Clay, Daviess, Fountain, Greene, Hendricks, Knox, Monroe, Montgomery, Morgan, Owen, Parke, Putnam, Sullivan, Vermillion, Vigo, & Warren Counties:					
GROUP I	11.49	.75	.75		.08
GROUP II	10.15	.75	.75		.08
GROUP III	9.57	.75	.75		.08
GROUP IV	8.51	.75	.75		.08

DECISION NO. IN78-2163 (Cont'd)

TRUCK DRIVERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	$ 9.805	31.00a	37.00a		
GROUP B	9.755	31.00a	37.00a		
GROUP C	9.705	31.00a	37.00a		
GROUP D	9.655	31.00a	37.00a		
GROUP E	9.605	31.00a	37.00a		
GROUP F	9.555	31.00a	37.00a		
GROUP G	9.505	31.00a	37.00a		
GROUP H	9.455	31.00a	37.00a		
GROUP I	9.405	31.00a	37.00a		
GROUP J	9.355	31.00a	37.00a		
GROUP K	9.305	31.00a	37.00a		
GROUP L	9.205	31.00a	37.00a		

CLASSIFICATIONS

GROUP A - Acey Wagons over 3 Buckets

GROUP B - Acey Wagons to and including 3 Buckets

GROUP C - Tandem-tandem Semi-Trucks; Truck Mechanics and Welders; Heavy Equipment Type Water Wagon over 5,000 Gallons; Tri-Axle Trucks pulling Tilt-Top Trailers; Low Boys, Tandem-tandem Axle

GROUP D - Tri-Axle Trucks; Tandem Axle Trucks; Equipment not self loaded or pusher loaded such as Koehring or similar Dumpster, Track Truck, Euclid Bottom Dump and Hug Bottom Dump, Tournatrailers, Tournarockers, Athey Wagons, or similar equipment over 12 cu. yd.; Tandem Axle Trucks pulling Tilt-Top Trailers; LowBoys; Tandem Axle Tri-Axle Batch

GROUP E - Tandem "Dog-Legs" Trucks; Semi-Water Trucks; Sprinkler Trucks; Heavy Equipment Type Water Wagons 5,000 Gallons & Under

GROUP F - Truck Mounted Pavement Breakers; Tandem Trucks over 15 Ton Payload; Single Axle Semi-Trucks; Farm Tractors hauling material; Equipment not self loaded or Pusher loaded such as Koehring or similar Dumpster, Track Truck, Euclid Bottom Dump and Hug Bottom Dump, Tourna-Trailers, Tournarockers, Athey Wagons or similar equipment 12 cubic yds. & under; Mixer Trucks, All Types; Single Axle Trucks pulling Tilt-Top Trailer; Lowboys, Single Axle

GROUP G - Tandem Axle Fuel Trucks; Tandem Axle Water Trucks; Bituminous Distributor (one man)

GROUP H - Single Axle Dog-Legs; Tandem Trucks or Dog Legs; Winch Trucks or A Frames used for Transportation; Batch Trucks Wet or Dry over 3 (34E) Batches-Grease and Maintenance Truck Servicing Tandem Axle Trucks

GROUP I - Single Axle Fuel Trucks; Single Axle Water Trucks; Bituminous Distributors, (two man)

GROUP J - Single Axle Straight Trucks; Wet or Dry 3 (34E) Batches or less; Grease & Maintenance Trucks servicing Single Axle Trucks

GROUP K - Helpers; Greasers: Tire men; Batch Board Tenders

GROUP L - Pick-Up trucks

FOOTNOTE: a-PER WEEK PER EMPLOYEE

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #LA79-4001 - Mod. #6 (44 FR 1634 - January 5, 1979) Statewide Louisiana					
Change:					
Electricians:					
Zone 7 - Electricians	$12.65	1.45	3%		1%
Cable splicers	13.10	1.45	3%		1%
DECISION #LA79-4002 - Mod. #5 (44 FR 1650 - January 5, 1979) Bossier, Caddo, Calcasieu Parishes, Louisiana					
Change:					
Electricians:					
Bossier & Caddo Parishes:					
Electricians	12.65	1.45	3%		1%
Cable splicers	13.15	1.45	3%		1%
DECISION #NE79-4028 - Mod. #1 (44 FR 10234 - February 16, 1979 Lancaster County, Nebraska					
Change					
Bricklayers, stonemasons	$10.775		.60		
Carpenters:					
Carpenters	9.625	.65	.50		.05
Piledrivermen	9.875	.65	.50		

DECISION #NJ78-3009 - Mod. #9
(42 FR-17223 - April 21, 1978)
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, & Warren Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers:					
Zone 1	12.10	.90	1.05		.025
Bricklayers, Stone Masons, Cement Masons, & Plasterers:					
Zone 7	12.65	.50	.70		.02
Zone 8	12.04	.85	.75		.11
Carpenters, Insulators, & Millwrights:					
Zone 4					
Carpenters & Insulators	12.13	8%	7%		½%
Millwrights	12.38	8%	7%		½%
Electricians & Cable Splicers					
Zone 2	13.84	7%	6%+.75		.02
Glaziers:					
Zone 3	12.45	1.00	2.00		.05
Laborers, Building Construction:					
Zone 3					
Regular Laborers	8.95	.65	.65		.07
Mortar Mixers, scaffold men, pneumatic hammer operators, bell men, & carpenter tenders	9.20	.65	.65		.07
Zone 5	8.50	.75	.85		.07
Zone 10					
Laborers, wrecking, demolition concrete mixers, w/o hoppers, Drill runners, Jackhammers, Mason Tenders, Mortar Mixers, Excavations & Foundations, Scaffold Builders, Carpenter Tenders, & Grading for Concrete	9.10	.50	.50		.07
Zone 11					
Laborers, Air Tool Operators (Jackhammer, Vibrator), Mason Tender, Mortar Mixers, Plasterer Tenders, Pipelayers, Wreckers & Excavation	8.95	.65	.50		.07
Zone 13	8.50	.75	.85		.07
Zone 16					
Common Laborers, Air Tool Operators, Mason Tenders, Plasterer Tenders. and Mortar Mixers	8.50	.75	.85		.07

DECISION #NJ78-3009- Mod. #9

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers, Heavy & Highway Construction:					
Group 1	9.85	1.00	1.00	e	.10
Group 2	9.70	1.00	1.00	e	.10
Group 3	9.45	1.00	1.00	e	.10
Group 4	9.40	1.00	1.00	e	.10
Group 5	9.30	1.00	1.00	e	.10
Group 6	9.20	1.00	1.00	e	.10
Group 7	8.95	1.00	1.00	e	.10
Group 8	8.80	1.00	1.00	e	.10
Group 9	8.75	1.00	1.00	e	.10
Laborers, Free Air Tunnel Jobs:					
Group 1	10.22	1.00	1.00	e	.10
Group 2	9.82	1.00	1.00	e	.10
Group 3	9.66	1.00	1.00	e	.10
Group 4	9.15	1.00	1.00	e	.10
Laborers, Asphalt Construction:					
Zone 1					
Street:					
Head Raker	8.80	.91	.84	e	.10
Rakers & Screen men	8.65	.91	.84	e	.10
Tampers, Smoothers, Kettlemen, Painters, Top Shovelers & Roller Boys	8.40	.91	.84	e	.10
Plant:					
Scale Mixer & Burner Men	8.65	.91	.84	e	.10
Feeders & Dust Men	8.40	.91	.84	e	.10
Marble Setter, Terrazzo Workers, & Tile Setters:					
Zone 1	12.04	.85	.95		.11
Painters:					
Zone 3					
Painters on new construction and major alterations	10.75	.70	.60	.35	.05
Painters on repaint work	9.80	.70	.60	.35	.05
Spray or application of hazardous or dangerous materials on repaint work	10.40	.70	.60	.35	.05
Exterior work exceeding 3 stories in height for painting of open structural steel and tanks under 3 stories in height except flat tanks on the ground and on interior work which					

DECISION #NJ78-3009 - Mod. #9

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Zone 3					
requires painting higher than 20' above the ground or floor (this shall not be applicable to machinery or equipment located therein)	10.90	.70	.60	.35	.05
Repaint work as described above	9.95	.70	.60	.35	.05
On bridges, television and radio towers, structural steel and tanks above 3 stories in height (30' or over), smoke stacks, water towers, sandblasting, steam-cleaning, spraying or application of hazardous materials	11.35	.70	.60	.35	.05
Pipefitters:					
Bergen & Hudson County and the city of Passaic in Passaic County	12.00	1.00	1.90	1.00	.25
Plumbers					
Zone 1	13.60	1.00	1.35		.25
Zone 2	13.60	1.00	1.35		.25
Zone 3	13.60	1.00	1.35		.25
Plumbers & Pipefitters:					
Zone 2:					
Plumbers	13.60	1.00	1.35		.25
Pipefitters	12.00	1.00	1.90	1.00	.25
Plumbers & Steamfitters:					
Zone 1					
Plumbers	13.60	1.00	1.35		.25
Zone 5					
Plumbers	13.60	1.00	1.35		.25
Steamfitters	12.00	1.00	1.90	1.00	.25
Zone 6					
Plumbers	13.60	1.00	1.35		.25
Steamfitters	12.00	1.00	1.90	1.00	.25
Sheet Metal Workers:					
Essex & Passaic Counties:	11.75	4%+.67	4%+.46	8%	.01

DECISION #PA78-3054 - Mod. #4
(43 FR 35868 - August 11, 1978)
Bucks, Chester, Delaware, Montgomery , Philadelphia Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	11.12	2.48	1.40	a	.13
Laborers					
Group 1	9.75	.95	.65		
Group 2	9.55	.95	.65		
Group 3	9.45	.95	.65		
Group 4	9.60	.95	.65		
Group 5	9.35	.95	.65		
Group 6	10.00	.95	.65		
Group 7	9.85	.95	.65		
Group 8	9.70	.95	.65		
Power Equipment Operators:					
Heavy Construction:					
Group 1	13.17	7%	10.3%	c	1.8%
Group 2	12.91	7%	10.3%	c	1.8%
Group 3	12.04	7%	10.3%	c	1.8%
Group 4	11.83	7%	10.3%	c	1.8%
Group 5	11.52	7%	103%	c	1.8%
Group 6	11.35	7%	10.3%	c	1.8%
Group 7	10.84	7%	10.3%	c	1.8%
Group 8	10.10	7%	10.3%	c	1.8%

DECISION #PA78-3054 - Mod. #4

HEAVY CONSTRUCTION CLASSIFICATION DEFINITIONS

Group I Handling steel and stone in connection with erection, cranes, doing hook work, any machines handling machinery, cable spinning machine, helicopters, machines similar to above

Group II All types of cranes, all types of backhoes, cableways, draglines, keystones all types of shovels derricks, trench shovels, trenching machines, Pippin type backhoes, Hoist with two towers, pavers 21E and over, all types overhead cranes, building hoists - double drum (unless used as single drum), mucking machines in tunnel, gradalls, front-end loaders 3½ cu. yds. & over, Boat Captain, tandem scrapers, tower type crane operation, erecting, dismantling, jumping or jacking, Drills self-contained (drillmaster type), fork lift (20ft. and over), motor patrols (fine grade) batch plant with mixer, machines similar to the above

Group III Conveyors (except building conveyors), buildign hoist (single drum), scrapers and tournapulls, asphalt engineer, roller (high grade finishing) frount end loaders under 3½ cu. yds., Mechanic- welder, spreaders high or low pressue boilers, concrete pumps, well drillers, fork lift trucks of all types, bulldozers and tractors, ditch witch type trencher, motor patrol, machines similar to the above.

Group IV Concrete breaking machines Rollers Machines similar to the above

GROUP V Seaman pulverizing mixer tireman on power equipment maintenance engineer (power Boat) machines similar to the above

GROUP VI Conveyors (Building) welding machines, heaters, wellpoints, compressors, farm tractors, fine grade machines, form line graders, road finishing machines, form line graders, road finishing machines, pumps, power broom (Self-contained), seed spreader, machines similar to the above

GROUP VII Fireman, grease truck

GROUP VIII Oilers and deck hands (personnel boats), grease truck helper

Decision No. PA78-3054 - Mod. #4 Cont'd.

POWER EQUIPMENT OPERATORS
HIGHWAY CONSTRUCTION

	Basic - Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	12.92	7%	10.3%	c	1.8%
GROUP 2	12.69	7%	10.3%	c	1.8%
GROUP 3	12.08	7%	10.3%	c	1.8%
GROUP 4	11.56	7%	10.3%	c	1.8%
GROUP 5	11.19	7%	10.3%	c	1.8%
GROUP 6	10.84	7%	10.3%	c	1.8%
GROUP 7	10.10	7%	10.3%	c	1.8%

HIGHWAY CONSTRUCTION CLASSIFICATIONS

WAGE GROUP 1 Handling steel and stone in connection with erection, cranes doing hook work, andymachine handing machinery, helicopters, machines similar to the above

WAGE GROUP II All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, pavers 21E and over, trenching machines, gradalls, front-end loaders 3½ c.y. and over, boat captain, pippin type backhoes, tandem scrapers, tower type crane operation erecting, dismantling, jumping or jacking, drills self-contained, (Drillmaster type), forklift (20 ft, and over), motor patrols (fine grade), batch plant with mixer, machines similar to the above

WAGE GROUP III Carryalls, scrapers, tournapulls, asphalt plant engineers, roller (high grade finishing) front-end loaders under 3½ c.y., spreaders (asphalt), concrete pumps, well drillers, bulldozers and tractors, ditch witch (small trencher), motor patrols, mechanic welder, machines similar to the above

WAGE GROUP IV Conveyor loader, seaman pulverizer, ten-ton roller (grader fill stone base) concrete breaking machines, machines similar to the above

WAGE GROUP V Form line grader, fine grade machines, farm tractors, road finishing, concrete spreaders, compressors, power broom self contained, seed spreader, pumps, welding machines, tireman, power equipment, maintenance engineers (power boats), machines similar to the above

WAGE GROUP VI Fireman, Grease truck

WAGE GROUP VII Oilers and deckhands (Personnel Boats), Grease Truck Helper

DECISION #PA79-3009 - Mod. # 1
(44 FR 26518 - May 4, 1979)
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos workers					
Zone 1	$12.81	.90	1.05		.08
Bricklayers:					
New Residential					
Under 4 stories	11.23	.77	.80		.02
All other work:					
Zone 3	11.46	1.07	1.45		.02
Carpenters:					
Residential					
Under 4 stories:					
Bucks, Chester, Delaware, and Montgomery Counties	8.43	1.08	1.40		.13
Philadelphia County	10.57	2.48	1.40		.13
All other work	10.67	2.48	1.40		.13
Cement masons					
Zone 3	10.29		1.65		
Electricians					
Commercial					
Zone 1	13.45	.81	3%+.81		.27
Zone 7	11.75	.70	3%+.80		.02
Laborers:					
All other work					
Class 1	9.50	.90	.65		
Class 2	9.60	.90	.65		
Class 3	9.65	.90	.65		
Class 4	9.80	.90	.65		
Class 5	9.90	.90	.65		
Class 6	9.44	.90	.65		
Line Construction					
Zone 1					
Linemen	14.62	.45	3%		1%
Groundmen	8.77	.45	3%		1%
Winch truck operator	10.23	.45	3%		1%
Plasterers					
Zone 2	10.31		1.65		
Plumbers					
Zone 3	12.87	.81	1.30		.14
Zone 1	13.27	.81	1.30		.14
Sheet metal workers					
Zone 1 (Commercial)	12.65	1.47	1.18		.03

DECISION #PA79-3009 - Mod. # 1, Cont'd.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Roofers:					
All other work					
Zone 1					
Composition, damp, and waterproofers	13.47	1.40	.95	e	
Roofers, Assistant	6.50	1.40	.95	e	
Sheet metal workers					
Residential					
Zone 2	7.08	1.02	.165		
Soft floor layers					
All other work	9.58	2.18	1.40		.13
Steamfitters:					
Zone 1	13.16	.80	1.45		.11
POWER EQUIPMENT OPERATORS:					
GROUP 1	13.17	7%	10.3%	a	1.8%
GROUP 2	12.91	7%	10.3%	a	1.8%
GROUP 3	12.04	7%	10.3%	a	1.8%
GROUP 4	11.83	7%	10.3%	a	1.8%
GROUP 5	11.52	7%	10.3%	a	1.8%
GROUP 6	11.35	7%	10.3%	a	1.8%
GROUP 7	10.84	7%	10.3%	a	1.8%
GROUP 8	10.10	7%	10.3%	a	1.8%

Decision #PA79-3009 - Mod. #1 Cont'd.

MODIFICATIONS P. 17

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP - I Handling steel and stone in connection with erection, cranes doing hook work, any machine handling machinery, cable spinning machine, helicopters, machines similar to above

GROUP - II All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, pippin type backhoes, hoist with two towers, pavers 21E and over, all types overhead cranes, building hoists - double drum (unless used as single drum) mucking machines in tunnel, gradalls, front-end loaders 3½ cu. yd. 7 over boat captain, tandem, scrapers, tower type crane operation, erecting, dismantling, jumping or jacking , drills self-contained (drillmaster type) fork lift (20 ft. and over), motor patrols (fine grade) batch plant with mixer, machine similar to the above

GROUP III - Conveyors (except building conveyors) building hoists (single drum) scrapers and tournapulls, asphalt plant engineers, roller (high grade finishing) frone-end loaders under 3½ cu. yds. mechanic-welder, spreaders, high or low pressure boilers, concrete pumps, well drillers, front lift trucks of all types bulldozers and tractors, ditch witch type trencher, motor patrol, machines similar to the above

GROUP - IV Concrete breaking machines rollers, machines similar to the above

GROUP - V Seaman pulverizing mixer, tireman on power equipment maintenance engineer (power boat) machines similar to the above

GROUP - VI Conveyors (building) welding machines, heaters, wellpoints, compressors, farm tractors, fine grade machines, form line graders, road finishing machines, pumps, power broom (self-contained), seed spreader, machines similar to the above

GROUP VII - Fireman, grease truck

GROUP VIII - Oilers and deck hands (personnel boats) grease truck helper

MODIFICATIONS P. 18

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX79-4003 - Mod. #5 (44 FR 1671 - January 5, 1979) Brazos County, Texas					
Change:					
Power Equipment Operators:					
Group 1	$11.94	.75	1.00		.07
Group 2	10.08	.75	1.00		.07
Group 3	9.45	.75	1.00		.07
DECISION #TX79-4004 - Mod. #5 (44 FR 1673 - January 5, 1979) El Paso County, Texas					
Change:					
Carpenters:					
Carpenters	8.74	.77			.03
Millwrights & piledrivermen	9.29	.77			.03
Stationary radial power saw op.	8.92	.77			.03
Floor layers	8.74	.77			.03
Electricians - Electricians	9.85	.45	3%		1/10%
Cable splicers	10.10	.45	3%		1/10%
Laborers - Group 1	6.71	.63	.40		
Group 2	6.46	.63	.40		
Group 3	6.21	.63	.40		
Group 4	6.09	.63	.40		
Group 5	5.96	.63	.40		
Group 6	5.81	.63	.40		
DECISION #TX79-4011 - Mod. #5 (44 FR 1683 - January 5, 1979) Galveston & Harris Cos., Texas					
Change:					
Laborers - Group 1	8.57	.47	.80		.02
Group 2	8.755	.47	.80		.02
Group 3	8.865	.47	.80		.02
Group 4	9.16	.47	.80		.02
Group 5	8.705	.47	.80		.02
Group 6	9.025	.47	.80		.02
Painters:					
Galveston Co. - Group 1	11.01	.70	.55	1.00	.035
Group 2	11.26	.70	.55	1.00	.035
Group 3	10.255	.70	.55	1.00	.035
Power Equipment Ops.-Group 1	11.94	.75	1.00		.07
Group 2	10.08	.75	1.00		.07
Group 3	9.45	.75	1.00		.07
Group 4	9.24	.75	1.00		.07

DECISION #TX79-4050 - Mod. #2 (44 FR 16334 - March 16, 1979) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Building Construction:					
Plumbers & pipefitters:					
Zone 1	$10.17	.30	.40		.04
Zone 2	10.88	.30	.40		.04
Incidental Paving & Utilities:					
Plumbers (Bell & Coryall Cos.):					
Zone 1	10.17	.30	.40		.04
Zone 2	10.88	.30	.40		.04

SUPERSEDEAS DECISION

STATE: Colorado COUNTY: Statewide
DECISION NUMBER: CO79-5116 DATE : Date of Publication
Supersedes Decision No. CO78-5132 dated November 17, 1978, in 43 FR 53966.
DESCRIPTION OF WORK: Heavy and Highway Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Carpenters					
*Zone I	$ 9.87	.90	.95	.85	.07
*Zone II	10.37	.90	.95	.85	.07
Underground Carpenters					
*Zone I	10.07	.90	.95	.85	.07
*Zone II	10.57	.90	.95	.85	.07
Working on Creosoted coated lumber or other toxic materials, Sawmen continuously assigned to 1½ HP saw at job site.	10.17	.90	.95	.85	.07
High work 35' above ground or above permanent floor or deck	10.22	.90	.95	.85	.07
CEMENT MASONS:					
*Zone I	10.01	.55	1.25	.30	.12
*Zone II	10.51	.55	1.25	.30	.12
ELECTRICIANS:					
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Gilpin, Grand, Jefferson, Lake, Larimer, Logan, Morgan, Phillips, Sedgwick, Summit, Washington, Weld and Yuma Counties					
Electricians	13.00	.70	3%+.75		3/10%
Cable Splicers	13.25	.70	3%+.75		3/10%
Delta, Dolores, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkins, Rio Blanco, Routt, San Juan and San Miguel Counties					
Electricians	12.40	.72	3%+.25		1½%
Cable Splicers	12.65	.72	3%+.25		1½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Alamosa, Archuleta, Baca, Bent, Chaffee, Crowley, Custer, Fremont, Huerfano, Kiowa, Las Animas, Mineral, Otero, Prowers, Pueblo and Rio Grande Counties					
Zone 1 (Within 12 miles from Pueblo Main Post Office)					
Electricians	$ 11.40	.72	3%+.80		1½%
Cable Splicers	12.54	.72	3%+.80		1½%
Zone 2 (12 to 20 miles from Pueblo Main Post Office)					
Electricians	11.80	.72	3%+.80		1½%
Cable Splicers	12.94	.72	3%+.80		1½%
Zone 3 (30 to 40 miles from Pueblo Main Post Office)					
Electricians	12.15	.72	3%+.80		1½%
Cable Splicers	13.29	.72	3%+.80		1½%
Zone 4 (40 miles and over from Pueblo Main Post Office)					
Electricians	13.28	.72	3%+.80		1½%
Cable Splicers	14.42	.72	3%+.80		1½%
Electricians on electrical contracts less than $20,000 in Zones 3 and 4	9.65	.72	3%+.80		1½%
Cheyenne, Elbert, El Paso, Kit Carson, Lincoln, Park, and Teller Counties					
Electricians	11.50	.72	3%+.50		.015
IRONWORKERS:					
Structural, Ornamental, and Reinforcing	11.60	1.04	1.25		.12
LINE CONSTRUCTION:					
Cable Splicer	12.78	.45	3%+.35		3/4%
Journeyman Lineman Cableman	11.97	.45	3%+.35		3/4%
Journeyman Lineman	11.90	.45	3%+.35		3/4%
Line Equipment Maintenance Man	10.13	.45	3%+.35		3/4%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION: (Cont'd)					
Line Equipment Operator, Class I: Crawler Equipment, Wire equipment Pullers, Tensioners, Cranes, over 8 tons, Heavy Pole Trucks (such as diesel, twin screws), All Bucket Trucks - 75 ft. reach and over, Trenchers, 4 ft. and over and Backhoes	$ 10.13	.45	3%+.35		3/4%
Line Equipment Operator, Class 2: Trenchers under 4 ft. depth, Hydro Cranes, under 8 tons, Bobcats, Trucks under 3 tons, G.T.M. Classification	9.05	.45	3%+.35		3/4%
Groundman	8.35	.45	3%+.35		3/4%
PAINTERS:					
Adams, Arapahoe, Boulder, Clear Creek, Delta, Denver, Douglas, Eagle, Elbert, Garfield, Gilpin, Grand, Gunnison, Jackson, Jefferson, Lake, Larimer, Logan, Mesa, Moffat, Montrose, Morgan, Park (Northern half), Phillips, Pitkin, Rio Blanco, Routt, Sedgwick, Summit, Washington, and Weld Counties					
Brush	11.15	.70	1.00		.07
Spray, Swing Stage	11.75	.70	1.00		.07
Baca, Bent, Crowley, Custer, Heurfano, Kiowa, Las Animas, Otero, Prowers and Pueblo Cos.					
Brush	8.82	.50	.50		.04
Steel	9.32	.50	.50		.04
Spray	9.82	.50	.50		.04
Steel Spray	10.32	.50	.50		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Archuleta, Chaffee, Cheyenne, Dolores, El Paso, Fremont, Hinsdale, Kit Carson, La Plata, Lincoln, Mineral, Montezuma, Ouray, Park (Southern half), Rio Grande, Saguache, San Juan, San Miguel and Teller Counties					
Brush	$ 9.69	.70	.50		.04
Spray	10.44	.70	.50		.04
Steel	10.19	.70	.50		.04
Steel Spray	10.94	.70	.50		.04

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS	Zone 1	Zone 2				
Group 1	$ 8.14	$ 8.64	.55	.65	.10	.05
Group 2	8.24	8.74	.55	.65	.10	.05
Group 3	8.54	9.04	.55	.65	.10	.05
Group 4	8.69	9.19	.55	.65	.10	.05
Group 5	8.89	9.39	.55	.65	.10	.05
LABORERS (Tunnels)						
Group 1	8.14	8.64	.55	.65	.10	.05
Group 2	9.04	9.54	.55	.65	.10	.05
Group 3	9.14	9.64	.55	.65	.10	.05
Group 4	9.22	9.72	.55	.65	.10	.05
Group 5	9.29	9.79	.55	.65	.10	.05
Group 6	9.94	10.44	.55	.65	.10	.05
(Shafts, Raises, Missile Silos and all underground work other than Tunnels)						
Group 1	9.14	9.64	.55	.65	.10	.05
Group 2	9.29	9.79	.55	.65	.10	.05
Group 3	9.39	9.89	.55	.65	.10	.05
Group 4	9.67	10.17	.55	.65	.10	.05
Group 5	9.72	10.22	.55	.65	.10	.05
Group 6	10.07	10.57	.55	.65	.10	.05

LABORERS

Group 1: Minimum Labor, including Caissons to 8'; Carrying Reinforcing Rods; Work on Cross Culverts, connections and side drains in connection with highway work, whether corrugated metal or concrete pipe; Fence Erectors; Metal Mesh; Dowel Bars; Tie Bars and Chairs in concrete paving; Flagman; Nursery Man including seeding, mulching and planting of trees, shrubs and flowers; Stake Chaser; Gabion Baskets and Reno Mattressess; Pipe plants and yards, stringing of pipe or skids, handling and signaling on pipe line work

Group 2: Chuck Tenders, Nippers, Core and Diamond Drill Helpers, Powdermen Helepr; Hot Asphalt Labor, Rakers, Boxtenders, Asphalt Curb Machines, Potmen (not mechanical); Multi-plate Culvert Pipe; Air, gas and electrical tool operators; Barco Hammers; Spaders, electric hammers; Air Tampers; Cutting Torches on demolition work; Caissons 8' to 12'; Cofferdams; Power operated Concrete Buggies; Operators of concrete saws on pavement (other than gang saws); Timber and Chain Saws; Stresser or Stretcherman on Post Tension or Prestressed Concrete on or off jobsite; Tool Room Man and Checkers; Cement Finisher Helper; Sand Blaster; Sand Blaster Helper; Concrete processing material; Monitor; Spotters; Signalmen; Dumpmen; Transverse Concrete Conveyor Operator; Mechanical Grouters; Boring Machine (air hydraulic); Automatic Concrete Power Curbing Machine; Jack Hammer; Vibrators; Paving Breakers; Frostproofing; Any laborer performing bridge work over 40' above the ground or above a floor and working from a Bos'n Chair; Swing Stage, Life Belt or Block and Tackle as safety requirement. (All lines and safety belts used shall be of a type approved by State and Federal laws); Gunniting and Shotcrete Helpers; Caissons over 12'; Scalers; Timbermen, underpinning and shoring; Form-setters and/or stringmen on roads, highways, streets and airport runways; Distribution, placing and hooking of landing mats; Bull Float (hand operated) and Center Expansion Machines; Grade Checkers if required by employer; Pipe Wrappers; Dopers; Jeep Holiday Detector Men, Bandage Makers; Laborers working in trenches on all pipe lines, sewer, water, gas, oil, telephone conduit, Pen Stock, Siphons, drainage lines, Caulkers, Yarners, Fine Graders, air, gas, electric and hydraulic tools, Boring Machines, Hydraulic Jacks, Drills, Tampers, and similar operated tools; Wiping of Joint Concrete Pipe, inside and out; Labor, applicable to pipe coating or wrapping, plants and yards; Enamelers of pipe, inside and out

LABORERS (Cont'd)

Group 3: Powdermen and Blasters; Gunnite Nozzlemen; Shotcrete Operator; Pipe Layer on truck pipe lines in connection with highway work; Relining Pipe; Mixer Man; Pipelayer; Hydro-broom

Group 4: Wagon Drills and Air Tracks; Jack Hammer Operators in Caissons over 12'; Bellers and Stemmen; Licensed Powdermen; Diamond and Core Drills powered by air

Group 5: Any work, other than on bridges, performed by Laborers working from a Bos'n Chair, Swinging Stage, Life Belt or Block and Tackle as a safety requirement. All lines and safety belts used shall be of a type approved by State and Federal laws; Pugs and Galleys in Dams

LABORERS
(Tunnels)

Group 1: Outside Labor

Group 2: Minimum Tunnel Labor, Dry Houseman

Group 3: Cable or Hose Tenders, Chuck Tenders, Concrete Laborers, Dumpmen, Whirley Pump Operators

Group 4: Helpers on Shotcrete, Gunniting and Sand Blasting; Helpers, Core and Diamond Drills; Pot Tenders

Group 5: Cement Finisher Helper, applying or concrete processing materials

Group 6: Collapsible from movers and setters, Miners, Machine Men and Bit Grinders, Nippers, Powdermen and Blasters, Reinforcing Steel Setters, Timbermen (steel or wood tunnel support, including the placement of sheeting when required) and all cutting and welding that is incidental to the Miner's work; Tunnel Liner Plate Setters; Vibrator Men, internal and external; Unloading, stopping and starting of Moran Agitator Cars; Diamond and Core Drill Operators; Cement Finisher (underground); Shotcrete Operator; Gunnite Nozzlemen, Sand Blasters, Pump Concrete placement Men

LABORERS (Cont'd)
(Shafts, Raises, Missile Silos and all Underground Work other than Tunnels)

Group 1: Laborers, Topmen, Bottommen and Cagers

Group 2: Chucktenders, Concrete Laborers, Whirley Pump Operators

Group 3: Helpers in Shotcrete Gunniting and Sand Blasting; Helpers on Core and Diamond Drills; Pot Tenders; Cement Finisher Helpers; applying of Concrete processing material

Group 4: Collapsible form movers and setters, Miners, Machine Men and Bit Grinders, Nippers, Powdermen and Blasters, Reinforcing Steel Setters, Timbermen (steel or wood tunnel support, including the placement of sheeting when required) and all cutting and welding that is incidental to the Miner's work; Liner plate Setters; Vibrator Men, internal and external

Group 5: Diamond and Core Drill Operators; Cement Finisher (underground); Gunnite Nozzlemen; Shotcrete Operators; Sand Blasters and Pump Concrete Placement Men

Group 6: Any employee performing work underground from a Bos'n Chair, Swinging Stage, Life Belt or Block and Tackle as a safety requirement. (All lines and safety belts used shall be of a type approved by State and Federal laws)

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts and Raises)	ZONE 1*	ZONE 2*				
Group 1	$ 9.25	$10.00	.79	$1.00	.45	.07
Group 2	9.60	10.35	.79	1.00	.45	.07
Group 3	9.95	10.70	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.40	11.15	.79	1.00	.45	.07
(For work in Tunnels, Shafts, and Raises)						
Group 1	9.40	10.15	.79	1.00	.45	.07
Group 2	9.75	10.50	.79	1.00	.45	.07
Group 3	9.85	10.60	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.65	11.40	.79	1.00	.45	.07

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generator, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments; Rodman, Chainman; Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable; Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on Concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; Single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer Mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric Rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

(For Work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-welder, heavy duty; Mucking Machines and Front End Loaders, under-ground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1*	ZONE 2*				
Group 1	$ 8.78	$ 9.28	.84	.63	.30	
Group 2	8.88	9.38	.84	.63	.30	
Group 3	8.98	9.48	.84	.63	.30	
Group 4	9.03	9.53	.84	.63	.30	
Group 5	9.08	9.58	.84	.63	.30	
Group 6	9.13	9.63	.84	.63	.30	
Group 7	9.18	9.68	.84	.63	.30	
Group 8	9.23	9.73	.84	.63	.30	
Group 9	9.33	9.83	.84	.63	.30	
Group 10	9.38	9.88	.84	.63	.30	
Group 11	9.48	9.98	.84	.63	.30	
Group 12	9.63	10.13	.84	.63	.30	
Group 13	9.68	10.18	.84	.63	.30	
Group 14	9.78	10.28	.84	.63	.30	
Group 15	9.88	10.38	.84	.63	.30	
Group 16	9.98	10.48	.84	.63	.30	
Group 17	10.08	10.58	.84	.63	.30	
Group 18	10.28	10.78	.84	.63	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk, Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and inlcuding 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers; Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds,

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanics, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 75 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.,

ZONE DESCRIPTION
FOR
CARPENTERS

Counties entirely within Zone 1:

Adams	Crowley	Gilpin	Morgan
Alamosa	Custer	Huerfano	Otero
Arapahoe	Delta	Jefferson	Phillips
Archuleta	Denver	La Plata	Prowers
Bent	Douglas	Lake	Pueblo
Boulder	Eagle	Larimer	Rio Grande
Chaffee	El Paso	Las Animas	Sedgwick
Clear Creek	Elbert	Logan	Teller
Conejos	Fremont	Mesa	Weld
Costilla	Garfield	Montezuma	

Counties entirely within Zone 2:

Baca	Jackson	Moffat	Routt
Cheyenne	Kiowa	Ouray	San Juan
Dolores	Kit Carson	Park	San Miguel
Grand	Lincoln	Pitkin	Summit
Gunnison	Mineral	Rio Blanco	Yuma
Hinsdale			

Legal description of the portions of Montrose, Saguache and Washington Counties which are included within Zone 1, as follows:

All of Montrose County lying Northerly of the North Line of Ouray County and said North Line extended West to the Township Line between R11W and R12W, said part being East of said Township Line of the New Mexico Principal Meridian, and the Eastern portion of Saguache County: from Highway 285 to the town of Saguache, and Highway 114 to the County Line, and all of Washington County lying North of the 40°00'00" Latitude base line.

Legal description of the portions of Montrose, Saguache and Washington Counties which are included within Zone 2, as follows:

All of Montrose County except that part lying Northerly of the North Line of Ouray County and said North Line extended West to the Township Line between R11W, and R12W, said point being East of said Township Line of the New Mexico Principal Meridian and the Western portion of Saguache County: from Highway 285 to Town of Saguache and Highway 114 to County Line, and all of Washington County lying South of the 40°00'00" Latitude base line.

LABORERS - Zone Descriptions

Zone 1: The area encompassed by 15 driving miles from the main Post Office at Craig, Steamboat Springs, and Meeker. Also included are all other Counties not outlined in Zone 2.

Zone 2: The Counties of Jackson, Moffat, Rio Blanco and Routt.

ZONE DESCRIPTIONS
Cement Masons, Power Equipment Operators and Truck Drivers

A. Counties entirely within Zone 1:

Alamosa	Custer	Huerfano	Otero
Archuleta	Delta	Jefferson	Phillips
Bent	Denver	La Plata	Prowers
Boulder	Douglas	Larimer	Pueblo
Chaffee	El Paso	Logan	Rio Grande
Clear Creek	Fremont	Mesa	Sedgwick
Conejos	Garfield	Montezuma	Teller
Costilla	Gilpin	Morgan	Weld
Crowley			

B. Counties entirely within Zone 2:

Baca	Jackson	Moffat	Saguache
Cheyenne	Kiowa	Ouray	San Juan
Dolores	Kit Carson	Park	San Miguel
Grand	Lake	Pitkin	Summit
Gunnison	Lincoln	Rio Blanco	Yuma
Hinsdale	Mineral	Routt	

C. Legal description of the portions of Adams, Arapahoe, Eagle, Elbert, Las Animas, Montrose and Washington Counties which are included within Zone 1, as follows:
All of Adams, Arapahoe, Elbert and Las Animas Counties lying west of the Township line between R59W and R60W of the 7ty Guide Meridian West; and all of Eagle County lying west of the Township line between R80W and R81W of the 10th Guide Meridian West. All of Montrose County lying East of said Township line of the New Mexico Principal Meridian, and all of Washington County lying North of the 40°00'00" Latitude Base Line.

D. Legal description of the portions of Adams, Arapahoe, Eagle, Elbert, Las Animas, Montrose and Washington Counties which are included within Zone 2, as follows:
All of Adams, Arapahoe, Elbert and Las Animas lying East of the Township Line between R59W and R60W of the 7th Guide Meridian West, and all of Eagle County lying East of the Township Line between R80W and R81W of the 9th Guide Meridian West and all of Montrose County except that part lying Northerly of the North line of Ouray County and said North line extended West of the Township line between R11W and R21 W, said point being East of said Township line of the New Mexico Principal Meridian and all of Washington County lying South of the 40°00'00" Latitude Base Line.

SUPERSEDEAS DECISION

STATE: Iowa COUNTY: Statewide except Scott County
DECISION NO. IA79-4064 DATE: Date of Publication
Supersedes Decision No. IA78-4027, dated April 7, 1978, in 43 FR 14855
DESCRIPTION OF WORK: Heavy and Highway Construction (does not include building structures in rest area projects and work on or pertaining to the Mississippi or Missouri Rivers

	Basic Hourly Rates	Fringe Benefits Payments			
CITY OF COUNCIL BLUFFS		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters & Piledrivermen	10.21	.67	.55		.05
Cement Masons	10.30	.67	.60		
Laborers:					
Group I	7.87	.60	.45		.05
Group II	7.47	.60	.45		.05
Group III	7.52	.60	.45		.05
Group IV	7.41	.60	.45		.05
Group V	7.20	.60	.45		.05
Group VI	7.39	.60	.45		.05
Power Equipment Operators:					
Group I	9.15	.70	.70		.08
Group II	8.75	.70	.70		.08
Group III	8.35	.70	.70		.08
Truck Drivers:					
Single axle	8.18	.60	.50		
Tandem axle, euclids, power lift form trucks	8.24	.60	.50		
Three axle tandem	8.30	.60	.50		
Lowboys, tractor trailers, water pulls	8.38	.60	.50		
Tandem dump with auxiliary end dump trailer	8.44	.60	.50		
Lumber Carrier	8.56	.60	.50		
LINN & POLK COUNTIES AND THE CITIES OF AMES AND DUBUQUE					
Carpenters & Piledrivermen	9.42	.45	.25		
Cement Masons	9.42	.45	.25		
Laborers:					
Group I	8.61	.30	.40		.05
Group II	8.36	.30	.40		.05
Group III	8.11	.30	.40		.05
Group IV	7.96	.30	.40		.05
Group V	7.86	.30	.40		.05
Power Equipment Operators:					
Group I	9.91	.70	.70		.08
Group II	9.51	.70	.70		.08
Group III	9.11	.70	.70		.08
Truck Drivers	8.68	.45			
CITIES OF BURLINGTON AND CLINTON AND BURLINGTON ORDINANCE PLANT					
Carpenters & Piledrivermen	9.42	.45	.25		
Cement Masons	9.42	.45	.25		
Laborers:					
Group I	8.61	.30	.40		.05
Group II	8.36	.30	.40		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers Cont'd:					
Group III	8.11	.30	.40		.05
Group IV	7.96	.30	.40		.05
Group V	7.86	.30	.40		.05
Power Equipment Operators:					
Group I	9.91	.70	.70		.05
Group II	9.51	.70	.70		.05
Group III	9.11	.70	.70		.05
Truck Drivers	8.68	.45			
CITY OF FORT DODGE					
Carpenters & Piledrivermen	8.78	.45	.25		
Cement Masons	8.78	.45	.25		
Laborers:					
Group I	8.26	.30	.40		.05
Group II	8.01	.30	.40		.05
Group III	7.76	.30	.40		.05
Group IV	7.61	.30	.40		.05
Group V	7.51	.30	.40		.05
Power Equipment Operators:					
Group I	9.91	.70	.70		.08
Group II	9.51	.70	.70		.08
Group III	9.11	.70	.70		.08
Truck Drivers	7.64	.45			
CITY OF IOWA CITY					
Carpenters & Piledrivermen	9.42	.45	.25		
Cement Masons	9.42	.45	.25		
Laborers:					
Group I	8.61	.30	.40		.05
Group II	8.36	.30	.40		.05
Group III	8.11	.30	.40		.05
Group IV	7.96	.30	.40		.05
Group V	7.86	.30	.40		.05
Power Equipment Operators:					
Group I	9.91	.70	.70		.08
Group II	9.51	.70	.70		.08
Group III	9.11	.70	.70		.08
Truck Drivers	8.68	.45			
CITY OF MASON CITY					
Carpenters & Piledrivermen	8.78	.45	.25		
Cement Masons	8.78	.45	.25		
Laborers:					
Group I	8.26	.30	.40		.05
Group II	8.01	.30	.40		.05
Group III	7.76	.30	.40		.05
Group VI	7.61	.30	.40		.05
Group V	7.51	.30	.40		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Group I	9.91	.70	.70		.08
Group II	9.51	.70	.70		.08
Group III	9.11	.70	.70		.08
Truck Drivers	7.64	.45			
BLACK HAWK COUNTY					
Carpenters & Piledrivermen	9.42	.45	.25		
Cement Masons	9.42	.45	.25		
Laborers:					
Group I	8.61	.30	.40		.05
Group II	8.36	.30	.40		.05
Group III	8.11	.30	.40		.05
Group IV	7.96	.30	.40		.05
Group V	7.86	.30	.40		.05
Power Equipment Operators:					
City of Waterloo:					
Group I	9.91	.70	.70		.08
Group II	9.51	.70	.70		.08
Group III	9.11	.70	.70		.08
Remainder of Black Hawk Co:					
Group I	9.91	.70	.70		.08
Group II	9.51	.70	.70		.08
Group III	9.11	.70	.70		.08
Truck Drivers	8.68	.45			
ZONE 1					
Carpenters & Piledrivermen	7.39	.20			
Cement Masons	7.39	.20			
Laborers:					
Group I	6.27	.30	.40		.05
Group II	6.00	.30	.40		.05
Group III	5.80	.30	.40		.05
Group IV	5.65	.30	.40		.05
Group V	5.55	.30	.40		.05
Group VI	5.45	.30	.40		.05
Power Equipment Operators:					
Group I	7.94	.40	.20		
Group II	7.70	.40	.20		
Group III	7.55	.40	.20		
Group IV	7.34	.40	.20		
Truck Drivers	6.60	.25			
ZONE 2					
Carpenters & Piledrivermen	6.74				
Cement Masons	6.74				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers:					
Group I	5.96	.20	.10		
Group II	5.42	.20	.10		
Group III	5.16	.20	.10		
Group IV	4.89	.20	.10		
Group V	4.68	.20	.10		
Group VI	4.78	.20	.10		
Power Equipment Operators:					
Group I	7.16	.40	.20		
Group II	6.73	.40	.20		
Group III	6.36	.40	.20		
Group IV	5.66	.40	.20		
Truck Drivers	5.58	.20	.05		
ZONE 3					
Carpenters & Piledrivermen	6.26				
Cement Masons	6.26				
Laborers:					
Group I	5.85	.20	.10		
Group II	5.32	.20	.10		
Group III	5.05	.20	.10		
Group IV	4.68	.20	.10		
Group V	4.35	.20	.10		
Group VI	4.19	.20	.10		
Power Equipment Operators:					
Group I	6.62	.40	.20		
Group II	6.25	.40	.20		
Group III	5.71	.40	.20		
Group IV	5.07	.40	.20		
Truck Drivers	4.89	.20	.05		
ZONE 4					
Carpenters & Piledrivermen	6.26				
Cement Masons	6.15				
Laborers:					
Group I	5.85	.20	.10		
Group II	5.31	.20	.10		
Group III	5.05	.20	.10		
Group IV	4.68	.20	.10		
Group V	4.25	.20	.10		
Group VI	4.03	.20	.10		
Power Equipment Operators:					
Group I	6.30	.40	.20		
Group II	5.93	.40	.20		
Group III	5.39	.40	.20		
Group IV	4.75	.40	.20		
Truck Drivers	4.99	.15	.05		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 5					
Carpenters & Piledrivermen	6.05				
Cement Masons	6.05				
Laborers:					
Group I	5.64	.20	.10		
Group II	5.10	.20	.10		
Group III	4.84	.20	.10		
Group IV	4.46	.20	.10		
Group V	4.03	.20	.10		
Group VI	3.82	.20	.10		
Power Equipment Operators:					
Group I	6.09	.40	.20		
Group II	5.71	.40	.20		
Group III	5.18	.40	.20		
Group IV	4.54	.40	.20		
Truck Drivers	4.78	.15	.05		

NOTE - All cities listed in this determination include all abutting municipalities.

DEFINITIONS OF ZONES

Zone 1 Pottawattamie County (area west of the eastern boundaries of Minden, York, Washington and Silver Creek Townships), Benton, Boone, Buchanan, Cedar, Clinton, Dallas, Delaware, Dubuque, Jackson, Jasper, Johnson, Jones, Madison, Marion, Marshall, Story, Warren, and Webster Counties (excluding the cities of Ames, Clinton, Council Bluffs, Dubuque, Fort Dodge, and Iowa City and their abutting municipalities).

ZONE 2 Des Moines, Louisa, nad Muscatine Counties (excluding City of Burlington and abutting municipalities and the Burlington Ordnance Plant).

ZONE 3 Allamakee, Appanoose, Bremer, Butler, Cerro Gordo, Chickasaw, Clayton, Davis, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Henry, Howard, Iowa, Jefferson, Keokuk, Lee, Mahaska, Mitchell, Monroe, Poweshiek, Tama, Van Buren, Wapello, Washington, Winnebago, Winneshiek, Worth and Wright Counties (excluding City of Mason City and abutting municipalities.

ZONE 4 Adair, Adams, Audubon, Calhoun, Carroll, Cass, Clark, Crawford, Decatur, Fremont, Greene, Guthrie, Harrison, Ida, Lucas, Mills, Monona, Montgomery, Page, Ringgold, Sac, Shelby, Taylor, Union, Wayne, and Woodbury Counties, and Pottawattami County (east of Minden, York, Washington and Silver Creek Townships).

ZONE 5 Buena Vista, Cherokee, Clay, Dickinson, Emmet, Humboldt, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas and Sioux Counties.

LABORERS CLASSIFICATION DEFINITIONS

PERTAINS TO: All cities (except Council Bluffs) and their abutting municipalities; Polk, Lynn and Black Hawk Counties.

GROUP I Sandblasters, powdermen; blasters; piplayers, sewer, water, telephone conduits, etc.; sewer utility man; gunnite nozzleman; diamond and core drills, powered by air, all work performed by laborers working from a bos'n chair, swinging stage, life belt, tagline or block and tackle; drill operator of air tracs, wagon drills and similar drills.

GROUP II Tree climber; form setters, rakers; boxtenders; asphalt curb machines; potmen, not mechanical; bull float, hand operated; scalers; timberman, underpinning and shoring; caissons over 12 ft.; grade checker and cutting torches on demolition work.

GROUP III Power buggyman; concrete and pavinf sawman; form liner, expansion joint assembler; bottom man; caulker and jointer and painter; timber and chain saw man; mechanical grouters; automatic concrete power curbing machines; stress or stretcherman on post-tension or pre-stressed concrete on or off the job; powderman helpers.

GROUP IV Form tamper; air, gas & electric tool operators, vibrators, barco hammer, paving breakers, spaders, tampers; electric drills, hammers & jack hammers; tree grounmen; chuck tenders; drill helpers; tool room men & checkers; sand blaster helper; concrete processing material & monitors; cement finisher helper; stringman on paving work.

GROUP V Fence erectors; handling & placinf metal mesh, dowel bars, reinforcing bars & chairs; dumpmen & spotters; carrying reinforcing rods; corrugated culvert pipe; concrete drainage pipe; stake chaser, seeding mulching & planting trees, shrubs & flowers; water boy; common laborer; roumen; tending carpenters; hot asphalt laborer, flagman.

PERTAINS TO: City of Council Bluffs and abutting municipalities

GROUP I Common laborers

GROUP II Towboat and dredge deckhands

GROUP III Form setters helpers

GROUP IV Rakers & screedmen on asphalt work; mortar mixers chain saw operators

GROUP V Pipelayers; Concrete saw operator

GROUP VI Form setters and precast manhole setters; inlet builder and manhole setters

PERTAINS TO ZONES 1, 2, 3, 4, & 5

GROUP I Pipe layer (utilities); sand blaster

GROUP II Form setter (structures); grade checker

GROUP III Caulker, jointer, painte, grouter & joint assembler; cure cart operator form setter (paving) & expasion joint assembler; paving sawman, power buggyman; raker

GROUP IV Air, gas & electric tool operator; cement finisher helper; concrete processing material & monitoring; stringman on paving work

GROUP V Common laborer; dump person and spotter; fence erector; scaleman; handling and placing of metal mesh, dowel bars, reinforcing bars and chairs

GROUP VI Flag person

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

PERTAINS TO: All Cities and abutting municipalities; Polk, Linn, & Black Hawk Counties

GROUP I Power shovel, crane, backhoe & dragline; central mix plant op.; dredge engineer; dredge leverman; paver or spreader op.; hoisting eng (steel erection); motor patrol; piledriver; concrete mixer; tow or push op.; master mechanic; CMI paver; CMI subgrader or equivalent; asphalt plant; front end loader; scraper; bulldozer; push cat; tractor pulling scraper; sidebroom tractor; churn or rotary drill; trenching machine (Cleavland 80 or similar cap.); asphalt laydown; asphalt screed; asphalt heater-planer unit; asphalt roller; self propelled elevating grader or similar machine; spreader (concrete); horizontal boring machine; mechanics welders; group equipment greaser; concrete pump; self propelled curb machine

GROUP II Concrete curb breaker; concrete widening machine; pavingbreaker; barber-greene, haiss loader or similar machine; tractor pulling ripper, disc, sheepsfoot or flat roller; self-propelled sheepsfoot roller, self-propelled roller other than asphalt;distributor; screening and washing plant; self-propelled vibrating compactor; trenching machine (other than above); steel placing machine; conveyor; finishing machine (on concrete); flexplane; bull float; form grader.

GROUP III Boiler; mechnaical broom; oiler, mechanics helper, group greaser helper; farm type tractor pulling disc, harrow or roller; welding machine; pump operator other than dredge; boom & winch truck; compressor; tank car heater (combination boiler & boster); Pumps on well points & deep wells for dewatering; truck crane combination driver-oiler; concrete curbing machine; safety boat operator; batch plant (dry).

PERTAINS TO: Zones 1, 2. 3, 4, & 5

GROUP I Power shovel, crane, backhoe, dragline, dredge engineer & leverman. hoisting engeer (steer erection) motor patrol (finish), pile driver, master mechanic, sideboom tractor, horizontal boring machine.

GROUP II Central mix plant, paver on self-propelled spreader; tow or push boat, CMI paver, subgrader or equivalent, asphalt plant, scraper over 12 c.y., bulldozer (finish) push cat, churn or rotary drill, trenching machine (Cleveland 80 or similar cap.), asphalt laydown, asphalt screed, asphalt heater-planer, concrete pump, self-propelled curb machine.

GROUP III Motor patrol (rough), front end loader (3 c.y. or over), scraper (12 c.y. & under bulldozer (rough), asphalt roller, mechanics-welders, group equipment greaser, concrete curb breaking machine, concrete widening machine, paving breaker, barber-greene - haiss loader or similar machine, crawler tractor (pulling disc, sheepsfoot, ripper or flat roller, self-propelled sheepsfoot roller, self propelled roller, distributor, screening and washing plant, self-propelled vibrating compactor, trenching machine (other than above), steel placing machine, conveyor, finishing machine (on concrete), flex plane, bull float, form grader.

GROUP IV Boiler, mechanical boom, oiler or mechanics helper or group greasers helper, farm type tractor (pulling disc, harrow or roller), welding machine, pump operator (other than dredge), boom and winch trucks, compressor, tank car heater (combination boiler and booster), pumps on well points and deep wells for dewatering, truck crane combination driver-oiler, concrete curbing machine, safetu boat, batch plant dry, spreader attachments, utility tractor with attachments.

SUPERSEDEAS DECISION

STATE: Mississippi COUNTIES: See below*
DECISION NO.: MS79-1084 DATE: Date of Publication
Supersedes Decision No. MS75-1077 dated August 22, 1975 in 40 FR 36935
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and garden type apartments up to and including 4 stories.

*Counties: Harrison, Pearl River, Stone, George, Jackson, and Hancock

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanic	5.25				
Bricklayers	6.84				
Carpenters	5.47				
Drywall finisher	7.00				
Drywall hanger	7.00				
Electricians	6.50				
Insulators	4.00				
Ironworkers, reinforcing	6.00				
Laborers:					
Laborers	3.36				
Mason tenders	3.50				
Mortar mixers	3.50				
Painters, brush	5.34				
Plasterers	5.75				
Plumbers and pipefitters	5.92				
Roofers	5.00				
Sheet metal workers	4.90				
Soft floor layers	5.40				
Welders - rate for craft					
POWER EQUIPMENT OPERATORS:					
Dozer	5.75				
Trenching machine	4.50				

SUPERSEDEAS DECISION

STATE: New York

COUNTIES: Bronx, Kings, Queens, New York And Richmond

DECISION NO.: NY79-3011

DATE: Date of Publication

Supersedes Decision No. NY78-3007 dated March 10, 1978 in 43 FR 10247

DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories), Heavy and Highway Construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	12.38	1.02	1.82		
Boilermakers	13.19	5%	15%	7%	.02
Bricklayers	11.25	1.27	3.68		
Carpenters, Building:					
Carpenters, Dock Builders, Pile-drivermen, Soft Floor Layers	11.80	1.50	1.78	.85	.04
Millwrights	12.13	1.55	1.78	.95	.02
Carpenters, Heavy:					
Carpenters, Dock Builders, and Piledrivermen	11.70	1.50	1.78	.91	.04
Cement Masons	11.40	1.74	1.19		.02
Divers	14.47	1.575	1.78	1.03	.05
Diver Tenders	11.08	1.575	1.78	1.03	.05
Electricians and Linemen	12.85	7%	3%+a	6%+b	½%
Elevator Constructors	11.32	.745	.35+e	c+d	.02
Elevator Constructors Helpers	8.44	.745	.35+e	c+d	.02
Elevator Constructors Helpers (Probationary)	5.66				
Elevator Constructors Modernization	9.35	.495	.32+e	c+d	.02
Elevator Constructors Modernization Helpers	7.01	.495	.32+e	c+d	.02
Elevator Constructors Repair	8.50	.495	.32+e	c+m	.02
Elevator Constructors Repair Helpers	6.38	.495	.32+e	c+d	.02
Glaziers	12.20	.66	1.66	.67	.01
Ironworkers:					
Ornamental Finisher	11.03	1.48	2.55	.78	.14
Reinforcing	10.41	1.325	1.985	.75+g	.03
Structural	11.50	1.55	3.00	1.60+f	.07
Laborers:					
Asphalt Laborers	10.30	1.25	1.05	h	
Asphalt Rakers	10.56	1.25	1.05	h	
Asphalt Tampers	10.32	1.25	1.05	h	
Cement Concrete Workers	10.40	.9525	1.4525	i	
Mason Tenders	9.40	.687	1.495		
Blasters (Heavy)	12.29	1.02	1.74	1.75	
Concrete Breakers, Chippers, Jackhammers, Pneumatic Tools, Spades (Heavy)	10.82	1.02	1.74	1.75	
Drill Runner, Air Trac, Wagon Drills, (Heavy) Quarrybar	11.05	1.02	1.74	1.75	
Powder Carriers (heavy)	9.92	1.02	1.74	1.75	
Magazine Keeper (Heavy)	6.07	1.02	1.74	1.75	
Nippers	9.44	1.02	1.74	1.75	

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers (cont'd):					
Laborers (Building & Heavy)	9.05	1.35	1.48		
Curb Setters (Highway)	12.26	1.10	1.05	h	
Laborers, Puddlers, Concrete Rakers	9.88	1.10	1.05	h	
Pavers (Highway)	12.26	1.10	1.05	h	
Rammers (Highway)	11.16	1.10	1.05	h	
Demolition:					
Barmen	9.80	8%	10%		
Barmen Helpers	9.50	8%	10%		
Plasterers Helpers (Kings)	9.70	2.80		.80	
Plasterers Helpers (Queens)	9.60	1.55		1.35	.01
Plasterers Helpers (Bronx, NY, Richmond)	8.60	.90	1.40	.35	
Lathers, Metalic	10.79	1.325	1.985	.75+p	.03
Lathers, Nail-on (Kings, Queens)	8.40	.655	1.655	.70	.01
Lathers, Nail-on (Bronx, NY, Richmond)	8.60		.25		.01
Leadburners	10.75	.40	.25	f	.01
Marble Setters:					
Carvers	10.60	1.21	1.71	k	
Cutters and Setters	10.45	1.21	1.71	k	
Polishers	10.93	1.21	1.71	k	
Crane Operators	9.55	1.21	1.71	k	
Painters:					
Brush	9.55	8½%	5%+q	3%	
Spray, Spray Gun, Scaffold Work	11.38	8½%	5%+q	3%	
Structural Steel	11.68	11%	14%	1%	
Structural Steel Spray	12.68	11%	14%	1%	
Pointers Caulkers and Cleaners	10.17	1.10	1.87		.05
Plasterers:					
Kings	10.60	1.10		1.40	.01
Queens	10.10	1.75		1.35	.01
Bronx, NY, Richmond	10.15	1.10	1.54	.90	.01
Plumbers:					
NY, Bronx	10.55	4.70	s		
Kings, Queens	11.35	4.79+j			
Richmond	11.25	1.30+l	2.01	1.05	.30
Roofers:					
Composition, Damp, Waterproofers	9.65	1.79	2.65	.65	
Slate, Tile (Kings, Queens)	11.07	.55			
Slate, Tile (Bronx, NY, Richmond)	9.70	.50	1.40	1.60	

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sheet Metal Workers	13.74	2.30	1.54		.16
Sprinkler Fitter and Steamfitters	12.33	2.75	1.12	1.00	.07
Stonemasons	11.00	.50	1.00		
Stone Derrickmen and Riggers	12.12	.98	1.01		
Terrazzo Workers	11.18	1.21	1.50		
Terrazzo Workers Helpers	9.84	1.21	1.50		
Tile Setters	10.95	1.15	.75		
Tile Setters Helpers	7.90	.50	1.27		
Timbermen (Heavy)	10.41	1.40	1.78	.70	.04
Tuckpointers:					
Sandblasters	10.02	1.05	1.82	.70	.05
Steamcleaners	9.17	1.05	1.82	..70	.05
Waterproofers	8.92	1.05	1.82	.70	.05
Truck Drivers, Building:					
Ready Mix Concrete, Sand, Gravel and Asphalt	9.44	.9675	1.8525	n+p	
Euclids and Turnapulls	8.825	.9675	1.8525	n+p	
4-Wheel, Hi-Lo Lift Operators	7.525	.9675	1.8525	n+p	
Euclids and Turnapulls (Heavy)	8.825	.9675	1.8525	n+p	
Welder-receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contributes $8.00 per day to an Annuity and Security Benefit fund.

b. Holidays: A through F, Columbus Day, Washington's Birthday, Election Day.

c. Holidays: A through F, Columbus Day, Election Day, Lincoln's Birthday, Washington's Birthday, Armistice Day.

d. Employees with 6 months or more but less than 5 years service receive 2 weeks vacation, 5 or more years of service receive 3 weeks vacation.

e. Employer contributed $8.00 per day to an Annuity Fund

f. Holidays: New Year's Eve and Christmas Eve provided the employee works a full half day preceeding the holiday.

g. Work on Christmas Eve and New Year's Eve will terminate at Noon, but employee will receive a full days pay.

h. Holidays: B, C, D, E, Election Day, Columbus Day and Veterans' Day providing the employee works at least 1 day in the week in which the holiday occurs.

i. If men work the last regular work day before Christmas Day or the last regular day before New Year's Day, the work day will end at Noon, but men will be paid for a full 7 hour day; However, if men are required to work after Noon they will be paid an additional time and a half for the hours worked.

j. Employer contributes $6.00 per day to Annuity Fund

k. One half days pay for Labor Day.

l. Employer contributes $6.01 per day to Annuity Fund.

m. Employee with 6 months or more but less than 5 years service receive 2 weeks vacation, 5 or more years of service but less than 15 years service receive 3 weeks vacation, 15 or more years of service receive 4 weeks vacation.

n. Holidays: A through F, Lincoln's Birthday, Washington's Birthday, Election Day, Veterans' Day, provided the employee works 2 days in the calendar week in which the holiday falls and each remaining work day during such calendar week.

p. For each 15 days worked within the contract year an employee will receive one day's vacation with pay with a maximum vacation of 3 weeks per year.

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BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Double Drum Hoist	$11.66	.93	1.95	.70+a	.02
Stone Derrick, Cranes, Cherry Pickers	12.17	.93	1.95	.70+a	.02
Hoists, Fork Lifts, House Cars, Plasterer (platform machine), Plasterer Bucket, Plasterer Pump, Compressors-Welding Machines (cutting concrete-tank work), Paint Spraying, Sandblasting, and All Equipment Used For Hoisting Material	11.74	.93	1.95	.70+a	.02
Cranes: All types-crawler or truck					
100' to 149' Boom	12.67	.93	1.95	.70+a	.02
150' to 249' Boom	12.92	.93	1.95	.70+a	.02
250' to 349' Boom	13.17	.93	1.95	.70+a	.02
350' to 450' Boom	13.67	.93	1.95	.70+a	.02
Steel Erection:					
Three Drum Derricks	12.25	.93	1.95	.70+a	.02
Cranes, 2 Drum Derricks, Cherry Pickers	11.74	.93	1.95	.70+a	.02
Compressors, Welding Machines	10.51	.93	1.95	.70+a	.02
Tower Cranes	12.19	.93	1.95	.70+a	.02

FOOTNOTE:

A. Paid Holidays: New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday (Iron League Only), Decoration Day, Independence Day, Labor Day, Columbus Day, Election Day, Armistice Day, Thanksgiving Day and Christmas Day providing the employee is employed during the payroll week in which the holiday occurs.

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HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Class 1	$11.66	.93	1.95	.70+a	.02
Class 2	11.58	.93	1.95	.70+a	.02
Class 3	11.33	.93	1.95	.70+a	.02
Class 4	11.11	.93	1.95	.70+a	.02
Class 5	10.88	.93	1.95	.70+a	.02
Class 6	10.87	.93	1.95	.70+a	.02
Class 7	10.59	.93	1.95	.70+a	.02
Class 8	10.36	.93	1.95	.70+a	.02
Class 9	9.89	.93	1.95	.70+a	.02
Class 10					
a	12.08	.93	1.95	.70+a	.02
b	12.33	.93	1.95	.70+a	.02
c	12.58	.93	1.95	.70+a	.02
d	12.08	.93	1.95	.70+a	.02
Class 11	12.07	.93	1.95	.70+a	.02
Class 12	11.78	.93	1.95	.70+a	.02
Class 13	11.58	.93	1.95	.70+a	.02
Class 14	11.13	.93	1.95	.70+a	.02

FOOTNOTE:

a. Paid Holidays: New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veteran's Day, Thanksgiving Day, Christmas Day, providing the employee works one day in the payroll week in which the holiday occurs.

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POWER EQUIPMENT OPERATORS
HEAVY AND HIGHWAY CONSTRUCTION

Class 1: Backhoes, Power shovels.

Class 2: Mine hoist, Cranes, etc, used as mine hoists.

Class 3: Gradalls, Ketstones, Cranes (with digging buckets including sand dock cranes, bridge cranes), Trenching machines.

Class 4: Rigs (under direction of a dockbuilder foreman), Derrick boats, Tunnel shovels, Piledrivers.

Class 5: Raise Bore Drill.

Class 6: Mucking machines, Back filling machines, Cranes, Paver dual drums.

Class 7: Elevator (manually operated), Concrete pavers, Cableways, Land Derricks, Mixers, Power Houses (which contain low pressure units).

Class 8: Power Houses (other than above), Compressors (3 or more in battery), Stone Crusher, Double Drum Hoist, Concrete pumps, Well point pumps, Tugger machines (caissons), Drilled in caissons, Soil solidification equipment, Welding machines (used for steel erection), Concrete plant, Conveyor attachment, Well Drilling machine.

Class 9: River cofferdam pumps, Welding machines, Boilers, High pressure, Compressors (portable, single or two in a battery), not over 100' apart, Concrete breaking machines, Hoists, Single drum, Load Masters, Locomotives and Dinkies over 10 tons, Mixers (concrete with loading attachment), Push button machines.

Class 10: Long Boom Land Cranes:
a---100' to 149'
b---150' to 249'
c---250' to 450'
d---350' to 450'

Class 11: Junior engineers when operating loaders rubber-tired and/or tractor type with a manufacturer's minimum rated bucket capacity of 6 cubic yards and over.

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POWER EQUIPMENT OPERATORS (CONT'D)
HEAVY AND HIGHWAY CONSTRUCTION

Class 12: Junior engineers when operating the following equipment and attachments: Scrapers, Turnapulls, Tugger hoists used exclusively for handling excavated material, Tractors (rubber tired and/or track type), Hysters and roustabout cranes, Back scratchers, Cherrypickers under 20 tons, Austin Western and machines of a similar nature, Bulldozers, Loaders rubber tired and/or tractor type with a manufacturer's minimum rated bucket capacity or less than 6 cubic yards, Conveyors, Motor Graders, Curb and Gutter Pavers and machines of a similar nature.

Class 13: Junior engineers when operating the flowing pieces of minor equipment: Tractors, Locomotives 10 tons and under, Post hole diggers, Motor Generators, Road Finishing machines, Mixers 16S and under with or without loading devices, Rollers 5 tons and under, Tugger hoists, Dual purpose trucks, Fork lifts, Dempster Dumpsters, Firemen tending to: Steam operated shovels, power boilers, steam operated piledrivers, steam operated derrick boats, steam operated water rigs.

Class 14: Apprentice engineers and oilers (all gasoline, electric, diesel, or air operated), Shovels, Cranes, Draglines, Backhoes, Keystones, Gradalls, Pavers, Trenching machines, Concrete pumps, Gunite machines, Compressors (3 or more in a battery), Power Houses, there duties shall be to assist the engineer in oiling, greasing and repairing of all machines, giving signals when necessary, chaining buckets and scale boxes, driving truck cranes, driving and operating fuel and grease truck.

SUPERSEDEAS DECISION

STATE: North Carolina COUNTY: See below*
DECISION NUMBER: NC79-1085 DATE: Date of Publication
Supersedes Decision No.: NC76-1073 dated July 9, 1976 in 41 FR 28469.
DESCRIPTION OF WORK: Residential Construction consisting of single family homes and garden type apartments up to and including 4 stories.

*Counties: Craven, Carteret, Duplin Green, Johnson, Jones, Lenior, Onslow, Pamlico, and Wayne.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanic	$5.00				
Bricklayers	6.50				
Carpenters	5.83				
Cement masons	5.00				
Dry wall Finishers	7.00				
Electricians	5.30				
Insulator installer	4.00				
Laborers:					
Laborers	3.00				
Masons tenders	4.00				
Mortar mixers	4.00				
Pipelayers	4.75				
Painters	5.00				
Plumbers & Pipefitters	5.00				
Roofers	5.52				
Sheet metal workers	6.00				
Soft floor layers	5.50				
Tile setters	6.50				
Truck drivers	4.00				
Welder - Rate for craft.					
POWER EQUIPMENT OPERATORS:					
Asphalt raker	4.80				
Backhoe	5.00				
Bulldozer	5.00				
Crane	6.25				
Grader	5.00				
Loader	5.00				
Paving machine op.	6.00				
Roller	4.36				
Scraper	4.50				
Tractor	4.15				

SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTIES: Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming & York
DECISION NO. PA793012 DATE: Date of Publication
Supersedes Decision No. PA78-3090, dated October 27, 1978, in 43 FR 50357.
DESCRIPTION OF WORK: Heavy and Highway Construction.

HEAVY & HIGHWAY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters/Piledrivermen	9.87	.55	.65		
Ironworkers:					
Structural, Ornamental & Reinforcing:					
Adams, Cumberland, Dauphin, Lancaster, Lebanon, Lycoming, Montour, Northumberland, Juniata, Perry, Snyder, Union & York Counties	12.105	1.14	1.35		.03
Laborers:					
Asphalt, tampers, concrete pitmen, puddlers & rubbers, Highway guard rail, right of way and property line fence, Highway slab reinforcing placers, laborers, landscape, planters, seeders and arborists, magazine tenders, railroad trackmen & signalmen, leaser beam men (pipe laying, paving machine)	8.56	.40	.20		
Pneumatic and electric tool op. jackhammers, paving breakers, concrete saws, whacker vibrators, sheet hammers, steward, chain saws, pipelayers, asphalt rake, lute or screed men, concrete block layers	8.76	.40	.20		
Caisson-open air-below 8 feet, cofferdam open air-below 8 feet where excavations for circular caissons and cofferdams 8 feet and below level of natural grade adjacent to starting point, form setters (road) wagon drill diamond point drill, gunite nozzle operators	9.11	.40	.20		
Blasters	9.34	.40	.20		
Reinforcing steel placers, bonding, aligning and securing and burning and welding in conjunction with reinforcing steel	9.40	.40	.20		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers (Cont'd)					
Concrete surfaces	9.78	.40	.20		
Free Air Tunnels and Rock Shafts					
Outside laborers in conjunction tunnels & rock shafts	9.20	.40	.20		
Chuck tenders, muckers, nippers, miners, & drillers helpers, inside laborers	9.49	.40	.20		
Miners, drillers, blasters, pneumatic shield operators, lining, spotting & timers workmen, reinforcing steel placer placers, bonding, aligning and securing and concrete sufacers	9.97	.40	.20		
Line Construction:					
Adams, Cumberland, Dauphin, Juniata, Perry & York Counties, Pennsylvania					
Journeyman Lineman	10.76	.45	3%		.053
Experienced Winch Truck	7.49	.45	3%		.037
2nd. 1000 Hrs.	7.30	.45	3%		.036
1st. 1000 Hrs.	7.12	.45	3%		.035
Experienced Truck Driver	6.94	.45	3%		.034
2nd. 1000 Hrs.	6.76	.45	3%		.033
1st. 1000 Hrs.	6.58	.45	3%		.032
Experienced Groundman	6.40	.45	3%		.032
2nd. 1000 Hrs.	6.21	.45	3%		.031
1st. 1000 Hrs.	6.03	.45	3%		.030
Easton, Northampton County					
Journeyman Lineman	12.43	.45	.124		.062
Experienced Winch Truck	8.66	.45	.086		.043
2nd. 1000 Hrs.	8.45	.45	.084		.042
1st. 1000 Hrs.	8.24	.45	.082		.041
Experienced Truck Driver	8.03	.45	.080		.040
2nd. 1000 Hrs.	7.82	.45	.078		.039
1st. 1000 Hrs.	7.61	.45	.076		.038
Experienced Groundman	7.40	.45	.074		.037
2nd. 1000 Hrs.	7.19	.45	.071		.035
1st. 1000 Hrs.	6.98	.45	.069		.034

Line Construction: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Berks, Lancaster, Lebanon, and Lehigh Counties					
Journeyman Lineman	11.46	.45	.114		.057
Experienced Winch Truck	7.98	.45	.079		.039
2nd. 1000 Hrs.	7.78	.45	.077		.038
1st. 1000 Hrs.	7.59	.45	.075		.037
Experienced Truck Driver	7.40	.45	.074		.037
2nd. 1000 Hrs.	7.20	.45	.072		.036
1st. 1000 Hrs.	7.01	.45	.070		.035
Experienced Groundman	6.82	.45	.068		.034
2nd. 1000 Hrs.	6.62	.45	.066		.033
1st. 1000 Hrs.	6.43	.45	.064		.032
Bradford, Carbon, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, Counties, Pa,					
Journeyman Lineman	10.80	.50	.32		.08
Experienced Winch Truck	7.59	.50	.22		.05
2nd 6 months	7.41	.50	.22		.05
1st 6 months	7.21	.50	.21		.05
Experienced Truck Driver	7.43	.50	.22		.05
2nd 6 months	7.21	.50	.21		.05
1st 6 months	7.04	.50	.21		.05
Experienced Groundman	7.26	.50	.22		.05
2nd 6 months	7.04	.50	.21		.05
1st 6 months	6.82	.50	.20		.05
Power Equipment Operator Zone 1 (Heavy Construction)					
Group 1	12.81	7%	10.3%	a	1.8%
Group 2	12.52	7%	10.3%	a	1.8%
Group 3	11.64	7%	10.3%	a	1.8%
Group 4	10.87	7%	10.3%	a	1.8%
Group 5	10.39	7%	10.3%	a	1.8%
Group 6	9.47	7%	10.3%	a	1.8%
Group 7	13.06	7%	10.3%	a	1.8%
Group 7-A	13.31	7%	10.3%	a	1.8%
Group 7-B	13.56	7%	10.3%	a	1.8%

Power Equipment Operators: Heavy Construction (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone II					
Group 1	12.86	7%	10.3%	a	1.8%
Group 2	12.57	7%	10.3%	a	1.8%
Group 3	11.70	7%	10.3%	a	1.8%
Group 4	10.93	7%	10.3%	a	1.8%
Group 5	10.46	7%	10.3%	a	1.8%
Group 6	9.55	7%	10.3%	a	1.8%
Group 7	13.11	7%	10.3%	a	1.8%
Group 7-A	13.36	7%	10.3%	a	1.8%
Group 7-B	13.60	7%	10.3%	a	1.8%

AREA COVERED BY POWER EQUIPMENT OPERATORS
HEAVY CONSTRUCTION

Zone - I - Lackawanna, Susquehanna, Wyoming, Pike, Wayne, Monroe, and Luzerne Counties.
Zone - II - Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lancaster, Lebanon, Lehigh, Lycoming, Montour, Northampton, Nothumberland, Perry, Schuylkill, Snyder, Sullivan, Tioag, Union and York Counties.

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

Group 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helicopters, machines similar to the above.

Group 2: All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, derricks, trench shovels, trenching machines, hoist with two towers, pavers 21E and over, all types overhes cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3½ c.y. and over, tandem scrapers, pippin type backhoes, boat Captains batch plant operators (concrete)drills, self-contained rotary drills, fork lifts, 20 ft. lift and over machine to the above.

Group 3: Conveyors, building hoists (singel drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bull-dozers and tractors, asphalt plant engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3½ cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft. lift, machines similar to the above.

Group 4: Welding machines, well points, compressors, pumps, heraters, farm tractors, form line grader, fine grade machines, road finishing machines, concrete breaking machines, rollers, seaman pulverizing mixer, power broom, seeding spreader, tireman (for power equipment), machines similar to above.

Group 5: Fireman, grease truck

Group 6: Oilers and deck hands (personnel boats), core drill helper

Group 7: All machines with booms (including jib, mast, leads, etc.): 100 ft. and over

Group 7-A: 150 ft. and over

Group 7-B: 200 ft. and over

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, provided the employee works the day before and after the holiday.

Power Equipment Operators Highway Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	11.26	7%	10.3%		1.8%
Group 2	10.42	7%	10.3%		1.8%
Group 3	9.91	7%	10.3%		1.8%
Group 4	9.47	7%	10.3%		1.8%
Group 5	8.92	7%	10.3%		1.8%
Group 6	11.51	7%	10.3%		1.8%
Group 6-A	11.76	7%	10.3%		1.8%
Group 6-B	12.01	7%	10.3%		1.8%

Group 1: Pile drivers or engineers working with dock builders and pile drivers. All types of cranes, all types of backhoes, dragline, keystones, all types of shovels, derricks, trench shovels, trenching machines, pavers 21E and over, gradalls, all front end loaders, 4 cu. yds, and over, tandem scrapers, Pippin type backhoes, Boat Captains, Batch plant with mixer, drill self contained (drillmaster type), CMI autograde, machines similar to above.

Group 2: Conveyor loader (EUC type), scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, bulldozers and tractors, asphalt plant engineers, rollers (high grade finishing), all loaders under 4 cu. yds., mechanic-welders, motor patrols, machines similar to above

Group 3: Welding machine, well points, compressors, pumps heaters, farm tractors, form line graders, Fine grade machine, ditch witch type trencher, road finishing machines, concrete breaking machines, rollers, seaman pulverizing mixer, power broom, seeding spreader, tireman - (for power equipment) conveyor loaders other than EUC, type, conveyors, machines similar to above

Group 4: Fireman

Group 5: Oilers and deck hands

Group 6: On all machines with booms (including jibs, masts, leads, etc.) 100 ft. and over

Group 6-A: 150 ft. and over

Group 6-B: 200 ft. and over

[FR Doc. 79-15228 Filed 5-17-79; 8:45 am]

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Truck Drivers:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Class I					
Helper, stake body truck (single axle), dumpster	9.52				
Class II					
Dump trucks, tandem & batch trucks, semi-trailers, agitator mixer trucks, ready mix and dumpcrete type vehicles, asphalt distributor when used for transportation stake body truck (tandem)	9.59				
Class III					
Euclid type, off-highway equipment back or belly dump truck and double hitched equipment, straddle (ross) carrier, low-bed trailers	10.08				
Welders - Rate for Craft					

federal register

Friday
May 18, 1979

Part IV

Department of the Interior

Geological Survey

Revised Outer Continental Shelf Orders Governing Oil and Gas Lease Operations

DEPARTMENT OF THE INTERIOR

Geological Survey

Revised Outer Continental Shelf Orders Governing Oil and Gas Lease Operations

Notice is hereby given that, pursuant to Title 30 CFR Part 250.11, the Chief, Conservation Division, U.S. Geological Survey, has approved the issuance of revisions to the Outer Continental Shelf (OCS) Orders for the following OCS Areas:

Gulf of Mexico
Pacific
Gulf of Alaska
Atlantic

Revised Area OCS Orders Nos. 1, 2, 3, 4, 5, 7, and 12 will be effective July 1, 1979. These Orders supersede the corresponding Orders currently in effect for the OCS Areas listed above.

During the development of the final version of these Orders, it was determined that the requirements for the Orders for the North, South, and Mid-Atlantic Areas were the same. Therefore, the requirements were incorporated into a single set of Atlantic Area OCS Orders.

OCS Order No. 5 supersedes the paragraphs listed below for OCS Order No. 8 for the Gulf of Mexico and for the Pacific Areas. The remainder of OCS Order No. 8 for these Areas remains in effect.

Area	Superseded Paragraphs
Gulf of Mexico	4 through 7
Pacific	2

Due to the development of the Platform Verification Program, it is necessary to revise extensively the previously published OCS Order No. 8 to reflect the implementation of the Program; therefore, a proposed revision of this Order will be published at a later date, with a solicitation for comments.

These Orders incorporate appropriate suggestions which were received in response to the solicitation for comments on the proposed National OCS Orders, which were published in the Federal Register on June 29, 1977, Vol. 42, No. 125, and August 25, 1977, Vol. 42, No. 165.

Due to the enactment of the OCS Lands Act Amendments of 1978, it will be necessary to review and revise existing rules and regulations relating to OCS Oil and Gas Activities. Since this review may have an impact on the concept of National OCS Orders, no further action will be taken to issue National OCS Orders at this time. During the development of National OCS Orders, the Department deferred issuing revisions to existing Area OCS Orders, pending issuance of National OCS Orders.

Many requirements were incorporated which improve the safety and antipollution precautions of the Orders. The Department has determined that it is in the public interest to incorporate these improved requirements into revised Area OCS Orders at this time. It is also recognized that some of these requirements will be reorganized and restructured when the existing regulations are revised to reflect the enactment of the Outer Continental Shelf Lands Act Amendments.

Comments were received from the following organizations:

Alaska Offshore Operators Committee
American Petroleum Institute
Atlantic Richfield Co.
Brown & Root, Inc.
California State Lands Commission
Cape May County Planning Board, New Jersey
Chevron USA, Inc.
Continental Oil Co.
State of Delaware
ENMET Corporation
Exxon Company, USA
Georgia Office of Planning and Budget
Global Marine, Inc.
Gulf Energy and Minerals Co.-USA
Herbert S. Hiller Corporation
International Association of Drilling Contractors
Interstate Natural Gas Association of America
Marathon Oil Co.
Massachusetts Secretary of Environmental Affairs
Mobil Oil Corporation
Natural Resources Defense Council, Inc.
New Jersey Department of Environmental Protection
Offshore Operators Committee
Glenn Paulson, Assistant Commissioner for Science, New Jersey
Phillips Petroleum Co.
Paul Purser, Professional Engineer
Shell Oil Co.
Sun Production Co.
Texaco, Inc.
Texas Eastern Transmission Corporation
The Offshore Co.
Trans-Continental Gas Pipeline Corp.
U.S. Coast Guard
U.S. Department of Commerce
U.S. Environmental Protection Agency
Western Oil & Gas Association
Edward Wilson, Coordinator OCS Activities, Virginia

Summaries of the comments received, discussions for accepting or rejecting the suggestions of the commenters, and the final versions of the Orders are published below. The requirements of certain paragraphs and subparagraphs are different for the various Areas due to environmental, geological, geophysical, or geographical differences. The Areas which are affected by these varying requirements are identified in the appropriate paragraphs and subparagraphs of the Orders. Booklet copies of the final Orders for each Area will contain only those requirements which are applicable to that Area.

The term OCS Area as used herein is defined as an established organizational unit of a U.S. Geological Survey Region which is under the jurisdiction of an Area Oil and Gas Supervisor. An Area is comprised of one or more Districts which are under the administration of a District Supervisor.

These Area OCS Orders are applicable to leases on the Outer Continental Shelf. The term "Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, 83rd Congress, 1st Session) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Where these Area OCS Orders refer to approvals or determinations by the Supervisor, these references mean the appropriate Area Oil and Gas Supervisor. In those instances where approvals or determinations are to be made by the District Supervisor, the Orders so state and the determination is made by the appropriate District Supervisor.

Departures granted under the provisions of the previous Area OCS Orders shall remain in effect, provided those specific provisions under which the departures were granted remain unrevised in these Orders.

For further information, contact Mr. Richard B. Krahl, Chief of the Branch of Marine Oil and Gas Operations, Conservation Division, U.S. Geological Survey, Mail Stop 620, Reston, Virginia 22092 (703–860–7531). The primary author of this document is Mr. Lloyd M. Tracey, OCS Orders and Standards Section, Branch of Marine Oil and Gas Operations, Conservation Division, U.S. Geological Survey (703–860–7835).

Copies of the revised Area OCS Orders and copies of maps indicating the boundaries of jurisdictional Areas are available from the following:

Conservation Manager, Gulf of Mexico Region, U.S. Geological Survey, P.O. Box 7944, Metairie, Louisiana 70011.
Conservation Manager, Eastern Region, U.S. Geological Survey, 1725 K Street, N.W., Washington, D.C. 20244.

Conservation Manager, Western Region, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025.
Area Oil and Gas Supervisor, Alaska Area, Skyline Building, Room 212, 800 A St., P.O. Box 259, Anchorage, Alaska 99501.
Area Oil and Gas Supervisor, Pacific Area, 7744 Federal Building, 306 N. Los Angeles St., Los Angeles, California 90012.
Chief, Conservation Division, U.S. Geological Survey, Mail Stop 620, National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

Copies of the U.S. Geological Survey Standards, which are referenced in Area OCS Order No. 2, are available from the Chief, Conservation Division, at the address above.

Dated: May 11, 1979.

J. R. Balsley,

Acting Director.

OCS Orders

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OCS Order No. 1

Title and Preamble

Comments. No comments received.

Discussion. The title of OCS Order No. 1 was revised by adding the words "Mobile Drilling Units" to be consistent with the content of the Order.

The preamble was revised to state that the Order is "issued" rather than "established," pursuant to the authority prescribed in 30 CFR 250.11. The last sentence of the preamble pertaining to departures was deleted and inserted into the last paragraph of the Order, as this is a requirement that should appear in the text of the Order rather than in the preamble. These revisions of the preamble will be incorporated into all OCS Orders.

Paragraphs Nos. 1, 3, and 4.

Comments. One commenter expressed concern that paragraphs Nos. 1 and 3 did not address the lighting of fixed structures and suggested that the marking of submerged objects should include "all-weather" aides to navigation. Another commenter suggested that marker buoys would not remain in place; therefore, the Order should require the owner to notify the U.S. Coast Guard (USCG) and the fishing and shrimping associations of the location of the object.

The USCG suggested the Order should state that the requirements for the marking of submerged objects should be determined by the U.S. Coast Guard District Commander.

Discussion. OCS Order No. 1 does not address the lighting of all surface facilities because the lighting of artificial islands and mobile drilling vessels is governed by regulations of the USCG.

Since the determination of hazards to navigation or to commercial fishing operations is a function of the U.S. Coast Guard District Commander, we have adopted the suggestion of the USCG and have revised paragraph No. 4 as follows:

"4. *Identification of Subsea Objects.* All subsea objects resulting from lease operations which are determined by the U.S. Coast Guard District Commander to be hazards to navigation or to the deployment of commercial fishing devices shall be identified by suitable aid-to-navigation devices as directed by the District Commander. Prior to the establishment of a subsea object, or in the event of the accidental submergence of an object, the owner shall inform the District Commander of the object's description, location, and unobstructed depth of water above the object's highest point. Based on this information, the District Commander will determine what marking and permits, if any, will be required (14 USC 83, 85; 43 USC 1333; 33 CFR 67). The owner shall maintain these navigational markings onsite and properly functioning at all times while the obstruction remains."

Paragraph No. 2

Comments. One commenter suggested that paragraph No. 2, "Identification of Nonfixed Platforms or Structures," should be titled "Identification of Mobile Drilling Units" because the paragraph addressed semi-submersibles, jack-ups, and drill ships. This terminology would also be consistent with proposed OCS Order No. 2 and with the U.S. Coast Guard regulations.

Discussion. The title has been revised to reflect this change.

United States Department of the Interior; Geological Survey Conservation Division

OCS Order No. 1, Effective July 1, 1979; Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.37.

1. *Identification of Fixed Platforms or Structures.* Platforms and structures shall be identified at two diagonal corners by a sign with letters and figures not less than 30 centimeters (12 inches) in height with the following information:

a. The name of the lease operator.

b. The area designation based on OCS Official Protraction Diagrams.

c. The block number in which the platform or structure is located.

d. The platform or structure designation.

The information shall be abbreviated as in the following example:

The Blank Oil Company operates "C" platform on Block 999 of the Salisbury Area. The identifying sign on the platform would indicate: BOC–SAL–999–C.

2. *Identification of Mobile Drilling Units.* Floating semisubmersible platforms, bottom-setting mobile rigs, and drilling ships shall be identified by one sign with letters and figures not less than 30 centimeters (12 inches) in height affixed to the derrick so as to be visible to approaching traffic and containing the following information:

a. The name of the lease operator.

b. The area designation based on OCS Official Protraction Diagrams.

c. The block number in which the drilling unit is located.

d. The OCS lease number.

e. The well number.

3. *Identification of Wells.* The OCS lease and well numbers shall be painted on, or a sign affixed to, the wellhead of each singly completed well. In multiply completed wells, each completion shall be individually identified at the wellhead. All identifying signs shall be maintained in a legible condition.

4. *Identification of Subsea Objects.* All subsea objects resulting from lease operations which are determined by the U.S. Coast Guard District Commander to be hazards to navigation or to the deployment of commercial fishing devices shall be identified by suitable aid-to-navigation devices as directed by the District Commander. Prior to the establishment of a subsea object or in the event of the accidental submergence of an object, the owner shall inform the District Commander of the object's description, location, and unobstructed depth of water above the object's highest point. Based on this information, the District Commander will determine what marking and permits, if any, will be required (14 USC 83, 85; 43 USC 1333; 33 CFR 67). The owner shall maintain these navigational markings onsite and properly functioning at all times while the obstruction remains.

5. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.12(b).

Approved:

Don E. Kash,

Chief, Conservation Division.

OCS Order No. 2

General Comments

Comments. No comments received.

Discussion. Due to technical and editorial revisions, the paragraph numbering has been changed in this Order. In the discussions of the revisions, the new paragraph numbering coincides with the final Order. The former paragraph numbering is shown in parentheses.

Comments. One commenter stated that "Onshore impacts from OCS Sales will be felt by the coastal communities prior to the adoption of the various state Coastal Zone Management plans." It was recommended that "A special lease stipulation should be promulgated to require OCS lessees to certify that their exploration and development plans are consistent with adopted Regional Master Plans as well as State Coastal Zone Management plans."

Discussion. Since the publishing of the proposed National OCS Orders in the Federal Register, revised 30 CFR 250.34 was published in the Federal Register, Vol. 43, No. 19, on January 27, 1978. A proposed revision to this regulation, conforming to the recently enacted 1978 amendments to the OCS Lands Act (PL95-372), was also published in the Federal Register, Vol. 44, No. 12, January 17, 1979. Since both of these publications require the submittal of documents certifying that exploration and development plans are consistent with approved State Coastal Zone Management programs, it is not believed that a special lease stipulation will be necessary.

Comments. One commenter stated that "The proposed order, in its entirety, appears to ignore existing API documents which outline adequate industry procedure."

Discussion. The United States Geological Survey (USGS) disagrees with this statement. Appropriate recommended practices and specifications published by the American Petroleum Institute (API) are referenced throughout the OCS Orders as well as standards established by other organizations and the USGS.

Preamble

Comments. One commenter addressed the second sentence of the first paragraph of the Preamble, stating that the phrase "* * * in effect until field rules are issued" should definitely be kept in this Order.

Discussion. The statement has been retained in the Order; however, the requirements for the establishment of field drilling rules are now incorporated into a new paragraph 10, "Field Drilling Rules." The intent of the preamble is to cite the authority for the issuance of the Orders, rather than to state specific requirements. Other requirements, pertaining to plans and applications, which were in the preamble were incorporated into the body of the Order for the same reason.

Paragraph 1

Comments. No comments received.

Discussion. The requirements for the submittal of plans and the Application for Permit to Drill, which were formerly addressed in the preamble, were incorporated into a new paragraph 1, "Plans and Applications," for the reason given in the preceding discussion. All subsequent paragraphs were renumbered.

Subparagraph 1.2

Comments. No comments received.

Discussion. The following sentence was added: "Additionally, the Supervisor will prescribe the number of public information copies to be submitted." The additional copies are required for submittal to States requesting copies in accordance with 30 CFR 250.34.

Subparagraph 2.1.1

Comments. It was suggested that the second sentence in subparagraph 2.1.1 (1.1.1) be changed to "The operator or drilling contractor shall * * *."

Discussion. This suggestion was not accepted because the lessee is legally responsible for drilling and developing the lease. The drilling contractor is considered the lessee's agent. Therefore, the word "operator" was replaced by the word "lessee." This revision was incorporated wherever the word "operator" appeared in all of the Orders.

Comments. One commenter suggested that the second sentence of 2.1.1 (1.1.1) was redundant and should be deleted because the requirements of the proposed subparagraphs 1.1.2, 1.1.4 and 1.2(a) and (b) addressed the same subject.

Discussion. The intent of this sentence was to state the requirement for the lessee to furnish evidence of the fitness of the drilling unit to perform the planned operations. The proposed subparagraph 1.1.4 recited the information which is required to evaluate the fitness of the drilling unit. The language of the subparagraph was revised to require the "rated capacity of all major drilling equipment * * *." This language was then incorporated into subparagraph 2.1.1 instead of a separate subparagraph (1.1.4). Refer to the comments and discussion of subparagraph 2.1.4 (1.1.4).

Comments. It was recommended that "* * * insertion of the intent of the Memorandum of Understanding (MOU) dated April 11, 1977, between the United States Coast Guard (USCG) and the USGS into this section will minimize duplication of regulatory efforts, reduce the burden on industry, and provide equal or more effective safety and pollution control."

Discussion. The third sentence of subparagraph 2.1.1 was revised to indicate the intent of the MOU. The subparagraph requires the submittal of information on equipment "associated with the drilling operation"; therefore, this requirement does not constitute a duplication of regulatory efforts. The USCG will inspect and approve the drilling equipment, its related systems, and the use of a mobile drilling unit at a particular location; whereas, the USGC will inspect and approve the systems relating to the safety and health of personnel, the general safety and integrity of the unit, and the marine and industrial systems as outlined in the MOU between the USCG and the USGS.

Comments. One commenter suggested that "Seismic (including tsunamis) conditions should be inserted along with oceanographic and meteorological considerations."

Discussion. Subparagraph 2.2b (1.2b) has been revised to require that application for drilling from mobile drilling units shall include "seismic motion to be encountered at the drill site during the period of drilling operations." Forces due to tsunamis would be included in this seismic motion data. Furthermore, subparagraph 2.3 (1.3) requires that applications for placement of fixed drilling platforms or structures shall be submitted in accordance with OCS Order No. 8, which in turn requires that the design of all artificial islands or structures shall consider forces due to seismic motion.

The following discussion is quoted from a report entitled "Environmental Design Data for the Gulf of Alaska (Update No. 3)," September 1977, which was prepared for the USGS by the Aerospace Corporation:

The damaging effects of tsunamis are primarily limited to very shallow water and coastal areas where the tsunami may be transformed to a breaking wave of great magnitude. In the open waters of the OCS lease, however, the tsunami is felt only as a rapid rise in sea level which imparts very little horizontal force to structures it may encounter. Since this phenomenon is frequently misunderstood, it is useful to place it in perspective by comparing the forces generated by both a large storm wave and a tsunami. According to Horrer (1975), a large tsunami which raised the water level 30 feet in 5 minutes at a site where the water depth is 200 feet would produce water particle horizontal accelerations and velocity maxima of 0.15 ft/sec ^{2} and 7 ft/sec., respectively. Similar water particle accelerations and velocities for a 90-foot-high storm wave with a 16-second period in the same water depth would be 8 ft/sec ^{2} and 20 ft/sec at the surface and 4 ft/sec ^{2} and 10 ft/sec at the bottom. Thus, from an offshore platform design standpoint, tsunamis can be treated in the same manner as a rise in water level elevation.

In view of the conclusions of the Aerospace Corporation's report, we believe that our requirement for the submission of seismic motion data and maximum-anticipated wave heights for both fixed and mobile platforms adequately covers the requirement for this data.

Comments. One commenter submitted a discussion of the merits and favorable aspects of using drill ships over other types of mobile drilling units in the Gulf of Alaska.

Discussion. The USGS considers the guidelines in new subparagraphs 2.1.1, "Fitness of Drilling Unit," and 2.1.2, "Pre-Drilling Inspection," sufficient and appropriate to determine the suitability of a mobile drilling unit to be approved for drilling in any OCS area, regardless of its configuration.

Subparagraph 2.1.2

Comments. It was suggested that the word "available" be added to the first sentence of subparagraph 2.1.2 (1.1.2) so that "a positive flow of events will occur with no unnecessary lost rig days."

Discussion. The suggestion was adopted for clarity.

Comments. It was suggested that the word "area" be clearly defined in subparagraphs 2.1.2 (1.1.2) and 2.2 (1.2).

Discussion. The word "area" has been defined in the preamble of this Notice. Copies of maps indicating the boundaries of these jurisdictional areas are available from the Conservation Managers at the addresses listed in the preamble of this Notice.

Subparagraph 2.1.3

Comments. It was recommended that the statement "* * * other surveys as required by the Supervisor * * *" be deleted from subparagraph 2.1.3 (1.1.3), and the wording changed to apply this section to exploratory wells only.

Discussion. The intent of the subparagraph was to recognize the Supervisor's authority to require archaeological or biological surveys. These surveys may be included in lease stipulations.

Comments. It was asked if well-site surveys "remain" with the District Supervisor. It was stated that the surveys should be forwarded to each involved State for review by appropriate personnel.

Discussion. Well-site survey data is maintained by the District Supervisor and may be reviewed by the public in accordance with subparagraph 2.10c of OCS Order No. 12 and the regulations set forth in 30 CFR 252.

Comments. It was suggested that "To be consistent with section 1.1.5, this section should mention that the requirements for well site surveys will be issued in an OCS Notice to Lessees."

Discussion. The subparagraph was not changed since survey requirements may vary within an OCS area. Survey requirements shall be considered on a case-by-case basis. A Notice to Lessees may not be the appropriate document to require these surveys.

Former Subparagraph 1.1.4

Comments. Several commenters addressed the original subparagraph 1.1.4 stating that in the first sentence, the term "performance data" should be changed to "rated capability." Furthermore, the word "major" should be inserted between the words "all" and "drilling." The reasons for these revisions concerned the necessity of submitting large volumes of data and drawings "* * * of *all* components of the rig's minor equipment."

Discussion. These comments have been adopted to clarify the intent of the subparagraph.

The original subparagraph 1.1.4 has been rewritten and is now included in subparagraph 2.1.1 beginning with the third sentence. Accordingly, original subparagraphs 1.1.4, 1.1.5, and 1.1.6 have been renumbered 2.1.3, 2.1.4, and 2.1.5, respectively.

Former Subparagraph 1.1.5

Comments. It was suggested that "* * * oceanographic and meteorological conditions be made available not just at any point in operation but in time to determine the fitness of the drilling units proposed for use."

Discussion. The U.S. Naval Oceanographic Office and the National Oceanographic and Atmospheric Administration (NOAA) have data that can be used by lessees to gain oceanographic and meteorological knowledge of most OCS areas. We agree that all available data should be used to determine the fitness of the drilling unit. It is the lessees' responsibility to gather this information and use it in formulating their programs for approval. Operational data will add to this data base.

Subparagraph 2.2

Comments. It was suggested that the USGS collaborate with the drilling contractor for criteria needed under subparagraph 2.2 (1.2), rather than with the operator.

Discussion. The USGS disagrees for the same reasons stated under subparagraph 2.1.1 on this subject.

Comments. It was suggested that subparagraph 2.2b (1.2b) be deleted because "* * * 'an average recurrence interval of 100 years' is extremely excessive * * *."

Discussion. The USGS agrees that the recurrence interval may vary as to the total length of time that a drilling unit may work in a given area. Accordingly, the subparagraph was rewritten to eliminate the 100-year recurrence interval. The revision requires that the information to be submitted shall be based on conditions "to be encountered at the drill site during the period of drilling operations."

Comments. It was noted that unless subparagraph 2.2c (1.2c) is deleted, "The USGS proposed requirement would require stacking of all domestic noncertified units until the U.S. Coast Guard certification program is implemented * * *."

Discussion. It is not the intent of the USGS to cause domestic noncertified rigs to be stacked in the Gulf of Mexico or in any other OCS Area. Until the USCG certification program is implemented, departures can be submitted in accordance with 30 CFR 250.12(b), as indicated in paragraph 11 of this Order. Departures would be granted for any Mobile Offshore Drilling Unit (MODU) which is waiting for the USCG to issue a Certificate of Inspection, provided the certificate is not being withheld due to failure to pass USCG inspection.

Comments. One comment was directed to subparagraph 2.2c stating that the USCG " 'Certificate of Inspection' is the proper reference, rather than 'Certificate of Fitness' * * *."

Discussion. This Order was revised to correct the misnomer.

Comments. It was suggested that subparagraph 2.2c be restructured as follows: "Current American Bureau of Shipping Classification *and* U.S. Coast Guard Certificate of Inspection * * *."

Discussion. It is concluded that substituting the word "and" for the word "or" would render the statement somewhat redundant. In consultation with the USCG concerning the subject of inspection of mobile drilling vessels, they assure that *all* mobile offshore drilling units must meet all applicable USCG safety standards. Moreover, all foreign drilling vessels operating in any United States waters will be inspected by the USCG. Additionally, if a mobile drilling unit is moved from one OCS area to another OCS area, it will also be inspected by the USCG.

Comments. One commenter stated that "The bulk of the units drilling in the North Atlantic are not likely to be covered under these regulations."

Discussion. The phrase "or other appropriate classifications" was added to recognize that other foreign classifications might be acceptable as evidence of the fitness of the vessel.

Paragraph 3

Comments. No comments received.

Discussion. The requirements of paragraph 3 (2), "Well Casing and Cementing," were reorganized and segregated into the following subparagraphs:

3.1 "General Requirements"
3.2 "Drive or Structural Casing"
3.3 "Conductor and Surface Casing Setting and Cementing Requirements"
3.3.1 "Conductor and Surface Casing Setting Depths"
3.3.2 "Conductor Casing Cementing Requirements"
3.3.3 "Surface Casing Cementing Requirements"
3.4 "Intermediate Casing Setting and Cementing Requirements"
3.5 "Production Casing"
3.6 "Pressure-Testing of Casing"

These editorial revisions present the requirements in a logical sequence and provide an improved index of the requirements.

Subparagraph 3.1

Comments. A number of commenters addressed several aspects of paragraph 3 (2), "Well Casing and Cementing," subparagraph 3.1, "General Requirements." One commenter noted: "For the surface and intermediate casing strings the statement concerning improper cementing is unnecessary and leads to confused interpretation. The critical operation at this point is the pressure test below the surface & intermediate casing shoe, which is required. If this shoe test shows that the surface & intermediate casing, the cementing job, and the formation immediately below it are capable of supporting the maximum mud weight required to reach the next casing point, there would be no valid reason for repairing an "indicated improper" cement job. If the formation leaks off below the desired mud weight, squeeze cementing below the surface and intermediate casing shoe would be the desired course of action regardless of the other indications during the primary cementing operation. The current requirement is also objectionable from the standpoint that the phrase 'make the necessary repairs' could be construed to require squeezing through

perforations, which is probably the least desirable solution.

"The requirement for a temperature or cement bond log is not included in the current Gulf of Mexico Order 2 and we feel that it is inappropriate to include it in the National Order."

Discussion. The USGS is in general agreement with the foregoing comments; however, temperature surveys and cement bond logs are very useful tools in determining the top of cement in cases where there is a question as to the actual placement of the cement. The paragraph has been restructured to allow greater flexibility in conducting these operations. This allows a choice of the means to determine the adequacy of the cement job and the remedial action to be taken, based on an engineering evaluation.

Comments. One commenter stated: "We are aware that in some instances in the South Atlantic OCS, the primary limestone aquifer extends offshore and may be within 20 feet of the ocean floor. Should well abandonment in an area where the aquifer is within 20 feet of the ocean floor require washing out of cement to facilitate the abandonment process, there is a strong possibility that the aquifer would be unprotected from contamination or leakage. We recommend that appropriate provision be made in this Order for adequate protection of the aquifer during and after abandonment."

Discussion. It is intended that subparagraph 3.1 provide for protection of all freshwater zones, regardless of depth. If special provisions are required to protect very shallow freshwater zones on the OCS, the District Supervisor shall consider these aspects before approval of the lessee's Application for Permit to Drill.

Comments. Several commenters suggested that the phrase "design wellhead pressure" be inserted between "pressures" and "and" in the fourth line. It was contended that "The design wellhead pressure will take into account the expected well conditions such as mud density to be used, the exposed formation fracture pressure, the well and casing setting depths the mud weights used outside the casing being drilled through, and any other pertinent drilling factors." The rationale for this suggestion is quoted as follows: "The proposal of design wellhead pressure allows the designer of the well to base equipment selection on well conditions and permits the selection of equipment with higher safety factors and avoids penalizing operators that use higher pressure rating BOP's for convenience or heavier wall casing for wear allowance."

Discussion. The USGS does not agree. Lessees may evaluate all of the design aspects considered in this comment. However, one set of design factors for one lessee may be quite different from the design factors adopted by another lessee, and still another set of design factors established by a third lessee. Consequently, different wellhead (working/test pressure) assemblies may result.

We know of nothing restrictive or penalizing in the use of the phrase "maximum-anticipated surface pressure" instead of "design wellhead pressure." The lessee is free to use "higher safety factors" and to use "higher pressure rating BOPs." Refer to subparagraph 5.1.1. (4.1.1.), 5.2 (4.2), 5.3 (4.3), and 5.6 (4.6). There are no limits on the selection of the weights and grades of the casing strings. The lessee is free to select higher weights and grades for safety considerations and wear allowances. Finally, the term "maximum-anticipated surface pressure" allows for the theoretical possibility of a full column of reservoir gas pressure at the surface, with no liquids in the well, and in a drilling area of abnormally high pressure gradients.

Comments. It was suggested that the third paragraph under subparagraph 3.1 (2) be revised to include the following: "A request to waive this requirement shall be accompanied by sufficient supporting offset well experience and formation data to verify that the proposed well will not penetrate abnormally pressured intervals."

Discussion. This suggestion was not adopted. The lessee has the option to utilize appropriate drilling technology which the District Supervisor has approved for use.

Comments. One commenter stated: "All casing is required to be new pipe which meets API quality standards or reconditioned used pipe that has been tested to insure it will meet API quality standards. What is the basis for reliance on the API standard? What review of this standard has been made by USGS? What happens if the standard is modified after the Orders are adopted? Does the API standard represent the best available and safest technology (BAST)? None of the answers to these questions can be determined from the Order."

Discussion. Prior to referencing in an OCS Order, any specification, standard, or Recommended Practice published by the API, American Society of Mechanical Engineers (ASME), American National Standards Institute (ANSI), or any other organization, published standards on the subject are reviewed. The most appropriate standard which accomplishes the intended purpose is selected for referencing in the Order. These documents reflect the best available technology because they undergo continued review and updating on a periodic basis by committees responsible for maintaining the documents. This review system assures that the documents reflect current technology.

Generally, when a standard is referenced in an OCS Order, a specific edition is indicated, normally the most current edition. Before another or later revision of the standard would be accepted, a review of that edition would be conducted by personnel of the USGS to see that it continues to accomplish the intended purpose. The Chief, Conservation Division, will therefore approve the use of any modified standard. In this particular paragraph, the intention is to assure that all casing, whether new or used manufactured domestically or foreign, meet the minimum accepted standards for collapse, tension, internal yield pressure, and mill test data.

There are at least 10 API documents which apply to oil-well casing. Since the lessee may elect to cite several of these documents as requirements for the casing installation for a particular well condition, it is deemed sufficient to refer to applicable API Standards.

Subparagraph 3.2

Comments. The following comment was made on subparagraph 3.2 (2.1): "There are many areas where hard sea floor outcrops make 100' of 36" or 48" hole very impractical. The attempt to set a specific, minimum length of casing for *all* areas of OCS waters ignores and denies the intelligent use of shallow hazards survey data by both the District Supervisor and the operator."

Discussion. The USGS is aware of areas where hard seafloors exist, and agrees that in these areas some flexibility should be allowed. Accordingly, the first sentence of this subparagraph was changed to "* * * a minimum depth of 30 meters (98 feet) below the oceanfloor or to other depths, as may be required or approved by the District Supervisor * * *."

Subparagraph 3.3.2

Comments. One commenter addressed subparagraph 3.3.2 (2.2.1) and recommended the following addition to the end of the first sentence: "except that in floating drilling operations this casing shall be cemented with a minimum quantity of cement sufficient to fill the calculated annular space to a point within 30 meters (98 feet) of the bottom of the drive or structural casing.

"The proposed revision for floating drilling operations would provide flexibility to the operator to use lesser amounts of cement which would greatly facilitate casing salvage and subsequent abandonment operations, if conducted, and would virtually eliminate the possibility of fouling the template with cement returns to the Gulf floor. No added safety margin is gained by cementing the conductor-structural string annulus back to the Gulf floor since the formation immediately below the shoe of the structural string is relatively incompetent."

Discussion. This suggestion was not adopted since provision has been made to wash out the top 12 meters (39 feet) below the ocean floor. The following provision is included in subparagraph 3.1: "In cases where cement has filled the annular space back to the ocean floor, upon approval by the District Supervisor, the cement may be washed out or displaced to a depth not exceeding 12 meters (39 feet) below the ocean floor to facilitate casing removal upon well abandonment."

Comments. It was proposed that the word "annular" be inserted between the words "calculated" and "space" in the first sentence of subparagraph 3.3.2. (2.2.1). It was contended that "* * * the word 'annular' properly defines 'space' in this sentence."

Discussion. The USGS agrees, and the suggestion was adopted.

Subparagraph 3.3.3

Comments. One commenter suggested that in subparagraph 3.3.3 (2.2.2) "* * * the term 'freshwater sands' be changed to read 'freshwater zones' so as to ensure protection of the limestone aquifer which may also occur in that shallow surface zone offshore."

Discussion. The USGS agrees, and has changed the phrase to "freshwater zones."

Comments. It was suggested that the following be added after the second sentence of subparagraph 3.3.3 (2.2.2): "For floating drilling operations that use a one stack blowout preventer system, a lesser volume of cement is permissible to prevent sealing the bottom of the annular space between the conductor casing and surface casing. Any annular space open to the drilled hole below must be sealed as required by Order 3 upon abandonment."

The rationale for this addition is quoted: "If the surface-conductor casing annulus is sealed at the bottom when using a one-stack subsea blowout preventer system, the subsea casing hanger pack-off sealing this annulus cannot be effectively presssure tested without danger of collapse of the surface casing or the bursting of the conductor casing each time the BOP's are tested to pressures exceeding the collapse pressure of the casing. With some formation exposed below the conductor pipe, the formation should break down before collapse of the surface pipe or burst of the conductor pipe, if a leak occurs in the sealing arrangement."

Discussion. This suggestion was not adopted. For the purposes of this discussion, case "A" will represent the condition wherein surface casing has been set and cement is extended into the surface/conductor annulus. Case "B" is the condition whereby the surface is set and the top of cement is below the conductor shoe (which could expose porous and permeable zones). The USGS believes that case "A" is the better surface-casing setting and cementing procedure than case "B." Surface casing is intended to protect all freshwater zones and to provide an anchor for the BOP stack.

If a wellhead seal leak should develop which would allow pressure communication in the surface/conductor annulus, then no pressure testing of the BOPs would be possible under case "B" until the seal is repaired. Otherwise, a porous formation could take fluid indefinitely.

If the lessee is concerned that a BOP pressure testing under case "A" could cause collapse of the surface casing or burst of the conductor casing, then pressure should be monitored on the conductor/surface annulus during the pressure test. If a leak is indicated, the lessee should take remedial action.

Subparagraph 3.4

Comments. One commenter was concerned with the requirement of drilling 100' of new hole below the casing shoe as stated in subparagraph 3.4 (2.3). It was contended that "The stipulation allowing an operator to drill nearly 100' of new hole below a casing shoe is not prudent in all OCS areas. It would be sound operating practice to limit this to 49' or 15 meters."

Discussion. It is acknowledged that long cement plugs in "soft" formations can cause inadvertent hole-deviation problems. Accordingly, the subparagraph was changed to adopt this suggestion.

Comments. Another commenter concerned with the wording of subparagraph 3.4 (2.3) suggested: "Add the following after the second sentence of the second paragraph: 'This isolation requirement may be satisfied by squeezing prior to completion or abandonment.' "

Discussion. This recommendation was included in the subparagraph.

Comments. One commenter stated that subparagraph 3.4 (2.3) was unclear. It was contended that the "Order is unclear." We assume the wording on pressure testing below the casing shoe was intended to be consistent with Section 2.2.2. Our recommendation on Section 2.2.2 also applies to this section." It was stated in a comment on subparagraph 3.3.3 (2.2.2) that "We do not think it necessary or advantageous to determine fracture gradients on *all* OCS wells, particularly all wells after the first on multiwell platforms." The commenter also stated: "In addition determination of the fracture gradient requires that the formation immediately below the casing shoe be pumped into * * *."

Discussion. It was intended that subparagraphs 3.3.3. (2.2.2) and 3.4 (2.3) be consistent. Both subparagraphs were revised as follows: "After drilling a maximum of 15 meters (49 feet) of new formation, a pressure test shall be conducted to obtain data to be used in estimating the formation fracture gradient. Pressure data shall be obtained either by testing to formation leak-off or by testing to a predetermined equivalent mud weight."

Pressure tests below the casing shoes (surface and intermediate) are intended to "aid" the lessee in his estimation of formation fracture gradients and maximum mud weights to carry into intermediate and production holes. The Order does not require fracturing of the formation. The pressures from the tests are used to estimate the true fracture gradient and pore pressure.

When field drilling rules are established, allowance will be made for the pressure-testing requirements for the determination of formation fracture gradients on multiwell platforms.

Comments. One commenter expressed concern regarding the "wide range of casing setting depths" which are permitted. "It is recommended that the Pacific Area requirements for the conductor and surface casing setting depths be adopted for the other areas with the provision to set an intermediate casing string at 4500' or shallower, if required by leak-off tests performed after drilling out of the surface casing. This would provide for the desired safety in the shallow and intermediate drilling and yet permit deeper drilling which may be the case in these other areas."

Discussion. The USGS does not agree that intermediate casing should 'set "at 4500' or shallower" for all areas, or even throughout a given area. Due to geological, geophisical, and other reasons, this amount of surface pipe may be required in an area. For the same reasons, intermediate casing may not be required at several thousand feet below this depth. Moreover, to adopt a fixed depth for all areas is not feasible and can cause a lessee to set multiple intermediate strings which would not be required for the safe drilling and may prevent the completion of a well due to insufficient well-bore diameter.

Subparagraph 3.5

Comments. Several commenters objected to subparagraph 3.5 (2.4), "Production Casing," stating that" * * * paragraph 2.4 is so written that an open-hole gravel pack completion would not be allowed. Although this type completion procedure is not in common usage offshore, we see no reason why it should not be permitted."

Discussion. It was not the intent of this subparagraph to preclude open-hole completions. This subparagraph was amended to state that hole and slotted-liner completions are permitted when approved by the District Supervisor.

Comments. It was suggested that the second sentence in this subparagraph be revised to: " * * * annular fillup to a minimum of 150 meters (492 feet) above the uppermost hydrocarbon bearing zone."

Discussion. The meaning of the sentence is not changed by the addition or deletion of the word "bearing."

Subparagraph 3.6

Comments. The third sentence of subparagraph 3.6 (2.5) was objected to. It was recommended that the following be added: "except in floating drilling operations."

Discussion. It is agreed that testing the casing with mud instead of with water would simplify the testing operation. Accordingly, the sentence was deleted.

Comments. It was suggested that the third sentence in this subparagraph be deleted to eliminate testing the casing string with water. An unsafe situation could be created by displacing the mud in the top 30 meters (98 ft) with water, due to the reduction of the hydrostatic head of the fluid column.

Discussion. The USGS agrees with this suggestion, and the sentence was deleted.

Comments. It was suggested that the second and third paragraphs of this subparagraph be revised as follows: "After cementing any of the above strings, drilling shall not be commenced until a time lapse of 8 hours under pressure for conductor casing string or 12 hours under pressure for all other strings, or until the cement has reached a 500 psi compressive strength, whichever is earliest. Cement is considered under pressure if one or more float valves are employed and are shown to be holding the cement in place or when other means of holding pressure is used. All casing pressure tests shall be recorded on the driller's log. The typical performance data for the particular cement mix used in the well shall be used to determine the time lapse required."

Discussion. The phrase "* * * or until the cement has reached a 500 psi compressive strength, whichever is earliest" was not adopted because of the uncertainty of determining the true compressive strength under actual well conditions.

Comments. One commenter stated that "It is not prudent operating practice to stress tubular goods in a drilling mode to the new tubular, internal yield. This requirement, coupled with the .22 psi/ft test on production or intermediate casing set at 12,000' or deeper

with high mud weights will operate excessive test pressures.

"The gel cement used on some strings of drilled-in structural casing takes in excess of 8 hours to attain 500 psi compressive. For the case of soft sea bed sediments, the cement, when it finally attained 500 psi compressive strength would be several times stronger than sediments. This would make the WOC time a useless waste of rig time. The concept is sound for all other casing strings and should be rigorously applied. However, the structural casing should not be included in this requirement."

Discussion. It is not intended that tubular goods be overstressed, regardless of their age and usage. A requriement has been added to limit pressure testing of casing to 70 percent of the minimum internal-yield pressure. When testing casing set at any depth, allowance shall be made for mud weights, the 0.22 psi/ft factor, and for other considerations. As stated in subparagraph 3.6 (2.5), structural casing is not included in this requirement.

Comments. No comments received.

Discussion. A new paragraph has been added following the table in subparagraph 3.6 to require certain tests to verify the integrity of the surface casing after unscheduled side-tracking operations or fishing operations.

Comments. It was suggested that the third sentence of this subparagraph be changed to "* * * 3 percent in 10 minutes * * *" to reduce rig time.

Discussion. This suggestion was not adopted because a 3 percent pressure increment would be too small to read on a high pressure gage and 10 minutes is not considered sufficient time for temperatures to stabilize in the well. Furthermore, this leak-detection criteria has been successfully used in the Gulf of Mexico OCS Area since August 28, 1969.

Paragraph 4

Comments. Several commenters were concerned with the allowable deviation angles in paragraph 4 (3), "Directional Surveys," and suggested that "an average of" be added between the words "exceed" and "three" in the first sentence, and the same notation for the first sentence of the second paragraph. The principal reason for this suggestion is that the proposed maximum of 3 degrees is too restrictive for vertical holes.

Discussion. The USGS agrees with the suggestions and has adopted the phrase, "Wells are considered vertical if inclination does not exceed an average of 3 degrees from the vertical or the maximum individual inclination survey does not exceed 6 degrees."

Comments. Several commenters recommended that directional surveys should be taken at each 300 meters (984 ft) instead of the required 150 meter (498 ft) intervals in vertical wells. Conversly, one commenter recommended that "* * * the minimum intervals be reduced to at least 60 meters to be more consistent with industry practices."

Discussion. The USGS disagrees that directional surveys should be conducted at each 300 meter (984 ft) interval in frontier areas where rank wildcats are to be drilled. Numerous factors which cause the bit to deviate from the vertical include (but are not limited to):

1. Bit configuration.
2. Nature and relative position of the formations being drilled.
3. Presence of faults, etc.

In some OCS areas, there has been *no exploratory drilling experience.* Hence, it is not known what hole-deviation characteristics will be experienced. When sufficient drilling experience has been gained in these frontier OCS areas, new survey intervals will be considered and the requirement changed, if justified.

Experience in the Gulf of Mexico OCS Area has confirmed that a survey interval of 300 meters (984 ft) is satisfactory for vertical wells; therefore, this requirement will remain unchanged for the Gulf of Mexico OCS Area.

Subparagraph 5.1.1

Comments. It was noted that on subsea blowout-preventer stacks "annular preventers are not currently available for working pressures greater than 5,000 psi in 16¾-inch and larger sizes."

Discussion. The USGS appreciates this correction. The subparagraph was revised accordingly.

Subparagraph 5.1.1a

Comments. It was suggested that "8,300 kPa (1,204 psi)" be replaced with 1,400 kPa (203 psi) in subparagraph 5.1.1a (4.1.1a) to be consistent with API RP 53.

Discussion. The USGS acknowledges this error and the suggested values have been included in the subparagraph.

Comments It was suggested that the first sentence in this subparagraph be reworded to eliminate the "vague and undefined term, 50 percent operating fluid reserve" and adopt "1.5 times the volume to close all BOP equipment units * * *."

Discussion. The USGS agrees that the suggested term more clearly defines the requirement, and the suggestion has been adopted.

Comments. It was recommended that the second sentence in this subparagraph be reworded for clarification as follows: "An accumulator backup system supplied by a secondary power source independent of the primary power source * * *."

Discussion. The USGS concurs and acknowledges that there is no need for two complete accumulator systems.

Subparagraph 5.1.1d

Comments. It was suggested that subparagraph 5.1.1d (4.1.1d) be reworded for clarity.

Discussion. The USGS agrees with this suggestion and has reworded this subparagraph as suggested.

Subparagrtaph 5.1.1f

Comments. It was observed that the fill-up line referred to in subparagraph 5.1.1f (4.1.1f) should be located above the top preventer to eliminate an unsafe practice of filling up below the preventers through a valve that must hold full working pressure.

Discussion. The USGS agrees with the suggestion and has adopted the comment. The USGS admits that on subsea BOP stacks, no valve or outlet should be below the BOP stack. If the valve should get knocked off, the entire BOP system is lost.

Subparagraph 5.1.1h

Comments. It was recommended that a new subparagraph 5.1.1h (4.1.1h) be added to state that "The wellhead assembly shall have a working pressure at least equal to the designed wellhead pressure."

Discussion. The USGS accepts this suggestion. However, the term "maximum-anticipated surface pressure" has been adopted. The reasons for this substitution have been stated earlier in the discussions for OCS Order No. 2.

Subparagraph 5.1.2c

Comments. It was stated that subparagraph 5.1.2c (4.1.2c) "* * * should be deleted since we believe it unnecessary and it would be impractical to carry a safety valve for every size of casing to be run."

Discussion. The USGS disagrees with this suggestion. A swage and a valve can be used to satisfy this requirement.

Subparagraph 5.1.3

Comments. One commenter noted that ethylene glycol is mixed with a BOP control fluid additive to form solutions as strong as 43 percent, to prevent freezing. It was also stated that "ethylene glycol appears to be toxic to aquatic organisms." Therefore, it would be desirable to use a less toxic substance in the BOP system, or to consider other alternatives such as devising a method of recovering the fluids after the BOP stack has been tested.

Discussion. This comment would not apply to surface-blowout preventer stacks since the hydraulic-control unit is a closed system and no fluid is lost when the preventers are actuated. In the case of subsea-blowout preventer stacks, water-based hydraulic fluids are available. Work is in progress to reduce the toxicity of hydraulic fluids to minimum levels and to provide adequate antifreeze protection under all operational environments. When nontoxic antifreeze compounds are developed, their use will be required. It is recognized that small volumes of hydraulic fluid may be discharged; therefore, the USGS is receptive to other alternatives.

Subparagraph 5.2

Comments. Several organizations commenting on subparagraph 5.2 (4.2), "Subsea BOP Requirements," suggested that the annular or packoff head on top of the marine riser be deleted from the drive-pipe drilling operation. The marine riser should also be deleted. It was pointed out that "The use of a marine riser and a preventer on drive pipe is an inherently unsafe operating practice. There are very few areas where the shallow seafloor sediments below structural casing will support weighted drilling fluids in excess of seatwater. In the case of a gas flow, there would be an immediate loss of head when the riser unloaded. Without the riser, the sea would hold a constant back pressure on the formation. Without a riser, the rig can be moved off the hole with no structural

damage to the casing or base-plate assembly. The soft-bottom sediments exposed below the structured casing would not be broached in this case.

"The use of a riser will require excessive drilling times for the conductor pipe since this entire section would have to be underreamed."

Discussion. We agree that the use of a riser, when drilling below drive or structural pipe, is dependent upon the competency of the seafloor sediments below these strings. In those areas where a riser is used, however, we believe that a diverter system is required. We also agree that it would be imprudent to attempt to contain pressure below drive or structural pipe by the use of a pressure rotating packoff head. Therefore, the Order was revised by deleting the requirement for an annular or pressure rotating packoff-head-type preventer and by adding the following note:

"Note: 1. When drilling fluids are circulated to the drilling vessel, a diverter system as described in subparagraph 5.4.1 shall be installed on top of the marine riser."

Comments. It was suggested that the requirement for two 15 cm (6 inch) internal diameter diverter lines and full opening valves "would result in the obsolescence of equipment that is and has satisfactorily performed floating drilling well control in the Gulf of Mexico."

Discussion. Note 4 for the Gulf of Mexico OCS Area has been revised to recognize that many drilling rigs in the Gulf of Mexico OCS Area have complied with the requirement for 10 cm (4 inch) diameter diversion lines in accordance with Gulf of Mexico OCS Order No. 2 which became effective January 1, 1965. The USGS also believes that 15 cm (6 inch) diameter lines provide greater protection; therefore, the note was revised to require that new installations or modifications of diverter systems made after the effective date of the Order would require the use of 15 cm (6 inch) diameter lines.

Comments. It was suggested that the word "additionally" be deleted in Note 5 (***) in subparagraph 5.2 (4.2) and Note 2 (**) in subparagraph 5.3 (4.3) since "* * * this could be interpreted to require an added ram-type BOP."

Discussion. Note 5 in subparagraph 5.2 (4.2) and Note 2 in subparagraph 5.3 (4.3) were revised to make it clear that the BOP stack must be equipped with rams to fit each size of pipe in a tapered drill string.

Comments. It was suggested that the second sentence in the second paragraph of subparagraph 5.2 (4.2) be revised to provide for a suitable alternate to the subsea accumulator system, and that the term "power fluid" be added to clarify the meaning of "connection." It was further contended that " 'Loss of connection', as now stated, is vague in that it could pertain to either a loss of a control fluid connection, a loss of a power fluid connection, or both."

Discussion. USGS has no objection to include "a suitable alternate approved by the District Supervisor." The sentence was also changed to include the phrase "power fluid connection."

Comments. it was suggested that the second and third sentences of the second paragraph should be deleted because the requirements for a subsea accumulator, "failsafe-design" and "failsafe-valving," "* * * would render obsolete equipment that has been and is currently being used satisfactorily * * *."

Discussion. The second sentence was revised to allow for an alternative to a subsea accumulator system. The third sentence was revised as follows: "The blowout-preventer system shall include dual pod control systems in accordance with API RP 53, First Edition, February 1976, reissued February 1978, subsection 5.B.13, or subsequent revisions which the Chief, Conservation Division, has approved for use."

Subparagraph 5.3

Comments. No comments received.

Discussion. Note 1 (*) of subparagraph 5.3 (4.3) was revised to be identical with Note 4 (**) of subparagraph 5.2 (4.2). Refer to the discussion for subparagraph 5.2 (4.2).

Subparagraph 5.4

Comments. The general comments on subparagraph 5.4 (4.4) indicated that the requirements for surface BOPs and subsurface BOPs were not clear.

Discussion. A review of the comments on this subparagraph indicated that the subparagraph on surface BOPs and the subparagraph on subsurface BOPs should be reorganized to clarify the intent. Therefore, the original subparagraph 4.4.1, "Surface BOPs," was reorganized and retitled 5.4.1, "Drilling Operations from Bottom-Supported Rigs." The original subparagraph 4.4.2, "Subsea BOP," was also reorganized and retitled 5.4.2, "Floating Drilling Operations." The details of the reorganization and revisions are discussed under separate headings for each subparagraph.

Subparagraph 5.4.1

Comments. It was recommended that the second sentence of subparagraph 5.4.1 (4.4.2) be revised as follows: "The diverter system shall be equipped with remote control valves in the main and diverter flow lines that can be operated from the control panel prior to shutting in the well."

It was stated that "A catastrophic situation could be caused by the inability of an automatic valve being able to reliably detect and select the downwind diversion. This system should be manually controlled for the safest operation."

Discussion. The USGS considered that this suggestion was an added point in the safety of operation, and the suggestion was adopted.

Subparagraph 5.4.2

Comments. It was suggested that subparagraph 5.4.2 (4.4.3), "Floating Drilling Operations," be revised to clarify that the conductor hole may be drilled with or without a riser/diverter system.

Discussion. The subparagraph was changed to clarify this point. This point was further clarified by the revision of Note 1 (*) of subparagraph 5.2 (4.2) which requires the use of a diverter when a riser is used. Refer to the discussion of subparagraph 5.2.

Comments. It was the consensus of opinion to delete the requirement for drilling a small diameter pilot hole to obtain shallow hazards data because of mechanical and deviation control problems.

It was also contended that "A one barrel kick in an 8¾" hole reduces the hydrostatic head much more than a one barrel kick in a 17½" hole." It was further contended that "* * * drilling a pilot hole will increase the risk if shallow hazards or hydrocarbons are encountered, rather than decrease them, since the hole will need to be reamed to full diameter and will be open longer in total time than if a full sized hole were drilled to begin with and surface casing promptly set."

Discussion. The USGS agrees with the comments and has deleted the small diameter pilot hole requirement.

Subparagraph 5.6

Comments. It was suggested that subparagraph 5.6 (4.6b) be changed by deleting the phrase "In addition to the above," and also by deleting the word "additionally" to clarify that "* * * additional preventer bodies are not needed on the BOP stack but that pipe rams of the proper size must be installed."

Discussion. During our review of the comments on this subparagraph, it became apparent that editorial revisions were required because some of the material in subparagraphs a, b, c, d, and f have been previously addressed under subparagraph 5.1, "General Requirements." The requirements of the proposed subparagraph 4.6a were incorporated into subparagraph 5.6 to elaborate on the minimum requirements as stated in tabular form in subparagraphs 5.2 and 5.3. The content of subparagraph 4.6b was incorporated into Note 5 of subparagraph 5.2 and Note 2 of subparagraph 5.3. The phrase "in addition to the above" and the word "additionally" were deleted. Refer to the discussion for the revisions of subparagraph 5.2 (4.2). The original subparagraphs 4.6 c, d, e, and f were deleted since these requirements are addressed in subparagraph 5.1, "General Requirements."

Subparagraph 5.7

Comments. It was suggested that subparagraph 5.7 (4.7) should be revised to segregate the testing requirements into separate subparagraphs addressing testing requirements for surface blowout-preventer stacks and testing requirements for subsea blowout-preventer stacks. This suggestion was adopted by changing the title of paragraph 5.7 (4.7) to "Testing of BOP Systems" and reorganizing the requirements into the following subparagraphs:

5.7.1 "BOP Testing Frequency"

5.7.2 "Pressure Testing Surface BOP Systems"

5.7.3 "Pressure Testing Subsea BOP Systems"

5.7.4 "Actuation of Surface BOP Systems"

5.7.5 "Actuation of Subsea BOP Systems"

The comments and discussion on each of these subparagraphs are addressed under separate headings.

Subparagraph 5.7.1

Comments. No comments received.

Discussion. As indicated in the discussion for subparagraph 5.7, the title of this subparagraph has been changed to "BOP Testing Frequency." The content of the original subparagraph 4.7.1, "BOP Controls," has been incorporated into subparagraph 5.1.1b.

The revised subparagraph states the testing frequency required for surface and subsea BOP stacks.

Subparagraph 5.7.2

Comments. It was suggested that the requirements for pressure testing of surface blowout-preventer stacks should be rewritten as follows: "Ram type blowout-preventers and related control equipment shall be tested to at least the design wellhead pressure, except that the annular-type preventers shall not be tested above 70% of their rated working pressure."

Discussion. This suggestion was partially adopted. The subparagraph was rewritten to require that surface blowout-preventer stacks be pressure tested to the maximum-anticipated surface pressure or at 70 percent of the minimum internal yield pressure of the casing, whichever is less. The annular-type BOP shall be tested at 70 percent of its rated working pressure or 70 percent of the minimum internal yield pressure of the casing, whichever is less. The rationale for the use of the phrase "maximum-anticipated surface pressure" instead of "design wellhead pressure" has been previously addressed in the discussion for subparagraph 3.1. The revised language makes it clear that the minimum internal yield pressure of the casing must be considered in determining the test pressure of the blowout-preventer stack. The subparagraph was also revised to require that the blind ram shall be tested as required for pipe rams before drilling out of each casing or liner shoe. This revision eliminates the necessity of setting a casing plug to allow the testing of the blind rams. A sentence was also added to make it clear that the smaller-sized pipe rams in a tapered string shall be tested when the smaller pipe is within the stack during a trip. This sentence makes it clear that it is not necessary to make a "special trip" to test the smaller pipe rams in a tapered drill string. The revision also adopts the suggestion that annular-type preventers should not be tested above 70 percent of their rated working pressure. This limitation is intended to reduce the wear of the annular blowout preventers.

Subparagraph 5.7.3

Comments. It was suggested that subparagraph 5.7.3 (4.7.2) be revised as follows: "Subsea BOPs and all related well-control equipment shall be stump tested at the surface with water to at least the design wellhead pressure, except that the annular-type BOP shall not be tested above 70 percent of its rated working pressure."

Discussion. This suggestion was adopted except that the phrase "maximum-anticipated surface pressure" was used in lieu of the phrase "design wellhead pressure." The rationale for the use of the phrase "maximum-anticipated surface pressure" has been addressed in the discussion of subparagraph 3.1.

Comments. It was suggested that the ocean floor pressure tests of subsea blowout-preventer stacks should be based on the same criteria as the pressure test for surface blowout preventers.

Discussion. This suggestion was adopted by incorporating the following language into the subparagraph: "After the installation of the BOP stack on the seafloor, the control equipment and pipe rams, conforming to the drill string within the stack, shall be tested as required under subparagraph 5.7.2. Before drilling out of each casing or liner shoe, the blind-shear rams shall be tested as required for blind rams under subparagraph 5.7.2."

Subparagraph 5.7.4

Comments. It was recommended in subparagraph 5.7.4 (4.7.3a) that daily operational tests of pipe rams on subsea blowout preventers be eliminated due to excessive wear on the ram rubbers.

Discussion. The USGS agrees that complete closure of the pipe rams is not necessary to verify proper functioning. We have also recognized that this is true for both surface blowout-preventer stacks and subsea blowout-preventer stacks. Subparagraph 5.7.4a was revised by adding the following sentence: "In order to prevent damage to the rams, complete closure of the rams on drill pipe is not required, provided proper operation is indicated." Subparagraph 5.7.5, "Actuation of Subsea BOP Systems," was revised to make this requirement applicable to subsea blowout-preventer systems.

Subparagraph 5.7.5

Comments. It was suggested that subparagraph 5.7.5 (4.7.3) should require that all hydraulic systems except those actuating the blind-shear rams should be actuated from each control station and each control system to test the proper functioning of each station and systems.

Discussion. This suggested requirement was incorporated into the revised subparagraph.

Subparagraph 5.8

Comments. Several commenters suggested that the last two sentences of subparagraph 5.8 (4.8) be deleted because "The presently required actuation and test procedures are the most reliable method of determining subsea equipment problems * * *."

Discussion. This subparagraph was changed by rewording the penultimate sentence to allow for unfavorable weather and sea conditions. The last sentence was left in the subparagraph since the use of television equipment is an acceptable method of subsea inspections.

Comments. It was suggested that the phrase "manufacturer's recommended procedures" be changed to "industry accepted standards such as API RP 53."

Discussion. The USGS disagrees with this suggestion. We know of no better source than the manufacturer's manuals concerning parts, lubrication, and operational procedures on blowout preventers. The API RP 53 is an excellent document and is endorsed by the USGS. This document also refers to the manufacturer. The maintenance procedures of subsection 7.A.12b recommends: "Using closing pressures recommended by the manufacturer." Moreover, API RP 53 contains no information on the maintenance of subsea installations.

Subparagraph 5.9

Comments. It was suggested that the fifth sentence of the proposed subparagraph 4.9 be deleted. It was contended that the nature of drilling operations precludes the precise scheduling of drills, especially when the remoteness of locations and communications are considered.

Discussion. It is agreed that the scheduling of drills would impose an unnecessary burden on the lessee. Furthermore, drills should not be scheduled in order to retain the element of surprise as a test of the state of readiness of the drilling crew and equipment. The sentence was deleted.

Comments. No comments received.

Discussion. The title of the subparagraph was changed to "Blowout-Preventer Drills" to accurately describe the contents. The paragraph was revised to require that blowout-preventer drills shall be conducted in accordance with the well-control drill requirements of the USGS Outer Continental Shelf Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," No. T 1 (GSS–OCS–T 1), First Edition, December 1977, and subsequent revisions thereto. The subsection of the standard entitled "Well-Control Drills" outlines the requirements in greater detail then the requirements of the original subparagraph.

Subparagraph 6.1

Comments. The overall comments on subparagraph 6.1 (5.1) indicated that the subparagraph should be reorganized to state the requirements in a more logical sequence.

Discussion. The subparagraph was reorganized by first stating the criteria which is to be used to determine when the hole is to be filled. This requirement was then followed by a sentence which requires that the number of stands of drill pipe and drill collars that may be pulled prior to filling the hole and the equivalent mud volume shall be calculated and posted. This requirements was then followed by the sentence which requires the use of a device for measuring the amount of mud required to fill the hole.

Comments. It was suggested that the second paragraph should be revised as follows: "When coming out of the hole with the drill pipe, the annulus shall be filled before the change in mud level decreases bottom-hole pressure 75 psi or every five stands of drill pipe, whichever gives a lower decrease in bottom-hole pressure (BHP)."

Discussion. This suggestion was adopted. This language is superior to the original reference point of "98 feet of head loss." The revised language improves the definition of the critical parameters of loss of bottom-hole pressure and the time interval required between checks.

Comments. It was suggested that the sentence which required the posting of the maximum pressure which may be applied under the blowout preventer should be revised to require the posting of the "maximum pressure to be contained under the blowout preventer."

Discussion. This suggestion was adopted. The revised language accurately describes the process of containing and controlling the back pressure by the use of the blowout preventer and choke manifold.

Comments. It was pointed out that the phrase "vacuum type gas separator" should be used instead of "degasser" because a "degasser" is a specific type of gas separator.

Discussion. The USGS agrees and has changed the sentence accordingly. The USGS does not intend to allow the use of rig-fabricated, atmospheric-type separators in OCS waters. A vacuum-type gas separator will more efficiently remove the gas from the mud than atmospheric-pressure separators.

Subparagraph 6.2d

Comments. In a comment on subparagraph 6.2d (5.2d), it was suggested that derrick floor indicators of hydrocarbon data not be required if a mud logging unit is in use, provided that the monitoring is on a continuous basis, and a means for immediate communication with the derrick floor is provided.

Discussion. The USGS agrees with the suggestion, and this subparagraph was changed to provide that "* * * with indicators located in the mud-logging compartment or on the derrick floor. If the indications are in the mud-logging compartment, there shall be a means of immediate communication with the rig floor, and the equipment shall be continually manned."

Subparagraph 6.3a

Comments. On subparagraph 6.3a (5.3a), many of the commenters objected to the use of the phrase "Twice the volume * * *." It was contended that in a large number of drilling conditions, the dry storage capacity of the drilling unit would be exceeded.

Discussion. Subparagraph 6.3a (5.3a) was changed to delete the "twice the volume" requirement in acknowledgment that there are numerous drilling conditions where mud quantities of this magnitude would exceed the capacity of many drill units. The subparagraph now requires that the minimum quantities of mud material shall be based on the volume required to replace the calculated capacity of the downhole and active surface systems. The second paragraph was revised as follows: "When the mud quantity required exceeds the storage capacity of the drilling facility, the lessee shall maintain maximum mud inventories and must receive approval from the District Supervisor of the lessee's plans to resupply mud inventories in the event of an emergency. The plan shall include an estimate of the time required for delivery of the mud supplies."

Subparagraph 7.3

Comments. On subparagraph 7.3 (6.3), several commenters recommended that 1 year be allowed for compliance with the USGS Training Standard No. T 1 (GSS–OCS–T 1).

Discussion. The subparagraph was revised to require compliance by December 1, 1979. A paragraph was also added to recognize that any driller, toolpusher, or operator's representative who received training in well-control between December 1, 1975, and December 1, 1979, will be credited as having met the training requirements of the Standard. These dates and the guidelines which were published in the Federal Register, Vol. 43, No. 39, February 27, 1978, and Vol. 43, No. 246, December 21, 1978, will be utilized in the determination of the acceptability of training.

Comments. One commenter stated that they "had not yet seen OCS T–1," and suggested that API RP T–3 treated the subject of training adequately. "However, if it is your intention to use OCS Standard T 1 we would strongly suggest that industry comment be sought and considered."

Discussion. Industry, all interested parties, and individuals were given two opportunities to submit written comments from two draft publications in the Federal Register as follows:

1. A Notice of intent to draft a training standard was first published in the Federal Register, Vol. 41, No. 105, May 28, 1976. Two draft standards were published as a basis for comments; one by the State of California, and the other was API RP T–3. Written comments were requested to be submitted by June 28, 1976.

2. The proposes USGS Training Standard was published in the Federal Register, Vol. 41, No. 212, November 2, 1976. In addition to the initial USGS draft form of the Training Standard, this publication included "Comments on the Publication, May 28, 1976, With Geological Survey Rationale." Comments were requested to be submitted by January 1, 1977.

Finally, the First Edition of the USGS Training Standard, GSS–OCS–T 1, dated December 1977, was published in the Federal Register, Vol. 42, No. 251, December 30, 1977.

Paragraph 8

Comments. No comments were received on paragraph 8 (7), "Hydrogen Sulfide." However, several comments were received on the contents of the proposed revision of the USGS Outer Continental Shelf Standard, "Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment," No. 1, (GSS–OCS–1), which was published in the Federal Register, Vol. 43, No. 128, July 3, 1978.

Discussion. This paragraph was revised to reference the Second Edition of GSS–OCS–1 which incorporates appropriate comments as a result of the Federal Register solicitation. The Second Edition clearly defines the requirements for areas which are known to contain H_2S, for areas where the presence of H_2S is unknown, and for areas known to be free of H_2S.

Paragraph 9

Comments. A commenter suggested that paragraph 9 (8) be deleted. The commenter stated: "However, if a special provision of this nature is to be required, the following wording would be a significant improvement from the standpoint of clarity and operator flexibility." The commenter then presented a revised introductory paragraph which suggested that the critical operations and curtailment plan should be applicable to the entire OCS Area covered by the Order, rather than the Area of individual leases. The commenter then listed three items which required that the plans should include guidelines which the operator would follow to assure coordination control and curtailment of drilling operation, identify the person in charge at the site, and include an outline for additional safety and antipollution measures.

Discussion. The USGS review of the comments received on this subparagraph, the original proposed paragraph, and the commenter's suggested modifications indicated that the requirements for the plans for mature areas need not be as detailed as those for frontier areas; therefore, separate paragraphs were written for the Gulf of Mexico Area and the other Areas of the OCS. The requirements of the Gulf of Mexico Area are different because numerous drilling operations over the years have caused the lessee to encounter problems, weigh risks, and develop solutions for critical operations. This experience has also allowed the lessee to formulate plans in advance of commonly anticipated situations and to find the need for and methods of curtailment of certain operations.

An example of foreknowledge can be witnessed almost every year during hurricane season when lessee expedite emergency evacuation operations which consist of securing facility and moving personnel. The language suggested by the commenter was revised and adopted for the Gulf of Mexico Area. A paragraph was added which required the lessee to review the plan at least annually, to notify the District Supervisor of the results of the review, and to recognize that any amendments or modifications of the plan are subject to the approval of the District Supervisor.

Since the requirements for the Gulf of Mexico Area would remain constant for many leases, the introductory paragraph requires a plan to be submitted for each District Area.

The introductory paragraph for the requirements for the other Areas of the OCS was revised to be consistent with the paragraph for the Gulf of Mexico Area, except that a Contingency Plan is to be submitted for each lease. This difference is required because in these Areas environmental conditions, water depths, and bottom stability may vary from lease to lease and affect the criticality of certain operations. A new paragraph was added to require the identification of the person in charge at the site.

United States Department of the Interior, Geological Survey, Conservation Division

OCS Order No. 2, Effective July 1, 1979; Drilling Operations

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11. All exploratory and development wells drilled

for oil and gas shall be drilled in accordance with 30 CFR 250.34, 250.41, 250.91, and the provisions of this Order except for those provisions superseded by the issuance of field drilling rules.

1. *Plans and Applications*

1.1 *Exploration Plan and Development and Production Plan.* In accordance with 30 CFR 250.34, the lessee shall submit Exploration Plans and Development and Production Plans to the Supervisor for approval. All wells drilled under the provisions of this Order shall be included in the appropriate plan.

1.2 *Application for Permit to Drill.* Prior to commencing drilling under an approved Exploration Plan or a Development and Production Plan, the lessee shall file, in triplicate, an Application for Permit to Drill (Form 9–331 C) with the District Supervisor for approval. Additionally, the Supervisor will prescribe the number of public information copies to be submitted. If drilling activity does not commence within 6 months after the approval date, the Permit to Drill will expire.

2. *Drilling From Fixed Platforms and Mobile Drilling Units*

2.1 *General Requirements.*

2.1.1 *Fitness of Drilling Unit.* All fixed and mobile drilling units shall be capable of withstanding the oceanographic and meteorological conditions for the proposed area of operations. The lessee shall submit evidence to the District Supervisor of the fitness of the drilling unit to perform the planned drilling operation. This evidence shall include drawings and specifications of the following:

a. The rated capacity of all major drilling equipment.

b. Drilling safety systems.

c. Firefighting equipment.

d. Pollution-prevention equipment associated with the drilling operation.

e. A schematic diagram of the drilling unit.

2.1.2 *Pre-Drilling Inspection.* Prior to commencing operations in an OCS Area, all fixed drilling platforms and mobile drilling units shall be made available for a complete inspection by the District Supervisor.

2.1.3 *Well-Site Surveys.* Lessees shall conduct a shallow geologic hazards survey, and other surveys as required by the Supervisor. In areas where shallow hazards or hydrocarbons are unknown, shallow high-resolution geophysical data shall be obtained. The results of these surveys and an analysis of the geological hazards shall be furnished to the District Supervisor. All data obtained from the surveys and all geophysical data relating to shallow hazards shall be furnished upon request to the District Supervisor.

2.1.4 *Oceanographic, Meterological, Performance Data.* Operators shall collect and report oceanographic, meteorological, and performance data during the period of operations. The type of information collected, method of collection, and report requirements will be as specified by the Supervisor.

2.1.5 *Subfreezing Operations.* Operators shall furnish evidence that the drilling equipment, drilling safety systems, and other associated equipment and materials are suitable for operations in those Areas which are subject to subfreezing conditions.

2.2 *Mobile Drilling Units.* Applications for drilling from mobile drilling units shall include the following:

a. Maximum environmental design criteria, operational criteria, and a critical operations plan as described in paragraph 9 of this Order.

b. Environmental data, statistical data and calculations which indicate the maximum-anticipated wave, wind, current values, and forces due to ice, icing, storm surges, and seismic motion to be encountered at the drill site during the period of drilling operations.

c. Current American Bureau of Shipping Classification, U.S. Coast Guard Certificate of Inspection, or other appropriate classifications, with operational limitations. Unless required by the Supervisor, after a mobile drilling unit has been approved for use in an area, the information detailed in subparagraph 2.1.1 need not be resubmitted unless there are changes in equipment which affect the rated capability of the unit.

2.3 *Fixed Drilling Platforms.* Applications for installations of fixed drilling platforms or structures, including artificial islands, shall be submitted in accordance with OCS Order No. 8.

3. *Well Casing and Cementing*

3.1 *General Requirements.* All wells shall be cased and cemented in accordance with the requirements of 30 CFR 250.41(a)(1). The Application for Permit to Drill shall include the casing design safety factors for collapse, tension, and burst. Wells drilled in areas which are underlain by freshwater aquifers shall have casing programs which are designed to protect the freshwater zones. In cases where cement has filled the annular space back to the ocean floor, upon approval by the District Supervisor, the cement may be washed out or displaced to a depth not exceeding 12 meters (39 feet) below the ocean floor to facilitate casing removal upon well abandonment. For the purpose of this Order, the several casing strings in order of normal installation are drive or structural, conductor, surface, intermediate, and production casing. If there are indications of inadequate cementing (such as lost returns, cement channeling, or mechanical failure of equipment in the surface-, intermediate-, and production-casing strings), the lessee shall evaluate the adequacy of the cementing operations by pressure testing the casing shoe, running a cement bond log, running a temprature survey, or a combination thereof before continuing operations. If the evaluation indicates inadequate cementing, the lessee shall recement or take other actions in accordance with the instructions of the District Supervisor. The lessee shall verify the adequacy of the remedial cementing operations as required by the District Supervisor.

The design criteria for all wells shall consider all pertinent factors for well control, such as:

a. Formation fracture gradients.

b. Formation pressure.

c. Maximum-anticipated surface pressure.

d. Casing setting depths.

The lessee shall utilize appropriate drilling technology and state-of-the-art methods, such as drilling-rate evaluation, shale-density analysis, or other appropriate methods in order to enhance the evaluation of conditions of abnormal pressure and to minimize the potential for the well to flow or kick.

All casing, except drive pipe or structural casing, shall be new pipe which meets or exceeds American Petroleum Institute (API) standards, or reconditioned used pipe that has been tested to assure that it will meet or exceed API standards for new pipe. If casing which is not fabricated to API standards is used, the manufacturer's specifications shall be included on the Application for Permit to drill (Form 9–331 C).

3.2 *Drive or Structural Casing.* This casing shall be set by drilling, driving, or jetting to a minimum depth of 30 meters (98 feet) below the ocean floor or to other depths, as may be required or approved by the District supervisor, in order to support unconsolidated deposits and to provide hole stability for initial drilling operations. If this portion of the hole is drilled, the drilling fluid shall be of a type that is in compliance with the liquid disposal requirements of OCS Order No. 7, and a quantity of cement sufficient to fill the annular space back to the ocean floor shall be used.

3.3 *Conductor and Surface Casing Setting and Cementing Requirements.*

3.3.1 *Conductor and Surface Casing Setting Depths.*

Gulf of Mexico

Casing design and setting depths shall be based upon all engineering and geologic factors, including the presence or absence of hydrocarbons, other potential hazards, and water depths. These strings of casing shall be set at the depths specified, subject to approved variation to permit the casing to be set in a competent bed, or through formations determined desirable to be isolated from the well by pipe for safer drilling operations; however, the conductor casing shall be set immediately prior to drilling into formations known to contain oil or gas, or, if unknown, upon encountering such formations. These casing strings shall be run and cemented prior to drilling below the specified setting depths. The District Supervisor may prescribe the exact setting depths for those wells which may encounter abnormal pressure conditions. Conductor casing setting depths shall be between 152 meters (499 feet) and 305 meters (1,000 feet) TVD below the Gulf floor. Surface casing setting depths shall be between 457 meters (1,499 feet) and 1,372 meters (4,500 feet) TVD below the Gulf floor.

Engineering and geologic data which are used to substantiate the proposed setting depths of the conductor and surface casing (such as estimated fracture gradients, pore pressures, shallow hazards, etc.) shall be furnished with Application for Permit to Drill.

Pacific

Casing design and setting depths shall be based upon all engineering and geologic factors, including the presence or absence of

hydrocarbons, other potential hazards, and water depths. These strings of casing shall be set at the depths specified, subject to approved variation to permit the casing to be set in a competent bed, or through formations determined desirable to be isolated from the well by pipe for safer drilling operations; however, the conductor casing shall be set immediately prior to drilling into formations known to contain oil or gas, or, if unknown, upon encountering such formations. These casing strings shall be run and cemented prior to drilling below the specified setting depths. The District Supervisor may prescribe the exact setting depths for those wells which may encounter abnormal pressure conditions. Conductor casing setting depths shall be between 91 meters (298 feet) and 152 meters (499 feet) TVD below the ocean floor. Surface casing setting depths shall be between 305 meters (1,000 feet) and 366 meters (1,200 feet) TVD below the ocean floor, but may be set 457 meters (1,499 feet) in the event that conductor casing is set as deep as 137 meters (499 feet) TVD below the ocean floor.

Engineering and geologic data which are used to substantiate the proposed setting depths of the conductor and surface casings (such as estimated fracture gradients, pore pressures, shallow hazards, etc.) shall be furnished with the Application for Permit to Drill.

Gulf of Alaska and Atlantic

Casing design and setting depths shall be based upon all enineering and geologic factors, including the presence or absence of hydrocarbons, other potential hazards, and water depths. These strings of casing shall be set at the depths specified, subject to approved variation to permit the casing to be set in a competent bed, or through formations determined desirable to be isolated from the well by pipe for safer drilling operations; however, the conductor casing shall be set immediately prior to drilling into formations known to contain oil or gas, or, if unknown, upon encountering such formations. These casing strings shall be run and cemented prior to drilling below the specified setting depths. The District Supervisor may prescribe the exact setting depths for those wells which may encounter abnormal pressure conditions. Except as may otherwise be prescribed, conductor casing setting depths shall be between 91 meters (298 feet) and 305 meters (1,000 feet) TVD below ocean floor, and surface casing setting depths shall be between 305 meters (1,000 feet) and 1,400 meters (4,593 feet) TVD below ocean floor.

Engineering, geophysical, and geologic data used to substantiate the proposed setting depths of the conductor and surface casings (such as estimated fracture gradients, pore pressures, shallow hazards, etc.) shall be furnished with the Application for Permit to Drill.

3.3.2 *Conductor Casing Cementing Requirements.* Conductor casing shall be cemented with a quantity of cement sufficient to fill the calculated annular space back to the ocean floor. Cement fill to the ocean floor shall be verified by the observation of cement returns. In the event that observation of cement returns is not feasible or possible, an excess volume of cement shall be used to assure fill to the ocean foor. The excess volume shall be approved by the District Supervisor.

3.3.3 *Surface Casing Cementing Requirements.*

Gulf of Mexico, Gulf of Alaska, and Atlantic

Surface casing shall be cemented with a quantity of cement sufficient to protect all freshwater zones, to provide well control until the next string of casing is set, and with sufficient cement to fill the calculated annular space to at lest 60 meters (197 feet) inside the conductor casing.

After drilling a maximum of 15 meters (49 feet) of new hole, a pressure test shall be conducted to obtain data to be used in estimating the formation fracture gradient. Pressure data shall be obtained either by testing to formation leak-off or by testing to a predetermined equivalent mud weight.The results of this test and any subsequent tests of the formation shall be recorded on the driller's log and used to determine the depth and maximum mud weight to be used in the intermediate hole.

Pacific

Surface casing shall be cemented with a quantitiy of cement sufficient to protect all freshwater zones, to provide well control until the next string of casing is set, and with sufficient cement to fill the calculated annular space to the ocean floor, or as approved by the District Supervisor.

After drilling a maximum of 15 meters (49 feet) of new hole, a presure test shall be conducted to obtain data to be used in estimating the formation fracture gradient. Pressure data shall be obtained either by testing to formation leak-off or by testing to a predetermined equivalent mud weight. The results of this test and any subsequent tests of the formation shall be recorded on the driller's log and used to detemmine the depth and maximum mud weight to be used in the intermediate hole.

3.4 *Intermediate Casing Setting and Cementing Requirements.* One or more strings of intermediate casing shall be set when required by anticipated normal pressure, mud weight, sediment, and other well conditions. The setting depth for intermediate casing shall be based on the pressure tests of the exposed formation below the surface casing shoe or on subsequent pressure tests. After drilling a maximum of 15 meters (49 feet) of new hole, a pressure test shall be conducted to obtain data to be used in estimating the formation fracture gradient. Pressure data shall be obtained either by testing to formation leak-off or by testing to a predetermined equivalent mud weight. The results of this test and any subsequent tests of the formation shall be recorded on the driller's log and used to detemine the depth and maximum mud weight to be used in the hole below the intermediate-casing string.

A quantitiy of cement sufficient to cover and isolate all hydrocarbon zones and to isolate abnormal pressure intervals from abnormal pressure intervals shall be used. This requirement for isolation may be satisfied by squeeze cementing prior to completion, suspension of operations, or abandonment, whichever occurs first. Sufficient cement shall be used to provide annular fill-up to a minimum of 150 meters (492 feet) above the zones to be isolated or 150 meters (492 feet) above the casing shoe in cases where zonal coverage is not required.

If a liner is used as an intermediate string, it shall be lapped a minimum of 30 meters (98 feet) into the previous casing string and cemented as required for intermediate casing. The liner shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and the next larger string has been achieved. The test shall be recorded on the driller's log. If the test indicates an improper seal, the top of the liner shall be squeeze cemented. When such liner is used as production casing, it shall be extended to the surface and cemented to avoid surface casing being used as production casing.

3.5 *Production Casing.* Production casing shall be set before completing the well for production. It shall be cemented in a manner necessary to cover or isolate all zones above the shoe which contain hydrocarbons; but in any case, a calculated volume sufficient to fill the annular space at least 150 meters (492 feet) above the uppermost hydrocarbon zone must be used. Open-hole and slotted-liner completions are permitted when approved by the District Supervisor.

When a liner is used as production casing below intermediate casing, it shall be lapped a minimum of 30 meters (98 feet) into the previous casing string and cemented as required for the production casing. Testing of the seal between the liner top and the next larger string shall be conducted as in the case of intermediate liners and recorded on the driller's log. If the test indicates an improper seal, the top of the liner shall be squeeze cemented.

3.6 *Pressure-Testing of Casing.* Prior to drilling the plug after cementing, all casing strings, except the drive or structural casing, shall be pressure-tested as shown in the table below. The test pressure shall not exceed 70 percent of the internal yield pressure of the casing. If the pressure declines more than 10 percent in 30 minutes or if there is another indication of a leak, the casing shall be recemented, repaired, or an additional casing string run, and the casing tested again. The above procedures shall be repeated until a satisfactory test is obtained.

Casing	Minimum surface pressure
Conductor	1,400 kilopascals (kPa) (203 psi)
Surface	6,900 kPa (1,000 psi).*
Intermediate, Liner, and Production.	10,400 kPa (1,508 psi) or 5 kPa/m (o.22 psi/ft.) whichever is greater.*

* Must not exceed 70 percent of the minimum internal yield pressure.

In the event of unscheduled drill pipe operations such as an unscheduled side-tracking operation or a fishing operation, the surface pipe shall be pressure tested, calipered, or otherwise evaluated, as approved by the District Supervisor.

After cementing any of the above strings, drilling shall not be resumed until a time lapse of 8 hours under pressure for the conductor casing string or 12 hours under pressure for all other strings. Cement is considered under pressure if one or more float valves are employed and are shown to be holding the cement in place or when other means of holding pressure is used. All casing pressure tests shall be recorded on the driller's log.

In addition to the time lapse stated above, sufficient time must elapse to allow the bottom 153 meters (502 feet) of annular cement fill, or total length of annular cement fill, if less, to attain a compressive strength of at least 3,448 kPa (500 psi) or as approved by the District Supervisor before drilling resumes.

The typical performance data for the particular cement mix used in the well shall be used to determine the time lapse required.

4. *Directional Surveys*

Gulf of Mexico

The requirements of this paragraph for the Gulf of Mexico Region are the same as the requirements for the Areas listed below. The only exception is that the survey interval of 150 meters (492 ft), specified in the first subparagraph of this paragraph, is changed to 300 meters (984 ft) for the Gulf of Mexico requirements.

Pacific, Gulf of Alaska, and Atlantic

Wells are considered vertical if inclination does not exceed an average of 3 degrees from the vertical or the maximum individual inclination survey does not exceed 6 degrees. Inclinational surveys shall be obtained on all vertical wells at intervals not exceeding 150 meters (492 feet) during the normal course of drilling.

Wells are considered directional if inclination exceeds an average of 3 degrees from the vertical or the maximum individual inclination survey exceeds 6 degrees. Directional surveys giving both inclination and azimuth shall be obtained on all directional wells at intervals not exceeding 150 meters (492 feet) during the normal course of drilling and at intervals not exceeding 30 meters (98 feet) in all planning angle-change portions of the hole.

On both vertical and directional wells, directional surveys giving both inclination and azimuth shall be obtained at intervals not exceeding 150 meters (492 feet) prior to, or upon, setting surface for intermediate casing, liners, and at total depth. Composite directional surveys shall be filed with the District Supervisor. The interval shown will be from the botton of conductor casing or, in the absence of conductor casing, from the botton of drive or structural casing to total depth. In calculating all surveys, a correction from true north to Universal Transverse Mercator Grid north or Lambert Grid north shall be made after making the magnetic-to-true-north correction.

5. *Blowout-Preventer (BOP) Equipment Requirements*

5.1 *General Requirements.* Blowout preventers and related well-control equipment shall be installed, used, maintained, and tested in a manner necessary to assure well control.

5.1.1 *BOP Equipment.* Blowout-preventer equipment shall consist of an annular preventer and the specified number of ram-type preventers. The pipe rams shall be of proper size to fit the drill pipe in use. The working pressure of any blowout preventer shall exceed the maximum-anticipated surface pressure to which it may be subjected, except that the working pressure of the annular preventer need not exceed 34,475 kPa (5,000 psi).

Information submitted with the Application for Permit to Drill shall include the maximum-anticipated surface pressure and the criteria used to determine this pressure. All blowout-preventer systems shall be equipped with:

a. A hydraulic actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 1,400 kPa (203 psi) above the precharge pressure. An accumulator backup system, supplied by a secondary power source independent from the primary power source, shall be provided with sufficient capacity to close all blowout preventers and hold them closed. Locking devices shall be provided on the ram-type preventers. The method of BOP actuation control such as hydraulic, acoustic, or other methods, shall be described and included in the Application for Permit to Drill.

b. At least one operable remote blowout-preventer-control station, in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor.

c. A drilling spool with side outlets, if side outlets are not provided in the BOP body, to provide for separate kill and choke lines.

d. A kill line equipped with 2 kill-line valves is required. The master valve shall be located adjacent to the BOP. This valve shall not normally be used for opening or closing on flowing fluid. The second valve shall be located adjacent to the master valve. This valve shall be used as the control valve.

e. A fill-up line above the uppermost preventer.

f. A choke manifold equipped in accordance with "API Recommended Practice for Blowout-Prevention Equipment Systems," API RP 53, First Edition, February 1976, reissued February 1978, Sections 3A and 3B, or subsequent revisions which the Chief, Conservation Division, has approved for use.

g. Valves, pipes, and fittings upstream of, and including, the choke manifold shall have a pressure rating at least equal to the maximum-anticipated surface pressure.

h. A wellhead assembly with a working pressure at least equal to the maximum-anticipated surface pressure.

5.1.2 *Auxiliary Equipment.* The following auxiliary equipment shall be provided and maintained in operable condition at all times:

a. A kelly cock shall be installed below the swivel and an essentially full-opening valve of such design that it can be run through blowout preventers shall be installed at the bottom of the kelly. A wrench to fit each valve shall be stored in a conspicuous location readily accessible to the drilling crew.

b. An inside blowout preventer and an essentially full-opening drill string safety valve in the open position shall be maintained on the righ floor at all times while drilling operations are being conducted. These valves shall be maintained on the rig floor to fit all connections that are in the drill string.

c. A safety valve shall be available on the rig floor assembled with the proper connection to fit the casing string that is being run in the hole at the time.

5.1.3 *Subfreezing Operations.* The blowout preventers and related control equipment shall be suitable for operations in those Areas which are subject to subfreezing conditions.

5.2 *Subsea BOP Requirements.* The minimum requirements for drilling below the casing strings for subsea blowout-preventer stacks are tabulated below:

Drive or structural	None required.[1 2]
Conductor	1—Annular.
	1—Diverter System.[3 4]
Surface	1—Annular.
	2—Pipe Rams.
	1—Blind Shear Ram.
Intermediate	1—Annular.
	2—Pipe Rams.[5]
	1—Blind Shear Ram.

Note.—1. When drilling fluids are circulated to the drilling vessel, a diverter system as described in subparagraph 5.4.1 shall be installed on top of the marine riser.

2. If returns to the surface cannot be established, refer to subparagraph 5.4.2.

3. The choke and kill lines or equivalent vent lines, equipped with necessary connections and fittings, can be used for diversion, if approved by the Supervisor, or an annular preventer or pressure-rotating, packoff-type head, equipped with suitable diversion lines, shall be installed on top of the marine riser.

Gulf of Mexico

4. To be installed on top of the marine riser. Diverter systems installed prior to the effective date of this Order shall include a minimum of two 10-centimeter (4-inch) internal diameter lines and full-opening valves. Diverter systems installed or modified after the effective date of this Order shall include a minimum of two 15-centimeter (6-inch) internal diameter lines and full-opening valves.

Pacific, Gulf of Alaska, and Atlantic

4. To be installed on top of marine riser. The diverter system shall provide, as a minimum, two 15-centimeter (6-inch) internal diameter lines and full-opening valves.

All Areas

5. When a tapered drill string is in use, the BOP stack shall be equipped with pipe rams to fit both sizes of drill pipe.

Subsea blowout-preventer stacks shall be equipped with blind shear rams. A subsea accumulator or a suitable alternate approved by the District Supervisor is required to provide fast closure of the preventers and to operate all critical functions in case of loss of power fluid connection to the surface. The

blowout-preventer system shall include dual pod control systems in accordance with API RP 53, First Edition, February 1976, reissued February 1978, subsection 5.B.13, or subsequent revisions which the Chief, Conservation Division, has approved for use. Prior to the removal of the marine riser for installing casing, the riser shall be displaced with sea water. Sufficient hydrostatic head shall be maintained within the well bore to compensate for the reduction to head and to maintain a safe well condition. If repair or replacement of the blowout-preventer stack is necessary after installation, this work shall be accomplished after casing has been cemented prior to drilling out the casing shoe or by setting a cement or bridge plug to assure safe well conditions.

5.3 *Surface BOP Requirements.* The minimum requirements for drilling below the casing strings for conventional surface blowout-preventer stacks are tabulated below:

Drive or structural	1—Diverter System.[1]
Conductor	1—Annular. 1—Diverter System.[2 4]
Surface	1—Annular. 2—Pipe Rams. 1—Blind Ram.
Intermediate	1—Annular. 2—Pipe Rams.[3] 1—Blind Ram.

Gulf of Mexico

Note.—1. Diverter systems installed prior to the effective date of this Order shall include a minimum of two 10-centimeter (4-inch) internal diameter lines and full-opening valves. Diverter systems installed or modified after the effective date of this Order shall include a minimum of two 15-centimeter (6-inch) internal diameter lines and full-opening valves.

Pacific, Gulf of Alaska, and Atlantic

1. The diverter system shall include a minimum of two 15-centimeter (6-inch) internal diameter lines and full-opening valves.

All Areas

2. When a tapered drill string is in use, the BOP stack shall be equipped with pipe rams to fit both sizes of drill pipe.

5.4 *Drive Pipe or Structural Casing BOP Requirements.*

5.4.1 *Drilling Operations from Bottom-Supported Rigs.* Before drilling below this string with a bottom setting rig, a diverter system and related equipment shall be installed for circulating the drilling fluid to the drilling structure. The diverter system shall be equipped with remote control valves in the main and diverter flow lines that can be operated from the control panel prior to shutting in the well. The diverter lines shall vent in different directions to prevent downwind diversion. A schematic diagram and operational procedures for the diverter system shall be submitted with the Application for Permit to Drill (Form 9-331 C) to the Drill Supervisor for approval.

5.4.2 *Floating Drilling Operations.* In drilling operations where a floating or semi-submersible type of drilling vessel is used and formation competency at the structural casing setting depth is not adequate to permit circulation of drilling fluids to the vessel while drilling the conductor hole, a program which provides for safety in these operations shall be described and submitted to the District Supervisor for approval. This program shall include all known pertinent information, including seismic and geologic data, water depth, drilling-fluid hydrostatic pressure, a schematic diagram indicating the equipment to be installed from the rotary table to to proposed conductor-casing seat, and a contingency plan for moving off locations.

5.5 *Conductor Casing.* Before drilling below this string, at least one remote-controlled, annular-type blowout preventer shall be installed. A diverter system and other equipment for circulating the drilling fluid to the drilling structure or vessel shall be installed as described in subparagraph 5.4.1.

5.6 *Surface and Intermediate Casing.* Before drilling below these strings, the blowout-preventer system shall consist of at least four remote-controlled, hydraulically operated blowout preventers including at least two equipped with pipe rams, one with blind rams, and one anular type. Subsea blowout-preventer stacks used with floating drilling vessels shall include one set of blind shear rams.

5.7 *Testing of BOP Systems.* Prior to conducting high-pressure tests, all BOPs shall be tested to a low pressure of 1,400 to 2,000 kPa (203 to 290 psi).

5.7.1 *BOP Testing Frequency.* Surface and Subsea BOP stacks shall be tested as follows:

a. When installed.

b. Before drilling out after each string of casing has been set.

c. At least once each week, but not exceeding 7 days between tests, alternating between control stations. A period of more than 7 days between tests may be allowed where drilling problems prevent testing and remedial efforts are being made, provided BOP tests will be conducted as soon as possible. Testing shall be at staggered intervals to allow each drilling crew to operate the equipment.

d. Following repairs that require disconnecting a pressure seal in the assembly.

5.7.2 *Pressure Testing Surface BOP Systems.* Ram-type BOPs and related control equipment shall be tested at the maximum-anticipated surface pressure or at 70 percent of the minimum internal yield pressure of the casing, whichever is the lesser. The annular-type BOP shall be tested at 70 percent of its rated working pressure or 70 percent of the minimum internal yield pressure of the casing, whichever is the lesser. Before drilling out of each casing or liner shoe, the blind rams shall be tested as required for pipe rams. When a tapered drill string is in use, the smaller pipe rams shall be tested when the smaller pipe is within the stack during a trip.

5.7.3 *Pressure Testing Subsea BOP Systems.* Subsea BOPs and all related well-control equipment shall be stump tested at the surface with water to the maximum-anticipated surface pressure, except that the annular-type BOP shall not be tested above 70 percent of its rated working pressure. After the installation of the BOP stack on the sea floor, the control equipment and pipe rams, conforming to the drill string within the stack, shall be tested as required under subparagraph 5.7.2. Before drilling out of each casing or liner shoe, the blind shear rams shall be tested as required for blind rams under subparagraph 5.7.2.

5.7.4 *Actuation of Surface BOP Systems.* The following minimum-actuation frequencies are required:

a. Pipe Rams—Daily. In order to prevent damage to the rams, complete closure of the rams on drill pipe is not required, provided proper operation is indicated.

b. Blind Rams—Once each trip while the drill pipe is out of the hole. If multiple trips are made, only one action per day is required.

c. Annular-Type Preventer—Once each week in conjunction with the pressure test.

d. Control Stations—Once each trip while the drill pipe is out of the hole; however, not more than once each day, if multiple trips are made.

e. Choke manifold valves, kelly cocks, drill pipe safety valves—Weekly.

5.7.5 *Actuation of Subsea BOP Systems.* The actuation frequency requirements for subsea BOP systems shall be the same as those listed in subparagraph 5.7.4 for surface BOP systems, except item "b" pertaining to blind rams.

The blind shear rams shall be actuated once each trip from alternate control stations and control systems; however, not more than once each day, if multiple trips are made. During the weekly pressure tests, all hydraulic systems except those actuating the blind shear rams shall be actuated from each control station and control system.

5.8 *Inspection and Maintenance.* All BOP systems, marine risers, and associated equipment shall be inspected and maintained in accordance with the manufacturer's recommended procedures. The BOP systems and marine risers shall be visually inspected at least once each day if the weather and sea conditions permit the inspection. Inspection of subsea installations may be accomplished by the use of television equipment.

5.9 *Blowout-Preventer Drills.* All drilling personnel shall be indoctrinated in blowout-preventer drills and be familiar with the blowout-preventer equipment before starting work on the well. A blowout-preventer drill shall be conducted for each drilling crew in accordance with the well-control drill requirements of the U.S. Geological Survey Outer Continental Shelf Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," No. T 1 (GSS-OCS-T 1), First Edition, December 1977, and subsequent revisions thereto. A BOP drill may be required by a U.S. Geological Survey designated representative at any time during the drilling operation.

6. *Mud Program.* The characteristics, use, and testing of drilling mud and the implementation of related drilling procedures shall be designed to prevent the loss of well control. Sufficient quantities of mud materials shall be maintained readily accessible for use at all times to assure well control.

6.1 *Mud Control.* Before starting out of the hole with drill pipe, the mud shall be properly conditioned. Proper conditioning requires either circulation with the drill pipe just off bottom to the extent that the annular volume is displaced, or proper documentation in the driller's log prior to pulling the drill pipe as follows:

a. There was no indication of influx of formation fluids prior to starting to pull the drill pipe from the hole.

b. The weight of the returning mud is not less than the weight of the mud entering the hole.

c. Other mud properties recorded on the daily drilling log are within the specified ranges required by the mud program.

When the mud in the hole is circulated, the driller's log shall be so noted.

When coming out of the hole with drill pipe, the annulus shall be filled with mud before the change in mud level decreases the hydrostatic pressure 517 kPa (75 psi) or every 5 stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled prior to filling the hole and the equivalent mud volume shall be calculated and posted. A mechanical, volumetric, or electronic device for measuring the amount of mud required to fill the hole shall be utilized.

When there is an indication of swabbing or influx of formation fluids, the necessary safety devices and action shall be employed to control the well. The mud shall be circulated and conditioned, on or near bottom, unless well or mud conditions prevent running the drill pipe back to the bottom.

For each casing string, the maximum pressure to be contained under the blowout preventer, before controlling excess pressure by bleeding through the choke, shall be posted near the driller's control console.

An operable vacuum-type gas separator shall be installed in the mud system prior to commencement of drilling operations. The separator shall be maintained for use throughout the drilling and completion of the well.

The mud in the hole shall be circulated or reverse-circulated prior to pulling drill-stem test tools from the hole.

6.2 *Mud Testing and Monitoring Equipment.* Mud-testing equipment shall be maintained on the drilling rig at all times, and mud tests shall be performed once each tour, or more frequently, as conditions warrant. Such tests shall be conducted in accordance with procedures outlined in "API Recommended Practice for Standard Procedure for Testing Drilling Fluids," API RP 13B, Seventh Edition, April 1978, or subsequent revisions which the Chief, Conservation Division, has approved for use. The results of the tests shall be recorded and maintained at the drill site.

The following mud-system monitoring equipment shall be installed with derrick floor indicators and used when mud returns are established and throughout subsequent drilling operations:

a. Recording mud pit level indicator to determine mud pit volume gains and losses. This indicator shall include both a visual and an audio warning device.

b. Mud-volume measuring device for accurately determining mud volumes required to fill the hole on trips.

c. Mud-return indicator to determine that returns essentially equal the pump discharge rate.

d. Gas-detecting equipment to monitor the drilling mud returns, with indicators located in the mud logging compartment or on the derrick floor. If the indicators are in the mud-logging compartment, there shall be a means of immediate communication with the rig floor, and the equipment shall be continually manned.

6.3 *Mud Quantities.* The lessee shall include, with his Application for Permit to Drill, a tabulation of well depth versus minimum quantities of mud material, including weighting material, to be maintained at the drill site. The minimum quantities of mud material required shall be based on the following:

a. The volume required to replace the calculated capacity of the downhole and active surface mud system.

b. The quantity of weighting material required to overcome the highest-anticipated formation pressure.

When the mud quantity required exceeds the storage capacity of the drilling facility, the lessee shall maintain maximum mud inventories and must receive approval from the District Supervisor of the lessee's plans to resupply mud inventories in the event of an emergency. The plan shall include an estimate of the time required for delivery of the mud supplies.

Daily inventories of mud materials, including weighting material, shall be recorded and maintained at the well site. Drilling operations shall be suspended in the absence of minimum quantities of mud material specified in the table or as modified in the approved plan.

7. Supervision, Surveillance, and Training

7.1 *Supervision.* A representative of the operator shall provide onsite supervision of drilling operations on a 24-hour basis.

7.2 *Surveillance.* From the time drilling operations are initiated and until the well is completed or abandoned, a member of the drilling crew or the toolpusher shall maintain rig-floor surveillance continuously, unless the well is secured with blowout preventers, bridge plugs, or cement plugs.

7.3 *Training.* By December 1, 1979, lessee and drilling contractor personnel shall be trained and qualified in accordance with the provisions of the USGS Outer Continental Shelf Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," No. T 1, (GSS–OCS–T 1), First Edition, December 1977, and subsequent revisions thereto.

Any driller, toolpusher, or operator's representative who received training in well-control operations between December 1, 1975, and December 1, 1979, will be credited with having met the training requirements of GSS–OCS–T 1.

After December 1, 1979, in order to maintain qualification, employees must successfully complete a USGS-approved refresher course annually and repeat the basic well-control course every 4 years, as described in the provisions of GSS–OCS–T 1. Credit for these courses shall be obtained from USGS-approved schools.

The refresher course shall be completed within 45 days of the student's anniversary date. The anniversary date is established upon the student's successful completion of a basic course in well control.

Records shall be maintained at the drill site for the affected personnel, indicating the specific training and refresher courses sucessfully completed, the dates of completion, and the names and dates of the courses.

In those Areas which are subject to subfreezing conditions, the lessee shall ensure that personnel responsible for maintenance of the blowout-preventer stack, the associated-control equipment, and the hydraulic-control fluids shall be instructed in the proper procedures to prevent freezing of the hydraulic-control fluids in the control system and the fluids in the choke and kill lines.

8. *Hydrogen Sulfide.* When drilling operations are planned which will penetrate reservoirs known or expected to contain hydrogen sulfide, (H_2S), or in those areas where the presence of H_2S is unknown, or upon encountering H_2S, the preventive measures and the operating practices set forth in U.S. Geological Survey Outer Continental Shelf Standard, "Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment," No. 1 (GSS–OCS–1) Second Edition, June 1979, or subsequent revisions thereto, shall be followed.

9. *Critical Operations and Curtailment Plans*

Gulf of Mexico

Certain operations performed in drilling are more critical than others with respect to well control, and for the prevention of fire, explosion, oil spills and other discharges or emissions. The lessee shall file with the District Supervisor, for approval, a Critical Operations and Curtailment Plan to be followed while conducting drilling operations in each District area. This plan shall include:

a. The guidelines the operator will follow to assure coordination, control, and, if necessary, curtailment of drilling activities.

b. The name of the person who has overall responsibility, as the person in charge at the site, for safety of drilling operations.

c. An outline of any additional safety or antipollution measures that are required when conducting critical drilling operations.

The lessee shall review the plan at least annually. The lessee shall notify the District Supervisor of the results of this review. Any amendments or modifications of the plan are subject to the approval of the District Supervisor.

Pacific, Gulf of Alaska, and Atlantic

Certain operations performed in drilling are more critical than others with respect to well control, and for the prevention of fire,

explosion, oil spills, and other discharges or emissions. The lessee shall file with the District Supervisor, for approval, a Critical Operations and Curtailment Plan to be followed while conducting drilling operations on each lease. This plan shall include:

a. A list or description of the critical drilling operations that are, or are likely to be, conducted on the lease. This list or description shall specify the operations to be ceased, limited, or not to be commenced under given circumstances or conditions. This list shall include operations such as:

(1) Drilling in close proximity to another well.

(2) Drill-stem testing.

(3) Running and cementing casing.

(4) Cutting and recovering casing.

(5) Logging or wireline operations.

(6) Well-completion operations.

(7) Moving the drilling vessel off location in an emergency, repositioning the vessel on location, and reestablishing entry into the well.

b. A list or description of circumstances or conditions under which such critical operations shall be curtailed. This list or description shall be developed from all the factors and conditions relating to the conduct of operations on the lease, and shall consider but not necessarily be limited to the following:

(1) Whether the drilling operations are to be conducted from mobile or fixed platforms.

(2) The availability and capability of containment and cleanup equipment and spill-control system response time.

(3) Abnormal or unusual conditions expected to be encountered during drilling operations.

(4) Known or anticipated meteorological or oceanographical conditions.

(5) Availability of personnel and equipment for particular operations to be conducted.

(6) Other factors peculiar to the particular lease under consideration.

c. The name of the person who has overall responsibility, as the person in charge at the site, for safety of drilling operations.

When any circumstance or condition listed or described in the plan occurs or other operational limits are encountered, the lessee shall notify the District Supervisor and shall curtail the critical operations as set forth under 9a.

Deviations from the plan shall require prior approval of the District Supervisor. If emergency action requires deviation from the plan, the District Supervisor shall be notified as soon as possible.

The lessee shall review the plan at least annually. The lessee shall notify the District Supervisor of the results of this review. Any amendments or modifications of the plan are subject to the approval of the District Supervisor.

10. *Field Drilling Rules.* When sufficient geological and engineering information is obtained as a result of drilling operations, the lessee may make an application or the Supervisor may require an application for the establishment of field drilling rules. After field drilling rules have been established by the Supervisor, development wells shall be drilled in accordance with these rules and the requirements of this Order which are not affected by such rules.

11. *Departures.* All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b).

Approved:

Don E. Kash,

Chief, Conservation Division.

OCS Order No. 3

Subparagraph 1.1

Comments. It was suggested that the phrase "or to prevent migration of fluids in the well bore" is redundant.

Discussion. The intent of OCS order No. 3 is to prevent the migration of formation fluids within the well bore. The subparagraph was revised by changing the title to "Isolation of Zones in Open Hole." The second sentence was revised as follows:

"The placement of additional cement plugs to prevent the migration of formation fluids in the well bore may be required by the District Supervisor."

This revision clarifies the intent and recognizes the District Supervisor's authority to require additional plugs.

Subparagraph 1.4

Comments. It was suggested that the phrase "cannot be used" is ambiguous and that the phrase should read "if the foregoing preferred methods are not used."

Discussion. The subparagraph was revised to eliminate the phrase "if the foregoing methods cannot be used." A new lead-in sentence was added as follows:

"If casing is cut and recovered leaving a stub, one of the following methods shall be used to plug the casing stub."

Two new subparagraphs were added, 1.4.1 and 1.4.2, to differentiate between the requirements of stubs terminating inside casing and stubs terminating below the casing strings.

Subparagraph 1.7

Comments. It was suggested that all plugs should be verified in the same manner as the first plug below the top plug.

Discussion. OCS Order No. 3 requires the testing of the first plug below the surface plug. Past well history has indicated that it is not necessary to test the plugs below the surface plug. The subparagraph was reorganized by adding a new lead-in sentence stating that the plug shall be verified by one of the following methods: "a" or "b". The methods were segregated into the following segments: "a" and "b". The revision also makes it clear that if cement is placed above a bridge plug or a retainer, the cement need not be tested.

Subparagraph 1.9

Comments. There was a divergence of opinion on the wording which provides flexibility for the District Supervisor to approve the removal of casing at depths less than 5 meters (16 feet) below the ocean floor.

Discussion. OSC Order No. 3 states that the approval of the Supervisor is required to remove casing at depths less than 5 meters (16 feet) "after a review of data on the ocean-bottom conditions." There have been instances where it was impossible to remove casing which had been severed at 5 meters (16 feet). In the Gulf of Alaska, a casing string was severed at 5 meters (16 feet) and could not be pulled with a force of 181,437 kilograms (400,000 pounds). The pipe was then cut at 2 meters (6 feet) below the ocean floor and was successfully pulled with a force of 136,078 kilograms (300,000 pounds). This problem is prevalent where hard bottoms exist. In a hard bottom where erosion of the ocean floor is unlikely, the depth of the severance is not critical. In a soft bottom which is subject to erosion, there would be no difficulty in removing the casing at 5 meters (16 feet) below the ocean floor.

Paragraph 2

Comments. No written comments received.

Discussion. The paragraph was revised, however, by the Conservation Division staff after it was realized that the requirement for setting a cement plug in the open hole of a temporarily abandoned drilling well has caused an unintentional sidetrack while trying to drill out of the 100-foot cement plug below the casing. This can easily occur when the formation is softer than the cement plug. Such sidetracking and the resultant dog leg are highly undesirable. The following two sentences were added to the paragraph:

"When a drilling well is temporarily abandoned, a bridge plug or a cement plug shall be set at the base of the deepest casing string. If a cement plug is set, it is not necessary for the cement plug to extend below the casing shoe into the open hole."

It was also suggested by Conservation Division personnel that this paragraph should address the requirements for the marking of casing stubs which extend above the ocean floor. The last sentence of the paragraph was revised as follows:

"When a casing stub extends above the ocean floor, the operator shall comply with the following requirements:

"a. A mechanical, retrievable, or permanent bridge plug, or a cement plug at least 30 meters (98 feet) in length shall be set in the casing between 5 and 60 meters (16 and 197 feet) below the ocean floor.

"b. The requirements of OCS Order No. 1, paragraph 4, 'Identification of Subsea Objects.' "

United States Department of the Interior; Geological Survey Conservation Division

OCS Order No. 3, Effective July 1, 1979; Plugging and Abandonment of Wells

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.15. The operator shall comply with the following minimum plugging and abandonment procedures which have general application to all wells drilled for oil or gas. Plugging and abandonment operations shall not be commenced prior to obtaining approval from the appropriate District Supervisor. Oral or telegraphic approvals shall be in accordance with 30 CFR 250.13.

1. *Permanent Abandonment*

1.1 *Isolation of Zones in Open Hole.* In uncased portions of wells, cement plugs shall be spaced to extend 30 meters (98 feet) below the bottom to 30 meters (98 feet) above the top of any oil, gas, and freshwater zones so as to isolate them in the strata in which they are found and to prevent them from escaping into other strata or the surface. The placement of additional cement plugs to prevent the migration of formation fluids in the well bore may be required by the District Supervisor.

1.2 *Isolation of Open Hole.* Where there is open hole below the casing, a cement plug shall be placed in the deepest casing string in accordance with "a" or "b" below. In the event lost circulation conditions have been experienced or are anticipated, a permanent-type bridge plug may be placed in accordance with "c" below:

a. A cement plug set by the displacement method so as to extend a minimum of 30 meters (98 feet) above and 30 meters (98 feet) below the casing shoe.

b. A cement retainer with effective back-pressure control set not less than 15 meters (49 feet) nor more than 30 meters (98 feet) above the casing shoe, with a cement plug calculated to extend at least 30 meters (98 feet) below the casing shoe and 15 meters (49 feet) above the retainer.

c. A permanent-type bridge plug set within 45 meters (148 feet) above the casing shoe with 15 meters (49 feet) of cement on top of the bridge plug. This bridge plug shall be tested in accordance with subparagraph 1.7 prior to placing subsequent plugs.

1.3 *Plugging or Isolating Perforated Intervals.* A cement plug shall be set by the displacement method opposite all open perforations (perforations not squeezed with cement) extending a minimum of 30 meters (98 feet) above and 30 meters (98 feet) below the perforated interval or down to a casing plug, whichever is less. In lieu of setting a cement plug by the displacement method, the following two methods are acceptable, provided the perforations are isolated from the hole below:

a. A cement retainer with effective back-pressure control set not less than 15 meters (49 feet) nor more than 30 meters (98 feet) above the top of the perforated interval with a cement plug calculated to extend at least 30 meters (98 feet) below the bottom of the perforated interval and 15 meters (49 feet) above the retainer.

b. A permanent-type bridge plug set within 45 meters (148 feet) above the top of the perforated interval with 15 meters (49 feet) of cement on top of the bridge plug.

1.4 *Plugging of Casing Stubs.* If casing is cut and recovered leaving a stub, one of the following methods shall be used to plug the casing stub.

1.4.1 *Stub Termination Inside Casing String.* A stub terminating inside a casing string shall be plugged by one of the following methods:

a. A cement plug set so as to extend 30 meters (98 feet) above and 30 meters (98 feet) below the stub.

b. A cement retainer set 15 meters (49 feet) above the stub with 45 meters (148 feet) of cement set below and 15 meters (49 feet) above.

c. A permanent bridge plug set 15 meters (49 feet) above the stub and capped with 15 meters (49 feet) of cement.

1.4.2 *Stub Termination Below Casing String.* If the stub is below the next larger string, plugging shall be accomplished in accordance with either subparagraph 1.1 or 1.2.

1.5 *Plugging of Annular Space.* Any annular space comunicating with any open hole and extending to the ocean floor shall be plugged with cement.

1.6 *Surface Plug.* A cement plug at least 45 meters (148 feet) in length, with the top of the plug 45 meters (148 feet) or less below the ocean floor, shall be placed in the smallest string of casing which extends to the ocean floor.

1.7 *Testing of Plugs.* The setting and location of the first plug below the surface plug shall be verified by one of the following methods:

a. By placing a minimum pipe weight of 6,800 kilograms (15,000 pounds) on the cement plug, cement retainer, or bridge plug. The cement placed above the bridge plug or retainer need not be tested.

b. By testing the plug with a minimum pump pressure of 6,900 kPa (1,000 psi) with no more than a 10-percent pressure drop during a 15-minute period.

1.8 *Mud.* Each of the respective intervals of the hole between the various plugs shall be filled with mud fluid of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling the intervals between the plugs.

1.9 *Clearance of Location.* All casing, wellhead equipment, and piling shall be removed to a depth of at least 5 meters (16 feet) below the ocean floor or at a depth approved by the District Supervisor after a review of data on the ocean-bottom conditions. The operator shall verify that the location has been cleared of all obstructions.

2. *Temporary Abandonment.* Any drilling well which is to be temporarily abandoned shall be mudded and cemented as required for permanent abandonment except for the requirements in subparagraphs 1.6 and 1.9. When a drilling well is temporarily abandoned, a bridge plug or a cement plug shall be set at the base of the deepest casing string. If a cement plug is set, it is not necessary for the cement plug to extend below the casing shoe into the open hole. When a casing stub extends above the ocean floor, the operator shall comply with the following requirements:

a. A mechanical, retrievable, or permanent bridge plug, or a cement plug at least 30 meters (98 feet) in length shall be set in the casing between 5 and 60 meters (16 and 197 feet) below the ocean floor.

b. The requirements of OCS Order No. 1, paragraph 4, "Identification of Subsea Objects."

3. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.12(b).

Approved:

Don E. Kash,

Chief, Conservation Division.

OCS Order No. 4

Preamble

Comments. It was suggested that the fourth sentence of the Preamble should be revised by changing the word "may" to "shall" and by adding the phrase "and reasonable and prudent efforts are being made to comply with the requirements."

Discussion. The intent of the Preamble was not to make it mandatory that the Supervisor grant a suspension of production. The Supervisor has specific guidelines to be used in his determination of the approval or the denial of a request for a suspension of production. The Supervisor has the discretion of approving or disapproving requests for suspensions of production based on these guidelines.

New Paragraph 1

Comments. No comments received.

Discussion. A new paragraph 1 was added to require the timely submittal of an application for determination of well producibility. This application is to be submitted to the District Supervisor to request his determination of well's capability of producing oil or gas in paying quantities for each new well drilled on a non-producible lease. The application must be submitted within 60 days after the drilling rig has moved from the well. This requirement allows the Supervisor to evaluate the diligence of the lessee in the development of the lease at an early stage. All subsequent paragraphs of the Order were renumbered.

Paragraphs 1, 2, and 3

Comments. Two commenters indicated that the intent of the Order was not clear. A lack of clarity was cited in the paragraphs which allow the demonstration of production capability through production tests, logs, or other proven formation evaluation techniques.

Discussion. We agree with these comments and have reorganized the Order as follows:

Paragraph 2, "Criteria for the Determination of Well Producibility," was written to incorporate and clarify the intent of the last sentence of the proposed Preamble. This new introductory paragraph states that the Supervisor shall prescribe which of certain criteria is to be used to determine the capability of a well to produce in paying quantities. This language makes it clear that the determination will be based either on production tests as outlined in subparagraph 2.1 or on a production capability determination as outlined in subparagraph 2.2.

The content of the original paragraph 4, "Witnessing and Results," was incorporated into the lead-in sentence of subparagraph 2.1, "Production Tests." The requirements for production tests for oil wells and gas wells, which were contained in the original paragraphs 1 and 2, were listed in separate subparagraphs "a" and "b" of subparagraph 2.1.

The original paragraph 3, "Production Capability," was retitled as a new paragraph 2.2, "Production Capability Determination." For the Gulf of Mexico Region, it has been determined that certian well data may be considered as reliable evidence that a well is capable of producing oil or gas in paying quantities; therefore, the Gulf of Mexico lists the type of data which the District Supervisor would evaluate in his determination of production capabilities. The Supervisor has the discretion to make a determination to accept this data or to require a production test. Since the Pacific, Gulf of Alaska, and Atlantic Areas do not have sufficient production history and data upon which to base a judgment on the reliability of well data as an indication of production capability, the production capability determination requirement was worded as follows:

"When the District Supervisor determines that open-hole evaluation data, such as wireline formation tests, drill stem tests, core data, and logs, have been demonstrated as reliable in a geologic area, such data may be considered as acceptable evidence that a well is capable of producing in paying quantities."

Comments. It was suggested that the proposed Appendix for the Gulf of Mexico does not parallel the requirements of the Order because the Order requires a flow test plus an analysis of pertinent engineering, geologic, and economic data to determine whether a well is capable of producing in paying quantities.

Discussion. As previously stated, the revised introductory sentence for paragraph 2 makes it clear that the Supervisor will determine whether production tests or well data are to be used in the determination of production capability.

Comments. It was suggested that the proposed subparagraph 3A(2) of the Appendix for the Gulf of Mexico should allow for the consideration of an apparent water resistivity ratio (Rwa) of 3:1 as an alternative to a minimum true resistivity ratio of 5:1 in a determination of production capability.

Discussion. The apparent water resistivity ratio is not considered a reliable indicator. The Rwa may be erroneous due to the presence of gas, shale, whole washout, or uncompacted sediments. The requirement for the Gulf of Mexico was not revised.

Comments. It was suggested that the words "absolutely," "conclusively," and "water free" are too positive for the intent of the proposed subparagraph 3C for the Gulf of Mexico Region.

Discussion. We agree with these comments and have deleted the words from the requirement for the Gulf of Mexico Region.

United States Department of the Interior; Geological Survey Conservation Division

OCS Order No. 4, Effective July 1, 1979; Determination of Well Producibility

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.12. An OCS lease provides for extension beyond its primary term for as long as oil or gas may be produced from the lease in paying quantities. The term "paying quantities" as used herein means production of oil and gas in quantities sufficient to yield a return in excess of operating costs. An OCS lease may be maintained beyond the primary term, in the absence of actual production, when a suspension of production has been approved in accordance with 30 CFR 250.12.

1. *Application for Determination of Well Producibility.* An application shall be submitted to the District Supervisor for the determination of every new well's capability of producing until a well, drilled on the lease, has been determined to be capable of producing oil or gas in paying quantities. The application shall be submitted within 60 days after the drilling rig has been moved from the well.

2. *Criteria for the Determination of Well Producibility.* The Supervisor shall prescribe which of the following criteria is to be used to determine the capability of a well to produce in paying quantities.

2.1 *Production Tests.* All tests must be witnessed by an authorized representative of the U.S. Geological Survey. Test data accompanied by operator's affidavit, or third-party test data, may be accepted in lieu of a witnessed test, provided approval is obtained from the District Supervisor prior to the performance of the test. All tests must conform to the following minimum requirements:

a. A production test for oil wells of at least 2 hours' duration following stabilization of flow.

b. A deliverability test for gas wells of at least 2 hours' duration following stabilization of flow or a 4-point back-pressure test.

2.2 *Production Capability Determination.*

Gulf of Mexico

The following may be considered as reliable evidence that a well is capable of producing oil or gas in paying quantities:

a. A resistivity log of the well showing a minimum of 15 feet of producible sand in one section that does not include any interval which appears to be water-saturated. All of the section counted as producible shall exhibit the following properties:

(1) Electrical spontaneous potential exceeding 20 negative millivolts beyond the shale base line. If mud conditions prevent a 20-negative-millivolt reading beyond the shale base line, a gamma ray log deflection of at least 70 percent of the maximum gamma ray deflection in the nearest clean water-bearing sand may be substituted.

(2) A minimum true resistivity ratio of the producible section to the nearest clean water-bearing sand of at least 5:1.

(3) A porosity log indicating porosity in the producible section.

b. Sidewall cores and core analyses which indicate that the section is capable of producing oil or gas.

c. The aforementioned criteria will ascertain that a well is producible. However, recognizing the fact that all geologic formations in the Gulf of Mexico Region do not possess the same physical properties and, therefore, do not lend themselves to one single method of log analysis, the U.S. Geological Survey may, at its discretion, accept sound log-interpretation techniques which demonstrate that a well would produce hydrocarbons in a particular area, even though the well might not qualify under items "a" and "b". The lessee can support the determination of well producibility by submitting further evidence such as wireline formation tests and/or mud logging analyses.

Pacific, Gulf of Alaska, and Atlantic

When the District Supervisor determines that open-hole evaluation data, such as wireline formation tests, drill stem tests, core data, and logs, have been demonstrated as reliable in a geologic area, such data may be considered as acceptable evidence that a well is capable of producing in paying quantities.

3. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.12(b).

Approved:

Don E. Kash,

Chief, Conservation Division.

OCS Order No. 5

Title

Comments. No comments received.

Discussion. The title of the Order was changed from "Subsurface Safety Devices and Surface Safety Systems" to "Production Safety Systems." The new title is consistent with the content of the Order.

Preamble

Comments. One commenter stated that "We do not believe the wording in the preamble to this Order is in accord with the objectives of the Memorandum of Understanding (MOU) between DOI and DOT which delineates the jurisdictional limits of DOI–USGS and DOT–OPSO for transmission pipelines and facilities boarding producer's platforms. The intent and the language of the MOU should be taken into consideration in delineation of jurisdiction."

Discussion. This Order is concerned with well and platforms safety devices; the objectives of the MOU between DOT and DOI are within the purview of OCS Order No. 9, "Oil and Gas Pipelines."

Paragraph 1

Comments. It was suggested that paragraph 1 be revised "to read as follows: Technological improvement. The operator is encouraged to continue development of new and improved safety device technology, and as technological research, progress, and product improvement result in increased effectiveness of existing safety devices or the development of new devices or systems, such devices or systems may be used or required. For new subsurface-safety devices or systems, field testing shall be approved by the District Supervisor, and applications for routine use shall include evidence that the device or system has been field tested at least once each month for a minimum of 6 consecutive months, and that each test indicated proper operation."

Discussion. Only the first sentence of this suggestion was adopted to be consistent with

the quality-assurance paragraph of this Order. The USGS encourages the development of new safety devices and systems; however, it is intended that new safety devices be tested according to the qualification test requirments of ANSI/ASME SPPE-1-1977 (formerly ANSI/ASME OCS-1-1977). (Refer to subparagraphs 2a and 2b.) It is not the objective to have uncertified and unproved devices field tested. The field testing of uncertified and unproved safety devices requires a departure in accordance with paragraph 10 of this Order.

Comments. Another commenter noted that "if the technology improves in a specific area, the USGS should be in a position to require its use." It was also contended that the best available equipment should be used on "* * * all existing operations (where practicable) and on all new operations, where necessary to protect public health, safety or the environment."

Discussion. The objectives and requirements of paragraphs 1 and 4 of this Order are consistent with these comments.

Paragraph 2

Comments. No comments received.

Discussion. Since the quality assurance and performance requirements of the original subparagraph 2.3.1 are applicable to both surface- and subsurface-safety devices, it was determined that these requirements should be listed under a separate paragraph rather than a subparagraph concerned with subsurface-controlled subsurface-safety devices. Therefore, the requirement was revised and retitled as a new paragraph 2, "Quality Assurance and Performance of Safety and Pollution-Prevention Equipment." The subsequent paragraphs were renumbered. The revised subparagraph refers to subparagraph 3.2 for compliance dates for subsurface-safety valves and to 4.3 for compliance dates for surface-safety valves.

Comments. It was suggested that the following "grandfather clause" should be incorporated into the first sentence of paragraph 2 (2.3.1), "All subsurface-safety devices purchased for installation after the date of this Order shall * * *." It was contended that "a grandfather clause is needed to prevent the wasteful replacement of these devices."

Another commenter stated that "These sections (2.3.1 and 2.3.2) require that the operator shall conform to API Specification 14A and API Recommended Practice (RP) 14B in selection, installation, and testing of subsurface safety devices."

It was also noted that "While the subsurface safety devices we currently use in our operations meet the intent of 14A and 14B, a rigorous analysis would find them lacking in certain minor areas. The forced replacement of these perfectly acceptable devices is unnecessary and wasteful."

Discussion. The dates for compliance with API Specification 14A and API RP 14B are stated in subparagraphs 3.2 and 3.3, respectively. Provision has been made for existing wells. It is not the intent of the USGS to cause unnecessary replacement of these subsurface devices.

Subparagraph 3.1

Comments. It was suggested that a date change be made to Appendix I, Gulf of Mexico as follows: "Change 'June 5, 1972' in six places in 2(a), 2(a)(1), 2(a)(2), 2(b), 2(b)(1), and 2(b)(2)." It was contended that "Existing OCS Order No. 5 for the Gulf of Mexico Area would have allowed installation of a subsurface-controlled safety device in a well initially completed or for which tubing was removed and reinstalled between June 5, 1972, the effective date of the Order, and December 1, 1972, the compliance date given in the Order. Any well which was so completed and which has not had the tubing pulled and reinstalled since December 1, 1972, could still have a subsurface-controlled subsurface-safety device and be in compliance with OCS Order No. 5. The use of the June 5, 1972, date in subparagraphs 2(a), 2(a)(1), and 2(a)(2) of the proposed Order would required that these devices be immediately changed even if the tubing does not need to be pulled and reinstalled. Revising the date in these three subparagraphs to be December 1, 1972, would retain the status quo on these wells."

Another commenter suggested that subparagraph 3.4 (2.3) be revised as follows: *"Except as provided below and in subparagraph 2.4,* all tubing installations open to and capable of producing from hydrocarbon-bearing zones shall be equipped with a surface-controlled subsurface safety device. The surface controls may be located on site or remotely. *Wells with a shut-in tubing pressure of 4,000 psig or greater shall be equipped with a subsurface-controlled subsurface safety device in lieu of a surface-controlled subsurface safety device. A surface-controlled subsurface safety device may be installed if approved by the Supervisor. When the shut-in tubing pressure declines below 4,000 psig, a surface-contolled subsurface safety device shall be installed when the tubing is first removed and reinstalled."*

It was contended that "The suggested revision incorporates the exception in existing Gulf of Mexico OCS Order No. 5 for high pressure wells into the National Order. The Gulf of Mexico Order recognizes the limited availability of surface-controlled subsurface safety valves for high pressure wells. We know of no justification for deviating from the Gulf of Mexico requirements, which have been proven by experience to provide adequate safety."

Discussion. The comments summarized above are interrelated; therefore, this discussion addresses several concerns.

It has been determined that the pressure criteria which were proposed in the original Gulf of Mexico Appendix are applicable to all Areas; therefore, subparagraph 3.1 (2.1) has been rewritten as an "all Areas" requirement. This determination is based on an assessment of technical problems which have been encountered in the control systems of subsurface-controlled subsurface-safety valves in wells with shut-in tubing pressures greater than 4,000 psig in the Gulf of Mexico Area.

It is recognized that December 1, 1972, is the effective date for the requirements of subparagraph 3.1 for the Gulf of Mexico Area; however, it is not necessary to stipulate a retroactive effective date for any Area. The existing requirements for all Areas are legally binding until the requirements are superseded by the revised order, which will become effective on July 1, 1979.

The subparagraph has been segregated into interdependent categories as follows:

(1) Wells and tubing installations completed after the effective date of the Order.

(2) Wells and tubing installations completed prior to the effective date of the Order.

(3) Shut-in tubing pressures greater than 4,000 psig.

(4) Shut-in tubing pressures less than 4,000 psig.

Comments. It was suggested that the first sentence of subparagraph 3.1 (2.1), "Installation," be changed to: "All tubing installations open to and capable of producing from hydrocarbon-bearing zones shall be equipped with a subsurface safety device unless, after application and justification, the well is determined to be incapable of flowing *oil or gas."*

It was contended that "The suggested addition of the phrase 'oil or gas' to the end of this sentence retains a requirement in the existing Gulf of Mexico Area OCS Order No. 5. There is no justification for requiring subsurface safety devices in wells which are incapable of flowing hydrocarbons.

"The USGS has shown no justification for deviating from the Gulf of Mexico Order, which has been proven by experience to provide adequate safety."

Discussion. This suggestion was not adopted. The intent is to require subsurface-safety devices in wells which are capable of flowing saltwater. High-salinity and high-temperature saltwater are also pollutants.

Subparagraph 3.2

Comments. No comments received.

Discussion. A new subparagraph 3.2 was written to incorporate a "grandfather clause" and to specify a date for compliance with "API Specification for Subsurface Safety Valves," API Spec 14A. This requirement was formerly in the proposed subparagraph 2.3.1. Refer to the discussion for paragraph 2.

Former Subparagraph 2.2

Comments. No comments received.

Discussion. The originally proposed subparagraph 2.2 was deleted and the requirements were incorporated into subparagraph 3.3.

Subparagraph 3.3

Comments. No comments received.

Discussion. A new subparagraph 3.3, "Design Installation and Operation," was written to consolidate the requirements of the original subparagraphs 2.2 and 2.3.2, and to add a "grandfather clause" for compliance with the requirements of API RP 14B. The test frequency requirement which was formerly in the original subparagraph 2.3.2 has been included in subparagraph 3.4.1. The subsequent subparagraphs were renumbered.

Subparagraph 3.4

Comments. It was recommended that the references to appendices III, IV, or V are not necessary because the requirements for "Subfreezing Operations" could be condensed into a one-sentence statement and placed in the Order.

Discussion. This suggestion was adopted.

Subparagraph 3.4.1

Comments. A large number of comments addressed subparagraph 3.4.1 (2.3.2), "Installation and Testing," objecting to the test frequency of surface-controlled subsurface-safety valves. The requirement is quoted: " * * * installed in a well shall be tested in place for proper operation when installed, or reinstalled, at least monthly for the next six months, and quarerly thereafter." The consensus was that the proposed testing periods were too frequent, burdensome, and unnecessary.

Conversely, one commenter stated that "Testing frequency should be increased over the life of the device, however, since equipment tends to get less reliable with age, rather than more reliable. Again we see reliance on API Recommended Practice, with no justification provided."

Discussion. After considering the above comments, the test frequency was changed to " * * * at least monthly for the first 3 months, and thereafter at intervals not exceed 6 months." It is believed that the initial three monthly tests are necessary to establish reliability; the subsequent semiannual tests are sufficient to verify functional operation for the remainder of the service-life of the device. The subparagraph was also revised to require the valves to be tested in accordance with Appendix E of API RP 14B. This appendix describes the test procedure.

Justification for reliance on API documents has been previously discussed in the Comments/Discussion section of OCS Order No. 2, paragraph 3.

Subparagraph 3.5 and 3.5.1

Comments. No comments received.

Discussion. In the proposed National OCS Order, subparagraph 2.4, "Subsurface-Controlled Subsurface-Safety Devices," there was no requirement for subsurface-controlled subsurface-safety devices for any Area of the OCS except the Gulf of Mexico Area. Our review of the Order indicated that the Order should provide for the installation of subsurface-controlled subsurface-safety valves in wells from single well and multiwell satellite caissons or jackets and ocean floor completions. It was concluded that the Order should allow the optional use of these valves instead of surface- or other remote-controlled subsurface-safety valves for the satellite or subsea-type well completions. This option is necessary because it may be impractical to use surface-controlled subsurface-safety valves in satellite caisson and subsea-type completions. A new subparagraph 3.5.1, "Inspection and Maintenance of Subsurface-Controlled Subsurface-Safety Valves," was also added to provide assurance of the proper functioning of the valves.

The closing-pressure and the flowrate design criteria which were specified in subparagraph 2d of the original appendix for the Gulf of Mexico OCS Area were deleted. These requirements are not necessary because these design criteria are specified in API RP 14B.

The new subparagraph 3.3 references API RP 14B as a requirement.

Subparagraph 3.6

Comments. The comments on the original subparagraphs 2.5, "Shut-in Wells," and 2.7, "Tubing Plugs," indicated that these subparagraphs are interrelated and, therefore, should be combined into a new paragraph entitled "Tubing Plugs in Shut-in Wells."

Discussion. The content of the original subparagraphs 2.5 and 2.7 were edited and combined into the new subparagraph 3.6, "Tubing Plugs in Shut-in Wells."

Comments. One commenter referred to subparagraph 3.6 (2.5), stating that "It appears that the pump-through type of retrievable plug may be more susceptible to leaks than a simple blanking plug. The reason for specifying this type of plug is unclear. Provision should be made for alternative plugging techniques."

Discussion. A pump-through type of tubing plug is required because this type of plug permits control of the well without removing the plug.

Comments. A number of commenters objected to subparagraph 3.6 (2.7) concerning the minor leakage of tubing plugs. One commenter proposed that the second and third sentences be revised as follows: *"If sustained liquid flow exceeds 400 cc/min, or gas flow exceeds 15 cu ft/min,* the plug shall be removed, repaired, and reinstalled or an additional tubing plug may be installed in lieu of removal and repair."

It was contended that "The very minimal flow rates allowed by the existing Gulf of Mexico Order permit confirmation that the plug is holding without having to wait for hours unitl *all* flow stops. Temperature fluctuations will also indicate very small flow rates (fluid expansion) without any leak through the plug."

Discussion. The tubing-plug-leakage factor has been reevaluated, and the suggestions were adopted.

Subparagraph 3.7

Comments. One commenter suggested that subparagraph 3.7 (2.6), "Injection Wells," be revised as follows: "Surface-controlled subsurface-safety devices, *except as specified in subparagraph 2.4,* shall be installed in all injection wells unless, after application and justification, it is determined that the well is incapable of flowing *oil or gas."*

It was contended that "Existing OCS Order No. 5 for the Gulf of Mexico Area allows the use of subsurface-controlled subsurface-safety devices in some older wells as long as the tubing has not been removed and reinstalled. The proposed order would require that all of these subsurface-controlled valves be replaced immediately with surface-controlled valves. The suggested revision would maintain the status quo and would only require replacement of the subsurface-controlled valve with a surface-controlled valve when the tubing is pulled and reinstalled on these older wells."

Discussion. The subparagraph was revised to segregate the requirements into two categories: (1) wells which were placed in injection service after the effective date of this order and (2) wells which were placed in injection service prior to the effective date of this order. This requirement is consistent with the existing OCS Order for the Gulf of Mexico which contains a compliance date of December 1, 1972. This requirement is also consistent with the existing requirements for the other Areas of the OCS. It is not necessary to specify specific compliance dates for each Area of the OCS because the existing orders are binding until the requirements are superseded by the revised Order, which will become effective July 1, 1979.

The phrase "oil or gas" was not added to the Order because injection wells often contain residual volumes of oil and/or entrained gas. These residual volumes collect in the well bore when injection is terminated; therefore, such injection wells are capable of oil or gas. High-salinity and high-temperature saltwater are also pollutants.

Subparagraph 3.8

Comments. No comments received.

Discussion. The subparagraph was revised to clarify the requirements for reporting the temporary removal of subsurface-safety devices and the requirements for attending the well when the subsurface-safety device has been removed.

Subparagraph 3.9

Comments. No comments received.

Discussion. The title of this subparagraph has been changed from "Additional Protective Equipment" to "Additional Safety Equipment" to more accurately describe the intent of the subparagraph.

Comments. Several commenters addressed subparagraph 3.9 (2.9), "Additional Safety Equipment," and suggested that the first sentence be revised as follows: "All tubing installations *made after June 5, 1972,* in which a wireline- or pumpdown-retrievable subsurface-safety device is to be installed shall be equipped with a landing nipple, with flow couplings, or other protective equipment, above and below, to provide for setting of the subsurface-safety device."

The commenter also noted that "Tubing installations made before June 5, 1972, in the Gulf of Mexico Area do not have to be equipped with a landing nipple and related equipment under the provisions of the current Gulf of Mexico OCS Order No. 5. The proposed Order would require that these wells be so equipped. The suggested revision would retain the status quo for these tubing installations."

Discussion. The subparagraph was revised by adding the clause "after the effective date of this Order." This revision is compatible with the existing requirements for all Areas of the OCS. Refer to the rationales pertaining to post effective dates in the discussion of subparagraph 3.1.

Comments. It was suggested that the second sentence of subparagraph 3.9 (2.9) be revised as follows: "All wells in which a subsurface-safety device or tubing plug is installed shall have the tubing-casing annulus packed off above the uppermost open perforations. *Unless otherwise approved by the District Supervisor, all tubing installations made after the effective date of this Order and in which a subsurface-safety device or tubing plug is installed* shall have the tubing-casing annulus packed off at least 30 meters (98 feet) below the measured or calculated top of cement on the production string or the intermediate string."

Discussion. The second sentence was deleted because the requirements will be included in a revision of OCS Order No. 6, "Well Completions and Workover Operations."

Comments. Another commenter suggested that the following phrase be added to the end of the last sentence of subparagraph 3.9 (2.9): "or of an independent remote shut-in system."

Discussion. In order to clarify the intent, the last sentences have been revised as follows: "The control system for all surface-controlled subsurface-safety valves shall be an integral part of the platform Emergency Shutdown System (ESD) as defined in API RP 14C Appendix C, Section C1. In addition to the activation of the ESD system, by manual action on the platform, the system may be activated by a signal from a remote location. Surface-controlled subsurface-safety valves shall close in response to shut-in signals from the ESD system or the fire loop, or both."

Former Subparagraph 2.10

Comments. No comments received.

Discussion. The proposed subparagraph 2.10, "Departures," was deleted because departures are now covered in the new paragraph 10. All subsequent subparagraphs have been renumbered.

Subparagraph 3.10

Comments. One commenter pointed to an error under subparagraph 3.10 (2.11), "Emergency Action," stating that "* * * reference to subparagraph 2.7 appears to be a typographical error, and it should probably refer to subparagraph 2.1."

Discussion. The suggestion is correct; subparagraph 3.1 (2.1) also should have been referenced. New subparagraph 3.10, "Emergency Action," has been revised to include the phrase "* * * in accordance with the provisions of this Order * * *." Therefore, specific paragraphs are not referenced.

Subparagraph 3.11

Comments. In response to subparagraph 3.11 (2.12), "Records," one commenter stated that "This requires records on subsurface-safety devices to be kept for a period of one year. Records on safety devices should be kept continuously throughout the life of the operation."

Discussion. The subparagraph has been changed to require a minimum record-retention period of 5 years for subsurface-safety devices. The 5-year record-retention period was adopted to be consistent with the American National Standards Institute/American Society of Mechanical Engineers Standard "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," OCS-1-1977. This standard has been adopted and is referenced in new subparagraph 2a.

The paragraph "Records," the subparagraph "Field Records," and the subparagraph "Other Records" were combined into one paragraph, "Records."

It was determined that the limited storage space in offshore field offices makes the storage of 5 years of records difficult. The Order was revised to state that records could be moved to the onshore office after 2 years. With this change, there was then no need to differentiate between field records and other records. The paragraph and subparagraphs were edited and combined.

Comments. One commenter addressed subparagraph 3.11d (2.12.1b) as follows: "Proposed Order No. 5, paragraph 2.12.1(b) would require verification of assembly by a qualified person in charge of installing the device and installation date. These downhole safety devices are actually factory assembled; therefore, offshore wireline operators could only verify installation and *not* assembly of such devices."

Discussion. The USGS agrees with this comment; subparagraph 3.11f (2.12.1b) has been revised as follows: "The qualifications of the personnel who directed all installations and removals * * *." The verification of the assembly is assured by the revision of subparagraph 3.11b which requires a record verifying that the assembly was manufactured in accordance with the quality-assurance requirements of ANSI-ASME SPPE-1-1977. The installation and removal dates are required by the new subparagraph 3.11g. A new item "c" has been added to require a record of all configuration modifications.

Comments. Several commenters objected to the requirement for the quarterly failure-analysis reports which were required by subparagraph 3.11 (2.12.2), "Other Records," and subparagraph 3.12 (2.13), "Reports." It was suggested that these reports should be submitted semiannually or annually.

Discussion. The "quarterly failure-analysis reports" requirement has been deleted from both of these subparagraphs. A new paragraph 6, "Failure and Inventory Reporting," has been added to this Order to cover equipment-failure reporting. The intention of the USGS to include the requirements for a failure and inventory reporting system (FIRS) in OCS Order No. 5 was announced in a **Federal Register** Notice, Vol. 43, No. 111, June 8, 1978. A discussion of the USGS rationale for the addition of the new paragraph 6 is given under a separate heading for that paragraph.

Subparagraph 4.1

Comments. Subparagraph 4.1 (3.1), "New Platforms," referenced API RP 14C; it was suggested that the phrase "or subsequent revisions as approved by the Supervisor" immediately follow the reference.

Discussion. The USGS has adopted the following phrase: "or subsequent revisions which the Chief, Conservation Division, has approved for use."

Subparagraph 4.2

Comments. A number of commenters were not in favor of the proposed date of December 1, 1977, for existing platforms to be in compliance with the provisions of API RP 14C, as stated in subparagraph 4.2 (3.2). It was contended that this date was "overly stringent," "exceedingly difficult," and "probably impossible to comply with." It was further contended that "Since the effective date of the National Order has not yet been established, then neither should this effective date of compliance by existing platforms be established."

Discussion. It has been recognized that the effective date for existing production platform facilities to be in compliance with the requirements of this subparagraph must be consistent with the existing Orders for those Areas which have existing production platforms. The currently effective OCS Order No. 8 for the Gulf of Mexico Area requires conformance on new platforms with the provisions of API RP 14C by April 1, 1977 (6 months after the October 1, 1976, effective date of the Order). This OCS Order also required compliance with the requirements of subparagraph 4D, "Additional Safety and Pollution Control Requirements," as follows:

a. Platforms installed after October 1, 1976, shall comply by April 1, 1977.

b. Existing platforms shall comply by October 1, 1977.

Shortly after the issuance of the September 7, 1976, revision of the Gulf of Mexico OCS Order No. 8, it was recognized that the OCS Order did not state the requirements for compliance with API RP 14C on existing platforms. All lessees in the Gulf of Mexico OCS Area were subsequently informed that Conservation division policy would require compliance with these requirements by October 1, 1977.

Subparagraph 4.2, "Existing Platforms," for the Gulf of Mexico Area has been written to require immediate compliance with the provisions of API RP 14C and with the additional requirements of paragraphs 4 and 5 of the Order.

Since the OCS Orders for the other Areas have not previously required compliance with the provisions of API RP 14C or certain specific requirements of paragraph 4 and 5 of OCS Order No. 5, subparagraph 4.2 for the Pacific, Gulf of Alaska, and Atlantic has been written to require compliance by January 1, 1980.

Subparagraph 4.3

Comments. No comments received.

Discussion. A new subparagraph 4.3 was written to incorporate a "grandfather clause" and to specify a date for compliance with "API Specification for Wellhead Surface Safety Valves for Offshore Service," API Spec 14D. This specification was not referenced in the proposed National OCS Orders because the Second Edition of the standard was not finalized and issued until November 1977. Refer to the discussion of

paragraph 2. The subsequent subparagraphs were renumbered.

Subparagraph 4.4

Comments. It was suggested that the following sentence be added to the first paragraph of subparagraph 4.4 (3.4): "The information shall be reviewed for approval by the District Supervisor within 60 days after being submitted.

Discussion. This suggestion was not adopted because the USGS has no control over the number of applications which are received in a certain time period. A time limit could result in an insufficient scrutiny of design proposals, if a large number were to be received in a 60-day period. The USGS plans to continue its policy of handling urgent matters as expeditiously as possible while fully discharging its regulatory responsibilities.

Subparagraph 4.4f

Comments. It was suggested that the word "smoke" be deleted in the first sentence of subpargraph 4.4f (3.4f). The reason for this suggestion is: "Experience has proven that enclosed high-hazard areas can be adequately protected with gas and fire detectors. API RP 14C only requires gas detectors in inadequately ventilated areas. The suggested revision makes it clear that three different types of fire sensors are not needed."

Discussion. The USGS has adopted this suggestion.

Subparagraph 4.4g

Comments. It was suggested that "This requirement is out of place in the proposed Order since 4.1.10 covers only electrical equipment. It appears that it should be added to 3.4 to be in the proper location."

Discussion. The USGS agrees with this comment. The requirement was revised and incorporated into subparagraph 4.4g.

Comments. This subparagraph was objected to by the following comment: "We seriously object to this requirement. It may be reasonable that designs be certified by appropriate registered professional engineers. It is absolutely not necessary for them to supervise installation, however. This should be done by qualified technicians and/or inspectors."

Another commenter suggested that the word "appropriate" should be deleted, because "In some states, registration by a particular engineering discipline is not used."

Discussion. This subparagraph has been rewitten to delete "appropriate" and to not require "supervision" of an installation by registered professional engineers. The revised subparagraph requires certification of the designs by registered professional engineers.

Subparagraph 5.1.1a

Comments. The following sentence was proposed to be added to the first paragraph of subparagraph 5.1.1a (4.1.1a): "All existing platforms are exempt from this requirement." It was stated that "The added sentence exempts older existing platforms from what would be a massive refitting job to meet a code written after they were constructed."

Discussion. The USGS does not agree. Pressure and fired vessels used in the production of oil or gas should be equipped with properly designed and sized pressure-relief valves, regardless of the age of the vessel.

Lessees who operate in the Gulf of Mexico have known since September 7, 1976, that pressure-relief valves shall conform to ASME boiler and pressure-vessel codes, and new platform production facilities should conform to API RP 14C.

The revision of subparagraph 4.2, "Existing Platforms," requires immediate compliance with the requirements of paragraphs 4 and 5 for the Gulf of Mexico and compliance by January 1, 1980, for all other Areas of the OCS. The rationale for the compliance dates is covered in the discussion for subparagraph 4.2. Furthermore, subparagraph 5.1.1e permits the use of existing uncoded pressure vessels, provided thay are hydrostatically pressure tested to 1.5 times their working pressure.

Comments. Another commenter addressed this subparagraph and suggested that the word "minimize" be deleted and the word "prevent" be substituted.

Discussion. This suggestion was adopted.

Comments. Another commenter addressed the following: "Reference to the ASME Boiler and Pressure Vessel Code, July 1, 1974, or subsequent revisions thereto approved by the Supervisor is used in paragraph (a), but 'subsequent revisions' are not listed in paragraphs (b), (c), and (e). We believe they should be for the sake of consistency."

Discussion. This suggestion was adopted by including the "subsequent revisions" phrase into the introductory paragraph of subparagraph 5.1.1. It is intended that this phrase apply to subsequent subparagraphs.

Subparagraph 5.1.1c

Comments. A commenter suggested that the following second sentence of subparagraph 5.1.1c (4.1.1c) be adopted: "The high pressure shut-in sensor shall activate sufficiently below the maximum allowable working pressure to positively insure operation before the relief valve starts relieving." It was contended that "It would be unsafe to set a high pressure alarm sensor to alert for a pressure which exceeds the manufacturer's 'maximum allowable working' pressure."

Discussion. The USGS review of this comment indicated that subparagraphs 5.1.1a and 5.1.1c should be revised to segregate the requirements for relief valves from the requirements for pressure sensors. The requirements of the original subparagraph 4.1.1c pertaining to the sizing and relieving requirements for relief valves have been incorporated into the revised subparagraph 5.1.1a. A clause was added to subparagraph 5.1.1a which requires relief valves to be set no higher than the maximum-allowable working pressure of the vessel.

Subparagraph 5.1.1c was revised to address the requirements for setting the actuation pressures for the high- and low-pressure shut-in sensors. This subparagraph requires that the high-pressure sensor be set sufficiently below the relief-valve set pressure to ensure that the pressure source is shut in before the relief valve starts relieving. This requirement, combined with the requirement of subparagraph 5.1.1a, prescribes the upper limit of the high-pressure sensor to be below the maximum-allowable pressure for the vessel, since the relief valve must be set below this pressure.

Comments. One commenter questioned the use of kilopascals as the accepted metric unit for pressure: "Is kilopascals or Kg/Cm^2 the accepted metric equivalent of psi?"

Discussion. The kilopascal (kPa) is the accepted unit of pressure by International Systems of Units (SI), and this unit has been adopted by the USGS.

Subparagraph 5.1.1d

Comments. A commenter was concerned with the ASME Boiler and Pressure Vessel Codes referenced in subparagraph 5.1.1d (4.1.1e), and the following statement was made: "In summary, it seems all of those could reference the latest revision. * * * Furthermore, if the government absolutely doesn't accept future revisions without subsequent approvals, this concept should be uniformly applied to all codes; *and* the subsequent approvals should be done once at the National USGS Director level, not duplicated repeatedly at each Supervisor level."

Discussion. The USGS does not bestow "blanket" approval on latest revision to any document, from all sources, without first reviewing the document to determine its applicability and suitability to OCS operations. The "subsequent revisions phrase" has been added to the introductory paragraph of subparagraph 5.1.1 in order to make this phrase applicable to the subsequent subparagraphs. All referenced standards are reviewed and approved by the Chief, Conservation Division, for use in all Areas of the OCS.

Comments. It was recommended that the word "installed" be changed to "ordered" in subparagraph 5.1.1d (4.1.1e). It was stated that "After a vessel is ordered, a change in specifications can be very costly and time consuming, especially if the change must be made at the time the vessel is being installed."

Discussion. This change was adopted.

Comments. Another commenter stated that "Consideration should be given to allow the use of small, uncoded pressure vessels when such vessels are fabricated solely, from pipe and factory made pipe fittings which meet the minimum material requirements for other piping and provided such vessels do not have any internal weldments and are hydrostatically tested to at least 1.5 times their working pressure, all as permitted by OPSO Part 192."

Discussion. The intent of the Order is to require that all pressure vessels, regardless of size, installed after the effective date of this Order shall be coded pressure vessels. Subparagraph 5.1.1d allows uncoded pressure vessels to be used on existing installations provided they have been pressure tested to at least 1.5 times their working pressure.

Subparagraph 5.1.2

Comments. It was proposed that the fourth sentence in subparagraph 5.1.2 (4.1.2) be changed to the following: "The high-pressure shut-in sensor shall be set no higher than 10 percent or 400 psi, whichever is greater, above the highest operating pressure of the line; but, in all cases, it shall be set sufficiently below the design working pressure of the well or the gas-lift supply pressure to assure actuation of the surface-safety valve."

It was also suggested that the fifth sentence of 5.1.2 be ended with the phrase "Before the designed working pressure is exceeded."

Discussion. These suggestions were not adopted. If the 400 psi criteria were adopted, then all wells with flowing tubing pressure of 400 psi, or less, would have their sensors set at the flowing pressure plus 400 psi. We believe that in many cases of low-pressure wells, the 400 psi could be excessive, whereas, the 10 percent is believed to be a better overall criteria, and would shut in the wells on signal of a downstream emergency.

The primary function of the high-pressure sensor is to shut in the wells in response to a downstream emergency. The secondary function of the high-pressure sensor is to protect the flowline from pressures in excess of the maximum-allowable working pressure. Therefore, the term "maximum shut-in pressure" was retained.

Comments. Another commenter proposed that "In the last phase of the third sentence the words should read 'below the maximum shut-in wellhead pressure', if *wellhead* pressure is what is intended."

Discussion. This proposal was adopted.

Subparagraph 5.1.3

Comments. No comments received.

Discussion. The original subparagraph 4.1.1d addressed general requirements for pressure sensors. The USGS concluded that these requirements should be covered under a separate heading, instead of including this requirement under the heading of pressure vessels; therefore, the requirements were incorporated into a new subparagraph 5.1.3, "Pressure Sensors."

Comments. A commenter responded to subparagraph 5.1.3 (4.1.1d), stating that "The wording of this requirement which specifies that a 'non-automatic *reset* relay shall be installed' is unduly restrictive in that it precludes certain design options the engineer (operator) may choose for the design on unmanned and automated unattended platforms. For example, a design objective might provide that when the pressure parameters normalize, the facility would automatically resume operations. There is no need to send a service crew by helicopter for shutdowns occassioned by minor self-correcting upsets or deviations."

Discussion. The USGS does not agree. There are also numerous examples of wellhead and platform equipment failures which could contribute to a fire and to pollution, with an automatic reset system.

It is intended that the "shutdown condition" shall remain in effect until the cause of the abnormal condition has been determined and corrected.

Subparagrah 5.1.4

Comments. No comments received.

Discussion. The title of subparagraph 5.1.4 (4.1.3) was changed from "Remote Shut-In Systems" to "Emergency Shutdown (ESD) System." This change was made to be consistent with the terminology of API RP 14C.

Comments. It was suggested that subparagraph 5.1.4 (4.1.3) be changed to allow for the use of a plastic loop of the control-pressure line. This loop may be located at the boat landings of the platform. It was stated that this arrangement would "* * * allow a platform to be shut in without personnel having to board the platform by breaking these plastic loops with boat hooks."

Discussion. In order to be consistent with subparagraphs 4. 1 and 4.2 which require conformance with API RP 14C, the following sentence was added following the first sentence of the subparagraph: "ESD stations may utilize a loop of breakable synthetic tubing in lieu of a valve."

Comments. Several commenters objected to the requirement that the platform shut-in shall be completed within 45 seconds after a shut-in control is activated. It was felt that a 45-second-response time would be unsafe and impractical for very large hydraulic systems.

Discussion. Although special consideration may be justified for very large shut-in systems on new and existing platforms, the USGS believes that a response time of 45 seconds is generally feasible and this response time is sanctioned by API RP 14C, Section C2, Second Edition, January 1978.

Subparagraph 5.1.6

Comments. Several commenters suggested that subparagraph 5.1.6 (4.1.5) should permit glycol-dehydration units to be equipped with a pressure-relief value "or an adequate vent."

Discussion. This suggestion was adopted.

Subparagraph 5.1.7

Comments. It was suggested that in subparagraph 5.1.7a(1) (4.1.6a(1)) the word "on" be changed to "to protect." In support of this, it was noted that "PSV's and PSH's are commonly installed upstream of coolers, not on interstate scrubbers." This change may also be applied to the following subparagraphs of 5.1.7 (4.1.6): a(1), a(2), a(3), b(1), and b(2).

Discussion. The USGS agrees and has adopted the new phrase in the above subparagraphs.

Comments. In a comment on subparagraph 5.1.7a(4) (4.1.6a(4)), one commenter stated that "The word 'building' is subject to interpretation. We suggest that the words 'room' or 'compartment' be substituted for 'building.' In cold weather climates, the entire platform may be totally enclosed and considered one building. The compressors are often located inside enclosures which may be considered as rooms in a building and shutdown devices (SDV's) may be located in a separate adjacent room for added safety."

Discussion. There are compressor stations in buildings on the OCS; however, to allow for exceptions, the term "building, room, or compartment" was adopted.

Comments. It was suggested that the second paragraph of the original subparagraph 4.1.6c be moved to subparagraph 4.1.6b(2) since the paragraph covers the use of level safety low shut-in controls.

Discussion. The suggestion is appropriate and has been moved to become the second sentence of new subparagraph 5.1.7b(2).

Comments. No comments received.

Discussion. The second paragraph of the original subparagraph 4.1.6b(3) was deleted. These requirements are covered by 5.1.7b(4) and the reference to subsection A8.3 of API RP 14C.

Comments. In a comment on subparagraph 5.1.7b(4) (4.1.6c), it was noted that "* * * level safety low shut-in controls * * * should be changed to "level safety *high* shut-in controls.

Discussion. The USGS agrees and has adopted the change. For editorial clarity, the former subparagraph 4.1.6c was renumbered 5.1.7b(4) and the former subparagraph 4.1.6d was renumbered 5.1.7c, and retitled, "Small Compressor Installations."

Former Subparagraph 4.1.7

Comments. The comments received on the original subparagraph 4.1.7 indicated that the requirements for "Curbs, Gutters, and Drains" was misplaced in this Order.

Discussion. The USGS review of the comments on the requirements of the proposed subparagraph 4.1.7, "Curbs, Gutters, and Drains," of the proposed OCS Order No. 5 and the comments received on subparagraph 1.1.4, "Curbs, Gutters, and Drains," of the proposed OCS Order No. 7, indicated that the requirements of these subparagraphs should be addressed only in OCS Order No. 7, "Pollution Prevention and Control." Therefore this paragraph was deleted from OCS Order No. 5 and the requirements were included under subparagraph 1.1.3, "Curbs, Gutters, and Drains for Fixed Platforms or Structures and Mobile Drilling Units." Refer to the discussions for subparagraph 1.1.3 for OCS Order No. 7.

Subparagraph 5.1.8

Comments. "Wording should be changed to be the Gulf of Mexico wording since it is too early to tell if requirements for other Areas need to be different from the Gulf of Mexico. Also, the National Orders should be written for Areas of minimum requirements. If increased requirements are justified in other Areas, then these should be separately identified in an appendix."

Discussion. Since this Order was published in proposed form, the API has completed and published API "Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms," API RP 14G, First Edition, September 1978. Our review has indicated that subsection 5.2, "Fire Water Systems," contains requirements which are applicable to all Areas of the OCS. Therefore, this subparagraph was rewritten to require that installations completed after the effective date of this Order shall conform

with subsection 5.2 and the additional requirements of subparagraph 5.1.8 of OCS Order No. 5. This revision deletes the requirements for an alternate pump, and requires that fuel or power be available for a period of 30 minutes after platform shut in. This provides sufficient time to either control the fire or to take other actions.

Subparagraph 5.1.9

Comments. It was suggested that the first sentence of subparagraph 5.1.9a (4.1.9a) be changed to the following: "Fire (flame, heat, or smoke) sensors * * *." It was stated that "Experience has proven that enclosed high-hazard areas can be adequately protected with gas and fire detectors. API Rp 14C only requires gas detectors in inadequately ventilated areas. The suggested revision make it clear that three different types of fire sensors are not needed."

Discussion. The USGS believes the suggestion has merit and has adopted this recommendation.

Comments. One commenter suggested that "* * * purge and pressurizing techniques as provided in National Electrical Code be included as an alternate to installation of detectors listed in 4.1.9(b)."

Discussion. The USGS does not believe that purge systems may be used as an alternative to fire and gas detection systems; however, a new subparagraph, 5.1.9e, has been added to reference the National Electrical Code.

Comments. A commenter recommended that subparagraph 5.1.9b (4.1.9b) be changed to delete the phrase "in the areas in which the detection devices are located."

Discussion. New subparagraph 5.1.9b has been changed to the following: "All detection systems shall be capable of continuous monitoring. The systems shall be of the manual-reset type."

Comments. Several commenters addressed subparagraph 5.1.9c (4.1.9c), and recommended that "as well as" be changed to "is an acceptable alternate to."

Discussion. It is recognized that odorants have certain disadvantages; however, they can be safely used. It is intended that the odorant act as a backup in the event of a malfunction of the gas-detection system. Considering the consequences of a gas leak, fire, or an explosion, we believe that this redundancy is justified.

Comments. A commenter stated that "Enclosed, continuously manned areas of the facility which do not have any gas handling or using equipment are presumably exempt from the automatic gas detection and alarm system requirements."

Another commenter stated that "The intent of this subparagraph is unclear."

Discussion. Subparagraph 5.1.9a has been changed to define a highly hazardous area. Under the definition, gas-detection equipment would not be required in manned areas where no fuel gas is used.

Subparagraph 5.1.10

Comments. It was suggested that subparagraph 5.1.10a (4.1.10a) be revised as follows: "All engines shall be equipped with a low-tension ignition system designed and maintained to minimize release of sufficient electrical energy to cause ignition of an external combustible material."

Discussion. This subparagraph was not revised. While this proposal would delete the phrase "low-fire-hazard type" from the description of engine ignition systems, the major concern is not with the wording but with the interception by USGS personnel that in order to satisfy this requirement, the ignition systems must be shielded. This interpretation did not originate with the USGS and is consistent with petroleum industry-recommended practices for engines operating in a hazardous area. Paragraph 6.4.5.1 of "Reciprocating Compressors for the General Refinery Services" API Standard 618, Second Edition, July 1974, states: "If a hazardous area is specified, all parts of the ignition system shall be as explosion-proof as possible. The spark plugs shall be shielded, and all low-tension wiring shall be enclosed in grounded steel conduits, but spark plug connecting cables shall be enclosed in grounded, metal-shielded, flexible conduits." The 1964 issue of API Standard 618 described such a system with the phrase "low-fire-hazard type of ignition system."

Additionally, the National Electrical Code and its supporting documents dealing with the hazardous classification of areas defines the area about a hydrocarbon compressor or pump, engine combination, as Class I, Division 1 or 2. This area classification would require the use of an ignition system as defined by paragraph 6.4.5.1 of API Standard 618.

It is our intention that the shielded ignition system requirement and the interpretation of the hardware required to satisfy the requirement remain the same until the ASME committee on "Shielded Ignition System for Industrial Engines" has produced an acceptable industry standard which could be referenced.

Subparagraph 5.1.10b

Comments. It was proposed that the last word in subparagraph 5.1.10b (4.1.10b) be changed from "installation" to "approval."

Discussion. This proposal was adopted.

Subparagraph 5.1.10c

Comments. Another similar suggestion was to change the last word in subparagraph 5.1.9c (4.1.10c) from "installation" to "approval."

Discussion. This proposal was adopted. The subparagraph was rewritten to reference the latest editions of the National Electrical Code and the Institute of Electric and Electronic Engineers (IEEE) Standard 45–1977.

Former subparagraph 4.1.10e

Comments. It was proposed that the sentence be changed to add the following prefix: "For installations made after the effective date of this order."

Discussion. The USGS has reevaluated this requirement and has determined that the statement is too general in meaning. In some installations, it may be desirable to provide lockouts for certain equipment functions. These lockouts would constitute special requirements, dependent upon the complexity of the platform. These special requirements will be considered during the review and approval process of new platform installations. Because of these reasons, this subparagraph has been deleted.

Subparagraph 5.1.10e

Comments. It was recommended that subparagraph 5.1.10e (4.1.10f) be deleted. It was contended that "Posting of such a schematic would serve no useful purpose in enhancing platform safety. Only skilled electrical technicians can interpret and work on such systems, and highly detailed schematics are required for their work."

Discussion. It is intended that the schematic must be elementary, functional, and simple to interpret. It is not intended that the drawing be highly detailed. The subparagraph refers to the "elementary" electrical schematic required by subparagraph 4.3e(2), which requires the schematic to have "a functional legend." The intent of the requirement is that the schematic would indicate "How the electrical safety system functions;" therefore, the following sentence was added to the subparagraph: "This schematic shall indicate the control functions of all electrically actuated safety devices." It is considered desirable and necessary that all crew members become familiar with the platform safety-shutdown system, know the purpose of each electrical control, and know where they are located.

Comments. Another commenter suggested that "The posting of the safety shutdown system schematic should not be limited to electrical, but should include all shutdowns including pneumatic and/or hydraulic."

Discussion. The USGS agrees with this suggestion. Subparagraph 5.1.4, "Emergency Shutdown (ESD) System," was revised to require the posting of a schematic of the ESD system indicating the control functions of *all* safety devices. The pneumatic, hydraulic, and/or electrical controls would be included on this schematic.

Subparagraph 5.1.10f

Comments. It was suggested that "This requirement is out of place in the proposed Order since 4.1.10 covers only electrical equipment. It appears that it should be added to 3.4 to be in the proper location."

Discussion. The USGS agrees with this comment. The first sentence was revised and incorporated into subparagraph 4.3g. The second sentence was retained in subparagraph 5.1.10f. Other comments on the original subparagraph 4.1.10g have been answered in the discussions for the new subparagraph 4.3g.

Subparagraph 5.1.11

Comments. One commenter recommended that the annual report date in subparagraph 5.1.1 (4.1.11) be changed from September to December, noting that most survey work is done in the summer months. "The September 1 reporting date does not allow sufficient time to submit data for the current year."

Another commenter stated that "We feel that this should be changed to say that erosion control shall be in effect for wells or fields having a history of sand production.

New wells in a known sand producing field will not have a history of sand production, but since the field does, the new wells should be protected."

Discussion. These suggestions were adopted. The last sentence was also revised to require that the annual report shall indicate which wells have an erosion-control program in effect.

Subparagraph 5.2

Comments. It was suggested that the second sentence in subparagraph 5.2 (4.2) be reworded as follows: "Subsurface safety devices and systems on wells which are capable of flow shall not be bypassed or blocked out of service, unless necessary during maintenance operations, etc. The comma after necessary must be removed for this sentence to make sense."

Discussion. This sentence was changed to the following: "Safety devices may be pypassed or blocked out of service if they are temporarily out of service due to startup, maintenance, or testing procedures, provided that personnel are monitoring the blocked-out functions."

Subparagraph 5.3

Comments. The consensus on subparagraph 5.3 (4.3), "Simultaneous Platform Operations," was that a "plan" should not be required for each well operation or for each platform. It was recommended that the phrase "for each platform" be deleted. It was contended that "There is no need for a completely separate plan for each platform as evidenced by experience in the Gulf of Mexico. The existing Gulf of Mexico Order 8 does not contain a phrase which is recommended for deletion."

Another commenter stated that "* * * the value of furnishing these plans to the district supervisor is not real clear."

Discussion. The Gulf of Mexico OCS Order No. 8, effective October 1, 1976, does contain the phrase "for each platform." Subparagraph 4D(2)(c), "Simultaneous Operations," is quoted in part: "A plan shall be submitted by each lessee/operator for each platform existing as of the effective date of this Order."

It is considered feasible, however, to delete the phrase "for each platform" and to rewrite the subparagraph which is quoted in part as follows: "* * * a 'General Plan for Conducting Simultaneous Operations' in a producing field shall be filed for approval with the District Supervisor. This plan shall be modified and updated by supplemental plans when actual simultaneous operations are scheduled."

These plans shall be submitted to the District Supervisor as it is not administratively feasible for the USGS to monitor each individual simultaneous operation. Therefore, a general plan detailing all potential simultaneous operations for each field and supplemental plans covering scheduled simultaneous operations should provide an effective method for supervising proposed operations.

The subparagraph includes specific requirements for the designation of one person to be responsible for all operations being conducted on the platform.

Subparagraph 5.4

Comments. A commenter stated that the last part of the third sentence in the first paragraph of subparagraph 5.4 (4.4) should be changed to the following: "* * * are pulled in the final abandonment or suspension of the last well on the platform." It was contended that "Just because the well is completed is not reason for cancelling these welding practices and procedures."

Discussion. The USGS agrees with this comment. The first paragraph of the subparagraph was revised accordingly.

The United States Coast Guard supervises welding practices and procedures on offshore mobile-drilling units which are not in the drilling mode.

Comments. One commenter stated that "We urge that the provisions of 4.4 not apply to mobile drilling vessels." It was contended that "The amount of welding on mobile drilling rigs is minor * * *."

Discussion. The danger is considered equal to mobile- or nonmobile-drilling units when an unexpected high-pressure gas zone is encountered and the mud becomes gas cut. The revision of the subparagraph requires the same precautions, regardless of the type of rig.

Comments. It was proposed that the following requirement be deleted from this subparagraph: "All offshore welding and burning shall be minimized by onshore fabrication when feasible."

Discussion. This statement was not deleted. The intent is to minimize offshore welding. The lessee has the option to determine if it is more feasible to fabricate platform components either onshore or offshore.

Subparagraph 5.4b

Comments. Another commenter suggested that "The Fire Watch should also maintain a continuous surveillance with a gas detector during welding."

Discussion. The USGS considers this an added contribution to safety in welding operations. This suggestion was adopted by adding the following sentence to subparagraph 5.4b (4.4d): "If welding is to be done in an area which is not equipped with a gas detector, the Fire Watch shall also maintain a continuous surveillance with a portable gas detector during welding."

Subparagraph 5.4d

Comments. It was recommended that the first sentence of subparagraph 5.4d (4.4f) should contain the word "piping."

Discussion. The USGS agrees and has adopted this recommendation.

Subparagraph 5.4e

Comments. It was contended in a comment on subparagraph 5.4e (4.4g) that "Some platforms have several wellhead compartments widely separated from one another and welding in one would not provide an ignition source for well operation in the other." It was suggested that the first sentence be reworded as follows: "In the event drilling, workover, or wireline operations are in progress on the platform, welding operations in the well room, compartment or area where these operations are in progress, may be conducted only if the well(s) * * *."

Discussion. Subparagraph 5.4 (4.4), "Welding Practices and Procedures," was written to cover general platform floor plans. This comment is based on wellhead compartments which are widely separated from each other. These conditions would merit consideration for departure.

Subparagraph 5.4f

Comments. It was recommended that subparagraph 5.4f (4.4h) be deleted. It was contended that welding operations can be conducted safely while maintaining production if adequate safety precautions are taken beforehand.

Discussion. This subparagraph was not changed. We believe that all welding or burning operations in the area of the wellhead, well bay, or production areas are potentially hazardous, and we believe the possibility of potential fire and/or explosion should be precluded. Except in emergencies, welding operations should be scheduled when the platform is shut in.

Subparagraph 5.5a

Comments. Several commenters objected to the semiannual testing of pressure relief valves required by subparagraph 5.5a (4.5a). The commenters contended that annual testing has proven satisfactory.

Discussion. This time period has been reconsidered and the annual period has been adopted.

Subparagraph 5.5c

Comments. A number of commenters objected to the requirement in subparagraph 5.5c (4.5c) that all surface-safety valves (SSV's) shall be checked for operation on a "weekly" basis. The consensus was that a "weekly" basis is excessive and a "monthly" basis is sufficient to establish the fact that these valves function properly.

Discussion. The operational testing of these valves on a "weekly" basis has been reconsidered and a "monthly" basis has been adopted.

Comments. Several commenters indicated that the allowable leakage rates for automatic wellhead safety devices and check valves should be different; therefore, these requirements should be segregated into separate paragraphs.

Discussion. The requirements were segregated into separate subparagraphs 5.5c and 5.5d, addressing the testing requirements for testing of surface-safety valves (SSV's) and flow safety valves (FSV's). The terminology of the requirements was revised to be consistent with API AP 14C. All subsequent items under subparagraph 5.5 were relettered.

Comments. Another commenter proposed that a wellhead safety valve leakage allowance be provided, not to exceed 200 cc/min liquid or 10 cfm gas. When these values are exceeded, the valve should be repaired or replaced.

Discussion. The USGS finds no justification to allow wellhead safety valve leaks. If

valves, with the correct sizing, working pressure, and seating arrangement, are selected and correctly installed by the lessee, no leaks should be anticipated. The numerous valve manufacturers do not design and fabricate valves with the intent that some "leakage tolerance" should be allowed. This is consistent with the requirements of paragraph 4 of this Order which prescribe that all wellhead surface-safety valves installed after July 1, 1979, shall conform to API Specification 14D. The performance tests in this specification state that "no leakage shall be allowed."

Subsection 5.5c has been revised to require SSV's to be tested for operation and leakage in accordance with API RP 14C. The subparagraph requires replacement of the valve if any fluid flow is observed in step 3 of the leakage-test procedure.

The USGS recognizes that the purpose of an FSV is to control backflow of fluid and that leakage is not as critical as leakage from an SSV. The SSV is intended to stop all flow from the well. Therefore, a new subparagraph 5.5d has been added which requires FSV's to be tested in accordance with API RP 14C and provides a leakage tolerance of 400 cc/min for liquid flow and 7 dm^3/sec (15 cubic ft/min) for gas flow.

Subparagraph 5.5e

Comments. In a comment on subparagraph 5.5e (4.5d), it was proposed that "An alternate provision should be made for testing such controls on dry vessels or those vessels with limited liquid entry, such as to hand-trip the external switch in order to test its function."

Discussion. This proposal was not adopted because these controls should be tested in normal operating sequences. It is desirable to preclude the possibility of internal malfunction such as a stuck float, etc.

Subparagraph 5.5j (4.5.i)

Comments. It was suggested in a comment on subparagraph 5.5j (4.5i) that "smoke, fire, and gas" be changed to "fire and gas."

Discussion. The term "fire (flame, heat or smoke) and gas" was adopted to be consistent with subparagraph 5.1.9a.

Subparagraph 5.5k

Comments. Another commenter recommended that the second and third sentences in subparagraph 5.5k (4.5j) be deleted. It was stated that "While an initial test and inspection of the integrated safety system would be useful, the repetition of this test and inspection at 6-month intervals serves no useful purpose. Most safety devices are tested monthly and all are tested at least every 6 months. In addition, the USGS report entitled 'Policies, Practices, and Responsibilities for Safety and Environmental Protection in Oil and Gas Operations on the Outer Continental Shelf,' published in June of 1977, indicates that the USGS inspects all major platforms at least semiannually and all minor platforms at least once each 15 months. In addition, scheduling such tests so that they can be witnessed by USGS representatives would result in significant lost production."

Discussion. The USGS has reevaluated the requirement for a complete test and inspection of the integrated safety system every 6 months. The subparagraph has been revised to require pre- and postproduction tests and inspections. These tests, together with the frequency of the testing requirements for the individual components, are considered adequate to assure that the safety system will function properly.

During inspection of the platform by USGS inspectors, the integrated safety system may be tested at any time.

Comments. It was noted that "Offshore operations are both costly and highly weather dependent, and, therefore, any delays to accommodate schedule itineraries of government inspection representatives should be minimized."

Discussion. The revision of the subparagraph, as discussed above, provides for the coordination and scheduling of the tests.

Subparagraph 5.6

Comments. It was suggested in a comment on subparagraph 5.6 (4.5) that the 1-year record-retention period be extended as follows: "to ensure adequate safety devices are being used, continuous records on safety devices at the operations should be kept and must be available."

Discussion. A new subparagraph 5.6, "Records," has been added to be consistent with the recordkeeping requirements for subsurface-safety valves required by subparagraph 3.11 and ANSI/ASME OCS-1-1977. The new subparagraph requires a record-retention period of 5 years. Refer to the discussion for subparagraph 3.11.

Subparagraph 5.6.1

Comments. No comments received.

Discussion. A new subparagraph 5.6.1 has been added to address the quality-assurance recordkeeping requirements of ANSI/ASME-SPPE-1 (formerly ANSI/ASME-OCS-1) for surface-safety valves.

Subparagraph 5.7

Comments. Several commenters objected to the October 1, 1978, date of compliance with the training requirements as stated in subparagraph 5.7 (4.6).

Discussion. In the Gulf of Mexico Area, this requirement was originally in subparagraph 4.D(4) of OCS Order No. 8, which was revised and published in the **Federal Register**, Vol. 41, No. 174, September 7, 1976. This revision became effective October 1, 1976, and required that personnel be trained by October 1, 1978. Therefore, the Gulf of Mexico OCS Order was revised accordingly. The Orders were revised for all other Areas to allow 1 year for submittal of a training plan and 2 years for the qualification of personnel.

Comments. It was suggested that the fourth paragraph and subparagraphs (a) through (g) be deleted. It was noted that "The fourth paragraph of this section would require that the operator report to the USGS as to how it intends to comply with the first paragraph."

The comments concerning subparagraphs (a) through (g) generally stated that "* * * should not concern the USGS," or other statements with similar meaning.

Discussion. The USGS does not agree with these comments concerning subparagraphs (a) through (g), nor with the suggested deletion of the fourth paragraph. This requirement has been rewritten as follows: "* * * the lessee shall submit an application for approval to the Chief, Conservation Division, describing the training to be conducted and the methods the lessee will utilize." This revision will assure consistency in the training plans of all Areas of the OCS.

The Gulf of Mexico OCS Order No. 8, effective October 1, 1976, required that a plan be submitted for approval within 1 year after the effective date of the Order and training be completed by October 1, 1978. These requirements have not been changed. The requirements of the other Areas have been revised to state the same time limitations for compliance as were given in the Gulf of Mexico OCS Order.

The USGS is concerned that all lessees operating on the OCS properly train their personnel in the installation, inspection, testing, and maintenance of safety devices.

Paragraph 6

Comments. Comments pertaining to the content of this paragraph were received in response to the **Federal Register** solicitations for comments dated April 12, 1976, and May 13, 1976.

Discussion. A new paragraph 6, "Failure and Inventory Reporting," has been added to this Order. The content of this paragraph was developed after considering comments received pertaining to a "Safety Device Inventory Reporting" system, which was published in the **Federal Register**, Vol. 41, No. 71, April 12, 1976, and from a solicitation for comments pertaining to a "Safety Device Failure and Activity Reporting System," which was published in the **Federal Register**, Vol. 41, No. 94, May 13, 1976. Our review of the comments indicated that the requirements for a Safety Device Failure and Inventory Reporting System (FIRS) should be incorporated into an OCS Order, instead of into two separate Notices to Lessees and Operators, as originally proposed.

A Notice was published in the **Federal Register**, Vol. 43, No. 111, June 8, 1978, which announced our intention to include the FIRS requirements in National OCS Order No. 5. As stated in the preamble of the "Revised Outer Continental Shelf Orders Governing Oil and Gas Lease Operations in All Areas," the Department has determined that it is in the public interest to issue revised Area OCS Orders instead of National OCS Orders at this time. Therefore, the FIRS requirements have been incorporated into paragraph 6 of the revisions of OCS Order No. 5 for all Areas of the OCS. Refer to the **Federal Register** Notice of June 8, 1978, for a discussion of the comments received and our rationales for the final FIRS requirements.

Paragraph 8

Comments. One commenter stated in a comment on paragraph 8(6) that "* * * the criteria described are excessive in their requirements. 'Instill * * * a conscious desire

to achieve' is a goal that would require extensive training and still be ineffective on many individuals."

Discussion. This paragraph has been rewritten to delete the phrase "* * * to instill in each individual * * *." The following sentence has been added: "A program to achieve safe and pollution-free operations shall be established." It is intended that individuals working offshore be properly trained, and that safe and pollution-free operations be stressed as part of their job responsibilities.

Subparagraph 9.2

Comments. It was proposed in a comment on subparagraph 9.2 (7.2) that new items 7.1f and 7.2c be added which would state that "When the rig is not owned by the operator, the operator shall require the contractor to have a welding practices and procedures plan and personnel training program which meet, as a minimum, the requirements of this Order."

Discussion. The intent of the OCS Orders is to ensure that the lessee is responsible for all operations on the lease. Therefore, the lessee is required to assure compliance with all requirements, regardless of who performs the work.

Comments. No comments received.

Discussion. The original item 7.1a was deleted because the original subparagraph 4.1.7, "Curbs, Gutters, and Drains," was moved to OCS Order No. 7.

A new item 9.1b was added because subparagraph 5.3, "Simultaneous Platform Operations," is applicable to drilling rigs on fixed structures.

The original item 7.1d was deleted because crane operations are a separate requirement and should not be included under the heading of "Requirements for Drilling Rigs."

United States Department of the Interior; Geological Survey Conservation Division

OCS Order No. 5, Effective July 1, 1979; Production safety systems

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and 250.12(a), and in accordance with 30 CFR 250.41(b), 250.42, and 250.46. The lessee shall be responsible for compliance with the requirements of this Order in the installation and operation of the production safety systems on all platforms and structures including those facilities not operated or owned by the lessee. All applications for approval under the provisions of this Order shall be submitted to the District Supervisor.

1. *Technological Improvement.* The lessee is encouraged to continue the development of safety-system technology. As research and product improvement result in increased effectiveness of existing safety equipment or the development of new equipment systems, such equipment may be used or required.

2. *Quality Assurance and Performance of Safety and Pollution-Prevention Equipment.* Safety and Pollution-Prevention Equipment (SPPE) shall conform to the following quality assurance standards or subsequent revisions which the Chief, Conservation Division, has approved for use.

a. American National Standards Institute/American Society of Mechanical Engineers Standards "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," ANSI/ASME SPPE-1-1977, December 1977 (formerly ANSI/ASME-OCS-1-1977).

b. American National Standards Institute/American Society of Mechanical Engineers Standard "Accreditation of Testing Laboratories for Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," ANSI/ASME-SPPE-2-1977, December 1977 (formerly ANSI/ASME-OCS-2-1977).

The dates for compliance with these quality assurance standards, the applicable SPPE components, and the applicable SPPE specifications are identified in subparagraph 3.2 and subparagraph 4.3.

3. *Subsurface-Safety Devices.*

3.1 *Installation.* All tubing installations open to hydrocarbon-bearing zones shall be equipped with a subsurface-safety device such as a Surface-Controlled Subsurface-Safety Valve (SCSSV), a Subsurface-Controlled Safety Valve (SSCSV), an injection valve, or a tubing plug, unless, after application and justification, the well is determined to be incapable of flowing. The device shall be installed at a depth of 30 meters (98 feet) or more below the ocean floor within 2 days after production is stabilized. The well shall be attended at the wellhead while open to a hydrocarbon-bearing zone, unless a subsurface-safety device is installed.

3.1.1 *Subsurface-Safety Valves.* The requirements for subsurface-safety valves vary according to when the wells are completed. Alternatives to the following requirements may be approved by the Supervisor when greater reliability or safety can be demonstrated.

a. *Wells completed after the effective date of this Order.*

(1) All tubing installations shall be equipped with a surface-or other remotely controlled subsurface-safety device if the shut-in tubing pressure of the well is 27,600 kPa (4,000 psig) or less.

(2) If the shut-in tubing pressure of the well is greater than 27,600 kPa (4,000 psig), the well shall be equipped with a subsurface-controlled subsurface-safety valve. When the shut-in tubing pressure declines below 27,600 (4,000 psig), a surface-or other remotely controlled subsurface-safety valve shall be installed when the tubing is first removed and reinstalled.

b. *Wells completed prior to the effective date of this Order.*

(1) Wells with shut-in tubing pressure of 27,600 kPa (4,000 psig) or less shall be equipped with a surface-or other remotely controlled subsurface-safety valve. If wells are equipped with a subsurface-controlled subsurface-safety valve on the effective date of this Order, they shall be equipped with a surface-or other remotely controlled subsurface-safety device when the tubing is first removed and reinstalled.

(2) Wells with a shut-in tubing pressure greater than 27,600 kPa (4,000 psig) shall be equipped with a subsurface-controlled subsurface-safety valve. If wells are equipped with a surface-or other remotely controlled subsurface-safety valve on the effective date of this Order, They shall be equipped with a subsurface-controlled subsurface-safety valve when the tubing is first removed and reinstalled. When the shut-in tubing pressure declines below 27,600 kPa (4,000 psig), a surface-or other remotely controlled subsurface-safety valve shall be installed when the tubing is first removed and reinstalled.

3.2 *Specification for Subsurface-Safety Valve.* Surface-controlled and subsurface-controlled subsurface-safety valves required by subparagraphs 3.4 and 3.5 which are installed on new installations or replaced on old installations after July 1, 1979, shall conform to "American Petroleum Institute (API) Specification for Subsurface-Safety Valves," API Spec 14A, Third Edition, November 1978, or subsequent revisions which the Chief, Conservation Division, has approved for use at the time of installation.

3.3 *Design, Installation, and Operation.* After the effective date of this Order, new installations, or replacements of old installations of subsurface-safety valves shall be in accordance with "API Recommended Practice for Design, Installation, and Operation of Subsurface Safety Valve Systems," API RP 14B, First Edition, October 1973, or subsequent revisions which the Chief, Conservation Division, has approved for use.

3.4 *Surface-Controlled Subsurface-Safety Valves.* After the effective date of this Order, all tubing installations open to a hydrocarbon-bearing zone shall be equipped with a surface-controlled subsurface-safety valve, except as specified in subparagraphs 3.1, 3.5, and 3.6. The surface controls may be located on the site or at a remote location.

The lessee shall furnish evidence that the surface-controlled subsurface-safety devices and related equipment are capable of normal operation in those Areas which are subject to subfreezing conditions.

3.4.1 *Testing of Surface-Controlled Subsurface-Safety Valves.* Each surface-controlled, or other remotely controlled, subsurface-safety valve installed in a well shall be tested in accordance with Appendix E of API RP 14B, when installed or reinstalled, at least monthly for the first 3 months, and thereafter at intervals not to exceed 6 months. If the device does not operate properly, it shall be promptly removed, repaired, reinstalled, or replaced, and tested to ensure proper operation.

3.5 *Subsurface-Controlled Subsurface-Safety Valves.* Tubing installations in wells completed from single-well and multiwell satellite caissons or jackets and ocean floor completions may be equipped with a subsurface-controlled subsurface-safety valve in lieu of surface-or other remotely controlled subsurface-safety valves.

3.5.1 *Inspection and Maintenance of Subsurface-Controlled Subsurface-Safety Valves.* Each subsurface-controlled subsurface-safety valve installed in a well

shall be removed, inspected, and repaired or adjusted as necessary and reinstalled at intervals not exceeding:

(1) 6 months for those valves not installed in a landing nipple.

(2) 12 months for those valves installed in a landing nipple.

3.2 *Tubing Plugs in Shut-in Wells.* A tubing plug shall be installed in lieu of, or in addition to, other subsurface-safety devices if a well has been shut in for a period of 6 months. Tubing plugs shall be set at a depth of 30 meters (98 feet) or more below the ocean floor. All retrievable plugs installed after the date of this Order shall be of the pump-through type. All wells perforated and completed but not placed on production shall be equipped with a subsurface-safety valve or tubing plug within 2 days after completion. A surface-controlled subsurface-safety valve of the pump-through type may be used as a pump-through tubing plug for the purpose of this subparagraph, provided the surface control has been rendered inoperative. A shut-in well which is equipped with a tubing plug shall be inspected for leakage by opening the well to possible flow at intervals not exceeding 6 months. If a liquid leakage rate in excess of 400 cc/min or a gas leakage rate in excess of 7 dm^3/sec (15 cubic ft/min) is observed, the plug shall be removed, repaired, and reinstalled, or an additional tubing plug may be installed in lieu of removal and repair.

3.7 *Injection Wells.* A surface-controlled subsurface-safety valve or an injection valve capable of preventing backflow shall be installed in all wells placed in injection service after the effective date of this Order.

Wells which were placed in injection service prior to the effective date of this Order shall be equipped ith a surface-controlled subsurface-safety valve or injection valve capable of preventing backflow when the tubing is first removed and reinstalled.

This requirement is not applicable if the District Supervisor concurs that the well is incapable of flowing. The lessee shall verify the no-flow condition of the well annually and submit an annual report certifying the no-flow status of the well.

3.8 *Temporary Removal for Routine Operations.* Each wireling- or pumpdown-retrievable subsurface-safety device may be removed, without further authorization or notice, for a routine operation which does not require the approval of a Sundry Notice and Report on Wells (Form 9–331), for a period not to exceed 15 days. The well shall be identified by a sign on the wellhead stating that the subsurface-safety device has been removed. The removal of the subsurface-safety device shall be noted in the records as required by subparagraph 3.11g. The well shall be attended at the wellhead until the subsurface-safety device has been reinstalled, unless attendance has been waived by the District Supervisor.

3.9 *Additional Safety Equipment.* All tubing installations in which a wireline- or pumpdown-retrievable subsurface-safety device is installed after the effective date of this order shall be equipped with a landing nipple, flow couplings to prevent internal abrasion, or other protective equipment, above and below, to provide for the setting of the subsurface-safety valve. The control system for all surface-controlled subsurface-safety valves shall be an integral part of the platform Emergency Shutdown System (ESD) as defined in API RP 14C, Appendix C, Section C1. In addition to the activation of the ESD system by manual action on the platform, the system may be activated by a signal from a remote location. Surface-controlled subsurface-safety valves shall close in response to shut-in signals from the ESD system or the fire loop, or both.

3.10 *Emergency Action.* All tubing installations open to hydrocarbon-bearing zones in which the subsurface-safety device has been removed, in accordance with the provisions of this Order, shall be identified by a sign on the wellhead stating the subsurface-safety device has been removed. A subsurface-safety device shall be available for each well on the platform. In the event of an emergency such as an impending storm, this device shall be properly installed as soon as possible with due consideration being given to personnel safety.

3.11 *Records.* The lessee shall maintain records for a minimum period of 5 years for each subsurface-safety device installed. These records shall be maintained in the nearest offshore field office for a minimum period of 2 years. The records may then be transferred to the onshore field office for the remaining 3 years of the 5-year retention period. These records shall be available for review by any authorized representative of the U.S. Geological Survey (USGS)., The records to be maintained shall contain verification of:

a. The design, including make, model, and type. For subsurface-controlled valves, number of the spacers, size of beans, springs, and the pressure settings.

b. The devices having been manufactured in accordance with the quality-assurance requirements of ANSI/ASME-SPPE–1 (formerly ANSI/ASME–OCS–1) as required by paragraph 2.

c. The completion and return of the receiving report to the manufacturer as required by ANSI/ASME–SPPE–1.

d. The record of all configuration modifications to the certified design.

e. Installation at the required setting depth and in accordance with the manufacturer's instructions and API RP 14B.

f. The qualifications of the personnel who directed all installations and removals.

g. The results of tests required by this Order, the dates of removals and reinstallations, and the reasons for removals and reinstallations.

h. The completion and submission of all failure reports required by paragraph 6 and all investigation reports required by paragraphs OE–2529 and OE–2670 and ANSI/ASME–SPPE–1.

3.12 *Reports.* Well completion reports (Form 9.330) and any subsequent reports of workover (Form 9.331) shall include the type and the depth of the subsurface-safety devices.

4. *Design, Installation, and Operation of Surface Production Safety Systems.* All production facilities, including separators, treaters, compressors, headers, and flowlines, shall be designed, installed, and maintained in a manner which will facilitate an efficient, safe, and pollution-free operation.

The lessee shall furnish evidence that the surface-safety systems and related equipment are capable of normal operation in those Areas which are subject to subfreezing conditions, and that all equipment and operating procedures take into account floating ice and other extreme environmental conditions that may occur in the Area.

4.1 *New platforms.* New platform production facilities shall be protected with a basic and ancillary surface-safety system designed, analyzed, tested, and maintained in operating condition in accordance with the provisions of "API Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems on Offshore Production Platforms," API RP 14C, Second Edition, January 1978, except Section A9, "Pipelines," which will be covered under OCS Order No. 9, or subsequent revisions which the Chief, Conservation Division, has approved for use and the additional requirements of the Order. For this application, the word "should" contained in API RP 14C shall be read "shall," except for those contained in explanatory statements, sections 3.4c and 4.3a(4) (a)–(f). If processing components are to be utilized, other than those for which Safety Analysis Checklists (SAC's) are included in API RP 14C, the analysis technique and documentation specified therein shall be utilized to determine the effects and requirements of these components upon the safety system.

4.2 *Existing Platforms.*

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Existing platforms shall comply with the provisions of API RP 14C, except Section A9, "Pipelines," which will be covered under OCS Order No. 9, with the additional safety and pollution-control requirements of paragraphs 4 and 5 of this Order. The submittal of information relative to design and installation features, as listed in subparagraph 4.4, is not required until an equipment modification to an existing facility is performed (other than those necessary for proper maintenance of the facility).

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Existing platforms shall comply with the provisions of API RP 14C, except Section A9, "Pipelines," which will be covered under OCS Order No. 9, with the additionals safety and pollution-control requirements of paragraphs 4 and 5 of this Order, by January 1, 1980. The submittal of information relative to design and installation features, as listed in subparagraph 4.4, is not required until an equipment modification to an existing facility is performed (other than those necessary for proper maintenance of the facility).

4.3 *Specification for Wellhead Surface-Safety Valves.* All wellhead Surface-Safety Valves (SSV's) required by subparagraphs 4.1 and 4.2, which are installed on new installations or replaced on old installations after July 1, 1979, shall conform to "API

Specification for Wellhead Surface Safety Valves for Offshore Service," API Spec 14D, Second Edition, November 1977, as amended by Supplement 1, March 1978, or subsequent revisions which the Chief, Conservation Division, has approved for use at the time of installation.

4.4 *Submittal of Safety-System Design and Installation Features.* Prior to installation, the lessee shall submit for approval to the District Supervisor, in duplicate, information relative to design and installation features, as indicated in subparagraphs a through g. This information shall also be maintained at the lessee's onshore field engineering office. All approvals are subject to field verifications. This information shall include:

a. A schematic flow diagram showing size, capacity, and design working pressure of separators, treaters, storage tanks, compressors, pipeline pumps, and metering devices.

b. A schematic flow diagram (reference API RP 14C, example: figure E1) and the related Safety Analysis Function Evaluation (SAFE) chart (reference API RP 14C, Subsection 4.3c). These diagrams and charts shall be developed in accordance with the provisions of API RP 14C and the additional requirements of this Order.

c. A schematic piping diagram showing the size and design pressure with reference to welding specification(s) or code(s) used. The maximum-allowable working pressures shall be determined in accordance with "API Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems," API RP 14E, First Edition, August 1975, and Supplement 2, October 1977, or subsequent revisions which the Chief, Conservation Division, has approved for use. The recommendations contained in API RP 14E are acceptable for the design and installation of the platform piping system.

d. A diagram of the fire-fighting system.

e. Electrical system information including the following:

(1) A plan of each platform deck outlining any nonrestricted area, i.e., areas which are unclassified with respect to electrical equipment installations and outlining areas in which potential ignition sources, other than electircial, are to be installed. The area outline shall include the following information:

(a) Any surrounding production or other hydrocarbon source and a description of the deck, overhead, and firewall.

(b) Location of generators, control rooms, panel boards, major cabling or conduit routes, and identification of the wiring method, including the identification of each wire and cable type that is utilized.

(2) Elementary electrical schematic of any platform safety-shutdown system with a functional legend.

(3) Classification of areas for electrical installations in accordance with the National Electrical Code, 1978 Edition, and with the "API Recommended Practice for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on lands and on marine Fixed and Mobile Platforms," API RP 500B, Second Edition, July 1973, or subsequent revisions which the Chief, conservation division, has approved for use.

f. The design and schematics of the installation and maintenance of all fire and gas detection systems shall include the following:

(1) Type, location, and number of detection heads.

(2) Type and kind of alarm, including emergency equipment to be activated.

(3) Method used for detection.

(4) Method and frequency of calibration.

(5) Name of organization to perform system inspection and calibration.

(6) A functional block diagram of the detection system, including the electric power supply.

g. Certification that the design for the mechanical and electrical systems were approved by registered professional engineers. After these systems are installed, the lessee shall submit a statement to the District Supervisor certifying that the complete installations conform to the approved designs or the lessee shall request approval of the "As-Built" changes.

5. *Additional Safety and Pollution-Control Requirements.* The following requirements modify or are in addition to those contained in API RP 14C.

5.1 *Design, Installation, and Operation.*

5.1.1 *Pressure Vessels.* Pressure vessels shall be designed, fabricated, stamped, and maintained in accordance with specific sections of the ASME Boiler and Pressure Vessel Code as listed below. The pressure vessels shall conform to the July 1, 1977, edition of the Code or subsequent revisions which the Chief, Conservation Division, has approved for use.

a. Pressure relief valves shall be designed, installed, and maintained in accordance with applicable provisions of sections I, IV, and VIII. The relief valves shall conform to the valve-sizing and pressure-relieving requirements specified in these documents; however, the relief valves shall be set no higher than the maximum-allowable working pressure of the vessel. All relief valves and vents shall be piped in such a way as to prevent fluid form striking personnel or ignition sources.

b. Steam generators shall be equipped with low-water-level controls in accordance with applicable provisions of sections I and IV.

c. The lessee shall determine and record the operating pressure ranges of all pressure-operated vessels in order to establish the pressure-sensor settings. The high-pressure shut-in sensor shall be set no higher than 10 percent above the highest operating pressure of the vessel. This setting shall also be sufficiently below the relief valve's set pressure to assure that the pressure source is shut in before the relief valve starts relieving. The low-pressure shut-in sensor shall activate no lower than 15 percent or 35 kilopascals (kPa) (5 psi), whichever is greater, below the lowest pressure in the operating range.

d. All pressure or fired vessels used in the production of oil or gas, ordered after the effect date of this Order, shall conform to the requirements stipulated in the edition of the ASME Boiler and Pressure Vessel Code, section I, IV, and VIII, as appropriate, in effect at the time the vessel is ordered. Uncoded vessels now in use shall have been hydrostatically tested to a pressure 1.5 times their work pressures.

The test date, test pressure, and working pressure shall be marked on the vessel in a prominent place. A record of the test shall be maintained by the lessee in the field area.

5.1.2 *Flowlines.*—a. All flowlines from wells shall be equipped with high- and low-pressure shut-in sensors located downstream of a well choke. All pressure sensors shall be equipped to permit testing with an external pressure source. The lessee shall determine and record the operating pressure ranges in order to establish pressure-sensor settings. The high-pressure shut-in sensor shall be set no higher than 10 percent above the highest operating pressure of the line; but, in all cases, it shall be set sufficiently below the maximum shut-in wellhead pressure or the gas-lift supply pressure to assure actuation of the surface-safety valve. The low-pressure shut-in sensor shall be set no lower than 10 percent or 35 kPa (5 psi), whichever is greater, below the lowest operating pressure of the line in which it is installed.

b. If a well flows directly to the pipeline before separation, the flowline and valves from the well located upstream of, and including, the header inlet valve(s) shall be able to withstand the maximum shut-in pressure of the well, unless the flowline is protected by one of the following:

(1) A relief valve which vents into the platform flare scrubber of some other location approved by the District Supervisor.

(2) A additional automatic shutdown valve controlled by an independent high-pressure sensor. The platform flare scrubber shall be designed to handle, without liquid-hydrocarbon carryover to the flare, the maximum-anticipated flow of liquid-hydrocarbons which may be relieved to the vessel.

5.1.3 *Pressure Sensors.* Pressure sensors may be of the automatic- or nonautomatic-reset type. When the automatic-reset types are used, a nonautomatic-reset relay shall be installed. All pressure sensors shall be equipped to permit testing with an external pressure source.

5.1.4 *Emergency Shutdown System.* The manually operated ESD valve shall be quick-opening and nonrestricted to enable the rapid actuation of the shutdown system. ESD stations may utilize a loop of breakable synthetic tubing in lieu of a valve. The time for the safety system to effect platform shutdown shall not exceed 45 seconds after the automatic detection of an abnormal condition or the actuation of an ESD station. A schematic of the ESD system shall be posted at a prominent location on the platform. This schematic shall indicate the control functions of all safety devices.

5.1.5 *Engine Exhausts.* Engine exhausts shall be equipped to comply with the insulation and personnel-protection requirements of API RP 14C, Section 4.2c(4). Exhaust piping from internal-combustion engines shall be equipped with spark arrestors.

5.1.6 *Glycol-Dehydration Units.* A pressure relief systems or an adequate vent shall be installed on the glycol regenerator, or at a location approved by the District Supervisor, which will prevent overpressurization of all glycol-dehydration units. The set pressure of the pressure-relief system shall be determined by the lessee and approved by the District Supervisor. The discharge of the relief valve must be vented in a nonhazardous manner. The glycol-dehydration unit shall be properly maintained to prevent overpressurization of the unit.

5.1.7 *Gas Compressors.* a. *Existing Compressor Installations.* Each compressor installation existing as of the effective date of this Order shall be equipped with the following protective equipment:

(1) a Level Safety High (LSH) and a Pressure Safety Valve (PSV) to protect each interstage scrubber.

(2) A Pressure Safety High (PSH) and a Pressure Safety Low (PSL) to protect each interstage scrubber, unless protected by a Temperature Safety High (TSH) shutdown control on the compressor cylinders.

(3) A Level Safety Low (LSL) to protect each interstafe scrubber, unless fluid dump is through a choke restriction to another pressure vessel.

(4) Compressor installations which are installed in a building, room, or compartment are excluded from the requirements of API RP 14C, Subsection A8.3b, "Flow Safety Devices (FSV)," and Subsection A8.3d, "Shutdown Devices (SDV)," which requires that these devices be located outside of the building.

b. *New Compressor Installations.* Each compressor installed after the effective date of this Order shall be equipped with the following protective equipment:

(1) A PSH, a PSL, a PSV, and an LSH to protect each interstage scrubber.

(2) An LSL to protect each interstage scrubber, unless the fluid is dumped through a choke restriction to another pressure vessel. An LSL shut-in control(s) installed in interstage scrubber(s) may be designed to actuate the automatic Shutdown Valve(s) (SDV's) installed in the scrubber dump line(s).

(3) A TSH on each compressor cylinder or other components as applicable.

(4) In addition to the provisions of API RP 14C, Subsection A8.3, PSH and PSL shut-in sensors and LSH shut-in controls protecting compressor suction and interstage scrubbers shall be designed to actuate automatic SDV's located in each compressor suction and fuel gas line so that the compressor unit and the associated vessels can be isolated from all input sources.

All automatic SDV's installed in compressor suction and fuel gas piping shall also be actuated by the shutdown of the prime mover.

c. *Small Compressor Installations.* Compressor installations of 745 kilowatts (1,000 horsepower) or less are excluded from those requirements of API RP 14C, A8, 3d, which provide for installation of a blowdown valve (BDV) on the discharge line.

5.1.8 *Firefighting Systems.* Firefighting systems installed after the effective date of this Order shall conform to Subsection 5.2, "Fire Water Systems," of "API Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms," API RP 14G, First Edition, September 1978, or to subsequent revisions which the Chief, Conservation Division, has approved for use and to the additional requirements of this subparagraph.

A firewater system consisting of rigid pipe with firehose stations shall be installed. A fixed water-spray system shall be installed in the well bays. The system shall be installed to provide needed protection at all times in all areas where production-handling equipment is located.

Acceptable pump drivers include diesel engines, natural gas engines, and electric motors. Fuel or power shall be available for at least 30 minutes of run-time during platform shut-in time. If necessary, an alternate fuel supply shall be installed to provide for this pump-operating time.

A firefighting system using chemicals may be used or may be required in lieu of a water-spray system if the District Supervisor determines that the use of a chemical system provides equivalent fireprotection control. A diagram of the firefighting system showing the location of all firefighting equipment shall be posted in a prominent place on the platform or structure.

Existing firefighting systems shall be reworked to conform to these requirements on or before July 1, 1980.

5.1.9 *Fire and Gas Detection System.* a. Fire (flame, heat, or smoke) sensors shall be used in all enclosed high-hazard areas. Gas sensors shall be used in all inadequately ventilated, enclosed, high-hazard areas. A high-hazard area is defined as:

(1) Any enclosed area containing a gas source, except a meter house with adequate ventillation.

(2) A compressor building.

(3) Any nonsealed enclosed area within 25 feet of a producing well or service area of a producing well, unless the enclosed area does not contain an ignition source. A diagram of the detection system showing the location of all detection points shall be posted in a prominent place on the platform or structure.

b. All detection systems shall be capable of continuous monitoring. The systems shall be of the manual-reset type.

C. A fuel gas odorant and an automatic gas-detection and alarm system are required in enclosed, continuously manned areas of the facility.

d. The District Supervisor may require a gas detector or alarm in any potentially hazardaous area.

e. Fire and gas detection systems shall be of a type as defined in the National Electrical Code, 1978 Edition, or subsequent revisions which the Chief, Conservation Division, has approved for use.

5.1.10 *Electrical Equipment.* The following requirements shall be applicable to all electrical equipment and systems:

a. All engines with ignition systems shall be equipped with a low-tension ignition system of a low-fire-hazard type and shall be designed and maintained to minimize the release of sufficient electrical energy to cause ignition of an external, combustible mixture.

b. All electrical generators, motors, and lighting systems shall be installed, protected, and maintained in accordance with the edition of the National Electrical Code and API RP 500B in effect at the time of approval.

c. At the time of approval, wiring methods shall conform to the National Electrical Code, 1978 Edition, or to the Institute of Electrical and Electronic Engineers (IEEE) "Recommended Practice for Electric Installation on Shipboard," IEEE Std. 45–1977, or subsequent revisions which the Chief, Conservation Division, has approved for use. Each conductor of a wire, a cable, or a bus bar shall be made of copper on all new installations constructed after the effective date of this Order.

d. An auxiliary power supply shall be installed to provide emergency power, capable of operating all electrical equipment required to maintain safety of operations, in the event of a failure in the primary electrical power supply.

e. The elementary electrical schematic of the platform safety-shutdown system required by subparagraph 4.3e(2) shall be posted in a prominent place on the platform or structure. This schematic shall indicate the control functions of all electrically actuated safety devices.

f. Maintenance of these systems shall be by qualified personnel.

5.1.11 *Erosion.* A program of erosion control shall be in effect for wells or fields having a history of sand production. The erosion-control program may include sand probes, X-ray, ultrasonic, or other satisfactory monitoring methods. An annual report, by lease, indicating the wells which have erosion-control programs in effect and the results of the programs shall be submitted by the first of December to the appropriate District Supervisor.

5.2 *General Platform Operations.* a. Safety devices and safety systems on wells which are capable of producing shall not be bypassed or blocked out of service. Safety devices may be bypassed or blocked out of service if they are temporialy out of service due to startup, maintenance, or testing procedures, provided that personnel are monitoring the blocked-out functions. Any device on wells, vessels, or flowlines which is temporialy out of service shall be flagged.

b. When wells are disconnected from producing facilities and blind-flanged or equipped with a tubing plug, compliance is not required with the provisions of API RP 14C or this Order concerning:

(1) Installation of automatic fail-close SSV on wellhead assemblies.

(2) Installation of the PSH and the PSL shut-in sensors downstream of the choke in flowlines from wells.

(3) Installation of flow safety valves (FSV's) in header individual flowlines.

c. All open-ended lines connected to producing facilities shall be plugged or blind-flanged, except those lines designed to be open-ended, such as flare or vent lines.

5.3 *Simultaneous Platform Operations.* Prior to conducting activities simultaneously with production operations which could

increase the possibility of occurrence of undesirable events, such as harm to personnel or to the environment or damage to equipment, a "General Plan for Conducting Simultaneous Operations" in a producing field shall be filed for approval with the District Supervisor. This plan shall be modified and updated by supplemental plans when actual simultaneous operations are scheduled. Activities requiring these plans are drilling, completion, workover, wireline, pumpdown, and major construction operations.

The "General Plan for Conducting Simultaneous Operations" shall include:

a. A narrative description of operations.

b. Procedures for the mitigation of potentially undesirable events including:

(1) The guidelines the lessee will follow to assure coordination and control of simultaneous activities.

(2) An indication of the person having overall responsibility at the site for the safety of platform operations.

The "Supplemental Plan for Conducting Simultaneous Operations" shall include:

a. A floor plan of each platform deck indicating critical areas of simultaneous activities.

b. An outline of any additional safety measures that are required for simultaneous operations.

c. Specification of any added or special equipment or procedural conditions imposed when simultaneous activities are in progress.

5.4 *Welding Practices and Procedures.* The following requirements are applicable to any welding practice or procedure performed on:

a. An offshore mobile-drilling unit during the drilling mode.

b. A mobile workover unit during any drilling, completion, recompletion, remedial, repair, stimulation, or other workover activity.

c. A platform, structure, artificial island, or other installation during any drilling, completion, workover, or production operation.

d. A platform, structure, artificial island, or other installation which contains a well open to a hydrocarbon-bearing zone.

For the purpose of this Order, the terms "welding" and "burning" are defined to include arc or acetylene cutting and arc or acetylene welding.

Each lessee shall file, for approval by the District Supervisor, a "Welding and Burning Safe Practices and Procedures Plan." The plan shall be filed within 90 days after the effective date of this Order and shall include the qualification standards or requirements for personnel and the methods by which the lessee will assure that only personnel meeting such standards or requirements are utilized. A copy of this plan shall be available in the field area. Any person designated as a welding supervisor shall be thoroughly familiar with this plan.

Prior to welding or burning operations, the lessee shall establish approved safe-welding areas. These areas shall be constructed of noncombustible or fire-resistant materials, be free of combustible or flammable contends, and be suitably segregated from adjacent areas. National Fire Protection Association Bulletin "Cutting and Welding Processes," No. 51B, 1971, or subsequent revisions which the Chief, Conservation Division, has approved for use, shall be used as a guide to designate these areas. A drawing showing the location of these areas shall be posted in a prominent place on the facility. All offshore welding and burning shall be minimized by onshore fabrication when feasible.

All welding equipment shall be inspected prior to beginning any welding or burning. Welding machines located on production or process platforms shall be equipped with spark arrestors and drip pans. Welding leads shall be completely insulated and in good condition; oxygen and acetylene bottles secured in a safe place; and hoses leak-free and equipped with proper fittings, gauges, and regulators.

All welding which cannot be done in the approved safe-welding area shall be performed in compliance with the procedures outlined below:

a. Prior to the commencement of any welding or burning operation on a structure, the lessee's designated person-in-charge at the installation shall personally inspect the qualifications of the welder or welders to assure that they are properly qualified in accordance with the lessee-approved qualification standards or requirements for welders. The designated person-in-charge and the welders shall personally inspect the work area for potential fire and explosion hazards. After it has been determined that it is safe to proceed with the welding or burning operation, the designated person-in-charge shall issue a written authorization for the work.

b. During all welding and burning operations, one or more persons shall be designated as a Fire Watch. Persons assigned as a Fire Watch shall have no other duties while actual welding or burning operations are in progress. The Fire Watch shall not be a member of the welding crew. If welding is to be done in an area which is not equipped with a gas detector, the Fire Watch shall also maintain a continuous surveillance with a portable gas detector during welding.

c. Prior to any welding or burning operation, the Fire Watch shall have in his possession firefighting equipment in a usable condition. At the end of the welding operation, the equipement shall be returned to a usable condition.

d. No welding shall be done on piping, containers, tanks, or other vessels which have contained a flammable substance unless the contents have been rendered and determined to be safe for welding or burning by the designated person-in-charge.

e. If drilling, workover, or wireline operations are in progress on the platform, welding operations in other than approved safe-welding areas shall not be conducted unless the well(s) where these operations are in progress contain noncombustible fluids and the entry of formation hydrocarbons into the wellbore is precluded. All other provisions of this section shall also be applicable.

f. If welding or burning operations are conducted on wells or in the well-bay area, all producing wells shall be shut in at the surface-safety valve.

5.5 *Safety Device Testing.* The safety-system devices which are required by this Order shall be tested by the lessee at the interval specified below or more frequently if operating conditions warrant.

Testing shall be in accordance with API RP 14C, appendix D, and the following:

a. All PSV's shall be tested for operation at least annually. These valves shall be either bench-tested or equipped to permit testing with an external pressure source.

b. All Pressure Sensors-High/Low (PSHL) shall be tested at least once each calendar month, but at no time shall more than 6 weeks elapse between tests.

c. All SSV's shall be tested for operation and for leakage at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The SSV's shall be tested for operation in accordance with the test procedure specified in API RP 14C, appendix D, section D4, table D2, subsection L, and tested for leakage in accordance with subsection M. If the valve does not operate properly or any fluid flow is observed in step 3 of the leakage test, the valve shall be repaired or replaced.

d. All flowline FSV's shall be checked for leakage at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The FSV's shall be tested for leakage in accordance with the test procedures specified in API RP 14C, appendix D, section D4, table D2, subsection D. If the leakage measured in step 6 exceeds a liquid flow of 400 cm/min or a gas flow of 7 dm^3/sec (15 cubic ft/min), the FSV's shall be repaired or replaced.

e. All LSH and LSL controls shall be tested at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. These tests shall be conducted by raising and lowering the liquid level across the level-control detector.

f. All automatic inlet SDV's which are actuated by a sensor on a vessel or a compressor shall be tested for operation at least once each calendar month, but at no time shall more than 6 weeks elapse between tests.

g. All SDV's located in liquid-discharge lines and actuated by vessel low-level sensors shall be tested for operation once each calendar month, but at no time shall more than 6 weeks elapse between tests.

h. The TSH shutdown controls installed in all compressors which are protected against abnormal pressures solely by temperature safety devices shall be tested semiannually and repaired or replaced as necessary.

i. All pumps for firefighting water systems shall be inspected and test-operated weekly.

j. All fire (flame, heat, or smoke) and gas detection systems shall be tested for operation and recalibrated semiannually, if necessary.

k. The lessee shall notify the District Supervisor when the lessee is ready to conduct a preproduction test and inspection of the integrated safety system. The lessee shall also notify the District Supervisor upon commencement of production in order that a

post-production test and inspection of the integrated system may be conducted.

l. All other safety devices shall be tested annually and repaired or replaced as necessary.

5.6 *Records.* The lessee shall maintain records for a minimum period of 5 years for each surface-safety device installed. These records shall be maintained in the nearest offshore field office for a minimum period of 2 years. The records may then be transferred to the onshore field office for the remaining 3 years of the 5-year retention period. These records shall be available for review by any authorized representative of the U.S. Geological Survey (USGS). The records shall show the present status and history of each device, including dates and details of installation, inspection, testing, repairing, adjustments, and reinstallation. The records shall also include all failure and inventory reports required by paragraph 6 of this Order.

5.6.1 *Surface-Safety Valve and Associated Actuator Records.* Records for surface-safety valves and associated actuators which require compliance with paragraph 2 shall contain additional information showing verification of:

a. The devices having been manufactured in accordance with the quality assurance requirements of ANSI/ASME–SPPE–1 (formerly ANSI/ASME–OCS–1) as required by paragraph 2.

b. The completion and return of the receiving report to the manufacturer as required by ANSI/ASME–SPPE–1.

c. The completion and submission of all failure reports required by paragraph 6 and all investigation reports required by paragraphs OE–2529 and OE–2670 of ANSI/ASME–SPPE–1.

5.7 *Safety Device Training.*

Gulf of Mexico

Personnel engaged in installing, inspecting, testing, and maintaining these safety devices are required to be qualified under a program as recommended by "API Recommended Practice for Qualification Programs for Offshore Production Personnel Who Work With Anti-Pollution Safety Devices," API RP T–2, revised October 1975, or subsequent revisions which the Chief, Conservation Division, has approved for use.

Documented evidence of the qualifications of individuals performing these functions shall be maintained in the field area.

Manufacturers' representatives need not be qualified in accordance with API RP T–2 if they are working on equipment supplied by their company and if they are directly supervised by a qualified person who is capable of evaluating the impact of the work on the total system.

On-the-job trainees working with safety devices shall be directly supervised by a qualified person.

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Before July 1, 1981, the lessee shall ensure that all personnel engaged in installing, inspecting, testing, and maintaining these safety devices will have been qualified under a program as recommended by "API Recommended Practice for Qualification Programs for Offshore Production Personnel Who Work With Anti-Pollution Safety Devices," API RP T–2, revised October 1975, or subsequent revisions which the Chief, Conservation Division, has approved for use.

Documented evidence of the qualifications of individuals performing these functions shall be maintained in the field area.

Manufacturers' representatives need not be qualified in accordance with API RP T–2 if they are working on equipment supplied by their company and if they are directly supervised by a qualified person who is capable of evaluating the impact of the work on the total system.

On-the-job trainees working with safety devices shall be directly supervised by a qualified person.

Before July 1, 1980, the lessee shall submit an application for approval to the Chief, Conservation Division, describing the training to be conducted and the methods the lessee will utilize. The application shall include:

a. A designation of the lessee's representative who is responsible for training and coordinating training matters with the USGS.

b. The categories of personnel to be qualified.

c. The training organizations and courses to be utilized.

d. The method for ensuring the qualification of third-party personnel.

e. The method for determining when additional training or requalification is required and the method for obtaining this training and requalification.

f. The method of monitoring operations to ensure that only qualified personnel perform certain functions.

g. The method of maintaining documented evidence of qualification at the work site.

6. *Failure and Inventory Reporting System (FIRS).* The USGS has established a safety and pollution-prevention device Failure and Inventory Reporting System (FIRS) to enhance the reliability and safety of operations in the OCS. This system applies to offshore structures, including satellites and jackets, which produce or process hydrocarbons and includes the attendant portions of hydrocarbon pipelines, when physically located on the structure.

When the devices specified herein are used as a part of the production-safety and pollution-prevention system, the lessee shall:

a. Submit an initial inventory and periodic updates in accordance with the procedures described in subparagraph 6.1.3.

b. Report all device failures which occur. The report content and format shall be in accordance with the procedures described in subparagraph 6.1.4.

Inventory and failure data required by this Order shall be submitted to the USGS Conservation Manager in the appropriate regional office.

6.1 *Data and Reporting Requirements.*

6.1.1 *Format.* Inventory and failure data shall be submitted in a format containing the same information that is in the Safety Device Inventory Report (Form 9–1994) and the Safety Device Failure Report Form (Form 9–1995) and as outlined in the respective User's Instruction Booklets. Copies of the forms and booklets may be obtained from the USGS Conservation Manager in the appropriate regional office.

The specific method of submitting the required data may be selected from the following:

a. USGS Forms 9–1994 and 9–1995, using a standard coding convention (e.g., all letters capitalized, Z, I, letter C, number 0).

b. ADP card decks of standard 80-column cards.

c. Magnetic tapes which are 9-track, 800 BPI, unlabeled, blocking cannot exceed 1040 characters, odd parity, single gap (i.e., compatible with IBM equipment EBCDIC).

6.1.2 *Device Coverage.* Inventory and failure reports are to be submitted on the safety- and pollution-prevention devices on offshore structures, including satellites and jackets, which produce or process hydrocarbons, and the hydrocarbon pipelines thereon. These reports shall be submitted on the following:

a. Blowdown Valve—(BDV)
b. Burner Flame Detector—(BSL)
c. Check Valve—(FSV)
d. Combustible Gas Detector—(ASH)
e. Emergency Shutdown Valve—(ESD)
f. Level Sensor:
   High—(LSH)
   Low—(LSL)
   Hi/Lo—(LSHL)
g. Pressure Sensor:
   High—(PSH)
   Low—(PSL)
   Hi/Lo—(PSHL)
h. Relief Valve—(PSV)
i. Shutdown Valve—(SDV)
j. Subsurface-Safety Valve—(SSSV)
k. Surface-Safety Valve—(SSV)
l. Temperature Sensor:
   High—(TSH)
   Low—(TSL)
   Hi/Lo—(TSHL)
m. Valve Actuator on, the shutdown valve, the blowdown valve, the surface-safety valves—(VA)

6.1.3 *Device Inventory Reporting.*

6.1.3.1 *Initial Inventory.* a. For platforms in existence at the time this Order becomes effective, a complete inventory of the safety and pollution-prevention devices shall be submitted no later than 6 months after the effective date of this Order.

b. For platforms completed after this Order becomes effective, a complete inventory of the safety and pollution-prevention devices shall be submitted no later than 1 month after the initial platform production date.

6.1.3.2 *Inventory Updates.* An updating of or addition/deletion to the latest inventory shall be submitted on a monthly basis so as to maintain a current and accurate data base. The inventory will be updated by using the contents of the Safety Device Inventory Report (Form 9–1994) and the Safety Device Failure Report (Form 9–1995).

Inventory updating due to the addition, deletion, or chargeout of a device is accomplished by the lessee's reporting of all the data required on the Safety Device Inventory Report (9–1994).

Whenever a device fails and is either replaced with a new device or "fixed" and put back into service, the inventory shall be

updated to reflect this change. Inventory updating, due to the failure of a device, will be performed by the USGS, using the contents of the Safety Device Failure Report (Form 9–1995). Inventory updating information shall be received no later than 30 days following the month in which the device change was made.

6.1.3.3 *Inventory-Reporting Methods.* Inventory data shall be reported either on the Safety Device Inventory Reporting forms (Form 9–1994), punched cards, or magnetic tapes. The reports shall contain all of the required information in the standard format as described in subparagraph 6.1.1.

6.1.3.4 *Inventory Verification.* The device inventory shall be verified by the lessee to ensure that the inventory data base is maintained on a current basis and that changes are being incorporated as they occur. The verification shall be accomplished no more frequently than once each 6-month period. When verification is required, the USGS will provide the lessee with a copy of the information on record, in the lessee's selected reporting format. The lessee shall review the information and either submit a letter stating that the information is correct, or make the appropriate corrections to the information provided by the USGS. The letter or appropriate corrections shall be received no later than 30 days following the month in which the inventory information which is to be verified was forwarded to the lessee.

6.1.3.5 *Inventory-Reporting Deviation.* A lessee may submit an inventory, update, or verification report differing from that described in subparagraph 6.1.3 when authorized by the USGS.

6.1.4 *Device Failure Reporting.*

6.1.4.1 *Failure-Data Submittal.* Device failure data shall be recorded as soon as possible after detecting the failure as defined in subparagraph 6.1.4.3. This data shall be received no later than 30 days following the month in which the failure was detected. This data must contain all of the required information and be submitted in the standard format either on Safety Device Failure Report forms (Form 9–1995), punched cards, or magnetic tape, as previously described in subparagraph 6.1.1. Information on the failed device must match that previously submitted in inventory reporting. A formal failure analysis is not required by this Order, but each failed device shall undergo sufficient test/disassembly to establish the basic cause(s) of the failure.

6.1.4.2 *Failure-Data Verification.* After receipt of the complete failure data from the lessee, a printout shall be made of all failures by manufacturer, model, and reported cause. Each manufacturer listed shall be furnished a copy of the printout containing the reported failures of his devices only. If he disagrees with the reported failure causes, he is invited to investigate the questioned causes in coordination with the reporting lessee and provide a coordinated reply within 30 days after receipt of the printout. If no reply is received within that time period, the originally reported causes shall be considered to be correct, and the data shall be evaluated accordingly.

6.1.4.3 *Failure Definition.* The safety and pollution-prevention device Failure and Inventory Reporting System does not differentiate between a malfunction and a failure. For the purpose of this program, a failure is defined as the inability of a device to perform its designed function within specified limits. A device is considered to have failed if it does not operate (perform its function) as required within the specified tests' tolerances.

A failure report is not required for:

a. Adjustments made within specified tolerances.

b. Adjustments required due to changes in operating conditions.

7. *Crane Operations.* Cranes shall be operated and maintained to ensure the safety of facility operations in accordance with the provisions of "API Recommended Practice for Operation and Maintenance of Offshore Cranes," API RP 2D, October 1972, or subsequent revisions which the Chief, Conservation Division, has approved for use. Records of inspection, testing, maintenance, and crane operators qualified in accordance with the provisions of API RP 2D shall be kept in the field area for a period of 2 years.

"API Specification for Offshore Cranes," API Specification 2C, February 1972, or subsequent revisions which the Chief, Conservation Division, has approved for use, shall be used as a guideline for the selection of cranes.

8. *Employee Orientation and Motivation Programs for Personnel Working Offshore.* The lessee shall make a planned, continuing effort to eliminate accidents due to human error. This effort shall include the training of personnel in their functions. A program to achieve safe and pollution-free operations shall be established. This program shall include instructions in the provision of "API Recommended Practice Orientation Program for Personnel Going Offshore for the First Time," API RP T–1, January 1974, or subsequent revisions which the Chief, Conservation Division, has approved for use. "API Employee Motivation Programs for Safety and Prevention of Pollution in Offshore Operations," API Bulletin T–5, September 1974, or subsequent revisions which the Chief, Conservation Division, has approved for use, shall be used as a guide in developing employee safety and pollution-prevention motivation programs.

9. *Requirements for Drilling Rigs.*

9.1 *Fixed Structures.* The following requirements contained in this Order are applicable to drilling rigs on fixed structures:

a. Subparagraph 5.1.10, "Electrical Equipment."

b. Subparagraph 5.4, "Welding Practices and Procedures."

c. Paragraph 8, "Employee Orientation and Motivation Programs for Personnel Working Offshore."

9.2 *Mobile Drilling Units.* The following requirements contained in this Order are applicable to drilling rigs on mobile drilling units:

a. Subparagraph 5.4, "Welding Practices and Procedures."

b. Paragraph 8, "Employee Orientation and Motivation Programs for Personnel Working Offshore."

10. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.12(b).

Approved:

Don E. Kash,

Chief, Conservation Division.

OCS Order No. 7

Paragraph 1

Comments. One commenter stated that the requirements of "This section should flatly prohibit any pollution of the ocean. Effluent limitations should be set for all discharges and should be based on best available technology."

Discussion. A number of studies have been done on the impacts of the disposal of drilling mud into the Pacific, Cook Inlet (Tanner Bank), and around live-bottom areas in the Gulf of Mexico. None of these studies have indicated significant detrimental impacts as a result of drilling muds. We, therefore, do not believe that it is appropriate to totally prohibit the discharge of muds; but to closely monitor the disposal practices and to restrict the discharges in areas that may be sensitive, such as the coral reefs and live-bottom fishing banks.

Comments. One commenter suggested that "In addition to the list of drilling mud components and special mud additives provided as a part of the Application for a Permit to Drill, individual well records should be maintained on the quantity, concentrations and components of the drilling muds * * *."

Discussion. Lessees are required to submit a detailed list of the quantities of drilling mud used and of the components of drilling mud. It is, however, very difficult to determine the concentrations of the various substances which are discharged, because of the variable amount of dilution associated with each discharge. The dilution of mud, which is discharged with the cuttings, is dependent upon the current and water depth. Excess mud which is generated during drilling is normally stored in reserve tanks. When the reserve tanks are full, excess mud is diluted and discharged as required to maintain the desired levels in the storage tanks. When drilling is completed, heavily weighted mud may be saved and used on subsequent development wells (mud cannot be reused on exploratory wells because of the presence of microscopic, formation-identifying, fossils) or the entire volume of mud may be diluted and discharged, after approval by the District Supervisor.

In order to assess the environmental effect of discharging drilling mud, a detailed chemical and biological survey has to be conducted during the drilling operation. This is not practical or necessary at every drill site. Such surveys have been run in the Gulf of Mexico, Cook Inlet, and Pacific areas with no indications of detrimental effects from the muds and cuttings discharged. These surveys indicate that the amount of dilution which takes place prior to discharge and the

subsequent dilution in the sea is sufficient to assure the protection of the environment.

Subparagraph 1.1.1

Comments. In comments on subparagraph 1.1.1 (1.1.2), several commenters objected to the requirement that approval of the disposal of drilling mud into the ocean must be obtained from the District Supervisor. One commenter claimed that "These requirements are redundant since the operator is required to provide data on the proposed method of disposal in the Application for Permit to Drill * * *."

Discussion. We do not believe this requirement is redundant because environmental conditions may change after the proposed method of disposal has been approved. Each mud-disposal program will be approved on a site-specific basis, considering the biologic and environmental conditions. We recognize that to date the disposal of drilling muds has not resulted in any negative impacts in the Gulf of Mexico or in other offshore areas. However, we must assure that discharges do not impact potentially sensitive areas, particularly coral reefs and fishing banks where there has been no drilling.

Comments. One commenter asked the following questions pertaining to the District Supervisor's decision to approve or disapprove the method of disposal of drilling mud: "* * * on what basis does the Supervisor make his decision? Does he contact the proper State fisheries personnel for site specific information first?"

Discussion. In making a decision to approve or disapprove the method of disposal of drilling mud, the District Supervisor considers information contained in the following documents which are required by 30 CFR 250.34:

1. Lessee's Environmental Report (Exploration).
2. Lessee's Environmental Report (Development/Production).
3. Oil and Gas Supervisor's Environmental Assessment of 1 or 2 above.
4. Environmental Impact Statement, if required by 3 above.

When these documents identify biologically sensitive areas, the District Supervisor consults with the appropriate Federal and State agencies, prior to approving the method of disposal of drilling mud.

Comments. One commenter stated that "Currently three agencies address the question on drilling mud disposal * * *," and suggested that the last two sentences should be revised as follows: "Approval of the drilling mud disposal method by the District Supervisor shall be consistent with any lease stipulations or other Federal regulations."

Discussion. We are currently working with the Environmental Protection Agency (EPA) to develop a memorandum of understanding that will deal with the disposal of drilling muds, cuttings, and other waste materials. The following sentence was added to recognize the EPA's authority in the regulation of discharges: "The disposal of drilling mud is subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act as amended."

Subparagraph 1.1.2

Comments. In a comment on subparagraph 1.1.2 (1.1.3), it was suggested that the requirements "* * * should be expanded to assure adherence to air quality and performance standards under the Clean Air Act Amendments of 1977."

Discussion. The United States Geological Survey (USGS) is currently developing air quality regulations in accordance with the OCS Lands Act Amendments of 1978.

Comments. One commenter suggested that "Periodic monitoring of this (hydrocarbon handling) equipment should be conducted to assure that it is functioning properly."

Discussion. This requirement is contained in OCS Order No. 5.

Subparagraph 1.1.3

Comments. Several commenters recommended that the term "mobile drilling unit" be deleted from this requirement in subparagraph 1.1.3 (1.1.4). One commenter interpreted that mobile drilling units were the responsibility of the U.S. Coast Guard (USCG). Another commenter felt that these requirements are inconsistent with OCS Order No. 5.

Discussion. The USGS review of the comments on the requirements of the proposed subparagraph 4.1.7, "Curbs, Gutters, and Drains," of the proposed OCS Order No. 5, and the comments received on subparagraph 1.1.4, "Curbs, Gutters, and Drains," of the proposed OCS Order No. 7, indicated that the requirements of these subparagraphs should be addressed only in OCS Order No. 7. Therefore, this paragraph was deleted from OCS Order No. 5 and the requirements were included in subparagraph 1.1.3 of OCS Order No. 7. The subparagraph has been retitled and rewritten to recognize the U.S. Coast Guard's authority to prescribe requirements for deck drainage systems on mobile drilling units which are not associated with the drilling operation. This revision is consistent with the Memorandum of Understanding (MOU) between the USCG and the USGS dated April 11, 1977. Comments which were received on subparagraph 4.1.7 of OCS Order No. 5 are discussed below.

Comments. Several commenters were concerned with the second sentence which required: "All walking and working surfaces shall be kept free of all liquid accumulations." The consensus of opinion was that this requirement was not practical and it would be impossible to comply with.

Discussion. This sentence has been changed to the following: "All walking and working surfaces shall be equipped with proper drainage to provide safety for personnel and to prevent pollution."

Comments. It was recommended that "Sump piles should also be closed, not open to the ocean and the language of the paragraph should be changed to make this clear."

Discussion. The OCS Orders for the Pacific, Alaska, and Atlantic areas were revised to require all drainage to be collected in a closed sump. The Gulf of Mexico OCS Order was revised to require the use of existing open-ended sump piles to be discontinued within 12 months after the effective date of the Order.

Comments. A commenter stated that "It is not mentioned whether petroleum contaminants would be passed through an oily water separator, incinerated on board the vessel, or transported to shore for disposal."

Discussion. A sentence was added to require the contaminants which are removed from sumps to be disposed of in a manner which will not create pollution.

Subparagraph 1.1.4

Comments. Several comments on the proposed subparagraphs 1.1.5, "Fixed Structure Discharges," and 1.1.6, "Mobile Drilling Unit Discharges," suggested that these subparagraphs should reflect the Environmental Protection Agency's (EPA)'s authority to regulate discharges from mobile drilling units and fixed drilling platforms.

Discussion. It has been determined that the EPA has jurisdiction over all types of discharges on the OCS, regardless of the source. Therefore, the contents of the original subparagraphs 1.1.5 and 1.1.6 have been incorporated into a new subparagraph 1.1.4, "Discharges from Fixed Platforms or Structures and Mobile Drilling Units." The revised subparagraph states that discharges from fixed platforms or structures and mobile drilling units are subject to EPA's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended.

Former Subparagraph 1.1.6

Comments. It was suggested that the proposed subparagraph 1.1.6, "Mobile Drilling Unit Discharges," placed no restrictions on the amount of oily substances from the mobile drilling unit, and the USGS should adopt the following language: "Discharges from mobile drilling units, including produced water and deck drainage shall contain no free oil and shall not cause a sheen to form on the surface of the ocean.

*Alternatively, a 50 ppm oil standard could be established."

Another commenter suggested that the term "free oil," which was used in the original subparagraph 1.1.1, "Oil-Cut Drilling Mud," should be defined.

Discussion. These suggestions were not adopted. The term "free oil" has been deleted from the proposed subparagraphs 1.1.1 and 1.2.1. The final versions of subparagraphs 1.1.1, 1.1.4, and 1.2.1 reflect EPA's authority to regulate discharges from all sources. The EPA is currently developing revised guidelines for the approval of discharge permits. When these guidelines are published, this Order will be revised, if necessary, to maintain consistency.

Subparagraph 1.2.1

Comments. A commenter stated, "Drill cuttings, sands and other well solids, unassociated with free oil, should not be allowed to be dumped into the ocean with no regulation whatsoever."

Discussion. As previously stated, the subparagraph was revised to reflect EPA's authority to regulate discharges from all sources. A sentence was also added to require the District Supervisor's approval of the method of disposal of drill cuttings, sand, and other well solids.

Comments. One commenter stated that "The term 'all of the free oil has been removed' is too broad and restrictive a term. The word 'all' would infer absolutely no oil would be present. It would be more realistic to specify a mg/1 value. Once solids have been exposed to oil it is doubtful that absolutely all of it could be removed by conventional treatment."

Another commenter suggested that "* * * under certain conditions, disposal of drilling muds, and other solids from which the 'free' oil has been removed could violate the effluent guidelines for disposal of these materials by creating free oil on the surface waters. We suggest that the wording of 1.1.1 and 1.2.1 be revised to be consistent with EPA's effluent guidelines."

Discussion. Subparagraphs 1.1.1, 1.2.1, and 1.4.1 have been revised in response to these comments. Refer to the discussion for former subparagraph 1.1.6.

Subparagraph 1.2.3

Comments. One commenter suggested that the location and description of equipment which is disposed of into the ocean under emergency conditions should be reported to the U.S. Coast Guard.

Discussion. This suggestion was adopted. The subparagraph was revised to require that equipment which is disposed of into the ocean under emergency conditions shall be reported to the District Supervisor and to the U.S. Coast Guard in accordance with paragraph 4 of OCS Order No. 1.

Subparagraph 2.1

Comments. A recommendation was made to require "All personnel, including those engaged in drilling operations, platform and pipeline construction and supply boat operations, shall be thoroughly instructed in the procedures and methods of operation of the fishing industry and in the measures which can be taken to avoid potential conflicts between the fishing and petroleum industries."

Discussion. In those Areas where conflicts between the fishing and petroleum industries have occurred, special training may be required by lease stipulations.

Subparagraph 2.2

Comments. A commenter stated, "All facilities whether manned or unattended should be required to have a pollution monitoring system in place and functioning at all times. Monitoring reports should be filed periodically and there should be periodic testing of the monitoring system to determine its accuracy."

Discussion. The Order already requires the lessee to inspect all facilities daily. Subparagraph 2.3 outlines how spills are to be reported. We believe that daily inspection of the facilities is the best method for detecting pollution or conditions which will cause pollution. Production equipment sensors are designed to automatically shut down production in the event of a malfunction, as required by OCS Order No. 5. No effective equipment has been developed for monitoring pollution around a platform.

Subparagraph 2.2.2

Comments. The majority of the commenters objected to the requirement to inspect unattended facilities daily. One commenter stated, "Daily inspection of unattended facilities would be excessively burdensome to the operators and under certain meteorological conditions dangerous to inspectors." The commenters suggested that inspections be required at frequent intervals prescribed by the District Supervisor.

Discussion. The requirement was not changed. It is the USGS' belief that early detection of situations that could cause pollution is the key to pollution prevention and the key to a rapid cleanup effort when a spill has occurred.

Subparagraph 2.3

Comments. Two commenters suggested that this subparagraph should require oil spills to be reported directly to the U.S. Coast Guard (USCG) and to the District Supervisor. Another commenter suggested that spills should be reported "* * * orally to the District Supervisor and in accordance with the reporting structure outlined in the Oil Pollution Liability Regulations (33 CFR 153.203) and confirmed in writing to the District Supervisor."

Discussion. The latter suggestion was adopted. The following sentence was added to the subparagraph: "All spills of oil and liquid pollutants shall also be reported in accordance with the procedure contained in 33 CFR 153.203." The USGS, the USCG, and the EPA are currently working to develop an MOU which will clarify the reporting requirements. When this MOU is finalized, this Order will be revised, if necessary, to maintain consistency.

Subparagraph 2.3.1

Comments. Several commenters expressed concern over the volume/time schedule for the reporting of oil spills.

Discussion. It has been found necessary through operational experience to set a limit on the size of an oil spill which poses a threat to the environment and could be removed or should require an onsite investigation. Oil spills of less than 1 cubic meter (6.3 barrels) are not considered to be a major threat to the environment. Spills greater than 1 cubic meter (6.3 barrels) have the potential to be a major threat. Therefore, the subparagraph provides for the appropriate degree of urgency in the reporting requirements by stipulating the 12-hour and without-delay reporting time periods. Regardless of the time period specified, the lessee is required by 33 CFR 153.203 to report without delay any oil spill which threatens public health or welfare or results in critical public concern. It should be noted that the National Oil and Hazardous Substances Pollution Contingency Plan defines a minimum discharge of oil in coastal waters as 10,000 gallons (238 barrels). The reporting procedure does not lessen the operator's responsibility to report the pollution incident, remove the pollutant, or be responsible for the results of any pollution damage.

Subparagraph 2.3.2

Comments. One commenter suggested that the requirement that lessees shall notify each other upon observation of equipment malfunction or pollution resulting from another's operations is an unnecessary requirement which should be deleted from the Order.

Discussion. This suggestion was not adopted. The intent of the Order is to promote mutual pollution-prevention efforts among lessees in a given area, especially on unmanned facilities.

Subparagraph 3.1

Comments. Several commenters expressed concern over the requirement that pollution-control equipment shall be maintained at an offshore location or at locations required by the Supervisor. One commenter suggested that "* * * this requirement is not specific enough as to the location of the equipment, nor does it necessarily provide an appropriate level of protection to the marine environment, particularly in view of the delay authorized in reporting spills of less than five cubic meters * * *." The commenter recommended that the subparagraph be revised as follows:

"3.1 *Equipment.* As a minimum, a sufficient amount of standby pollution control equipment should be maintained at each site to permit the efficient and timely removal of up to 5.0 cubic meters of oil. Additional containment and removal equipment, sufficient to control all spills larger than 5.0 cubic meters should be readily accessible to the operator. Accessibility may be determined by direct ownership, joint ownership, cooperative venture or contractual agreement. This shall include * * *."

Discussion. The first sentence of the subparagraph was revised as follows: "Pollution-control equipment and materials shall be maintained by, or shall be available to, each lessee at an offshore location, or at a location approved by the Supervisor." It has been determined that certain pollution-control equipment can be stored at offshore locations while other equipment requires storage either onshore or possibly on floating equipment in estuary areas. Due to platform size, configuration, or location, it may be undesirable to store certain pollution-control equipment on an active drilling or production platform. In the event of a fire, an explosion, or a blowout, the equipment could be destroyed or be inaccessible. The intent of the revised language is to assure that pollution-control equipment will be stored in areas that provide the minimum response time, if an oil spill occurs. The Supervisor evaluates the adequacy of the response time on a case-by-case basis during his review of the Contingency Plans.

Comments. One commenter suggested that the third sentence of the requirement of this subparagraph should be changed to state "The use of chemical agents or other additives shall be permitted only * * *" rather

than stating "The use of chemicals shall be permitted only * * *." This language would be consistent with Annex X of the National Oil and Hazardous Substances Pollution Contingency Plan.

Discussion. This suggestion has been adopted. However, this requirement is related to spill control and removal; therefore, the sentence was added as the last sentence of paragraph 5, "Spill Control and Removal."

Comments. A commenter recommended that "* * * in addition to monthly inspections, all pollution control equipment on drilling rigs be inspected and tested by factory representatives or other knowledgeable personnel prior to well-spudding operations."

Discussion. This recommendation was not adopted. We believe the drills and training required by paragraph 4 of this Order provide an adequate test of the performance of the men and equipment.

Subparagraph 3.2

Comments. One commenter stated that his State would like to review Oil Spill Contingency Plans. The commenter also requested that "* * * the State be included as a party required to be notified in the case of an oil discharge."

Discussion. Oil Spill Contingency Plans are public information, as specified in OCS Order No. 12, and they will be made available by the Supervisor. We do not believe that the Order should require the lessee to notify the affected States when an oil discharge occurs. The National Oil and Hazardous Substances Pollution Contingency Plan, Title 40 CFR Part 1510.34(c), invites affected States to furnish liaison to the Regional Response Team (RRT) for planning and preparedness activities. When the Team is activated for a pollution emergency, the affected State or States are invited to participate in RRT deliberations.

Our review of this comment indicated that requirements for an annual review of the Contingency Plan should be included in subparagraph 3.2 rather than in paragraph 6, "Contingency Plan Review"; therefore, former paragraph 6 was deleted.

Subparagraph 3.2c

Comments. One commenter suggested that "* * * the term 'biological sensitivity' is too restrictive to cover the various types of damage which occur as a result of oil spills." The commenter stated that "It is also considered necessary to identify the possible impact areas before a protection plan can be devised. It was recommended that 3.2c be revised as follows: "Provisions for identifying and protecting areas of special environmental sensitivity."

Discussion. This suggestion was adopted. The addition of the words "for identifying" is consistent with 30 CFR 250.34–3.

Subparagraph 3.2e(3)

One commenter stated that "In order to provide the person in charge of cleanup operations with the best information available as to the status and progress of the cleanup, the operations center should be located as close as possible to the spill incident." The commenter recommended that the following sentence be added to the subparagraph: "The location selected should be as close as possible to the probable spill area. The operations center may be either a fixed or mobile facility, provided that adequate communications are available."

Discussion. This recommendation was not adopted. It is assumed that the lessee will exercise prudent judgment in the selection of a preplanned location for the oil-spill-response operations center. If a lessee selected a location which was excessively remote from the probable spill areas, the Supervisor has the discretion to disapprove the Oil Spill Contingency Plan.

Paragraph 4

Comments. One commenter recommended "* * * that an additional paragraph be added to section 4 stating that at least one supervisory individual on each offshore unit must receive formal oil spill control instructions and be so certified by the instructing institution."

Discussion. This recommendation was adopted. For editorial clarity, the requirements were segregated into two subparagraphs, 4.1, "Drills," and 4.2, "Training."

Comments. Several commenters expressed concern over the adequacy of onshore drills. It was suggested that the phrase " 'onshore locations where pollution and containment equipment is based,' should be deleted." Other commenters expressed concerns over the requirement for "A drill schedule acceptable to the Supervisor * * *." Other commenters expressed concern over the adequacy of drills where all equipment is not deployed.

Discussion. The new subparagraph 4.1, "Drills," has been rewritten in response to some of these comments. The provision for drills at onshore locations has been deleted. The sentence, "All equipment need not be deployed at each drill," has been deleted and replaced with the following two sentences: "A time schedule with a list of equipment to be deployed shall be submitted to the Supervisor for approval. The drill schedule shall provide sufficient advance notice to allow U.S. Geological Survey personnel to witness any of the drills."

These revisions recognize the Supervisor's authority to approve the timing of the drills and to make a judgment on the adequacy of the list of equipment to be deployed. The Supervisor would not require the deployment of duplicate sets of equipment, if adequate training and deployment capability could be demonstrated by the deployment of one set.

Paragraph 5

Comments. One commenter suggested: "The policy of the United States requiring the removal of spilled oil should be unequivocally stated. Also stated should be a preference for the use of mechanical removal methods, such as the use of sorbents, booms, and skimmers over the use of chemical agents."

Discussion. This suggestion was not adopted. The policy of the United States regarding the lessee's responsibility for the removal of pollutants is clearly stated in 30 CFR 250.43 and 33 CFR 153. Methods and procedures for the removal of discharged oil are detailed in 33 CFR 153.305. The respective responsibilities of the USGS and the USCG are defined in the MOU between the Department of the Interior and the Department of Transportation, dated August 16, 1971. We believe the pollution removal policies of the United States are adequately covered in these documents.

U.S. Department of the Interior; Geological Survey, Conservation Division

OCS Order No. 7, Effective July 1, 1979; Pollution Prevention and Control

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.43. The lessee shall comply with the following requirements.

1. *Pollution Prevention.* During the exploration, development production, and transportation of oil and gas, the lessee shall prevent pollution of the ocean. Furthermore, by the disposal of waste materials into the ocean, the lessee shall not create conditions which will adversely affect the public health, life, property, aquatic life, wildlife, recreation, navigation, commercial fishing or other uses of the ocean.

1.1 *Liquid Disposal.*

1.1.1 *Drilling-Mud Components.* The lessee shall submit, as a part of the Application for Permit to Drill (Form 9–331C), a detailed list of drilling-mud components including the common chemical or chemical trade name of each component, a list of the drilling-mud additives anticipated for use in meeting special drilling requirements, and the proposed method of drilling-mud disposal. The disposal of drilling mud is subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended. Approval of the method of drilling-mud disposal into the ocean shall be obtained from the District Supervisor; each request will be decided on a case-by-case basis.

1.1.2 *Hydrocarbon-Handling Equipment.* All hydrocarbon-handling equipment for testing and production such as separators, tanks, and treaters shall be designed and operated to prevent pollution. Maintenance or repairs which are necessary to prevent pollution of the ocean shall be undertaken immediately.

1.1.3 *Curbs, Gutters, and Drains for Fixed Platforms or Structures and Mobile Drilling Units.*

Gulf of Mexico:

a. *Fixed Platforms or Structures.*

(1) *New Installations.* Curbs, gutters, and drains shall be installed in all deck areas so that all contaminants are collected in a closed sump. When open decks are used, drip pans or the equivalent shall be placed under equipment and piped to a closed sump. Closed sumps shall automatically maintain fluid at a level sufficient to prevent the discharge of oil into the ocean. Contaminants that are removed from sumps shall be disposed of in a manner which will not create pollution.

All walking and working surfaces shall be equipped with proper drainage to provide safety for personnel and to prevent pollution.

(2) *Existing Installations.* The use of open-ended sump piles as a processing device to treat or skim liquid hydrocarbons or to dispose of sand shall be discontinued within the 12-month period which immediately follows the effective date of this Order, or within a period of time approved by the District Supervisor.

b. *Mobile Drilling Units.* Curbs, gutters, and drains which collect contaminants associated with the drilling operation on a mobile drilling unit shall be installed as required by subparagraph 1.1.3a.

Curbs, gutters, and drains which collect contaminants not associated with the drilling operation are subject to regulation by the U.S. Coast Guard.

Pacific, Gulf of Alaska, Atlantic

a. *Fixed Platforms or Structures.* Curbs, gutters, and drains shall be installed in all deck areas to collect all contaminants in a closed sump. When open decks are used, drip pans or the equivalent shall be placed under equipment and piped to a closed sump. Closed sumps shall automatically maintain fluid at a level sufficient to prevent the discharge of oil into the ocean. Contaminants that are removed from sumps shall be disposed of in a manner which will not create pollution.

All walking and working surfaces shall be equipped with proper drainage to provide safety for personnel and to prevent pollution.

b. *Mobile Drilling Units.* Curbs, gutters, and drains which collect contaminants associated with the drilling operation on a mobile drilling unit shall be installed as required by subparagraph 1.1.3a.

Curbs, gutters, and drains which collect contaminants not associated with the drilling operation are subject to regulation by the U.S. Coast Guard.

1.1.4 *Discharges from Fixed Platforms or Structures and Mobile Drilling Units.* Discharges from fixed platforms or structures and mobile drilling units, including sanitary waste, produced water, drilling mud, and deck drainage, are subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended.

1.2 *Solid Material Disposal.*

1.2.1 *Well solids.* The disposal of drill cuttings, sand, and other well solids containing oil is subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended. Approval of the method of disposal of drill cuttings, sand, and other well solids shall be obtained from the District Supervisor.

1.2.2 *Containers.* Containers and other similar solid-waste materials shall not be disposed of into the ocean.

1.2.3 *Equipment.* Disposal of equipment into the ocean is prohibited except under emergency conditions. The location and description of any equipment disposed of into the ocean shall be reported to the District Supervisor and to the U.S. Coast Guard in accordance with paragraph 4 of OCS Order No. 1.

2. *Personnel, Inspections, and Reports.*

2.1 *Personnel.* The lessee's personnel shall be instructed in the techniques of equipment maintenance and operation for the prevention of pollution. Contractor personnel providing services offshore shall be informed in writing, prior to executing contracts, of the lessee's obligations to prevent pollution and of the provisions of this Order.

2.2 *Pollution Inspections.*

2.2.1 *Manned Facilities.* Manned drilling and production facilities shall be inspected daily to determine if pollution is occurring. Maintenance or repairs which are necessary to prevent pollution of the ocean waters shall be undertaken and performed immediately.

2.2.2 *Unattended Facilities.* Unattended facilities, including those equipped with remote control and monitoring systems, shall be inspected daily or at intervals prescribed by the District Supervisor to determine if pollution is occurring. Necessary maintenance or repairs shall be made immediately.

2.3 *Pollution Reports.* All spills of oil and liquid pollutants shall be reported orally to the District Supervisor and shall be confirmed in writing. All reports shall include the cause, location, volume of spill, and action taken. Reports of spills of more than 5.0 cubic meters (31.5 barrels) shall include information on the sea state, meteorological conditions, size, and appearance of slick. All spills of oil and liquid pollutants shall also be reported in accordance with the procedure contained in 33 CFR 153.203.

2.3.1 *Spills.* Spills shall be reported orally within the following time limits:

a. Within 12 hours, if spills are 1.0 cubic meters (6.3 barrels) or less.

b. Without delay, if spills are more than 1.0 cubic meter (6.3 barrels).

2.3.2 *Observed Malfunctions.* Lessees shall notify each other of observed pollution resulting from another's operation.

3. *Pollution-Control Equipment and Materials and Oil Spill Contingency Plans.* The lessee shall submit a description of procedures, personnel, and equipment that will be used in reporting, cleanup, and prevention of the spread of any pollution resulting from an oil spill which might occur during exploration or development activities. The following subparagraphs describe the minimum requirements for pollution-control equipment and procedures.

3.1 *Equipment and Materials.* Pollution-control equipment and materials shall be maintained by, or shall be available to, each lessee at an offshore location or at a location approved by the Supervisor. The equipment shall include containment booms, skimming apparatus, cleanup materials, and chemical agents which shall be available prior to the commencement of operations. The equipment and materials shall be inspected monthly and maintained in a state of readiness for use. The results of the inspections shall be recorded and maintained at the site.

3.2 *Oil Spill Contingency Plans.* The lessee shall submit an Oil Spill Contingency Plan for approval by the Supervisor, prior to the approval of an Exploration Plan or a Development and Production Plan. Oil Spill Contingency Plans shall be reviewed annually. All modifications of the Oil Spill Contingency Plan and the results from the review of the plan shall be submitted to the Supervisor for approval. The Oil Spill Contingency Plan shall contain the following:

a. Provisions to assure that full resource capability is known and can be committed during an oil spill, including the identification and inventory of applicable equipment, materials, and supplies which are available locally and regionally, both committed and uncommitted, and the time required for deployment of the equipment.

b. Provisions for vaying degrees of response effort depending on the severity of the oil spill.

c. Provisions for identifying and protecting areas of special biological sensitivity.

d. Establishment of procedures for the purpose of early detection and timely notification of an oil spill including a current list of names, telephone numbers, and addresses of the responsible persons and alternates on call to receive notification of an oil spill; and the names, telephone numbers, and addresses of regulatory organizations and agencies to be notified when an oil spill is discovered.

e. Provisions for well-defined and specific actions to be taken after discovery and notification of an oil spill, including:

(1) Specification of an oil-spill-response operating team consisting of trained, prepared, and available operating personnel.

(2) Predesignation of an oil-spill-response coordinator who is charged with the responsibility and is delegated commensurate authority for directing and coordinating response operations.

(3) A preplanned location for an oil-spill-response operations center and a reliable communications system for directing the coordinated overall response operations.

(4) Provisions for disposal of recovered spill materials.

4. *Drills and Training.*

4.1 *Drills.* Drills for familiarization with pollution-control equipment and operational procedures shall be held by the lessee. The personnel identified as the oil-spill-response operating team in the Contingency Plan shall participate in these drills. The drills shall be realistic and shall include deployment of equipment. A time schedule with a list of equipment to be deployed shall be submitted to the Supervisor for approval. The drill schedule shall provide sufficient advance notice to allow U.S. Geological Survey personnel to witness any of the drills. Drills shall be recorded, and the records shall be made available to U.S. Geological Survey personnel. Where drill performance and results are deemed inadequate, the Supervisor may require an increase in the frequency or a change in the location of the drills until satisfactory results are achieved.

4.2 *Training.* The lessee shall ensure that training classes for familiarization with pollution-control equipment and operational procedures are provided for the oil-spill-response operating team. The supervisory personnel responsible for directing the oil-spill-response operations shall receive oil-spill-control instruction suitable for all seasons. The lessee shall retain course-completion certificates or attendance records

issued by the organization where the instruction is provided. These records shall be available to any authorized representative of the U.S. Geological Survey, upon request.

5. *Spill Control and Removal.* Immediate corrective action shall be taken in all cases where pollution has occurred. Corrective action taken under the lessee's Oil Spill Contingency Plan shall be subject to modification when directed by the Supervisor. The primary jurisdiction to require corrective action to abate the source of pollution shall remain with the Supervisor, pursuant to the provisions of this Order and the Memorandum of Understanding (MOU) between the Department of Transportation (U.S. Coast Guard) and the Department of the Interior (U.S. Geological Survey) dated August 16, 1971. The use of chemical agents or other additives shall be permitted only after approval by the Supervisor in accordance with Annex X, National Oil and Hazardous Substances Pollution Contingency Plan and in accordance with the previously mentioned MOU.

6. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.12(b).

Approval:

Don E. Kash,

Chief, Conservation Division.

OCS Order No. 12

Paragraph 1

Comments. One commenter objected to "the withholding of a lessee's or operator's geophysical and geological information from public scrutiny." This commenter does not believe "5 USS § 552 authorizes such an exemption." The commenter believes "reports should be available for public inspection."

Discussion. Pursuant to revisions of the Freedom of Information Act [5 U.S.C. § 552(b)(9)], Title 43 CFR Part 2 was revoked in its entirety and a revised Part 2 was adopted. Specifically, § 2.13(c), "Statutory Exemptions," (9) was revised to provide for the exemption of geophysical and geological data. These revised regulations became effective when the revisions were published in the **Federal Register**, Vol. 40, No. 34, Wednesday, February 19, 1975.

In accordance with the authority vested in the Secretary of the Interior by the Outer Continental Shelf Lands Act of August 7, 1953, Title 30 CFR 250.97 was amended to provide for the release of geophysical data 10 years after the date of submission or after the expiration of the lease, whichever occurs first. This amendment also provided for the release of geological data 2 years after the date of submission or after the expiration of the lease, whichever occurs first. These amendments became effective when signed by the Secretary of the Interior on June 11, 1976. The amendments were subsequently published in the **Federal Register**, Vol. 41, No. 122, Wednesday, June 23, 1976. These amendments are applicable to leases issued after June 11, 1976. Therefore, paragraph 3, "Information Exempt from Public Inspection," has been revised to provide for the implementation of these regulation amendments.

Paragraph 2

Comments. It was suggested that records, pertaining to leases and wells, which have been classified as proprietary data and withheld from public information "* * * should be made available to the States at least under such a provision as is included in the Bureau of Land Management's proposed rulemaking published in the September 26, 1977, **Federal Register.** These proposed rules provide that data protected from general release as Public Information shall be available to the Governor's designee on a protected confidential basis."

Discussion. The final revision of the Bureau of land Management's regulation, 43 CFR 3301.8(d), as published in the **Federal Register**, Vol. 43, No. 19, January 27, 1978, states in part: "no data or information determined to be exempt from public disclosure under such Act and regulations shall be made available for public disclosure or provided to any affected state or to the executive of any local government." This final regulation is consistent with 30 CFR 250.34, 250.97, and 43 CFR 2.13. Subparagraph 2.10, "Availability of Data and Information Submitted by Lessees," lists various nonproprietary data which is available.

Comments. One commenter stated that "All information on the monthly reports should be available for public inspection, including the category designated 'Remarks'." The commenter suggested that "No reason is ever given for exempting the remarks from public scrutiny.

The commenter also objected to the withholding of information on "the type, location, and producing interval of the wells," prior to commencement of production.

Discussion. In the "Remarks" section of the monthly report, the operator is usually discussing operational matters concerning producing intervals. This is considered proprietary data and is not available for public scrutiny.

The type, location, and producing interval of wells is also considered proprietary data because this information could be used to develop a contour map of the producing structure. The paragraph was not changed.

Comments. One commenter suggested that "there should be a provision for timely (weekly or montly) cataloging of the records available for public inspection in the Area office."

Discussion. The Order contains a complete listing of the information which is available in the public information room of the Area office. The current status on the receipt of specific information from specific leases or wells is available upon request. The public information room is open to the public during normal working hours. Therefore, the cataloging of the available records is unnecessary.

Subparagraph 2.4

Comments. One commenter suggested that "the casing program for the drive or structural and conductor casings should not be proprietary."

Discussion. The setting depths of all casing strings are based on geological data; therefore, this information is exempt from public disclosure.

Subparagraph 2.10

Comments. One commenter suggested that the phrase "except for those portions which the lessee shall designate, with the Supervisor's approval, as trade secrets and commercial or financial information which is privileged or confidential" be moved from subparagraph 2.10c and inserted at the end of the lead-in sentence. The commenter stated: "In addition to results of site surveys required prior to drilling or placement structures, other information submitted in items (a) through (f) may contain privileged or confidential information which should not be made available for public inspection."

Discussion. The USGS agrees with this comment and has revised the Order accordingly. Subparagraph 2.10c was revised further by adding the phrase, "such as shallow geologic hazards surveys, archaeological/cultural resource surveys, or other surveys related to the placement of platforms or structures." This revision clarified the type of site surveys which are to be made available.

Subparagraph 2.10b

Comments. It was suggested that subparagraph 2.10b be deleted. The commenter suggested that the subparagraph "has several very undesirable aspects" which he believes include:

"1. It reduces competition between the operating companies in that data accumulated at great cost by one company is obtained free by another company.

"2. It reveals proprietary data on performance of a contractor's vessel to his competitor. This again reduces competition.

"3. It is not in the national interest to publish detailed data on performance of our drilling units while receiving nothing in return from foreign nations which can, at least through a third party, obtain the data.

"4. This information is detailed technical data and is not in the form which is of use to the public."

Discussion. We cannot agree that competition will be reduced by furnishing oceanographic data and meteorological data. Each company operating in the OCS will be contributing; therefore, an exchange of data would be mutually beneficial to all. We agree that drilling-vessel performance data should not be made available without the consent of the lessee; therefore, the requirement for the release of performance data was deleted.

Subparagraph 2.10d

Comments. The commenter, quoted in the comments for subparagraph 2.10b, also suggested that this subparagraph be deleted for the same reasons.

Discussion. Subparagraph 2.10d was revised by replacing the words "performance data" with the words "rated capability."

Subparagraph 2.10e

Comments. One commenter stated that "Much of the data required by this section has been acquired through exhaustive and

expensive private research and is, therefore, proprietary in nature." The commenter recommended that the subparagraph be revised to require that proprietary data "shall not be disclosed without prior notification to the affected party and appropriate hearings."

Discussion. The revision of subparagraph 2.10 provides for the exemption of proprietary information with the approval of the Supervisor.

Subparagraph 2.11

Comments. No comments received.

Discussion. In accordance with 30 CFR 250.97, a new subparagraph 2.11, "Expired Leases," was added to provide for the release of information pertaining to expired leases.

Paragraph 3

Comments. One commenter stated that "Legal means should be provided to decide whether or not specific information is or is not proprietary in nature and, therefore, subject to disclosure."

Discussion. As outlined in the discussions of the revision of paragraph 1, paragraph 3 has been revised completely to elaborate on the release of information which is exempt from public inspection. The Freedom of Information Act § 552 sets forth guidelines for the determination of proprietary data. These guidelines are the "legal means" for the determination of proprietary data. The requirements for the release of information have also been set forth in 30 CFR 252.6 as published in the Federal Register, Vol. 43, No. 19, Friday, January 27, 1978.

U.S. Department of the Interior; Geological Survey Conservation Division

OCS Order No. 12, Effective July 1, 1979; Public Inspection of Records

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.34, 250.97, 252.6, and 43 CFR Part 2. Requests for information made under the Freedom of Information Act, 5 U.S.C. § 552, will be governed by the provisions of 43 CFR Part 2 (40 FR 7304, February 19, 1975).

1. *Filing of Reports.* All reports on forms 9–152, 9–330, 9–331, 9–331 C, 9–1869, 9–1870 and the forms used to report the results of multipoint back-pressure tests shall be filed by the lessee in accordance with the following:

a. All reports submitted on these forms shall include a copy with the words "Public Information" shown on the lower right-hand corner. This copy of the form shall be made available for public inspection.

b. All items on the form not marked "Public Information" shall be completed in full, and such forms and all attachments thereto shall not be available for public inspection.

c. The copy marked "Public Information" shall be completed in full except that the items described in subparagraphs 2.1 through 2.4 below and the attachments relating to such items may be excluded.

2. *Availability of Records.* It has been determined that certain records pertaining to leases and wells in the Outer Continental Shelf (OCS) and submitted under 30 CFR 250 shall be made available for public inspection, as specified below, in the Area office.

2.1 *Form 9–152—Monthly Report of Operations.* All information contained on this form shall be available except the information required in the "Remarks" column.

2.2 *Form 9–330—Well-Completion or Recompletion Report and Log.*

2.2.1 *Prior to Commencement.* Prior to commencement of production, all information contained on this form shall be available except:

a. Item 1a, Type of Well.

b. Item 4, Location of Well, at top production interval and at total depth.

c. Item 22, If Multiple Completion, how many.

d. Item 24, Producing Interval.

e. Item 26, Type Electric and Other Logs Run.

f. Item 28, Casing Record.

g. Item 29, Liner Record.

h. Item 30, Tubing Record.

i. Item 31, Perforation Record.

j. Item 32, Acid, Shot, Fracture, Cement Squeeze, Etc.

k. Item 33, Production.

l. Item 37, Summary of Porous Zones.

m. Item 38, Geologic Markers.

2.2.2 *After Commencement of Production.* After commencement of production, all information shall be available except Item 37, Summary of Porous Zones, and Item 38, Geologic Markers.

2.2.3 *5 Years' Elapsed Time.* If production has not commenced after an elapsed time of 5 years from the date of filing Form 9–330 as required in 30 CFR 250.38(b), excluding the total time that operations and production are suspended by direction of the Secretary of the Interior or his duly authorized representative, and further excluding the total time that operations and production are stopped or prohibited by Court order, all information contained on this form shall be available except Item 37, Summary of Porous Zones, and Item 38, Geologic Markers. Within 90 days prior to the end of the 5-year period, exclusive of exceptions noted above, the lessee shall file a Form 9–330 containing all information requested on the form except Item 37, Summary of Porous Zones, and Item 38, Geologic Markers, to be made available for public inspection. Objections to the release of such information may be submitted with the completed Form 9–330.

2.3 *Form 9–331—Sundry Notices and Reports on Wells.*

2.3.1 *"Request for Approval to."* When used as a "Request for Approval to:" conduct operations, all information contained on this form shall be available except Item 4, Location of Well, at top production interval and at total depth, and Item 17, Describe Proposed or Completed Operations.

2.3.2 *"Subsequent Report of."* When used as a "Subsequent Report of:" operations, and after commencement of production, all information contained in this form shall be available, except information contained in Item 17 pertaining to subsurface locations and measured and true vertical depths for all markers and zones not placed on production.

2.4 *Form 9–331 C—Application for Permit to Drill, Deepen, or Plug Back.* All information contained on this form and the location plat attached thereto shall be available except Item 4, Location of Well at Proposed Production Zone, and Item 23, Proposed Casing and Cementing Program.

2.5 *Form 9–1869—Quarterly Oil-Well-Test Report.* All information contained on this form shall be available.

2.6 *Form 9–1870—Semi-Annual Gas-Well-Test Report.* All information contained on this form shall be available.

2.7 *Multi-point Back-Pressure-Test Report.* All information contained on this form shall be available.

2.8 *Sales of Lease Production.* Information contained on the monthly U.S. Geological Survey computer printout showing sales volumes, value, and royalty on production of oil, condensate, gas, and liquid products by lease shall be made available.

2.9 *Availability of Inspection Records.* All accident-investigation reports, pollution-incident reports, facilities-inspection data, and records of enforcement actions are also available for public inspection.

2.10 *Availability of Data and Information Submitted by Lessees.* It has been determined that much information submitted by lessees, as a result of OCS Orders and OCS Notices to Lessees and Operators, is nonproprietary in nature or that release of such information is necessary for the proper development of the lease. This information will be made available for public inspection, except for those portions which the lessee shall designate, with the Supervisor's approval, as trade secrets and commercial or financial information which is privileged or confidential. The available information will include:

a. Notices of support activity.

b. Oceanographic and meteorological data collected from drilling units and production facilities during the period of operations.

c. Results of site surveys required prior to drilling or placement of platforms or structures, such as shallow geologic hazard surveys, archeological/cultural resource surveys, or other surveys related to the placement of platforms or structures.

d. Drawings, maximum environmental design criteria, and rated capability data of mobile drilling units and structures.

e. Oil Spill Contingency Plans.

f. Critical Operations and Curtailment Plans.

g. Other data required under 30 CFR 250.34.

2.11 *Expired Leases.* All information is available upon the expiration of a lease.

3. *Information Exempt from Public Inspection.* The information in subparagraphs 2.1 through 2.4 which has been restricted from public inspection is classified as geological and geophysical data. The release of this data is subject to the following restrictions.

3.1 *Leases Issued Prior to June 11, 1976.* For leases issued prior to June 11, 1976, the classified data is exempt from disclosure under exemption No. (9) of the Freedom of Information Act [5 U.S.C. § 552(b)(9) and 43 CFR 2.13 subsection (c), *"Statutory Exemptions." (9)].*

3.2 *Leases Issued After June 11, 1976.* For leases issued after June 11, 1976, the classified data is available in accordance with 30 CFR 250.97, *Public Inspection of Records*, as follows:

a. *Geophysical Data.* Geophysical data shall not be available for public inspection, except as provided in 2.10c, without consent of the lessee as long as the lease remains in effect or for a period of 10 years after the date of submission, whichever is less, unless the Supervisor, with the approval of the Director, determines that earlier release of this information is necessary for proper development of the field or area.

b. *Geological Data.* Geological data shall not be made available for public inspection without the consent of the lessee as long as the lease remains in effect or for a period of 2 years after the date of submission, whichever is less, unless the Supervisor, with the approval of the Director, determines that earlier release fo such information is necessary for the proper development of the field or area. In accordance with 30 CFR 250.38, *Well Records*, data and well records shall be transmitted to the Supervisor upon request or, if not requested, within 30 days following completion or suspension of any well. For the purpose of orderly release of data, in all cases the date of submission will be considered to be 30 days following such completion or suspension.

4. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.12(b).

Approved:

Don E. Kash,

Chief, Conservation Division.

[FR Doc. 79-15392 Filed 5-17-79; 8:45 am]

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federal register

Friday
May 18, 1979

Part V

Department of the Interior

Office of the Secretary

Department of Commerce

National Oceanic and Atmospheric Administration

Fish and Wildlife Coordination Act, Uniform Procedures for Compliance

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 410]

Fish and Wildlife Coordination Act; Notice of Proposed Rulemaking

AGENCY: National Oceanic and Atmospheric Administration, Commerce; Office of the Secretary, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This Notice invites public participation in the development of rules which would establish uniform procedures for federal agency compliance with the Fish and Wildlife Coordination Act (FWCA). The President's Water Policy Message of June 6, 1978 and the President's Water Policy Memorandum dated July 12, 1978, directed the publication of these rules. These rules would standardize agency procedures and interagency relationships in the analysis of the impacts of federal, or federally-approved, water-related projects upon wildlife resources. They relate closely to the procedures established for compliance with the National Enviornmental Policy Act [NEPA].

DATES: Written comments must be received no later than July 17, 1979.

ADDRESS: Comments should be addressed to: Associate Director (AE), Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Written and oral comments will be received at public hearings to be convened in the following cities on dates to be later announced by notice published in the **Federal Register:**
Arlington (Dallas/Ft. Worth), Texas
Washington, D.C.
San Francisco, California
New Orleans, Louisiana
Denver, Colorado

FOR FURTHER INFORMATION CONTACT:
Thomas J. Bond, Fish and Wildlife Service, Division of Ecological Services, 18th and E Sts. NW., Washington, D.C. 20240, (202) 653–5952.
James R. Chambers, National Marine Fisheries Service, 3300 Whitehaven St. NW., Page Building II, Washington, DC 20235, (202) 634–7940.

SUPPLEMENTARY INFORMATION:

I. Procedural Background

In a Water Policy Memorandum dated July 12, 1978, President Carter directed that—

> The Secretary of the Interior in cooperation with the Secretary of Commerce shall promulgate regulations by March 1, 1979, defining the requirements and procedures that must be met for fully complying with the Fish and Wildlife Coordination Act.* * * Then, not later than 3 months after promulgation of such final regulations, Federal agencies with consultative responsibilities under the [FWCA] shall publish . . . separate procedures to be followed in implementing the regulations for [the FWCA]. These procedures shall be reviewed, and if consistent with the regulations, approved within 60 days by the Secretary of the Interior . . . and shall be published in final form. These regulations shall include acceptable methods for determining adequate measures to prevent or to mitigate losses to fish, wildlife, . . . and other resources protected by [the FWCA] . . . and procedures to ensure compliance of all projects not yet constructed with [the FWCA] and these regulations.[1]

A Notice of Intent to Propose Rules under the FWCA was published in the **Federal Register** on September 29, 1978. 43 FR 44870–44872. We received a large number of responses to the questions asked in that Notice, particularly from state fish and wildlife agencies. The staff of the Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration (NOAA) which participated in the drafting of these rules held numerous conferences with interested Congressional staffs and with most federal agencies which would be affected by these rules. In addition, the President's Water Policy Implementation Task Force on Environmental Statutes discussed, and held public hearings on, the President's proposal for FWCA rules.

II. The FWCA

The FWCA requires federal agencies (hereinafter "action agencies") which propose, or are authorized, to undertake the impoundment, diversion, deepening, or other control or modification of waters of any stream or other body of water, or which are asked to approve such activity in some way, to provide wildlife conservation equal consideration with other features of such projects throughout the agencies' planning and decision-making processes. It requires such agencies, or applicants to such agencies, to first consult with state and federal wildlife agencies with a view to ascertaining what project facilities, operations, or measures may be considered necessary by those agencies to mitigate and compensate for project-occasioned losses to wildlife resources, as well as to enhance those resources.

The FWCA further requires that the reports and recommendations of wildlife agencies on the wildlife aspects of such projects shall be presented to action agency decision-makers and (where applicable) the Congress, and that the action agencies shall give full consideration to those reports. Action agencies are required to include in project plans such means and measures for wildlife conservation as they may find justifiable to obtain maximum overall project benefits, and the costs thereof are to be considered integral to those of the project.

III. Relationship of the FWCA and This Proposal to NEPA and Other Environmental Review Requirements

Because of the breadth of the concerns imposed upon wildlife agencies by the FWCA, more is required of wildlife agencies in carrying out their commenting responsibilities under NEPA than is required of most other agencies who comment upon environmental impact statements (EIS). The Eighth U.S. Circuit Court of Appeals has noted that "[t]he proposed mitigation plans go to the very heart of the question before the [agency] preparing its environmental impact statement—whether the project should proceed at the present time in view of its environmental consequences." *Environmental Defense Fund v. Froehlke,* [Cache River], 473 F.2d 346, 351 (8th Cir. 1972).

The procedures established in these proposed FWCA rules can be carried out at the same time that action agencies are complying with the NEPA regulations, particularly prior to and during the preparation of a draft EIS.[2]

[1] The President also directed the submission of annual reports to the Office of Management and Budget which demonstrate compliance with environmental protection statutes, including the FWCA. Finally, the President directed that—

> In all project construction appropriation requests, agencies shall include designated funds for all environmental mitigation required for the project and shall require that mitigation funds be spent concurrently and proportionately with construction funds throughout the life of the project.

These reporting and funding directives are being analyzed by the President's Water Policy Implementation Task Force on Environmental Statutes and are not addressed in this Notice. However, should that Task Force so recommend, these rules may be amended at a later date to incorporate the procedures adopted for complying with these latter two directives.

[2] It has been stated that "compliance with the National Environmental Policy Act . . . is *de facto* compliance with [the FWCA]." *Cape Henry Bird Club v. Laird,* 359 F. Supp. 404 (W.D. Va. 1973). This conclusion was presumed by that Court to be justified by *Environmental Defense Fund, Inc. v. Corps of Engineers* [Gillham Dam], 325 F. Supp. 749, 754 (E.D. Ark. 1971), which held that where a federal agency observes the requirements of NEPA, "it will automatically take into consideration all factors

Footnotes continued on next page

The relationship between the NEPA regulations and these proposed rules has been carefully drawn here and specific cross-citations have been made to the NEPA regulations where appropriate. § 410.3 (definitions of "compensation," "loss prevention," "mitigation"); § 410.16(a); (general relationship); § 410.15 (lead agencies); § 410.22(b)(4) (scoping); § 410.22(a)(1) (preliminary review of applications); § 410.23(b) (timing of reports by wildlife agencies); § 410.24(a)(2) (findings on justification for wildlife mitigation measures in draft EIS); §§ 410.32(b), 410.32(d)(1)(i) (compliance with NEPA in development of General Plans); § 410.33(c) (post-authorization monitoring).

The requirements of NEPA and the FWCA are similar in many respects. First, by requiring that wildlife conservation be given "equal consideration" with other features of water resource development programs, the FWCA assigns a weight to wildlife values in making determinations on the content of Federal project plans or Federal approvals. This parallels the goals and policies of Section 101 of NEPA, and the requirements in Section 102(4) and (B) that agencies use a systematic interdisciplinary approach to insure that environmental values and amenities are given appropriate consideration along with economic and technical factors. The legislative history of the FWCA shows that Congress was prepared to accept a reduction in the benefits of other project purposes in order to obtain the benefits of fish and wildlife conservation.

Secondly, NEPA's requirement that wildlife impacts and mitigation alternatives be considered in environmental impact statements carries with it an obligation to undertake mitigation activities to the fullest extent possible in order to achieve the goals of Section 101. See NEPA Section 102 and 40 CFR 1505.2(c) and 1505.3. The FWCA requires (1) the preparation of a plan containing specific measures to mitigate and compensate wildlife losses, as well as to enhance wildlife resources, (2) the submission of that plan to Congress at the same time project reports are submitted, and, (3) the implementation of the authorized mitigation plan concurrently with construction.

The FWCA is more than a mere consultative responsibility; it is an affirmative mandate to action agencies, of which consultation with wildlife agencies is only a part. Like NEPA, it requires early planning and post-consultation findings and implementation. Moreover, it speaks specifically to benefit-cost calculations and allocates responsibilities for paying the costs of mitigation. 16 U.S.C. 662(c),(d), 663(b). This complements the requirements of NEPA's Sections 102(2)(C) and 102(2)(E). In the case of projects requiring EIS's, the NEPA regulations provide that when benefit-cost analyses are prepared, they shall be incorporated by reference or appended to the EIS to assist in the evaluation of alternatives, and of environmental consequence. 40 CFR 1502.23. These proposed reguations are thus fully consistent with and complement NEPA and the NEPA regulations.

These rules will also advance the President's directive that federal agencies should coordinate and simplify invironmental review requirements. See President's Invironmental Message of May 23, 1977, 13 WEEKLY COMP. OF PRES. DOC. 782, 794. FWCA compliance is to be coordinated with other federal environmental review requirements. See §§ 410.23(b) and 410.23(c)(6).

In addition, § 410. 15 permits two or more action agencies which each have jurisdiction over an action, and which would separately have to comply with the FWCA, to complete the consultation and reporting phases of FWCA compliance through one (lead) agency. Section 410.16(b) requires action agencies which are considering the approval of a project to which the FWCA applies to require their applicants to make a showing of compliance with other permit programs to which the FWCA applies separately; namely, sections 402 and 404 of the Clean Water Act and sections 9 and 10 of the River and Harbor Act of 1899. Action agency observance of these two provisions could avoid placing wildlife agencies in the position of commenting upon the same proposed project at different times. This is the "two bites at the apple" problem which is posed for any federal agency administering a federal environmental review requirement respecting an action over which several other federal agencies may also initiate primary jurisdiction. This problem is exacerbated when an applicant for one of these various federal approvals makes application to the agencies at different points in time. Such results also occur when one federal regulation becomes applicable to a project only after the jurisdiction of another agency has been invoked by an application filed under a different program.

IV. Applicability

Subpart B of these rules establishes a compliance procedure for all projects covered by the FWCA, with slightly different procedures applied, depending upon whether the project in question is federal or "non-federal." Latitude is provided to action agencies during the proposed rulemaking and implementing procedures phases of this initiative to discuss with the Secretary of the Interior and the Administrator of NOAA FWCA compliance procedures which would be carefully tailored to their individual needs and programs.

No procedures would be established in advance for FWCA compliance by comprehensive water and related land resources planning programs, for certain projects undertaken in emergencies, and for federal programs administered by states. An opportunity is provided during the proposed rulemaking and implementing procedures phases of this initiative to devise FWCA review procedures appropriate to these types of activities.

V. Project Accounting

Several provisions of these proposed rules should resolve some of the confusion which exists over the treatment of wildlife resource-related project accounting for benefit-cost, reimbursement, and budgeting purposes. These rules make a distinction between "mitigation" and "enhancement". See § 410.3. This is necessary for two reasons. First, the costs of installing fish and wildlife enhancement measures at federal projects are reimbursed to the United States under rules which differ substantially from those which govern the reimbursement of the costs of loss prevention and mitigation measures. *Compare* 16 U.S.C. 460*l*–12, *et seq., with* 16 U.S.C. 662(b), 662(d).

Second, the costs of fish and wildlife loss prevention and mitigation measures are required by the FWCA to be considered as costs, not benefits, for the purposes of any benefit-cost analysis which may be required by other law. See § 410.24(b). Although the costs of adopted wildlife resource loss-compensation measures, and of uncompensated losses, would be figured as costs in the overall project benefit-

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Footnotes continued from last page

required by [the FWCA] and it is not reasonable to require them to do both separately." While it may not have been appropriate to require the Corps in that case to consult again with wildlife agencies—it having done so previously under NEPA—it is quite another matter to suggest the NEPA and the FWCA impose identical burdens. Other cases considering the relationship of the two Acts have recognized their distinct requirements. *Zabel v. Tabb*, 430 F.2d 199 (5th Cir. 1970); *Akers v. Resor*, 339 F. Supp. 1375 (D. Tenn. 1972); *National Wildlife Federation v. Andrus*, 440 F. Supp. 1245 (D.D.C. 1977); *Texas Committee on Natural Resources v. Alexander*, —— F. Supp.—— (E.D. Texas, December 8, 1978) unofficially reported 12 ERC 1676.

cost ratio, conservation measures would not be subjected to normal benefit-cost analysis in order to determine whether they are justified. See § 410.24(b)(3)(ii) and § 410.24(a)(2).

These rules also make it clear that the total costs of wildlife compensation measures (acquisition, operation, maintenance, replacement, and management) are to be included in cost analysis. See § 410.24(a)(2). In the case of federal profects, the budgeting of such costs will be by the construction agency, in order that the true costs of water projects can be recognized. See § 410.32(e); 16 U.S.C. 663(b). Lack of agency and Congressional attention to funding of OM&R costs has been a major factor foreclosing authorized mitigation.

VI. Techniques for Evaluating Project Impacts on Fish and Wildlife Resources

These rules respond to the President's directive that "these regulations shall include acceptable methods for determining adequate methods to prevent or to mitigate losses to fish, wildlife, * * * and other resources protected by * * *" the FWCA. This is consistent with and carries out NEPA's Section 102(2)(3), which requires "to the fullest extent possible" that all agencies identify and develop methods and procedures which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making, along with economic and technical considerations. These rules would require, at least for federal projects, that the federal construction agency receive, consider, and transmit to the Congress an analysis of the extent of wildlife resource productivity lost to, or gained with, the proposed project, and an analysis of the compensation measures which are required to replace that loss, measured in terms of equivalent wildlife resource productivity. See §§ 410.23(c)(3), 410.24(a)(1)(ii), 410.24(c). In preparing their reports under the FWCA, wildlife agencies are directed to use evaluation techniques in describing project effects and identifying conservation measures which are directed at qualifying and quantifying potential effects on wildlife, their habitat and related values. See § 410.23(c)(1). Action agency findings on conservation measures which they deem justifiable must be based upon the use of assessment and evaluation techniques reflecting wildlife habitat values. See § 410.24(b)(1).

VII. Section-by-Section Analysis

A general overview of the remaining, more significant provisions of the proposed rules follows. The FWCA and these rules apply to water-related federal actions; defined as "projects". Different procedures are provided, depending upon whether the projects in question are federal undertakings, as opposed to "non-federal" projects which are "approved" by a federal agency. These procedures are set forth in Subpart B.

In § 410.3, the terms "action agency", "approval", and "project" are defined. "Project" defines the kind and location of impacts covered by the FWCA. "Action agency" defines the kinds of federal actions which are the predicate for application of the FWCA. "Approval" refers to a federal agency action which provides entitlements for *non*-federal projects.

The terms "loss prevention", "mitigation", and "enhancement" have been defined and distinguished after extensive deliberations among wildlife resource planners. They are distinguished because (1) they have different economic and financial connotations (described above), and (2) in order to emphasize them as separate steps in the action agency approval and authorization process. Enhancement is recognized to be a separate planning objective which is just as important as mitigation. See §§ 410.24(b)(1), 410.21.

"Compensation" is used to state an objective or measure of loss prevention and mitigation planning. It is a term used in the FWCA.

The definition of "Regional Directors", as applied in § 410.22(a) (1) and (2), confirms the fact that the jurisdiction of the Departments of the Interior and Commerce over all projects to which the FWCA applies will be totally concurrent. It is recognized that different levels of effort will be devoted to various projects by the two federal agencies, depending upon such factors as project location, resource impact, program emphasis, and staffing. Should the pending proposal for executive reorganization become effective, appropriate changes will be made to this proposal.

"Wildlife agency" is defined and used to refer to federal and state wildlife agencies collectively. In the case of state agencies, the FWCA is construed to require consultation with the state agency which exercises "immediate and direct administration over the fish and wildlife resources" of the affected state or states.

"Wildlife" and "wildlife resources" are defined by taxonomic classifications, as well as by reference to habitat elements. As applied in § 410.24(b)(1), the rules require that action agencies consider impacts upon wildlife resource not only in the project area, but wherever they "occur". For example, an upstream water project could have significant impacts upon the wildlife resources of an estuary far removed from the project site.

"Wildlife resource properties", as applied in § 410.32, refers to areas designated by federal agencies in connection with federal projects for the conservation of wildlife resources. Areas set aside in connection with non-federal projects are not affected by these proposed rules.

Section 410.11(a) should resolve a great deal of confusion which has arisen over the applicability of the FWCA to certain federal programs, project locations, actions indirectly affecting water, and types of water resources. It is recognized that by defining the applicability of the FWCA, in part, by reference to actions which "depend upon, or necessarily result in, a diversion, control or other modification of a stream or other body of water," there will be a point at which the effects of that federal action upon water are remote. During proposed rulemaking or the implementing procedures phase of the President's initiative, action agencies and the public may recommend to the Secretary of the Interior whatever special compliance procedures they feel should be applied to these programs.

Section 410.11 (b) and (c) restate the exemptions or exclusions contained in the FWCA for certain programs or projects. Public and agency views are particularly solicited on the extent to which the FWCA applies to certain of such programs directly. Agreements have been reached between wildlife agencies and some of those agencies to insure that wildlife resource considerations are factored into their decision-making processes. These agreements will appear in the Appendices to this Part. Though the FWCA may not apply to such agency programs directly, the FWCA does apply through other agency environmental review programs applicable to these otherwise exempt projects and programs. The most apparent of those other agency programs are: the Section 103(b), 402, and 404 permit programs under the Clean Water Act; the permit programs under §§ 9 and 10 of the River and Harbor Act of 1899.

Section 410.12 deals with the timing and extent to which these rules will be applied to particular projects which are in various stages of authorization, approval, or construction. It is responsive to the President's directive that these rules should "insure compliance of all projects not yet constructed with [the FWCA]". This includes, *inter alia*, projects which are authorized and on which construction is not complete. Guidance is sought from the affected agencies and the public on screening criteria [see § 410.12(c)(1)] which could be use to selectively apply these rules to projects where construction has begun but has not yet advanced to a stage where compensation measures are foreclosed.

A vast potential exists for examining the fish and wildlife resource conservation potentials of authorized federal water projects, particularly those authorized many years ago. Should the procedures of Subpart B become applicable to such projects in accordance with this provision, the relevant decision-makers and the Congress would be provided with up-to-date analyses of the fish and wildlife resource needs and potentials of these projects.

It is understood that the views, needs, and rights of federal projects sponsors would be taken into account during the observance of these procedures, and in any later submissions which may be made to the Congress for implementing the ensuing recommendations of the Executive Branch.

Subpart B sets forth the basic FWCA compliance procedure. Section 410.21 provides substance to the term "equal consideration," as used in the FWCA. It emphasizes the relative weight to be accorded to wildlife resource conservation. It identifies enhancement as a separate project objective of equal importance with the objective of merely compensating for wildlife resource losses. It defines the FWCA compliance process as involving four steps; not just as the consultation and avoidance process which sometimes characterizes the practices of action and wildlife agencies today.

Section 410.22 largely restates existing action agency practices for the initiation of wildlife agency involvement in their planning and approval processes. The intent of this section is to get wildlife agencies involved early so that they can complete their necessarily extensive review in time for action agencies to use their input in a meaningful way. For larger projects which are likely to have the most significant impact upon wildlife resources, action agencies are required to provide, in their application procedures for non-federal projects, that applicants for such projects must provide documentation showing that the applicant has previously consulted with the wildlife agencies. This practice has been used successfully by the Federal Energy Regulatory Commission. Delays in action agency approval processes are avoided by the development of environmentally sound project applications. Often, tardy, post-application consultation with wildlife agencies places them in a reactive posture, often with a short time frame for response. The resultant delays caused by honest attempts to carry out FWCA responsibilities are characterized as faults in the FWCA and wildlife agencies.

No period of time is specified for this consultation in advance of the application in question. This is left to the judgment of the applicant. Since this procedure applies only in the case of larger projects—which doubtless will require an extensive period of pre-application planning—it should not be burdensome. To the extent that this procedure may encourage the filing of well-conceived applications, it will result in a saving of action agency resources.

Section 410.24 deals with the decision-making processes of action agencies. It requires action agencies to make a record of their decisions concerning the wildlife resource component of environmental mitigation. It also requires public disclosure of, and public participation in, action agency decisions on which wildlife conservation measures will be incorporated into the project. It identifies the financial cost of wildlife conservation measures as the subject of benefit-cost analysis. These cost are to be developed for alternatives so that a true comparison can be made among them, and so that, if an alternative to the primary proposal is selected, appropriate conservation measures are available for inclusion in the authorization.

Section 410.24(b)(3) specifies some considerations which may not be taken into account by action agencies in making the statutorily-required findings as to which wildlife conservation measures recommended by wildlife agencies are justified to maximize overall project benefits. Whereas it is true that action agencies have the ultimate authority under the FWCA to make these findings, it is also true that, at least in the case of federal projects, the Congress, not the federal action agency, makes the final determination. Moreover, these findings are made by action agencies in the context of certain objectives and requirements of the FWCA.

Paragraphs (b)(3)(ii) and (b)(3)(iii) of § 410.24 provoked much discussion during the preparation of these proposed rules, partly because they are misunderstood. These rules apply only to measures recommended for the "compensation" of wildlife resource losses, not to "enhancement." The FWCA provides that wildlife resource compensation measures are to be considered costs of doing business in public resource areas. Thus, the fact that measures necessary for compensation of wildlife resource losses may produce "benefits" under one of a number of different methods of calculation is totally irrelevant to the question of whether those measures are justified under the FWCA.

Similarly, the unwillingness of non-federal entities to fund or reimburse their statutory share of federal project costs otherwise deemed justified to compensate for wildlife resource losses should not be a reason for refusing to seek authorization of such measures. Paragraph 410.24(b)(3)(iii) does not apply to non-federal projects. If, prior to federal project authorization, non-federal entities indicate an unwillingness to fund an appropriate share of these project costs, the project would not be recommended for authorization. Subsequent to authorization, if the action agency determines that wildlife resource compensation measures which had not previously been authorized should be recommended for authorization, then alternative cost-sharing provisions can be recommended in those cases where non-federal entities are unwilling (e.g., by reason of contract rights) to share the costs. Nothing in these rules would require the adoption of such measure in those circumstances or require the imposition of such burdens on non-federal entities.

Section 410.32 should provide an incentive for wildlife agencies and action agencies to devote more attention to wildlife areas which had been proposed to justify project authorizations. If, as a result of the FWCA compliance process, a project is authorized in part upon the representation that land and water areas will be acquired and managed in order to replace the wildlife productivity lost to the project, and then the affected agencies do not provide resources to make good that representation, then the wildlife resource and the public have been short-changed. Bare acquisition, without management, is not mitigation.

VIII. Alternative Approaches

This discussion focuses upon alternatives which were considered to those provisions of these proposed rules which would make significant changes in action agency procedures.

The procedures contained in Subparts B and C apply to all projects to which the FWCA applies, unless they are rendered inapplicable by specific provision of these rules or by Secretarial action during the implementing procedures phase of the President's initiative. See § 410.12. The Departments of the Interior and Commerce are not in a position at this time to review and analyze all federal programs to determine whether the procedures of Subparts B and C can be meaningfully applied to all such programs. Action agencies are in a much better position to examine these questions in the first instance and to seek selective modification, when necessary.

Section 410.12(c) is responsive to the President's directive that these rules should apply to authorized but not completed *federal* projects. These rules would not apply to all such projects. In certain of these cases, the Secretary of the Interior can consider specified criteria and find that these procedures will be applied. In such cases, affected federal agencies are provided an opportunity to state whether they believe the rules should apply. However, if an authorized project is not exempt, action agencies are admonished not to make "any irreversible or irretrievable commitment of resources pending compliance with these rules which would foreclose the consideration of alternatives to compensate for wildlife resource losses."

Alternatives considered included a provision making these rules applicable immediately upon their effective date and a provision which would direct the action agencies not to seek funding for these projects until these rules were complied with. We also considered making these rules applicable to approved, non-federal projects. It was determined that the proposal adopted was the least burdensome alternative which was still acceptable from the standpoint of meeting the intent of the President's directive.

Section 410.22(a)(1) would require action agencies to change their procedures for receiving applications for non-federal projects which they approve. It would require a showing that the applicant undertook pre-application consultation with the wildlife agencies. This requirement applies only to applications for the larger, potentially more damaging projects (from the perspective of wildlife resource conservation). An alternative considered and rejected would have applied this procedure to all, or wider, classes of projects. Also rejected was a proposal to require pre-application consultation with wildlife agencies prior to a fixed period in advance of filing an application with the action agency. The proposal which was adopted was considered acceptable from the standpoint of promoting environmentally sound non-federal projects applications.

Although the findings which would be required of action agencies by § 410.24(a) are being made as a matter of practice by some action agencies, this provision was deemed necessary to ensure that wildlife agencies and the public are able to participate in this aspect of decision-making by all action agencies. In many cases, the wildlife agencies and the public are excluded from action agency decision-making on wildlife conservation recommendations and are provided no meaningful rationale for why they were rejected. Alternative procedures which were rejected included (1) publication of these findings in only one media (the Federal Register), (2) a provision requiring action agency decision-makers to provide their rationale for rejecting wildlife conservation measures recommended by their own staffs, and (3) a provision for mandatory public hearings upon the request of wildlife agencies.

Section 410.24(b)(1) requires that findings made by action agencies as to loss prevention and mitigation measures deemed justified to maximize overall project benefits "shall be made using assessment and evaluation techniques based upon wildlife habitat values. Monetary values may be displayed and used in measuring the cost-effectiveness of alternative mitigation plans but shall not be used for justification purposes." This provision recognizes the limitations of monetary or user-day computations of value in determining whether recommended loss prevention and mitigation measures will compensate for wildlife resources lost, and therefore should be adopted. Alternatives considered included a proposal that assessment and evaluation techniques based upon wildlife habitat values should be emphasized, but not required in such findings. Also considered and rejected was a provision requiring the use of a particular assessment and evaluation technique, once approved or certified by the Secretary of the Interior, coupled with a ban upon the use of other such techniques subsequent to certification.

The selected proposal serves the function of forcing wildlife and action agencies to focus upon losses to wildlife resources, rather than on the human use of such resources. If habitat productivity is lost to a project, no amount of human use of the project features will replace it. The fact that a value can be attached to human use of project features or of "replacement" habitat is gratuitous but bears no relation to the assessment of what must be done to replace habitat productivity lost to a project. The use of computational methods other than those based on wildlife habitat productivity (or values) has persisted because there has been insufficient incentive such as these rules to abandon them.

IX. Rulemaking Requirements

The Department of the Interior and the Department of Commerce have determined that the rulemaking procedures of the Department of the Interior will be followed. The Department of the Interior has determined that this document is a significant rule but does not require a regulatory analysis under Executive Order 12044, and 43 CFR Part 14. An enviornmental assessment has been prepared and is available from the Associate Director, Environment, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 [(202) 343–4767].

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written and oral comments, suggestions, or objections regarding this proposal in the manner set forth above.

In the Notice of Intent to Propose Rules, published at 43 FR 44870–44872, it was proposed that these rules be codified in Part 403 of Title 50, CFR. In order to provide more room in the 400 series of Title 50 for endangered species regulations, these joint rules will, when adopted, be codified as Part 410 of Title 50.

The joint authors of this document are:

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It is therefore proposed to amend 50 CFR, Chapter IV, by adding a new Part 410 in the manner set forth below.

Dated this 11 day of May, 1979.

James A. Joseph,

Acting Secretary of the Interior.

Elsa A. Porter,

Acting Secretary of Commerce.

PART 410—FISH AND WILDLIFE COORDINATION ACT

Subpart A—General Provisions

Sec.

Subpart B—FWCA Compliance Procedure

Subpart C—Project Implementation

Subpart D—Implementation of This Part

Authority.—Fish and Wildlife Coordination Act, Pub. L. 85–264, 72 Stat. 563 (16 U.S.C. 661, *et seq.*); National Environmental Policy Act of 1969, sec. 102(2)(A) and (B), Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332(2)(A), (B)); 5 U.S.C. 552; Fish and Wildlife Act of 1956, sec. 7, 70 Stat. 1122 (16 U.S.C. 742f); President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978 [See also, Weekly Comp. of Pres. Doc. 105 (June 6, 1978)]; U.S.C. 301.

Subpart A—General Provisions

§ 410.1 Scope.

This Part implements the National Environmental Policy Act (NEPA), 42 U.S.C. 4332, and sections 1–4, 8, and 9 of the Fish and Wildlife Coordination Act (FWCA), 72 Stat. 563, as amended (16 U.S.C. 661–664, 666b, 666c (1976)). The FWCA recognizes that wildlife resources make a vital contribution to the Nation and that federal and non-federal water and related land resources developments will affect such resources. It mandates that wildlife conservation shall receive equal consideration and be coordinated with other features of water resource development programs throughout the action agencies' planning and decision-making processes. It requires such agencies, or applicants to such agencies, to first consult with state and federal wildlife agencies to ascertain what means and measures may be considered necessary by those agencies to prevent and mitigate project-related losses of wildlife resources, as well as to enhance those resources.

The FWCA further requires that reports and recommendations from wildlife agencies be presented to action agency decision-makers and (in the case of federal projects) the Congress, and that the action agencies shall give full consideration to those reports and recommendations. Action agencies are required to include in project plans such means and measures for wildlife conservation as they may find justifiable to obtain maximum overall project benefits to the public. The costs of such means and measures are to be considered integral to those of the project.

§ 410.2 Purpose.

The purpose of these rules is to ensure that wildlife conservation of fully considered and weighted equally with other project features in agency decision-making processes by integrating such considerations into project planning, NEPA compliance procedures, financial and economic analyses, authorization documents, and project implementation. This Part will—

(a) Establish procedures to be followed in achieving compliance with the FWCA in the development and consideration of alternative project plans which provide for the conservation of wildlife resources;

(b) Minimize delays in project authorization decisions and require the development of environmentally sound project plans without needless waste of public and private resources by establishing procedures for the timing and integration of FWCA compliance into decision-making processes while plans are still flexible;

(c) Ensure that planning for wildlife resource conservation measures addresses loss prevention, mitigation, compensation, and enhancement;

(d) Establish guidelines which ensure that applicants for selected classes of non-federal project approvals by action agencies will consult with wildlife agencies before making such applications;

(e) Describe factors to be considered by an action agency in determining what measures are justifiable to obtain maximum overall project benefits to the public;

(f) Require the use of techniques based upon habitat values as the means for assessing impacts on wildlife resources and for evaluating loss prevention, mitigation and compensation measures;

(g) Ensure that comparative benefit-cost analyses of alternative project plans include the construction, acquisition, operation, maintenance, and replacement costs of wildlife conservation measures, and, if quantifiable, the costs of uncompensated wildlife resource losses;

(h) Provide for inter-agency review of, and public participation in, wildlife and action agency decisions on means and measures for wildlife resource conservation.

§ 410.3 Definitions.

As used in this Part:

"Action agency" means a department, agency or instrumentality of the United States which plans, constructs, operates or maintains a project, or which plans for or approves a grant, loan, loan guarantee, financial or technical assistance, permit, lease, license, or contract for projects.

"Approval" or "approve" means final action agency action on an application by a federal, state, or other applicant for a grant, loan, loan guarantee, financial or technical assistance, permit, lease, license, or contract.

"Compensation" means completely offsetting losses to wildlife resource values using measures described in the NEPA regulations [40 CFR 1508.20].

"Conservation" means wildlife resource loss prevention, mitigation, compensation, and enhancement.

"Enhancement" means development or improvement of wildlife resource values of the area affected by the project beyond that which would occur without the project. This term is synonomous with the term

"development and improvement," as used in the FWCA.

"Federal project" means a project planned or constructed by or on behalf of a federal agency.

"Loss prevention" means designing and implementing a project to avoid adverse impacts on wildlife resources. [40 CFR 1508.20(b)]

"Mitigation" means (1) lessening wildlife resource losses to a project through use of loss prevention measures and (2) offsetting losses through use of other structural and non-structural measures. [40 CFR 1508.20(b)–(e)]

"Project" means any action, or planning process which could condition an action, which impounds, diverts, deepens the channel of, or otherwise controls, pollutes, or modifies any water body for any purpose whatsoever. Such water bodies include, without limitation, wetlands and the waters of any stream, including their associated ground water, or estuarine or marine waters seaward to the outer margin of continental shelf (OCS) or fisheries conservation zone, whichever is farther.

"Regional Directors" means the named officials, or designees, of the Fish and Wildlife Service (FWS) [including the Area Director for Alaska] and the National Marine Fisheries Service (NMFS) in whose geographic areas of jurisdiction the project may be located. For projects outside the U.S. territorial sea, "Regional Director" means the named official of both agencies whose area of jurisdiction is closest to the project. [See App. A for addresses and areas of jurisdiction of federal Wildlife agency Regional Directors].

"Reporting Officer" means that action agency official responsible for preparing the project report, obtaining public and agency views, and making recommendations on a proposed project to higher authority (if any) within the agency. Implementing procedures of action agencies will identify appropriate reporting officer(s).

"Wildlife agency" means the FWS, NMFS, and, if the project is to be sited within the boundaries of States of the United States, the state agency(ies) exercising immediate and direct administration over the fish or wildlife resources of the particular state(s) wherein projects are proposed to be, or have been, constructed. For projects to be sited outside the territorial sea, this term means the head of the wildlife agency(ies) of the state(s) nearest the project.

"Wildlife" and "wildlife resources" mean birds, fish, mammals and all other classes of wild animals, and all types of aquatic and land vegetation upon which wildlife is dependent. "Wildlife resources" include the biotic and abiotic factors upon which wildlife depends; i.e. habitat.

"Wildlife resource properties" means the lands, waters, or interests therein to be acquired, reserved, or otherwise set aside by federal agency for the conservation of wildlife resources in connection with a federal project, pursuant to the provisions of section 3 and section 4 of the FWCA.

§ 410.11 Applicability of the FWCA.

(a) *General.* The FWCA applies to federal projects and to non-federal projects which are approved by an action agency. It applies to federal projects which are authorized by the federal construction agency itself, as well as those authorized by the Congress. Examples of projects covered by the FWCA are:

(1) Discharges of pollutants, including municpal, mining and industrial wastes or dredged and fill material, into water or wetlands;

(2) Those involving the construction, operation, or maintenance of channels, turning basins, or other navigation features;

(3) Those involving the construction of dams, impoundments, and/or water diversion structures for flood control, hydroelectric power generation, water supply, cooling ponds, irrigation, recreation, fish and wildlife, or other purposes;

(4) Those which depend upon, or necessarily result in, a diversion, control or other modification of a stream or other body of water, such as: federal water and hydro-power marketing, allocation or contracting decisions; changes in reservoir release and storage plans; diversions for or discharges from power plants; mineral exploration or extraction permits, leases, or licenses on the OCS; reservoir rights-of-way on federal or Indian trust lands; projects conducted in beds of intermittent streams, or those temporarily dewatered; water-related aspects of federal mining or mineral leases, or of mining plans adopted under the Surface Mining Control and Reclamation Act;

(5) Those undertaken to abate damages or causes of erosion, storms, or floods [See paragraph 410.22(a)(2)(iii) for expedited FWCA compliance procedures in these cases];

(6) Those involving the rehabilitation or lining of water conveyance systems;

(7) Water resource and water quality planning programs.

(b) *Previously authorized or approved projects.* Prior authorization or approval of a project does not constitute a waiver, *per se,* of FWCA requirements. By reason of section 2(g) of the FWCA, section 2 of the FWCA does not apply to projects (or project units) authorized or approved prior to August 12, 1958, which were completed or substantially completed on August 12, 1958. A project or project unit is deemed to be substantially completed when sixty percent or more of then-estimated construction costs (as of August 12, 1958) had been obligated for expenditure. However, the FWCA does apply to projects (or project units) authorized or approved prior to August 12, 1958, which were not substantially completed at that time, and to projects (or project units) authorized or approved subsequent to August 12, 1958, regardless of their state of construction or whether completed.

Section 2 applies to action agency initiation of a process of developing a report on the modification or supplementation of plans for previously authorized federal projects (whether or not constructed). It also applies to any application for the renewal or modification of a federal approval.

(c) *Agencies or agency projects specifically exempt from the FWCA.* The FWCA does not apply to the Tennessee Valley Authority, the small watershed program of the Soil Conservation Service (as authorized by Section 3 of the Watershed Protection and Flood Prevention Act of 1954), to impoundment projects where the aggregate maximum surface area of such impoundments is less than ten acres, or to activities for or in connection with programs primarily for land management and use carried out by federal agences with respect to federal lands under their jurisdiction. However, where such projects require other water-related federal approvals, the FWCA applies through those programs.

§ 410.12 Applicability of this part.

Except as provided in §§ 410.13, 410.14, and 410.22(a)(2)(iii), this Part shall apply to projects to which the FWCA applies and shall govern the content of implementing procedures issued in accordance with Subpart D. They shall become applicable as follows:

(a) *Projects not authorized or approved.* For projects in a planning phase and not yet approved or authorized for construction on the effective date of these rules, action agencies shall comply with the procedures and methods prescribed by this Part which are applicable to the planning or approval stages remaining on that date.

(b) *Completed or approved projects.* This Part applies upon action agency initiation of a process of developing a report on the modification or supplementation of plans for previously authorized federal projects (whether or not constructed). It applies to applications for renewal, modification, or relicensing of a non-federal project. It applies to actions which are defined as projects and which are proposed or undertaken at those authorized projects covered by § 410.11(b). These rules will apply to completed federal, and other federally-approved, projects as the action agency may, from time to time, determine practicable.

(c) *Authorized but not completed federal projects.* (1) This Part will become applicable to federal projects, or separately-authorized units thereof, which were authorized for construction but not completed on the effective date of this Part to the same extent that the Principles and Standards Manual of Procedures, issued pursuant to the President's Water Policy Initiatives of July 12, 1978, will be applied to such projects. The Secretary of the Interior may nevertheless determine that this Part will apply to projects otherwise exempt by reason of the foregoing if, after a review of evidence submitted in accordance with paragraph (c)(3) of this section, the Secretary determines that—

(i) Authorized fish and wildlife conservation measures will not be installed or will not substantially compensate for fish and wildlife resource losses caused by the project, and

(ii) The impacts of the project upon wildlife resources are significant, or

(iii) Construction has not proceeded to the point that all options for wildlife conservation are practically foreclosed. Where appropriate, the Secretary of the Interior will consult with the Administrator of NOAA in making this determination.

(2) If this Part becomes applicable to a Federal project in accordance with paragraph (c)(1) of this section, action agencies shall not make any irreversible or irretrievable commitment of resources pending compliance with this Part which would foreclose the consideration or alternatives to compensate for wildlife losses.

(3) Within Ninety (90) days of a written request by the Secretary of the Interior, action agencies will submit the following information to the Secretary of the Interior with respect to each federal project, and separately-authorized federal project unit, which is otherwise exempt by reason of paragraph (c)(1) of this section:

(i) Its location, and the source and date of authorization;

(ii) The state of constuction (if any) and the percentage of current total estimated project cost which has been expended;

(iii) A description of the mitigation and enhancement measures which were authorized and a discussion of any difficulties encountered which could defeat adoption of such measures;

(iv) Where mitigation and enhancement measures may be under consideration for future authorization, an explanation of the status of planning and approval of such proposals within the action agency;

(v) If mitigation or enhancement land acquisition was authorized, a statement of the percentage of the authorized amount which has been acquired;

(vi) A ranking of those projects most in need of Secretarial action under paragraph (c)(1), stating the rationale for such ranking and listing those not under active consideration for construction;

(vii) A statement of whether the project meets one or more of the criteria referred to in paragraph (c)(1) and, if it does, whether the procedure of this Part should nonetheless apply.

(d) *Waivers by States or NMFS.* Where, in the judgment of a Regional Director of NMFS or the head of a state wildlife agency, their involvement in the procedures set forth in Subparts B and C would be inappropriate, he or she may waive those requirements as applied to said agency.

§ 410.13 Comprehensive water resources planning requirements.

With the exception of Level C studies undertaken by federal action agencies, Subpart B will not apply to comprehensive water or related land resources planning requirements. However, § 410.21 does apply to such programs. Wildlife agencies will be involved in such programs as provided in Subpart D.

§ 410.14 Federal programs administered by States.

Subpart B will not apply to projects approved under federal programs administered in whole or in part by States, except as provided pursuant to § 410.41.

§ 410.15 Lead action agencies.

Wildlife agencies will coordinate action compliance with the procedural requirements of §§ 410.22 and 410.23 of this Part through lead action agencies designated in accordance with NEPA regulations [40 CFR 1501.5], or, where not so designated, through an action agency which obtains the concurrence of other action agencies which may have jurisdiction over the project in question to act in that capacity. Notwithstanding such agreement, action agencies must comply with the other requirements of the FWCA and this Part.

§ 410.16 Relation to other environmental review requirements.

(a) Compliance with NEPA and the Principles and Standards of the Water Resources Council are complementary to, but not a substitute for, compliance with the FWCA or these rules. To the maximum extent possible, the reports and recommendations of wildlife agencies will accompany environmental assessments and be incorporated into the draft and final decision document and the draft and final environmental impact statement (EIS), and Principles and Standards analysis.

(b) If a permit is required under sections 103(b), 402, or 404 of the Clean Water Act or section 9 or 10 of the River and Harbor Act of 1899 for projects of, or pending approval before, a federal agency, that agency shall ensure compliance with those permit programs before, or at the same time, approves, seeks authorization of, or seeks construction funding for the project.

(c) Many statutory authorities require consultation with the Departments of the Interior and/or Commerce on the wildlife impacts of federal actions. Federal, state, or private agencies or individuals are encouraged to adopt and employ the procedures or methods prescribed by these rules to obtain the full loss prevention, mitigation, and enhancement potential of projects, whenever authorized.

Subpart B—FWCA Compliance Procedure

§ 410.21 Equal consideration.

Equal consideration of wildlife resource values in project planning and approval is the essence of the FWCA compliance process. It requires action agencies to involve wildlife agencies throughout their planning, approval, and implementation process for a project and highlights the need to utilize a systematic approach to analyzing and establishing planning objectives for wildlife resource needs and problems and developing and evaluating alternative plans. Wildlife resources will be conserved in action agency project planning and approval by minimizing adverse effects, compensating for wildlife resource losses, and enhancing wildlife resource values.

Compliance with the equal consideration mandate requires:

(1) *Consultation* between action agencies (or applicants to them) and wildlife agencies on measures necessary to conserve wildlife in project planning, construction, and operation;

(2) *Reporting* by wildlife agencies on the effects of the project and its alternatives upon wildlife resources and on measures recommended to conserve wildlife resources in connection with the project and its alternatives;

(3) Full *consideration* by the action agencies of measures recommended to conserve wildlife resources, both with regard to the project and its alternatives;

(4) *Implementation* of justifiable conservation measures.

§ 410.22 Consultation.

(a) *Initiation.* The FWCA compliance process may be initiated by a potential applicant, an action agency, or a wildlife agency.

(1) Potential Applicants. Implementing procedures of action agencies shall provide that applicants for those non-federal project approvals enumerated below contain written evidence that they initiated the FWCA compliance process with both Regional Directors and the head of the state wildlife agency exercising administration over the fish and wildlife resources of the state(s) wherein the project is to be constructed. This pre-application procedure applies to projects which—

(i) Involve drainage, dredging, filling, or other modification of wetlands greater than ten acres, create impoundments greater than fifty acres, involve one half mile of dredging or stream channel modification, or

(ii) Require a water-dependent power project approval from the Federal Energy Regulatory Commission (FERC), the Nuclear Regulatory Commission (NRC), or the Rural Electrification Administration (REA). This paragraph also applies to preliminary permit (FERC) and early site review (NRC) applications. The intent of this paragraph (a)(1) of this section is to assist applicants in designing environmentally sound projects without waste of their planning resources and to minimize the potential for delay in the processing of applications. Action agency implementing procedures shall advise that consultation should be initiated by the applicant at the earliest stages of its project planning, and that its submissions to wildlife agencies shall indicate the general work or activity being considered, its purpose(s), and the general area in which it is contemplated. The information provided to wildlife agencies will be specific enough to allow them to identify possible effects on wildlife and to identify potential conservation measures (including alternatives), and yet be general and flexible enough to allow the incorporation of justifiable conservation measures prior to submission of a formal application to the action agency. Wildlife agencies will provide to the potential applicant a brief analysis of potential impacts to wildlife resources, suggested modifications or alternatives, and an indication of which project features, if any, would likely be viewed as being unacceptable at the time of permit or license review. The detail of analysis and refinement of recommendations will be related to the level of detail of the proposed plan. The wildlife agencies shall identify any areas of concern or analysis that require further detail or study. The results of this analysis should be integrated in or accompany the action agency's NEPA environmental assessment.

(2) Action agencies. Notwithstanding any applicant consultation which may be required by paragraph (a)(1) of this section, action agencies shall initiate (or continue) the FWCA compliance process in the following manner:

(i) Federal projects. Action agencies shall notify both Regional Directors and the head of the state wildlife agency (through OMB Circular A–95 procedures, or otherwise) upon initiation of studies or actions which may lead to the authorization of a federal project. This also applies to the initiation of planning for the modification or supplementation of project reports on previously authorized project. See § 410.12(b)(2). Action agencies shall invite wildlife agencies to participate actively throughout the planning process. [For existing Memoranda of Understanding, see App. B and C].

(ii) Federally-approved projects. Appropriate written notice of preliminary permit (FERC) and early site review (NRC) applications, as well as NRC and FERC construction license and permit or renewal applications, will be forwarded for comment to both the Secretaries of the Interior and of Commerce and to the head of the wildlife agency for the state(s) wherein the proposed construction may occur. Appropriate written notice of all other applications to federal agencies for approvals, including renewal applications, shall be forwarded promptly after their receipt to both Regional Directors and to the head of the wildlife agency for the state(s) wherein the proposed construction may occur. The evidence which is required by paragraph (a)(1) of this section shall accompany these notices.

(iii) Emergencies. (A) If a major disaster will be declared by the President under authority of the Disaster Relief Act Amendments of 1974, the designated Federal Coordinating Officer (FCO) of the Federal Emergency Management Agency (FEMA), will consult with the Regional Directors and the affected state wildlife agency to determine the need for FWCA compliance during the course of the emergency. When continuing detailed coordination is determined necessary by wildlife agencies, the FCO will provide facilities for a wildlife agency coordinator(s) at the Disaster Field Office (DFO). Field level coordination will occur between the designated wildlife coordinator(s) and the FEMA Public Assistance Officer (PAO) responsible for the DFO. In the event of unresolved conflicts between the wildlife coordinator(s) and the PAO, the matter will be referred to the Federal Coordinating Officer for resolution.

(B) Procedures for FWCA compliance in other action agency programs or actions in emergency situations will be identified during the period for approval of implementing procedures.

(3) Wildlife agencies. Where FWCA compliance is not initiated where required, it shall be deemed initiated upon notice by a wildlife agency.

(b) *Coordinated planning.* (1) Particularly in the case of federal projects and NRC, FERC, and REA-approved projects, wildlife and action agencies shall utilize a systematic approach in analyzing wildlife resource needs and problems, establishing planning goals therefor, and developing and evaluating alternative resource management plans.

(2) Wildlife agencies will cooperate with action agencies in the development of analyses, recommendations, and reports to action agencies on means and measures for the conservation of wildlife resources.

(3) Action agencies shall provide wildlife agencies adequate opportunity to prepare FWCA reports and recommendations and transmit them to the action agency for timely consideration with NEPA environmental assessments, and for incorporation into the draft EIS and other decision documents.

(4) In the case of federal projects and FERC, NRC, and REA-approved projects, the action agencies shall convene scoping meetings with the wildlife agencies and (where applicable) applicants upon initiation of the FWCA compliance process. Such meeting need

not be convened where consultation has occurred in accordance with paragraph (b)(1) of this section. To the fullest extent possible, these meetings should be combined with the NEPA scoping process where the proposal requires preparation of a draft EIS. 40 CFR 1501.7. Such meetings may also be convened in the case of other applications for approvals at the request of a wildlife agency or the action agency. Such meetings will be for the purposes of—

(i) Developing plans of study which ensure full wildlife agency participation throughout each phase of the planning or approval process,

(ii) Determining who, as among the federal and state agencies or the applicant, will undertake and oversee the required studies and investigations,

(iii) Establishing mutually acceptable target dates for the initiation and completion of studies and the submission of FWCA reports and recommendations,

(iv) Coordinating FWCA compliance with other environmental review requirements,

(v) Ensuring that conservation of wildlife resources is given equal consideration with other study or project purposes or goals, and

(vi) Ensuring that action agencies provide wildlife agencies with adequate descriptions of alternative project plans under consideration. A record of the agreements reached and responsibilities assigned in scoping meetings shall be distributed to the participating parties and included in the administrative record of the action agency. All parties share a responsibility for early and timely exchange of information required for completion of assigned studies, investigations, reports, and recommendations.

§ 410.23 Reporting.

(a) *Authority.* Except in the case of NRC and FERC-licensed projects, the authority to transmit FWCA reports and recommendations of the Secretaries of the Interior and Commerce is exercised by the Regional Directors. In the case of FERC and NRC-approved projects, such authority is exercised for the Secretary of Commerce by the Assistant Administrator for Fisheries, NOAA, and for the Secretary of the Interior by the Assistant Secretary for Polcy, Budget, and Administration, acting upon the recommendation of the FWS and the Office of Environmental Project Review.

(b) *Timing.* Consistent with NEPA regulations [40 CFR 1501.6 and 1502.25], wildlife agencies shall, to the maximum extent possible, forward their reports and recommendations to action agencies within an agreed-upon time frame sufficient to permit preliminary action agency decisions on incorporation of those recommendations into project plans, and to permit their inclusion and analysis in the draft decision document and/or the environmental assessment or draft EIS. See § 410.24(a). To the maximum extent possible, preparation and transmittal of FWCA reports will be coordinated and combined with the preparation and transmittal of reports or other reviews required of the Department of the Interior or National Oceanic and Atmospheric Administration (NOAA) by other federal environmental review requirements, including—

(1) Endangered Species Act of 1973,

(2) Estuary Protection Act,

(3) § 6(a) of the Federal Water Project Recreation Act,

(4) Coastal Zone Management Act,

(5) §§ 103(b), 401, 402, 404, 303, and 208 of the Clean Water Act of 1977,

(6) § 5(d) and 7(b) of the Wild and Scenic Rivers Act.

Memoranda of understanding or agreements which may provide time limits for the referral of FWCA reports and recommendations for certain classes of projects appear in Appendices B and C.

(c) *Content.* (1) Wildlife agencies will prepare reports that describe project-related effects upon wildlife resources and identify alternative means and measures necessary to conserve wildlife resources. Evaluation techniques used in describing effects and identifying conservation measures will be directed at quantifying and qualifying potential effects upon wildlife, their habitat and its productivity and related values.

(2) Wildlife agencies shall prepare and submit reports to action agencies that describe—

(i) Wildlife problems and needs and recommended fish and wildlife planning goals,

(ii) The positive and negative effects and impacts of alternative project plans upon wildlife and recommended conservation features,

(iii) The positive and negative effects and impacts of the construction and operation of the selected plan upon wildlife, the conservation measures identified during plan formulation, and specific recommendations for conservation measures that should be included in the selected plan,

(iv) The results and impacts expected from implementing these recommendations, and

(v) The plan, if any, which they prefer from the standpoint of wildlife conservation.

(3) Wildlife agency reports on federal projects shall include an analysis of the extent of wildlife resource productivity lost to, or gained with, the proposed project and of the conservaton measures required to replace that loss (if that is possible), measured without reference to values attributed to human use ("user-day") or other monetary computations. This analysis may be provided for non-federal projects and for alternative project plans.

(4) FWCA reports and recommendations will contain a review of the disposition of wildlife agency recommendations previously made.

(5) If features of project design, construction, or operation are not sufficiently developed that their effects can be properly assessed, the report of the wildlife agencies will so state and will list the areas requiring further study to identify necessary conservation measures. Any consultation or coordination necessary in the implementation of conservation measures will be identified.

(6) When analyzing project effects and impacts, wildlife agencies will take into account other water-related project planning and review requirements, such as: Executive Orders 11988 (floodplains) and 11990 (wetlands); § 73 of the Water Resources Development Act of 1974 (non-structural alternatives); Indian trust environmental review requirements; the Marine Protection, Research, and Sanctuaries Act of 1972; § 102(b) of the Clean Water Act; federal water policy; the potential effects of the proposed project upon federal property and public trust interests, including reserved water rights.

(d) *Public participation.* Where significant wildlife resource issues are involved, wildlife agencies will invite public participation in the process of developing FWCA reports and recommendations in accordance with guidelines which they develop.

(e) *Inability to report.* If a wildlife agency is unable to prepare an FWCA report or otherwise participate in the planning or approval process, it shall notify the action agency within 30 days of the receipt of an action agency's request to initiate consultation, detailing the reasons therefor. Such notification does not relieve action agencies of the requirements of the FWCA or §§ 410.21 and 410.24 of this Subpart.

(f) *Follow-through.* Once wildlife agency reports are sent to action agencies, all wildlife agenceis should actively pursue such means as will

ensure that necessary studies and recommended measures are undertaken and implemented.

§ 410.24 Consideration.

(a) *Action agency findings.* (1) The reporting officer shall prepare for the administrative record (project plan or planning report, where applicable) written findings on which of the measures recommended by wildlife agencies with respect to the selected project plan and its alternatives are and are not believed to be justified, and why. This documentation will include:

(i) A summation of measures adopted during plan formulation to prevent and compensate for wildlife resource losses;

(ii) In the case of federal projects, a finding whether the selected plan fully compensates for losses to wildlife resource productivity, measured in terms of equivalent wildlife resource productivity;

(iii) The justification for tradeoffs made between wildlife conservation and other project features in arriving at the selected plan;

(iv) An identification of any issues of disagreement remaining between the action agency and the wildlife agencies.

(2) In addition to the matter required for federal projects by § 2(f) of the FWCA (16 U.S.C. 662(f)), the reporting officer on federal projects and projects pending consideration by NRC and FERC, shall analyze and discuss the acquisition, operation, maintenance, replacement, and management costs, and the environmental impacts, of wildlife conservation measures proposed by each wildlife agency for each alternative treated in the draft and final environmental impact statement, in benefit-cost analyses of alternatives, and (where applicable) in the evaluation accounts of the Principles and Standards of the Water Resources Council. The reporting officer shall also treat uncompensated damages to fish and wildlife resources as a cost chargeable to the project. All such costs (monetary and non-monetary) shall be estimated over the life of the project, regardless of whether the U.S. Treasury or non-federal parties will bear them.

(3) In making the findings required by paragraphs (a)(1) and (a)(2) of this section, the reporting officer and each higher action agency decision-making authority shall use the criteria established in paragraph (b) of this section.

(4) Where the findings required by paragraphs (a)(1) and (a)(2) of this section have not been disclosed in a draft EIS, in publicly circulated planning document, or in public or adjudicatory hearings, the reporting officer shall publish those findings in the **Federal Register** or other appropriate media and afford the public reasonable opportunity to present its views. In the case of FERC and NRC-approved projects, opportunities for administrative or court review of the findings of action agency initial or final decision-makers will not be considered compliance with this paragraph.

(5) The reporting officer shall transmit the information required by paragraphs (a)(1) through (a)(4) to counterpart officials in the wildlife agency(ies) concerned for an agreed-upon period of time for comment prior to final agency action on the matter. If there are differences at this stage between a wildlife agency and the action agency on the reporting officer's disposition of wildlife agency recommendations, the wildlife agency may request the action agency to hold a public hearing on the matter. Action agency implementing procedures shall require an ensuing reconsideration of the matter and, if such hearings are deemed appropriate by the action agency, full consideration of information generated by such public hearings. Differences not resolved in this manner shall be made a matter of record and, if requested by either the action or wildlife agency, promptly referred to successively higher authority of both agencies for resolution. Where memoranda of understanding or agreement do not already so provide [see App. B and C], implementing procedures shall provide a means of complying with this paragraph.

(6) If, despite best efforts, wildlife agencies cannot identify loss prevention, mitigation, and enhancement measures in detail prior to project authorization or approval, action agencies shall include in their recommendations to higher authorities the requirements necessary to ensure that, once identified and described, these measures will be proposed for authorization or approval and, if authorized and funded or approved, will be implemented. Action agencies should avoid committing resources which foreclose adoption of alternative wildlife conservation measures.

(b) *Decision criteria.* (1) Action agencies are required to make findings on wildlife conservation measures which they deem justified to be included in projects to obtain maximum overall project benefits to the public. Action agencies must regard wildlife conservation as a programmatic and project purpose or goal equal to other project purposes or goals. Certain project benefits may be diminished to obtain these conservation goals. Findings directed at loss prevention and mitigation measures shall be made using assessment and evaluation techniques based upon wildlife habitat values. Monetary values may be displayed and used in measuring the cost-effectiveness of alternative mitigation plans, but shall not be used for justification purposes. Enhancement measures may be evaluated using other techniques, but should be measured using habitat-based techniques, where possible. Such findings shall be made with the objectives of both preventing and compensating for wildlife resource losses, and of enhancing wildlife resource values. To the extent practicable and justifiable, action agencies shall ameliorate project-related losses to wildlife resources, wherever they occur. With the exception of the enhancement component, wildlife resource conservation measures do not create benefits for the purposes of benefit-cost analysis; they are to be considered as avoiding or abating costs (losses) to existing resources and values.

(2) Action agencies may not reject recommended wildlife conservation measures for federal projects on the grounds that wildlife conservation is not a "purpose" for which a federal project was or can be authorized, or on the grounds that they are not authorized to so condition a non-federal project approval. The FWCA amends the organic authorities of action agencies to provide these authorities. In the case of federal projects undertaken by the Department of the Interior, the Fish and Wildlife Act of 1956, 70 Stat. 1122 (16 U.S.C. 742f(4)–(5) (1976)), supplements such authority.

(3) Action agencies must justify the adoption or rejection of means and measures for wildlife resource conservation using substantive economic, envirnomental, and social reasons. Measures recommended by wildlife agencies for compensation of wildlife resource losses cannot be considered unjustified because—

(i) That agency or other agencies may not have adopted a habitat-based wildlife impact assessment and evaluation procedure,

(ii) Those measures, either alone or collectively, do not have a favorable monetary benefit-cost ratio,

(iii) Project beneficiaries or other non-federal entities are unwilling to fund the appropriate share of increased federal project costs necessary to compensate for wildlife resource losses,

(iv) There are other proposed uses for land or waters recommended for wildlife compensation purposes, unless

their proposed use is found to be more in the public interest than the proposed mitigation, or

(v) Recommended wildlife resource properties or compensation measures are outside the immediate project boundaries.

(4) If an action agency finds that a measure recommended by wildlife agencies for compensation of wildlife resource losses is not justifiable because it would render the monetary benefit-cost ratio of the project unfavorable or because project beneficiaries or other non-federal entities are unable to fund the appropriate share of increased federal project costs necessary to mitigate/compensate for the wildlife resource losses involved, the action agency shall explain in detail, in terms of obtaining maximum overall project benefits, its reasons for so finding.

(5) Justifiable means and measures for wildlife resource conservation shall be incorporated as conditions or stipulations in action agency approvals where the practical effect of not doing so is that the means and measures will not be adopted.

(c) *Requests for project authorization.* The reports, recommendations, and findings required by §§ 410.23 and 410.24 shall be made an integral part of (1) action agency reports submitted to the Office of Management and Budget and the Congress in connection with a construction authorization proposal, and (2) submission to action agency final decision-maker(s) of recommendations on projects they may approve or authorize.

Subpart C—Project Implementation

§ 410.31 Congressional liaison.

Wildlife agencies will make themselves available to testify in authorization and appropriations committee hearings concerning proposals for Congressional authorization or funding of wildlife conservation measures.

§ 410.32 General plans for management of wildlife resource properties.

A General Plan is a document that designates the lands which are to become transferred for wildlife resource management properties and generally describes the use of such properties for wildlife management purposes. The objective of General Plans is to ensure a realization of the wildlife resource conservation measures which formed a basis for the justification and authorization of the project. The FWCA requires the execution of a General Plan prior to action agency transfer of administrative or legislative jurisdiction over the area to the agency which will administer the area for wildlife purposes.

(a) *The determination of which agency shall manage the wildlife resource properties.* (1) Properties with migratory bird values. After investigation, the Secretary of the Interior will determine whether wildlife resource properties have value in carrying out the national migratory bird program. When the Secretary concludes that the properties have such value, the Department of the Interior may administer the lands directly, or in accordance with a cooperative agreement with the appropriate state wildlife agency. The Secretary may manage such properties through another public or private agency or organization. The action agency shall make such wildlife resource properties available, without cost, for administration to—

(i) The Secretary of the Interior, when the Department of the Interior will be responsible for administering the property either directly, or through cooperation with a public or private agency or organization, or

(ii) The state wildlife agency, if it is jointly determined by the Secretary of the Interior and such state wildlife agency that state administration of those wildlife resources would be in the public interest.

(2) *Other properties.* When the Secretary concludes that the wildlife resource properties have value other than for migratory bird management, the state wildlife agency shall be afforded the opportunity to assume management of the lands.

(3) *Interim administration.* During the period after the action agency has acquired the wildlife resource properties and before the joint approval of the General Plan, wildlife resource properties shall be made available upon request and without cost to the FWS for interim administration of the property for wildlife resource conservation purposes. The FWS and the state wildlife agency may agree which agency shall assume interim administrative responsibility. If for any reason, the state wildlife agency cannot assume or continue the administration of wildlife resource properties, the FWS shall be afforded the opportunity to assume administration of such property for wildlife resource purposes on an interim basis, or to enter into cooperative arrangements with the action agency whereby that agency shall administer such property for wildlife resource purposes.

(b) *NEPA compliance.* Action agencies are responsible for NEPA compliance respecting General Plans. Where possible, the information referred to in subsection (d) of this section should appear in the project EIS.

(c) *Development and approval of general plans.* (1) After consultation with the state wildlife agency, the Regional Director of NMFS, the action agency and (if different) the agency exercising primary jurisdiction over the area ("primary jurisdiction agency"), the FWS will initiate the development of a preliminary draft of a general plan for the management of the wildlife resources of wildlife resource properties. In cases where the area in question will likely be managed by a State, the FWS will request the state wildlife agency to prepare the draft. The major features of the draft shall be based on the wildlife agencies' reports and recommendations which are required by section 2(b) of the FWCA and these rules. The draft shall be submitted concurrently to the wildlife agencies, the action agency, and (if different) the primary jurisdiction agency, for their review and responsive recommendations.

(2) Any differences between the action and/or primary jurisdiction agency and the FWS on the proposed General Plan that cannot be resolved by staff shall be resolved by—

(i) The Secretary of the Interior, when the said agency is an agency in the Department of the Interior, or

(ii) The Secretary of the Interior, in consultation with the head of any other department or agency of which the action or primary jurisdiction agency may be a part.

(3) Any differences over the content of the proposed General Plan between FWS and state wildlife agency that cannot be resolved by them will be resolved by the Governor of the affected state and the Secretary of the Interior.

(4) General plans shall be approved at the same time as the document which transfers administration of the lands from the primary jurisdiction agency to the agency or organization designated in accordance with paragraph (a) of this section. The General Plan shall be approved or modified jointly by—

(i) The head of the agency exercising primary jurisdiction over the area,

(ii) The Secretary of the Interior, and

(iii) The head of the wildlife agency of the state wherein the proposed project may be or is constructed.

(5) Where the FWS and NMFS agree that wildlife resources of interest to NMFS would be substantially affected by management of the wildlife resource property which is the subject of the

General Plan, the responsibilities assigned to Interior officials by paragraphs (c)(2) through (c)(4) of this section shall be performed jointly by the appropriate official of NOAA and Interior.

(d) *Content of a general plan.* A General Plan shall: (1) Describe the uses of the wildlife resource property by generally detailing—

(i) The wildlife management goals for the area, as discussed in the project EIS (where applicable),

(ii) The principal species and habitats to be managed,

(iii) The general management concepts and practices to be employed,

(iv) The wildlife development, facilities, or other features to be constructed,

(v) Any restrictions on use of the wildlife resource properties, and

(vi) The availability of the land for public access;

(2) Designate the agency or organization responsible for the administration of the wildlife resource properties, as governed by the provisions of paragraph (a) of this section;

(3) Describe the boundaries and location of the wildlife resource management properties;

(4) Identify capital, operation, maintainence and replacement costs;

(5) Contain provisions for continued consultation between the agency administering the property for wildlife purposes and the primary jurisdiction agency to coordinate wildlife resource management with the management of the project.

(e) *Funding and reports.* Funds for operation, maintainence, management, and replacement of wildlife resource properties acquired or made available for compensation of project-related wildlife resources losses shall be computed by the administering agency and included in the annual budget submissions of action agencies. Together with other project features adopted for compensation of wildlife resource losses, these costs are integral project costs. Any agency administering wildlife resource properties may be requested to prepare annual reports to action and federal wildlife agencies demonstrating how authorized wildlife conservation measures and the General Plan are being implemented and how compensation and enhancement is being achieved.

§ 410.33 Study or modification of authorized federal projects.

If it is decided to undertake post-authorization wildlife resource studies of Federal projects, they should be made either by wildlife agencies, or by others after consultation with wildlife agencies. Post-authorization studies should determine the need for added wildlife conservation measures. In addition to the monitoring provided for in NEPA regulations [40 CFR 1505.3], post-construction studies should evaluate the impact of any non-implementation of measures recommended by wildlife agencies, as well as the effectiveness of implemented measures.

All reports, findings, and determinations resulting from such studies shall be incorporated into any reports on modification or supplementation of plans for previously-authorized projects and employed in complying with the FWCA and these rules. See § 410.11(b).

Subpart D—Implementation of This Part

§ 410.41 Action agency implementing procedures.

(a) Within three months of the publication (not effective) date of these rules, action agencies shall propose to the Secretary of the Interior procedures which would implement this Part. Action agencies will first identify in that proposal the typical classes of projects of, or approved by, them which are referred to in paragraphs 410.11 (a) through (c) and § 410.14 of Subpart A, and in § 410.22(a)(2)(iii) of Subpart B. For each class of projects so identified, action agencies shall provide responses to the following:

(1) What are the statutory and U.S. Code citations under which authority the class of projects may be authorized;

(2) Do existing procedures already satisfy the following provisions of this Part (if so, give specific CFR or other citations to appropriate sections of action agency procedures), particularly—

(i) Section 410.3 ("Regional Directors," "reporting officer" and "wildlife agency") and § 410.22(a)(2)—routing of consultation requests, and

(ii) Section 410.11(c) and § 410.16(b)—coordination with the Clean Water Act and River and Harbor Act permit programs.

(3) Does the law applicable to the action agency positively bar the adoption of any requirement of this Part applicable to a class in question;

(4) What implementing procedures are required to put into effect the provisions set forth in paragraph (a)(2);

(5) How would this be accomplished—by codified regulation, by a public proceeding, or by other instructions—and what time delay is required by procedural preconditions to their adoption;

(6) If any applicable provisions of this Part are believed to be inappropriate for a class of projects, are there reasons why such classes should be exempt, or is there an alternative which satisfies the substance and intent of the provisions?

(b) In consultation with the Administrator of NOAA and the head of the federal agency in question, the Secretary of the Interior will resolve any differences on interpretation and applicability of this Part which may arise and cannot be resolved by staff during the process of approval of implementing procedures.

(c) The Secretary will approve acceptable implementing procedures which are proposed in accordance with paragraph 410.41(a) within one hundred fifty (150) days of the publication date of this Part.

§ 410.42 Comprehensive planning requirements.

Within three months of the publication date of these rules, action agencies will review the comprehensive water and related land resources and water quality planning programs administered by them to determine what level(s) of wildlife agency involvement therein are presently provided for by written action agency procedures. Action agencies will report such determinations to the Secretary of the Interior and, if necessary, propose to the Secretary new coordination procedures for wildlife agency involvement in such programs, including (but not limited to) those authorized by, or referred to as—

(a) Water Resources Planning Act of 1965,

(b) Sections 201, 208, 303, and 314 of the Clean Water Act of 1977,

(c) Type IV studies of the Soil Conservation Service,

(d) Coastal Zone Management Act of 1972,

(e) Federal Land Policy and Management Act,

(f) Land and Water Conservation Fund Act,

(g) Wild and Scenic Rivers Act,

(h) Resource Conservation and Development Act,

(i) Forest and Renewable Resources Planning Act of 1974,

(j) Urban Studies of the Corps of Engineers,

(k) National Forest Management Planning Act of 1976,

(l) Soil and Water Resource Conservation Act of 1977,

(m) Surface Mining Control and Reclamation Act,
(n) Outer Continental Shelf Lands Act.

Appendix A. Regional Directors, Fish and Wildlife Service

Region I

U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

Region II

U.S. Fish and Wildlife Service, 500 Gold Avenue, S.W., P.O. Box 1306, Albuquerque, New Mexico 87103.

Region III

U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, MN 55111.

Region IV

U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., P.O. Box 95067, Atlanta, Georgia 30347.

Region V

U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

Region VI

U.S. Fish and Wildlife Service, P.O. Box 25486, 134 Union Boulevard, Lakewood, Colo. 80228.

Alaska Area Office

U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

Regional Directors, National Marine Fisheries Service

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 191 Main Street, Gloucester, Massachusetts 01930.

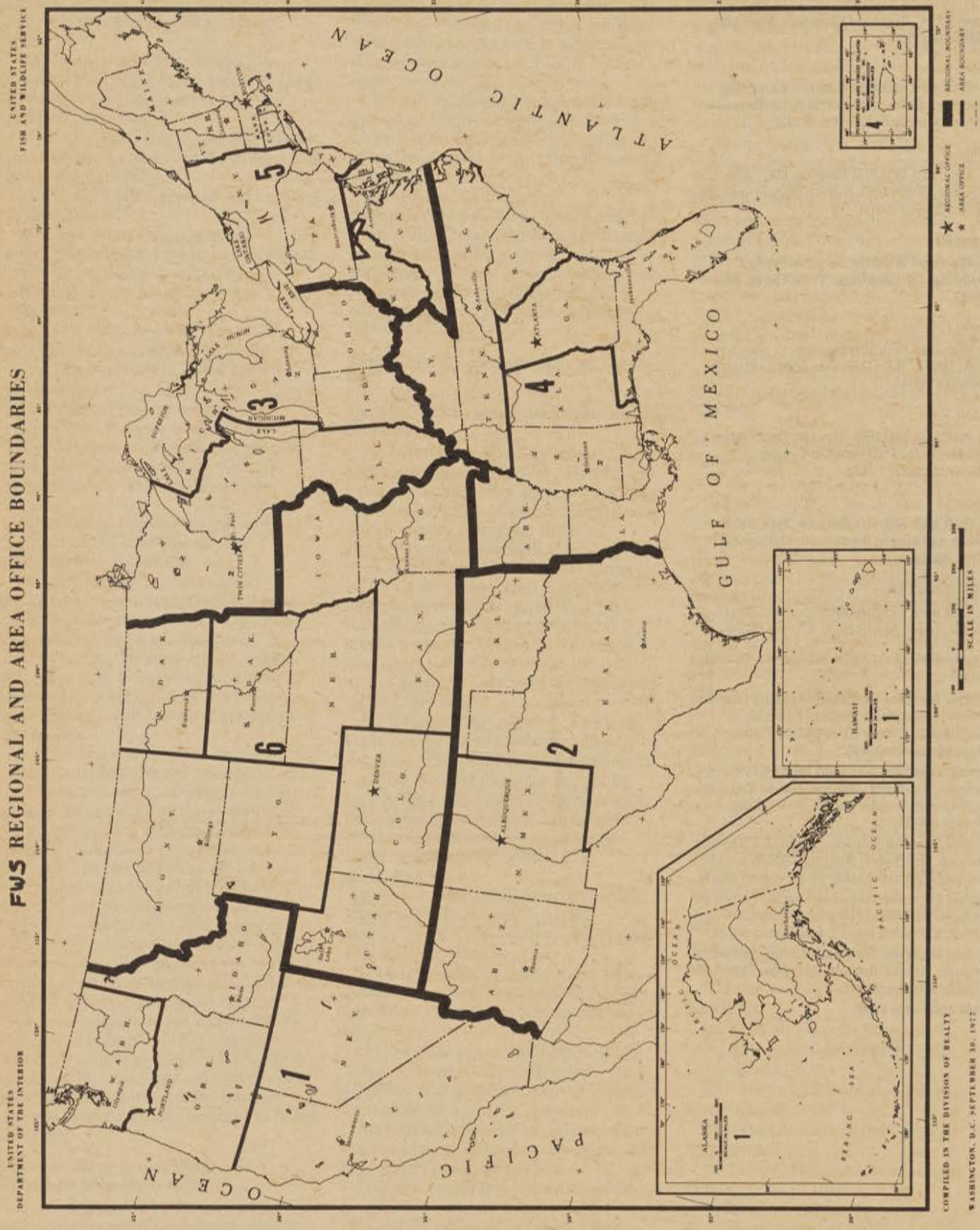
Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue, North, Seattle, Washington 98109.

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99801.

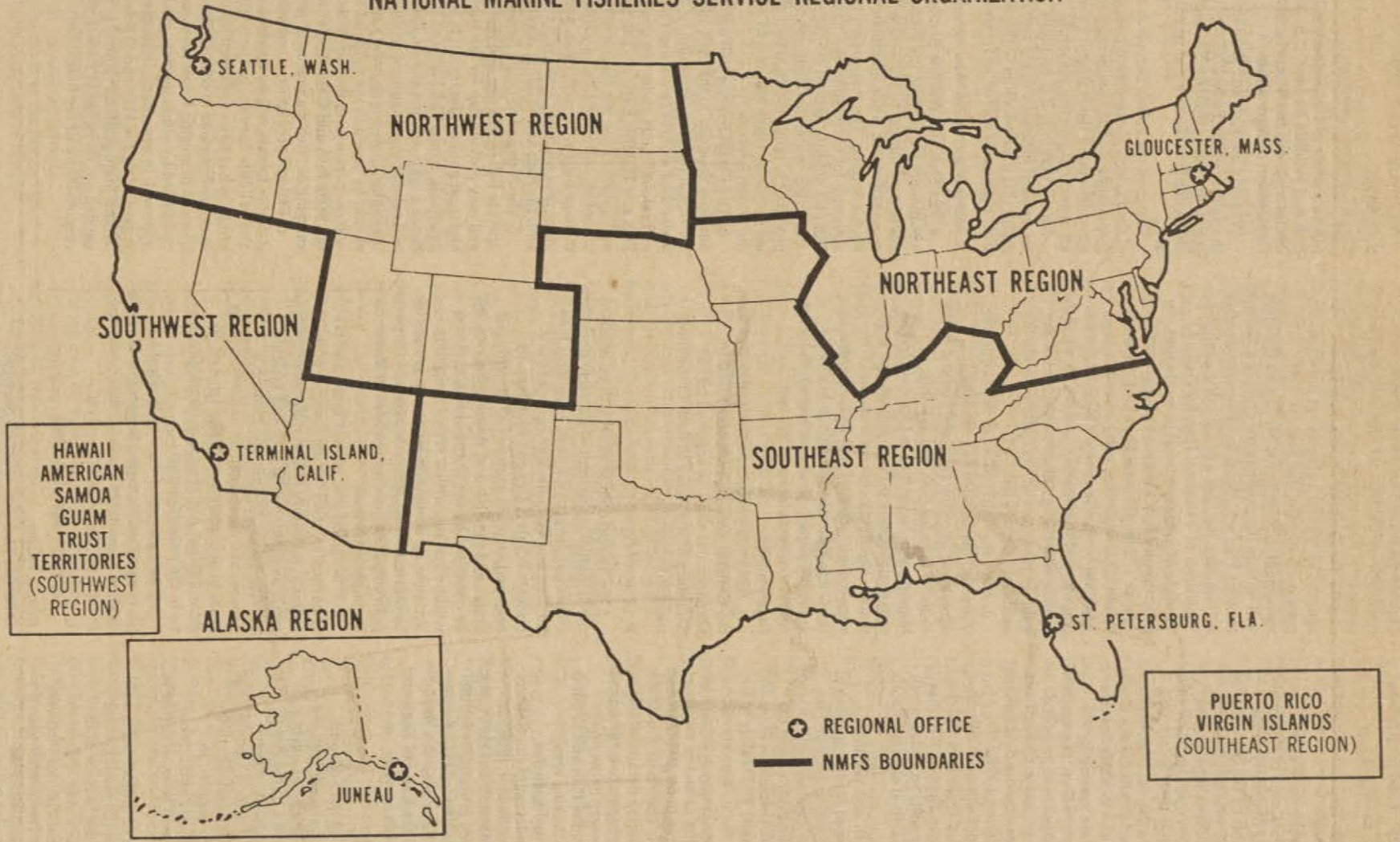
BILLING CODE 4310-55-M


FWS REGIONAL AND AREA OFFICE BOUNDARIES
UNITED STATES
FISH AND WILDLIFE SERVICE
UNITED STATES
DEPARTMENT OF THE INTERIOR
ATLANTIC OCEAN
GULF OF MEXICO
PACIFIC OCEAN
REGIONAL BOUNDARY
AREA BOUNDARY
REGIONAL OFFICE
AREA OFFICE
SCALE IN MILES
COMPILED IN THE DIVISION OF REALTY
WASHINGTON, D.C. SEPTEMBER 30, 1977

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

Exhibit 2 to DOO 25-5B

NATIONAL MARINE FISHERIES SERVICE REGIONAL ORGANIZATION



OCTOBER 16, 1978

BILLING CODE 4310-55-C

Appendix B—Part A–28 Land Acquisition

Exhibit 1.—General Plans—A–28.1

Procedures for Developing General Plans for Fish and Wildlife Management

The agreement between the Fish and Wildlife Service and the Corps of Engineers, approved by the Acting Secretary of the Interior on August 6, and by the Secretary of the Army on August 20, 1954, provides in Section 7 that General Plans for Fish and Wildlife Management, as specified in Section 3 of the Coordination Act (Pub. L. 732, 79th Congress, approved August 14, 1946, 60 Stat. 1080) shall be developed jointly by the Corps of Engineers, the Fish and Wildlife Service, and the appropriate State agency for all project lands and waters where management for fish and wildlife purposes is proposed. The agreement further provides, in Section 8, that standard procedures for the development of General Plans for Fish and Wildlife Management shall be developed jointly by the Office of the Chief of Engineers and the Fish and Wildlife Service. Section 8 further provides that copies of such procedures will be made available to all field offices of both agencies.

General Plans for Fish and Wildlife Management are prepared for the purpose of designating the type of use as between the national migratory bird management program of the Department of the Interior and the wildlife programs of the respective State and therein to define the lands and waters to be administered by each. Such Plans should be only as detailed in those respects as may be necessary to indicate the agencies, the areas, and the general purposes to be accomplished under each assignment. The Plans should not be burdened with operating details which are properly a part of the cooperative agreements understood to be necessary between the Corps of Engineers and the Fish and Wildlife Service or the State in making areas available to the latter two agencies subsequent to the completion of the General Plans for Fish and Wildlife Management.

In accordance with Section 8 of the August agreement, the following procedures for the development of General Plans for Fish and Wildlife Management have been developed jointly by the Office of the Chief of Engineers and the Fish and Wildlife Service.

A. *Specific Procedures*

1. Reports prepared by the Fish and Wildlife Service in cooperation with the appropriate State fish and game agency, in accordance with Section 2 of the Act of August 14, 1946, shall specify, when appropriate, the necessity for a General Plan for Fish and Wildlife Management in the recommendations of the reports. In accordance with previously established procedure, the reports will be transmitted to the District Engineer.

2. Whenever the use of project lands and waters for fish and wildlife management purposes is proposed, the Service or the appropriate State agency may request the preparation of a General Plan for Fish and Wildlife Management. The formulation of a General Plan for Fish and Wildlife Management shall be a joint cooperative endeavor by the District Engineer, Corps of Engineers; Regional Director of the Service; and the Head of the appropriate State agency, by mutual exchange of information pertaining thereto, discussions, and agreement. Normally the Service or the State will initiate the preliminary draft of a General Plan for Fish and Wildlife Management after determining the views of the other agencies. Such draft of a General Plan for Fish and Wildlife Management will be submitted concurrently for comment to the other two agencies. Such General Plan for Fish and Wildlife Management will be subject to approval by the Secretary of the Army, the Secretary of the Interior, and the Head of the agency exercising administration over the wildlife resources of the State wherein the lands and waters lie.

3. After the field offices of the Corps, the State and the Service have reached agreement as to the form and context of the General Plan for Fish and Wildlife Management, signature in triplicate by the appropriate State official will be obtained thereto signifying concurrence, and the signed copies thereof will be forwarded by the Corps through channels to higher authority for approval and execution by the respective Secretaries of the two Departments.

4. After completion, conformed copies of the General Plan for Fish and Wildlife Management shall be supplied by the Secretary of the Army to each of the three respective parties.

B. *General Provisions*

1. Every reasonable effort will be made to reach mutual agreement at an early date with respect to the provisions of a General Plan for Fish and Wildlife Management for a project. Where a General Plan is to be prepared, wildlife agencies of the affected States and the Fish and Wildlife Service will be consulted by the Corps of Engineers on wildlife matters with a view to reaching tentative agreement on lands and waters to be utilized for wildlife management purposes prior to public hearings on Master Reservoir Management Plans.

2. It is agreed that project lands and waters of particular value for the conduct of the national migratory bird management program made available to the Fish and Wildlife Service may subsequently, through a cooperative agreement, be administered by a State in accordance with Section 4 of the Coordination Act, if such action appears to be in the public interest.

3. It is understood that the Federal and State agencies managing the project lands for wildlife may utilize same for the production of food for the wildlife involved.

Approved: March 9, 1955.

John L. Farley,

Director, Fish and Wildlife Service.

Approved: April 6, 1955.

S. D. Shugs,

Chief, Corps of Engineers.

Memorandum of Understanding Between the Fish and Wildlife Service, U.S. Department of the Interior, and the Forest Service, U.S. Department of Agriculture

Whereas the Fish and Wildlife Service is the agency of the Federal Government primarily responsible for the welfare of fish and wildlife resources and research thereon; and

Whereas the Forest Service is the agency of the Federal Government primarily responsible for the administration and management of the National Forests and for all aspects of forestry research;

Now, Therefore, it is mutually agreed that the general functions of the two agencies under this memorandum within the limits of their resources, will be as follows:

1. Administration and Management

a. The Fish and Wildlife Service will act in an advisory capacity to the Forest Sevice in matters pertaining to fish and wildlife management on lands administered by the Forest Service. The responsibility and authority for correlation and integration of fish and wildlife habitat management with recreation, watershed management, timber production, range management and other uses of these lands will rest at all times with the Forest Service.

b. The Forest Service will act in an advisory capacity to the Fish and Wildlife Service in matters pertaining to timber, watershed and range management on forest and related lands under the control of the Fish and Wildlife Service. The responsibility and authority for correlation and integration of timber, watershed and grazing management with recreation, game, fish and other uses on these areas will rest at all times with the Fish and Wildlife Service.

c. The Fish and Wildlife Service will operate fish hatcheries and rearing facilities, and may provide fish for the stocking of water on national forest lands on mutually agreeable terms. The Fish and Wildlife Service may conduct stream and lake surveys and related investigations to determine principles upon which fishery management should be based in the national forests, and will cooperate with the Forest Service and the State Fish and Game Departments in carrying out fish management programs.

d. Federal predator control projects on national forests will be conducted by the Fish and Wildlife Service, but only after the program has been approved by the Forest Service. Programs to control non-game animals damaging forest resources may be conducted by either agency, after joint approval, in accordance with methods approved by the Fish and Wildlife Service. Where State predator control projects are carried out on national forests, it is the responsibility of the Forest Service to

coordinate this program with that of the Fish and Wildlife Service.

e. No introduction of an exotic wild animal species will be undertaken or authorized on the national forests without the approval of both agencies.

f. Studies of water-use projects on national forest lands, required to be made under the Fish and Wildlife Coordination Act and the Federal Power Act, will be planned and conducted by the Fish and Wildlife Service in cooperation with the Forest Service and State fish and game agencies.

2. Research

The Fish and Wildlife Service and the Forest Service will conduct cooperative research relating to fish and wildlife, including rodents, and wildlife habitat management on forest and range lands wherever and whenever it is of mutual interest to the two agencies. Such cooperative research will be guided by the following:

a. Generally, research involving the two agencies will be coordinated, with the Fish and Wildlife Service emphasizing the wild animal phase and the Forest Service emphasizing the vegetation and land-use phases.

b. Where lack of finances limits the participation of either agency in coordinated research, joint planning and evaluation of results will remain the guiding principle.

3. There will at all times be a free exchange of pertinent data and frank discussions between members of the two agencies. Members of both agencies will refrain from expressing in public a view contrary to the mutually accepted polciy or plans of the other.

4. Nothing in this memorandum of understanding is intended to modify in any manner the present cooperative programs of either agency with States, other public agencies, or educational institutions.

5. The Cooperative Agreement between the Forest Service and the Fish and Wildlife Servive, dated September 16, 1952, is superseded by this Memorandum of Understanding.

6. This Memorandum of Understanding will become effective upon the date subscribed by the last signatory, and shall continue in force and effect until terminated by either agency upon ninety days written notice to the other.

Dated: October 6, 1960.

U.S. Department of the Interior, Fish and Wildlife Service.

Arnie J. Suomela,

Commissioner of Fish and Wildlife.

Dated: October 19, 1960.

U.S. Department of Agriculture, Forest Service.

R. E. McArdle,

Chief, Forest Service.

Memorandum of Understanding Between the Geological Survey, Bureau of Land Management, Fish and Wildlife Service

Whereas, the Geological Survey, hereinafter referred to as the Survey, is responsible for the issuance of mineral exploration permits and for the supervision of development and production of mineral resources on the Outer Continental Shelf of the United States;

Whereas, the Bureau of Land Management, hereinafter referred to as the Bureau, is responsible for the administration and issuance of leases thereon; and is responsible for the examination and assessment, under the National Environmental Policy Act of 1969, of foreseeable environmental impact that could result from the development of mineral deposits; and

Whereas, the Fish and Wildlife Service, hereinafter referred to as the Service, is responsible for the conservation and management of fish and wildlife resources, and has the capability to provide advice and assistance on biological, chemical and physical factors affecting these resources to the foregoing agencies; and

Whereas, the Survey and the Bureau, in meetng their responsibilities for administering and supervising mineral exploration, leasing, development, and production, and assessing environmental impact, desire to engage in mutual cooperation and exchange of information and to solicit the cooperation and expertise of the Service;

Now, Therefore, it is mutually agreed that:

A. The Survey and the Bureau will cooperate with the Service in minimizing harm to fish and wildlife resources and their environment by providing the Service with:

1. Information regarding the conduct of marine geophysical explorations supervised by the Survey.

2. Opportunity to make recommendations on conditions to be included in permits for such geophysical explorations and in leases for mineral development.

3. Opportunity to observe geophysical explorations in areas of interest and, when in the course of such observation, it appears that adverse environmental effects may result, to recommend such action as may be necessary to reduce such possibility.

4. Information regarding areas of the Outer Continental Shelf that are expected to be or are being considered for a possible call for nominations.

B. The Service will cooperate with the Survey and Bureau in assessing the potential environmental impact of administering OCS leasing, and of administering and supervising exploration, development and production of mineral resources with minimal environmental harm by providing:

1. Results of periodic studies on problems relating to the impact of mineral exploration and exploitation on estuarine and coastal resources.

2. Information which relates directly or indirectly to the assessment of potential environmental impact, and to the administration and supervision of mineral exploration and production of the Outer Continental Shelf lands by the Bureau or the Survey.

3. Information useful in the identification and designation of restricted use areas including Marine Preserves.

C. Designation of Coordinating Offices for Purposes of this Memorandum:

1. For the Survey, the Conservation Division is designated as the coordinating office in Washington, and the office of the appropriate Regional Conservation Manager or the Conservation Manager, Gulf of Mexico OCS Operations, as the field level coordinating office.

2. For the Bureau, the Division of Marine Minerals is designated as the coordinating office in Washington, and the office of the appropriate Outer Continental Shelf Manager as the field level coordinating office.

3. For the Service, the Office of Environmental Quality, Bureau of Sport Fisheries and Wildlife is designated as the coordinating office in Washington, and the office of the appropriate Regional Director of the Bureau of Sport Fisheries and Wildlife as the field level coordinating office.

D. General Provisions:

All assistance rendered under this Agreement will be carried out in full compliance with the objectives, policies, and responsibilities of the Department. Any unresolved matters concerning Outer Continental Shelf management where there is a mutual interest shall be referred for resolution to the next supervisory level involved.

Arrangements will be made by the three agencies at headquarters and field offices as may be necessary to implement the intent and purposes of this Agreement.

Dated: November 8, 1972.

Spencer H. Smith,

Director, Bureau of Sport Fisheries and Wildlife.

Dated: November 20, 1972.

Burt Silcock,

Director, Bureau of Land Management.

Dated: November 16, 1972.

V. E. McKelvey,

Director, Geological Survey.

Memorandum of Understanding Between Bureau of Land Management, Fish and Wildlife Service, and U.S. Geological Survey Concerning OCS Environmental Research and Monitoring Activities

Purpose: The purpose of this Memorandum of Understanding (MOU) is to detail procedures and responsibilities of the Bureau of Land Management (BLM), the U.S. Geological Survey (USGS), and the Fish and Wildlife Service (FWS) in the conduct of environmental research and monitoring associated with the OCS minerals program. This ensues from Section 2 of Secretarial Order 2974. The environmental research and monitoring activities are carried out in the context of a BLM program for administration, management, funding, the construction of environmental studies related to the effects of OCS development, and which include benchmark data collection, subsequent monitoring, and special investigations. Benchmark and monitoring studies will be designed, conducted, or overseen in the manner described below. Special studies initiation, implementation, and monitoring are outlined in the subsequent section.

A. Benchmark and Monitoring Studies

In order to facilitate inter-bureau coordination with respect to benchmark and monitoring studies related to OCS minerals development, BLM, USGS, and FWS agree to the following procedures:

1. BLM will apprise USGS and FWS of any schedule (including schedule changes) of forthcoming benchmark or monitoring studies for each OCS lease area as soon as such schedule is prepared, or a change is made. In order that BLM may have full knowledge of ongoing or occasional studies being performed or funded by FWS and USGS in the area, the transmittal of a studies schedule by BLM shall oblige FWS and USGS to prepare lists of ongoing environmental studies, future (within present and the succeeding fiscal years) proposed studies, and past (within previous two years) studies, and transmit them to BLM within 30 days. Studies to be listed are defined as those studies which collect data on biotic, physical, and geologic systems on the OCS and in the coastal zone, or specific effects studies of limited geographic or subject scope.

2. (a) To provide specifically for the participation of USGS and FWS in the design phase of benchmark or monitoring studies on an area-by-area basis, one or more planning conferences will be scheduled for each separately identified OCS area in which such studies are to be conducted. Staff representatives of BLM, USGS, and FWS will meet to formulate a study plan. At the conference(s), USGS and FWS will make Recommndations concerning (1) specific elements to be incorporated in the studies, including scope, intensity, timing, required funding, etc., and (2) allocation of funds and the levels of effort among various study elements. The conference(s) will normally be under Washington Office control; a period of one month after notification by BLM of its desire to construct a study plan will be allowed for field office recommendations to reach the Washington Office of the respective bureaus.

(b) Each study plan will be formally reviewed at the Washington Office level for comment by USGS and FWS prior to the issuance of a request for proposals (RFP), non-competitive contract, or arrangements for development of study plans and management of the study with other agencies. A time period of one week after the final planning conference will be allowed for the formal study plan review.

(c) After due consideration of all views and recommendations, BLM will approve the study plan for implementation and will notify GS and FWS of its decision. If GS and FWS do not agree with the final decision of BLM, they may notify the Assistant Secretary—Program Development and Budget of the nature of the disagreement through the appropriate line Assistant Secretary (as specified in Section 5 of Secretarial Order 2974) within 5 working days after notification of the decision. In such a case, the Assistant Secretary—Program Development and Budget will inform the Director, BLM that he has received an appeal of the decision. The Assistant Secretary—Program Development and Budget will then take appropriate steps to resolve the disagreement. If GS or FWS do not notify the Assistant Secretary—Program Development and Budget of a disagreement within 5 working days, the decision of BLM will be considered uncontested and implementation will proceed.

3. (a) Subsequent to the development of a study plan, but in all cases prior to the issuance of an RFP, non-competitive procurement, or interagency agreement for any or all work elements, a meeting will be held to mutually consider the desirability of FWS or USGS participation in the performance or management of work elements identified in each study plan developed. Such meeting should be held within two weeks of a completed study plan, unless significant revision of the study plan is anticipated by other sources (such as the OCS Research Management Advisory Board). Provisions for such participation will then be made if, and as, appropriate. Recommendations from FWS and USGS regarding the type of procurement should be made at this meeting.

(b) At the meeting mentioned in 3.(a), FWS and USGS should indicate to BLM those aspects of each study plan in which each agency has a special interest and would like to monitor in some fashion. As both bureaus are already standing members of the Technical Proposal Evaluation Committee, monitoring may take the form of:

(1) Participation in post-contract award planning and coordination with contractors.

(2) Assignment as the contracting Officer's authorized representative (COAR) and/or inspector.

After consideration of the interests of FWS and USGS, BLM will determine appropriate arrangements for such study monitoring and will notify USGS and FWS of its decision. If USGS and FWS do not agree with the final decision of BLM, they may notify the Assistant Secretary—Program Development and Budget of the nature of the disagreement through the appropriate line Assistant Secretary (as specified in Section 5 of Secretarial Order 2974) with 5 working days after notification of the decision. In such a case the Assistant Secretary—Program Development and Budget will inform the Director, BLM that he has received an appeal of the decision. The Assistant Secretary—Program Development and Budget will then take appropriate steps to resolve the disagreement. If GS or FWS do not notify the Assistant Secretary—Program Development and Budget of a disagreement within 5 working days, the decision of BLM will be considered uncontested and implementation will proceed.

B. Special Investigations

In order that BLM may obtain the expert advice from FWS and USGS regarding special investigations that do not lie within the framework of benchmark or monitoring studies, FWS and USGS will submit to BLM on or before January 1 and July 1 of each year their recommendations for special investigations. Each set of recommendations should be constructed and directed toward those investigations which:

(1) may affect decisionmaking by the Secretary

(2) are non-duplicative of planned or ongoing efforts

(3) fill data gaps in the Department's research effort toward determining the effects of OCS mineral development.

Recommendations should not be restricted to in-house capabilities or interests, but should examine the scientific and technical questions from as many theoretical aspects as possible. BLM will direct the investigation of duplication of effort with Federal, State, and private agencies through the Inter-Bureau Coordinating Committee on the OCS Minerals Program, OCS Research Management Advisory Board, contracts, and informal contacts. To aid BLM in this investigation, the FWS and USGS will list those ongoing or proposed in-house studies that could relate to the special investigations portion of the OCS environmental studies program.

1. At the beginning of budget review cycles (fiscal funding, supplemental appropriations), BLM will conduct a meeting with FWS and USGS concerning accumulated recommendations (including BLM's). The topical nature of said meeting will be the examination of each recommended special investigation, its scope, feasibility and tractability, anticipated funding, and management. A mutually agreed upon set of special investigations recommended for BLM funding will be developed, except that, in all cases, any additional BLM recommended investigations will not be subject to agreement. Comments and criticism by FWS and USGS concerning BLM recommended studies are actively solicited, however, BLM recommended studies are actively solicited, however, BLM reserves the right to prioritize special investigations pursuant to approved funding levels.

2. When special investigations are given budgetary approval, FWS and USGS will be notified of the anticipated special investigations.

3. BLM will decide timing of initiation of each and every BLM funded special investigation. When such a determination is made, FWS and/or USGS (depending on needed expertise) will meet with BLM to discuss design of the investigation. In general, the sequence of events outlined in Section A above will then be followed to insure inter-bureau participation and involvement throughout the study period.

Dated: March 30, 1976.

Curt Berklund,

Director, Bureau of Land Management.

Dated: April 20, 1976.

W. A. Radlinski,

Director U.S. Geological Survey.

Dated: April 30, 1976.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

Memorandum of Understanding Between Bureau of Land Management and the Fish and Wildlife Service on Interfacing Activities Regarding OCS Leasing Process

Purpose: The purpose of this Memorandum of Understanding (MOU) is to outline general procedures providing for Fish and Wildlife Service (FWS) input to the Bureau of Land Management (BLM) in relation to interfacing activities associated with the OCS leasing process. This ensues from Sections 2 and 3 of Secretarial Order 2974. The activities are carried out in the context of a BLM program for the administration and management of the OCS leasing program which includes baseline studies, resource assessments, tract selections environment impact statements, and other inputs to the decision process. The varous activities will be conducted in the manner outlined below.

A. Baseline Studies

The FWS participate in the formulation of the environmental baseline studies program. This involvement is set forth in the BLM–USGS–FWS Memorandum of Understanding on environmental research and monitoring activities.

B. Proposed Sale

1. *Preliminary Resource Assessment.*—The FWS in response to a formal request from the BLM will provide an assessment of fish and wildlife resources within a general proposed lease area, and those nearby areas which will be affected by activity in the lease area. The assessment will be based on existing knowledge.

2. *Supplemental Information Prior to Tract Selection.*—Because, at the time of the Call for Nominations, the proposed sale area is better defined, FWS may provide additional information which might bear upon potential leasing and development of particular tracts. This response will be based on additional data or assessments which were not available at the time of preliminary resource assessment. This additional during the tract selection process.

C. Tract Selection Process

Tract Selections—The FWS will participate, as outlined in S.O. 2974, in the tract selection process and will be represented at field and Washington office tract selection meetings as appropriate. The Regional representative will prepare a memorandum for attachment to the BLM–GS field recommendation. An FWS Washington office representative will surname the memorandum to the Secretary recommending the tentative tract selection.

D. Draft Environmental Impact Statement

1. *Data for Impact Statements.*—The appropriate FWS regional office will work directly with the BLM OCS Office to provide such data and insight on the fish and wildlife resources within and immediately adjacent to a proposed sale area as is available. The BLM will develop lease stipulations to protect fish and wildlife resources in consultation with the FWS.

2. *Review Draft Environmental Impact Statement.*—Draft environmental impact statements will be reviewed for content and substance.

3. *Attend Public Hearings.*—The FWS will attend public hearings on draft environmental impact statements usually representing the Assistant Secretary for Fish and Wildlife and Parks.

E. Decision Process

1. *FWS Input to Program Decision Option Document (PDOD).*— The FWS will provide input to the PDOD regarding fish and wildlife resources of concern in relation to the proposed sale. Input should discuss aspects of resources that are controversial, questioned, unresolved or otherwise the subject of discussion which warrant consideration by the Secretary.

FWS will prepare and forward to BLM options for the sale which are concerned with the fish and wildlife protection issues that FWS identifies.

Options presented will include a list of the tracts affected, the manner in which the area in each option will be affected, and, if possible, quantitative/qualitative estimates of the value of the resource based on the best information available.

2. *Review Final Environmental Impact Statement.*—The review process will be the same as for the draft statement except that comment will usually be restricted to important new information or where, in the opinion of FWS, comments on the draft were not adequately considered.

3. *Program Decision Option Document.*—FWS will review the draft PDOD, especially with regard for the issues as FWS views them and the sale options as FWS perceives them from a fish and wildlife resource advocacy viewpoint. Any FWS position in relation to fish and wildlife resource protection provided by the options will be provided to the secretary for his consideration in the decisionmaking process.

4. *Notice of Sale.*—The FWS will review the notice of sale and surname the document if appropriate.

Dated: March 30, 1976.

Curt Berklund,

Director, Bureau of Land Management.

Dated: March 3, 1976.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

October 9, 1975.

United States Department of the Interior, Fish and Wildlife Service,
Washington, D.C. 20240.

Memorandum to: Associate Director, Environment and Research; Associate Director, Fish and Wildlife Management; Assistant Director, Administration; Regional Directors; Alaska Area Director, and Western Field Coordinator.

From: Director, Fish and Wildlife Service.

Subject: Memorandum of Understanding Between the National Park Service and the Fish and Wildlife Service.

A few weeks ago we mailed several hundred copies of the subject Memorandum of Understanding to the Regional Offices. If it has not been done already, please see that they are distributed to the appropriate offices for careful review and implementation.

Assistant Scretary Reed has asked us to prepare a report one year from the date the Memorandum of Understanding was signed outlining the steps that have been taken to implement it. He stressed "the need for all of our personnel to improve their cooperation, coordination and liaison to insure that the Interior family is working together toward mutual goals."

May we have your progress report, including highlights of implementation of this Memorandum of Understanding, by July 1, 1976.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

Memorandum of Understanding Between the National Park Service and the U.S. Fish and Wildlife Service

1. WHEREAS the National Park Service and the Fish and Wildlife Service are both concerned with the conservation and the management of lands, waters, and fish and wildlife resources and their use and enjoyment by the public; and

2. WHEREAS the National Park Service is responsible for the administration and the management of the natural, historic, and recreation areas of the National Park System and the fish and wildlife resources therein, including the development and interpretation of research and resources management plans; and is authorized to conduct and to direct research necessary to fulfill these responsibilities; and is authorized to furnish technical assistance to other agencies on recreational planning, development and operations; and

3. WHEREAS the Fish and Wildlife Service administers lands on which there are fish, wildlife and recreational resources, and is authorized to cooperate with other Federal agencies in the conduct of research, surveys, and investigations to provide a sound biological basis for fish and wildlife conservation and management; and

4. WHEREAS the complexities of natural resources management demand integrated skills and knowledge from many disciplines of the natural, social and physical sciences; and

5. WHEREAS both agencies have developed recognized experience and skill in their paramount fields of responsibilities and desire to exchange their knowledge on mutually satisfactory terms in furtherance of the recognized objectives, policies, and responsibilities of each,

NOW, THEREFORE, it is agreed that:

a. The Fish and Wildlife Service will assist the National Park Service in the attainment of its basic objectives by conducting research and by providing technical advice and services required to preserve and to manage fish and wildlife resources on lands administered by the National Park Service; and

b. The National Park Service will assist the Fish and Wildlife Service in the attainment of

its basic objectives by conducting studies and by providing technical advice and services required to develop and to operate recreational and interpretive use facilities and programs on lands administered by the Fish and Wildlife Service.

In Effecting This Understanding

A. The Fish and Wildlife Service will when requested: 1. Assist the National Park Service by planning and by conducting research on fish and wildlife occurring on lands and waters of the National Park System or proposed for addition to such system. Such research may include, but not necessarily be limited to: studies concerned with taxonomy and distribution, ecology, population dynamics, behavior, life histories, habitat requirements, food habits, parasites, diseases, pesticide-wildlife relationships, and other factors affecting the numbers and conditions of fish and wildlife.

This research will be designed to:

a. Advance technical knowledge on fish and wildlife resources to achieve a better understanding of ecological relationships.

b. Provide information basic to the conservation, management, and interpretation of fish and wildlife on lands administered by the National Park Service.

c. Provide such information as necessary in order to assess the impacts of other activities and programs carried out in units of the National Park System on the fish and wildlife resources.

2. Assist the National Park Service by conducting investigations and providing technical assistance and services in fish and wildlife management. Such management services may include, but will not be limited to:

a. Surveys of marine and fresh water resources conducted to determine: the status of populations of fishes and other aquatic life, catch by anglers, fishermen use, needs for replenishing fish stocks, feasibility of native fish restoration, aquatic habitat reclamation, the degree of protection necessary for the preservation of threatened and endangered species of aquatic plant and animal life and the applicability of fishing regulations.

b. Surveys of animal resources to determine: the status of animal populations, conditions of the habitat, occurrence of diseases, parasites and other factors affecting the number and conditions of animal species, the degree of protection and/or management of threatened animal species and habitats necessary to insure their survival, and measures required to protect or to restore native species of animals and their habitat.

c. Studies concerned with the effects of proposed water resource projects and other developments upon the fauna and flora of established areas in the National Park System or in areas proposed for inclusion in the System.

d. Provision of fishes from national fish hatcheries for distribution in park waters under approved stocking programs and assistance in fish stocking operations.

e. Participation in the planning and the conduct of fish restoration or aquatic habitat reclamation projects.

f. Technical assistance in projects directed toward the control of surplus, problem or non-native animals.

g. Evaluation of the effects of pollutants on fish and wildlife and their habitats in units of the National Park System.

h. Management of fish and wildlife resources on recreation areas in the National Park System, when so agreed upon through approved management plans.

B. The National Park Service will when requested: 1. Assist the Fish and Wildlife Service by planning for recreational development and use by the public on lands under Fish and Wildlife Service jurisdiction.

This assistance may include, but is not limited to:

a. Recreational surveys and analysis of present and projected visitor use of Fish and Wildlife Service areas.

b. Assistance in developing recreational use plans for Fish and Wildlife Service areas having potential for public use. These general development plans will include proposals for primary and supportive visitor use facilities which are compatible with the basic mission of the area.

c. Assistance in providing necessary professional services for the designing and developing of recreational facilities, and in the analyzing of traffic flow and visitor use patterns as a guide for developing future recreational facilities.

d. Assistance in designing exhibits and interpretive materials depicting interesting and educational features of the area's natural resources.

e. Assistance in operating recreational and interpretive programs and facilities on lands under the jurisdiction of the Fish and Wildlife Service, when so agreed upon through approved management plans.

f. Archeology, history and cultural anthropology surveys and assistance in developing preservation or restoration plans for Fish and Wildlife areas.

2. Assist the Fish and Wildlife Service by planning and conducting training programs for Fish and Wildlife Service employees engaged in recreation management and interpretation of fish and wildlife to the public. This assistance may include attendance by Fish and Wildlife Service personnel at National Park Service training schools or provision of special instruction by National Park Service personnel at Fish and Wildlife Service training sessions. The objective shall be the development of suitable programs, including interpretation, as features of an expanded Fish and Wildlife Service effort to provide recreation related to fish and wildlife.

3. Recognize and facilitate the use of national parks by the Fish and Wildlife Service for studies and investigations designed essentially for Fish and Wildlife Service purposes when not in conflict with the park mission.

4. Consider proposals for the collection of scientific specimens by the Fish and Wildlife Service under permit issued by the Superintendent of the area in which collecting is done.

5. Assist the Fish and Wildlife Service in surveys of fish and wildlife resources and in the conduct of approved restoration projects being conducted for the National Park Service by furnishing such manpower, equipment, and facilities as may be available for the purpose.

6. Evaluate any proposals to transfer fish and fish eggs from park waters for cultural or restoration purposes or to transfer wildlife from park lands for restoration purposes when these activities will not jeopardize the welfare of the native species in the park and will not conflict with other park values.

7. Consider cooperative proposals to use National Park Service lands to reintroduce endangered plant and animal species historically indigenous to the areas.

C. General Provisions

1. All assistance and services rendered under this agreement by either Service for the benefit of the other will be carried out in full compliance with the program objectives, policies, and responsibilities of the benefiting Service. Reference should be made to his Memorandum of Understanding in other agreements with State agencies that may pertain to fish and wildlife resources of the National Park System. If cooperative projects are to be undertaken in a particular area, an initial meeting between the appropriate personnel will be held to develop a thorough understanding of project objectives and responsibilities.

2. The extent to which the National Park Service and the Fish and Wildlife Service will undertake substantial cooperative projects falling within the terms of this Memorandum of Understanding will depend upon availability of funds and personnel. By mutual agreement, funds may be transferred from one Service to the other or the work performed on a reimbursable basis for this purpose. In order to staff and finance substantial cooperative projects, it is essential that the work be programmed in advance and a determination made as to which Service should budget the work before it is undertaken. Projects undertaken within the terms of this Memorandum of Understanding will be implemented after a work plan is developed which sets forth the work to be accomplished, source and level of funding, manpower requirements, and respective agency responsibilities have been approved by both agencies.

3. Irrespective of 2. above, personnel of each Service are encouraged to provide routine advice and assistance to one another. Advance programming or an exchange of funds between the Service shall not be required for this purpose.

4. The parties to this Memorandum agree to exchange information and consult with each other prior to implementing plans, programs, or activities that may directly or indirectly affect the other party.

5. Publication of research and technical reports shall be encouraged and shall follow the normal editorial and review policies of the author's respective agency. Other reports, manuscripts, and informational materials related to National Park Service and Fish and Wildlife Service policies, administration and management programs resulting from projects covered in this Memorandum will be released or published only after mutual agreement in

each specific case. Advice and information on all cooperative projects will be freely exchanged. The Service issuing the reports or informational materials will provide copies of these releases to the other.

6. Scientific specimens collected in the course of investigations conducted essentially for Fish and Wildlife Service purposes shall be deposited in the study collections of the Fish and Wildlife Service until such time as they are catalogued as part of the U.S. National Museum collection. Specimens collected in the course of investigations conducted essentially for National Park Service purposes shall be deposited in the study collection of the park concerned. Other suitable depositories for such specimens may be used by either Service upon mutual consent. Each Service will provide duplicate specimens to the other upon request.

7. The Fish and Wildlife Service is recognized as the lead Service in matters pertaining to threatened and endangered species of plant and animals under authority given to the Secretary of the Interior by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543; 87 Stat. 884). The National Park Service recognizes its unique responsibilities in this matter by providing essential habitat and protection of existing populations within several of the national parks for many of the plant and animal forms covered by this Act. The Fish and Wildlife Service will, as appropriate, cooperatively assist the National Park Service in carrying out the Endangered Species Program within parks administered by the National Park Service in accordance with regulations and policies of the National Park Service. The Fish and Wildlife Service will provide consultation and supportive services as prescribed in the Endangered Species Act of 1973 which will benefit special National Park Service management programs pertaining to threatened and endangered species of plants and animals.

8. This Memorandum of Understanding supersedes the Memorandum of Understanding between the National Park Service and the Bureau of Sport Fisheries and Wildlife dated August 5, 1966. Supplementary agreements between the Bureau of Sport Fisheries and Wildlife, now known as the U.S. Fish and Wildlife Service, and the National Park Service, presently in force, remain in effect until superseded or terminated by mutual consent. Supplementary agreements will be entered into and implemented by the two Services at appropriate administrative levels to carry out the function and objectives outlined in this Memorandum of Understanding.

9. This Memorandum of Understanding shall become effective when approved by the Assistant Secretary of the Interior for Fish and Wildlife and Parks and shall continue in force and effect until terminated by either party with the concurrence of the Assistant Secretary. This Memorandum may be amended by mutual consent and with the concurrence of the Assistant Secretary.

Dated: June 23, 1975.

Gary Everhardt,

Director, National Park Service.

Dated: July 10, 1975.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

Approved:

Nathanial P. Reed,

Assistant Secretary of the Interior for Fish and Wildlife and Parks.

Memorandum of Agreement between the Bureau of Outdoor Recreation and the Bureau of Sport Fisheries and Wildlife

(Supersedes the Memorandum of Understanding approved on February 3, 1965)

In view of the mutual necessity for close cooperation between the Bureau of Outdoor Recreation and the Bureau of Sport Fisheries and Wildlife to insure that fish and wildlife resources and outdoor recreation make the greatest possible contribution to the welfare of the American public, it is mutually agreed that the two Bureaus will carry out their respective responsibilities and programs with full coordination and shall specifically operate in the following manner.

1. *Planning:* There will be frequent consultation between planning offices of the two Bureaus in the development of plans for programs of the type specified in this agreement. Where so designated herein, each Bureau will furnish the other with one or more copies of the completed plans. Site plans of the Bureau of Sport Fisheries and Wildlife—master plans for refuges, hatcheries, and laboratories—will be furnished only when they have a bearing on a cooperative endeavor between the two Bureaus.

2. *Planning Related to Water Resource Development Programs:* The purpose of this section is (1) to promote sound planning for recreation related to fish and wildlife and other outdoor recreation in conection with Federal water resource projects and programs and with similar projects subject to Federal license or permit; and (2) to establish procedures which will avoid duplication of effort and insure inter-Bureau coordination.

A. The Bureau of Sport Fisheries and Wildlife will conduct investigations and prepare reports to construction agencies concerning the fish and wildlife aspects of water resource projects. These reports will contain, among other things, recommendations for the conservation, development, and utilization of fish and wildlife resources for recreational, commercial, and other purposes, including recommendations, where appropriate, for the acquisition and use of lands and waters for such purposes.

B. The Bureau of Outdoor Recreation will conduct investigations and prepare reports to construction agencies concerning the total outdoor recreation aspects of water resource projects. These reports will include, where appropriate, data on fish and wildlife to be supplied by the Bureau of Sport Fisheries and Wildlife. These reports also will contain, among other things, recommendations concerning the preservation, development, and utilization of lands and water for all types of outdoor recreation opportunities and will reflect coordination of planning to provide for such opportunities.

C. The Bureau of Sport Fisheries and Wildlife will furnish to the Bureau of Outdoor Recreation for inclusion on the project report of that Bureau information concerning the conservation, development, and utilization of fish and wildlife resources for sport fishing, hunting, and other related recreation purposes. This information will cover such specific subjects as: present and future demand for hunting, fishing, and other recreation uses of fish and wildlife; existing and prospective supplies of fish and wildlife resources; recommended measures for the conservation, development, and utilization of fish and wildlife resources; and anticipated benefits and costs in dollars and/or other measures. To the extent appropriate, the Bureau of Outdoor Recreation may refer in its reports to the findings and recommendations of the Bureau of Sport Fisheries and Wildlife.

D. The Bureau of Outdoor Recreation will furnish to the Bureau of Sport Fisheries and Wildlife for inclusion in the project report of that Bureau information concerning the conservation, development, and utilization of land and water for general and specialized outdoor recreation purposes. This information will cover such subjects as: present and future demand for all recognized outdoor recreation activities; existing and prospecting supplies; recommended measures for the preservation, development, and utilization of recreation opportunity; and anticipated benefits and costs in dollars and/or other measures. To the extent appropriate, the Bureau of Sport Fisheries and Wildlife may refer in its reports to the findings and recommendations of the Bureau of Outdoor Recreation.

E. In recognition of the problens of separating hunting, fishing, photography, and nature study from other closely associated general recreation activities such as camping, boating, and picnicking, the reporting officers will make a special effort to identify areas of mutual and separable interests and take them into account in the planning process. Where hunting, fishing, and other recreation use of fish and wildlife resources are experienced by visitors to a project area the extent and value of this use will be determined by the Bureau of Sport Fisheries and Wildlife. The extent and value of other uses of recreation opportunity afforded by a project area including such activities as camping, which may be experienced in conjunction with hunting, fishing, and allied uses of fish and wildlife resources, will be determined by the Bureau of Outdoor Recreation.

F. To the extent practicable, the Bureau of Outdoor Receation and the Bureau of Sport Fisheries and Wildlife when reporting on a specific river basin or project area will employ the same or equivalent basic data relating to population, mobility, income levels, and other economic factos in their determination of needs, resource requirements, and recommended action.

G. Reports of the two Bureaus on a given water resource project will be consistent one with the other insofar as the effects of the

project on conservation, development, and utilization of fish and wildlife are concerned.

H. Reporting officers of the two Bureaus will cooperate closely with a view toward attaining compatible use of water resource projects for various outdoor recreation activities including fishing and hunting.

I. Information made available by one Bureau to the other under the terms of this agreement will be treated as preliminary and subject to revision until the Bureau supplying the information has released or is prepared to release such information in its own reports and/or has granted approval of its release by the other agency.

J. The Bureau of Outdoor Recreation, after consultation with the Bureau of Sport Fisheries and Wildlife, will include in its report on any Federal water resource project a finding on the extent to which the proposed recreation and fish and wildlife development conforms to and is in accordance with the State Comprehensive Plan developed pursuant to Subsection 5(d) of the Land and Water Conservation Fund Act of 1965 (Pub. L. 88-578), as required by Subsection 6(a) of the Federal Water Project Recreation Act of July 9, 1965 (Pub. L. 89-72).

K. Procedures shall be devised by the two Bureaus to provide for the equitable division of dual-use separable costs involving general recreation and fish and wildlife enhancement to facilitate cost-sharing and administration negotiations with non-Federal public bodies pursuant to Subsection 2(a) of the Federal Water Project Recreation Act of July 9, 1965.

3. *Studies of Demand for Outdoor Recreation:* The Bureau of Outdoor Recreation conducts studies of demand for outdoor recreation in connection with the Nationwide Outdoor Recreation Plan, which it prepares in accordance with the directive of the Congress in Public Law 88-29. The Bureau of Sport Fisheries and Wildlife conducts hunting and fishing surveys under the authority of the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act, as amended.

In view of the close relationships between these types of demand studies, each Bureau agrees to inform the other, in writing, as to its plans for the conduct of such studies, and to consult with the other as to the content of the studies in order to promote maximum coordination of demand data and to avoid duplication of effort.

4. *Financial Assistance to States for Planning and Program Development:* Under authority of the Land and Water Conservation Fund Act of 1965, the Bureau of Outdoor Recreation may provide financial assistance to States for the preparation and maintenance of comprehensive statewide outdoor recreation plans, required by that Act as a prerequisite to receiving acquisition and development grants. Under authority of the Federal Aid in Wildlife Restoration Act (Pittman-Robertson Act) and the Federal Aid in Fish Restoration Act (Dingell-Johnson Act), the Bureau of Sport Fisheries and Wildlife may provide financial assistance to the States for the preparation of statewide plans and programs for the utilization and development of fish and wildlife resources which would be important segments of the State outdoor recreation plans.

A. In view of the close relationship of these two types of financial assistance, the two Bureaus agree to keep each other informed as to these matters and to coordinate their efforts in the review and approval of the two programs.

B. The Bureau of Outdoor Recreation will inform the Bureau of Sport Fisheries and Wildlife of those "701" urban planning grants made to States by the Department of Housing and Urban Development for recreation planning, provided under authority of Section 701 of the Housing Act of 1954, as amended.

C. Whenever possible, the Bureau of Outdoor Recreation will finance fish and wildlife planning under its grants to the extent such planning contributes to and is an integral part of the State Comprehensive Outdoor Recreation Plan.

D. The Bureau of Outdoor Recreation will encourage the Department of Housing and Urban Development to include provisions for fish and wildlife planning, to the extent cited above, in such "701" grants as are made to State planning agencies for developing recreation plans.

E. The Bureau of Outdoor Recreation and the Bureau of Sport Fisheries and Wildlife agree to work out any additional details and procedures which may be necessary to implement this agreement.

5. *Financial Assistance to States for Acquisition and Development:* Land acquisition and development projects which are submitted for financial assistance under either Bureau's grant program will be reviewed by the receiving Bureau for consistency with the Statewide Comprehensive Outdoor Recreation Plan.

A. Each Bureau will study project proposals for grant assistance with consideration for programs of the other. Those that would affect a project assisted by the other Bureau will be referred to that Bureau for review. Projects for the acquisition or development of facilities for the production of fish and game for stocking purposes will be referred to the Bureau of Sport Fisheries and Wildlife for review and comments as to the need for and desirability of the Project.

B. The Bureau of Outdoor Recreation shall submit to the Bureau of Sport Fisheries and Wildlife any project proposal for acquisition or development adjacent to National Wildlife Refuges, National Fish Hatcheries, or areas managed under the small wetlands waterfowl production program; or any proposal affecting rare and endangered species, anadromous fish, or migratory birds. If no comments are made by the Bureau of Sport Fisheries and Wildlife within thirty (30) days, the project will be presumed to have no adverse effects on fish or wildlife.

6. *Threatened Species of Fish or Wildlife:* One of the purposes of funds allocated to Federal agencies under the Land and Water Conservation Fund Act is the acquisition of land for the preservation of habitat for species of fish and wildlife threatened with extinction. The Bureau of Sport Fisheries and Wildlife will:

A. Compile all available information on such species.

B. Prepare plans to insure preservation.

C. Support Bureau of Outdoor Recreation budget requests as agreed upon.

D. Ascertain, acquire, and manage such lands, and will designate them as national areas for this purpose, and, wherever feasible, will develop their utility for wildlife-oriented outdoor recreation.

7. *Regional Liaison and Cooperation:* Since both Bureaus are organized on a regional basis (although not congruent) and since broad authority has been delegated to the respective regional directors, active liaison and cooperation will be fostered at the regional level. As specific procedures are formulated, such will be incorporated in the respective Bureau operating instuctions or manuals.

8. *Terms of Agreement:* This Agreement supersedes the Memorandum of Understanding between the Bureau of Outdoor Recreation and the Bureau of Sport Fisheries and Wildlife, dated February 3, 1965.

This Agreement shall become effective upon the date subscribed by the last signatory and shall continue in full force and effect until terminated by either Bureau upon sixty (60) days written notice to the other.

IN WITNESS WHEREOF the parties hereto have executed this Memorandum of Agreement as of the dates entered below:

Dated: November 19, 1966.

John S. Gottschalk,

Director, Bureau of Sport Fisheries and Wildlife.

Dated: January 24, 1970.

Douglas Hoft,

Director, Bureau of Outdoor Recreation.

Memorandum of Agreement between the Bureau of Sport Fisheries and Wildlife and the Bureau of Outdoor Recreation, United States Department of the Interior

(Supplements the Memorandum of agreement of January 24, 1979)

WHEREAS, hunting and fishing and associated recreation activities are important segments of the total recreation province and planning for those activities should be an integral part of the comprehensive statewide outdoor recreation plan prepared for purposes of the Land and Water Conservation Fund Act of 1965; as amended, as well as for the state comprehensive fish and wildlife resource management plan prepared under the authorities of the Federal Aid in Fish and Wildlife Restoration Acts, as amended; and

WHEREAS, it is of mutual benefit to the state planning programs assisted by those Acts that close coordination between the programs be maintained; and

WHEREAS, the Bureau of Outdoor Recreation has been delegated responsibility by the Secretary of the Interior as the agency responsible for the administration of the Land and Water Conservation Fund Act of 1965, as amended; and

WHEREAS, the Bureau of Sport Fisheries and Wildlife has been delegated responsibility by the Secretary of the Interior as the agency responsible for the

administration of the Federal Aid in Fish and Wildlife Restoration Act, as amended;

NOW THEREFORE, it is mutually agreed that the general functions of the two agencies under this memorandum within the limits of their resources, will be as follows:

A. *Coordination of State Planning Efforts.* Both Bureaus will encourage their counterpart State planners to:

1. Develop the overall assessment of hunting and fishing within the State as an integral part of the statewide outdoor recreation plan as well as the State comprehensive fish and wildlife plan.

2. Effect close planning coordination to avoid duplication in the collection of data pertinent to both plans.

3. Use the same methodologies for inventorying physical resources, estimating and projecting hunting, fishing and other recreation demand and determining future requirements for the environmental, scientific, and recreational enrichment of the people.

4. Use the same basic estimates and projections of population, and other supply and demand variables as those used for overall comprehensive planning in the State.

5. Use common target years for projections.

6. use common or consistent intra-State planning regions to the extent possible.

7. Summarize and reflect in the appropriate sections of the statewide comprehensive outdoor recreation plan the needs and proposed actions of the comprehensive plan for fish and wildlife management.

B. *Federal Review of Planning Documents.*

1. Within their respective Regions, the Regional Directors, Bureau of Sport Fisheries and Wildlife, will be accorded an opportunity to review each statewide comprehensive outdoor recreation plan submitted to the Bureau of Outdoor Recreation, and the Regional Directors, Bureau of Outdoor Recreation will be accorded the opportunity to review each State comprehensive fish and wildlife plan submitted to the Bureau of Sport Fisheries and Wildlife.

2. Thirty days will be allowed for the review and comments, if any, that the Regional Director may wish to make.

3. Comments received will be of assistance in the review process and will serve as a basis for discussions with the State planners for subsequent updating and improvement of the plan.

4. Where they are still available, the Regional Directors, Bureau of Outdoor Recreation, will endeavor to make arrangements with each State to furnish the appropriate Regional Director, Bureau of Sport Fisheries and Wildlife, with a copy of the current statewide outdoor recreation plan. Where copies are no longer available, the Regional Director, Bureau of Sport Fisheries and Wildlife, upon his request, will be accorded an opportunity to review the file or working copy held by the Bureau of Outdoor Recreation.

5. Each Regional Director will encourage each State to furnish copies of plans developed under their respective Federal grant programs to the appropriate counterpart Regional Director for his information and files.

6. Amendments or updated strategic or operational plans submitted for approval under either Federal grant program will be exchanged by the Regional Directors for review and comment as under B1 and B2 of this memorandum.

This agreement supplements but does not supersede or replace the Memorandum of Agreement of January 24, 1970, between the Bureau of Outdoor Recreation and the Bureau of Sport Fisheries and Wildlife.

This agreement shall become effective on the date subscribed by the last signatory and shall continue in full force and effect until terminated by either Bureau upon sixty (60) days written notice to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement as of the dates entered below.

Dated: November 20, 1973.

United States Department of the Interior, Bureau of Outdoor Recreation.

James G. Watt,

Director.

Dated: October 26, 1973.

United States Department of the Interior, Bureau of Sport Fisheries and Wildlife.

Lynn A. Greenwalt,

Director.

Memoradum of Understanding Between the Secretary of the Interior and the Secretary of the Army

In recognition of the responsibilities of the Secretary of the Army under section 10 and 13 of the Act of March 3, 1899 (33 U.S.C. 403 and 407), relating to the control of dredging, filling, and excavation in the navigable waters of the United States, and the control of refuse in such waters, and the interrelationships of those responsibilities with the responsibilities of the Secretary of the Interior under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 *et seq.),* the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661–666c), and the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a *et seq.),* relating to the control and prevention of water pollution in such waters and the conservation of the Nation's natural resources and related environment, including fish and wildlife and recreational values therein; in recognition of our joint responsibilities under Executive Order No. 11288 to improve water quality through the prevention, control, and abatement of water pollution from Federal and federally licensed activities; and in recognition of other provisions of law and policy, we, the two Secretaries, adopt the following policies and procedures:

Policies

It is the policy of the two Secretaries that there shall be full coordination and cooperation between their respective Departments on the above responsibilities at all organizational levels, and it is their view that maximum efforts in the discharge of those responsibilities, including the resolution of differing views, must be undertaken at the earliest practicable time and at the field organizational unit most directly concerned. Accordingly, District Engineers of the U.S. Army Corps of Engineers shall coordinate with the Regional Directors of the Secretary of the Interior on fish and wildlife, recreation, and pollution problems associated with dredging, filling, and excavation operations to be conducted under permits issued under the 1899 Act in the navigable waters of the United States, and they shall avail themselves of the technical advice and assistance which such Directors may provide.

2. The Secretary of the Army will seek the advice and counsel of the Secretary of the Interior on difficult cases. If the Secretary of the Interior advises that proposed operations will unreasonably impair natural resources or the related environment, including the fish and wildlife and recreational values thereof, or will reduce the quality of such water in violation of applicable water quality standards, the Secretary of the Army in acting on the request for a permit will carefully evaluate the advantages and benefits of the operations in relation to the resultant loss or damage, including all data presented by the Secretary of the Interior, and will either deny the permit or include such conditions in the permit as he determines to be in the public interest, including provisions that will assure compliance with water quality standards established in accordance with law.

Procedures for Carrying Out These Policies

1. Upon receipt of an application for a permit for dredging, filling, excavation, or other related work in navigable waters of the United States, the District Engineers shall send notices to all interested parties, including the appropriate Regional Directors of the Federal Water Pollution Control Administration, the United States Fish and Wildlife Service, and the National Park Service of the Department of the Interior, and the appropriate State conservation, resources, and water pollution agencies.

2. Such Regional Directors of the Secretary of the Interior shall immediately make such studies and investigations as they deem necessary or desirable, consult with the appropriate State agencies, and advise the District Engineers whether the work proposed by the permit applicant, including the deposit of any material in or near the navigable waters of the United States, will reduce the quality of such waters in violation of applicable water quality standards or unreasonably impair natural resources or the related environment.

3. The District Engineers will hold public hearings on permit applications whenever response to a public notice indicates that hearings are desirable to afford all interested parties full opportunity to be heard on objections raised.

4. The District Engineer, in deciding whether a permit should be issued, shall weigh all relevant factors in reaching his decision. In any case where Directors of the Secretary of the Interior advise the District Engineers that proposed work will impair the water quality in violation of applicable water quality standards or unreasonably impair the natural resources or the related environment,

he shall, within the limits of his responsibility, encourage the applicant to take steps that will resolve the objections to the work. Failing in this respect, the District Engineers shall forward the case for the consideration of the Chief of Engineers and the appropriate Regional Director of the Secretary of the Interior shall submit his views and recommendations to his agency's Washington headquarters.

5. The Chief of Engineers shall refer to the Under Secretary of the Interior all those cases referred to him containing unresolved substantive differences of views and he shall include his analysis thereof, for the purpose of obtaining the Department of the Interior's comments prior to final determination of the issues.

6. In those cases where the Chief of Engineers and the Under Secretary are unable to resolve the remaining issues, the cases will be referred to the Secretary of the Army for decision in consultation with the Secretary of the Interior.

7. If in the course of operations within this understanding either Secretary finds its terms in need of modification, he may notify the other of the nature of the desired changes. In that event the Secretaries shall within 90 days negotiate such amendment as is considered desirable or may agree upon termination of this understanding at the end of the period.

Dated: July 13, 1967.

Steward L. Udall,

Secretary of the Interior.

Dated: July 13, 1967.

Stanley Resor,

Secretary of the Army.

Memorandum of Understanding for the Geothermal Program, U.S. Geological Survey—Bureau of Land Management—U.S. Fish and Wildlife Service, Cooperative Procedures in the Geothermal Program

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Memorandum of Understanding for the Geothermal Program

U.S. Geological Survey—Bureau of Land Management—U.S. Fish and Wildlife Service

The following guidelines are for the mutual cooperative efforts of the U.S. Geological Survey, Bureau of Land Management, and U.S. Fish and Wildlife Service in implementing the Federal geothermal resources program pursuant to the Geothermal Steam Act of 1970.

Abbreviations used hereafter for the various agencies, offices, and reports are as follows:

BLM—Bureau of Land Management
BLM-DO—Bureau of Land Management District Office
BLM-SO—Bureau of Land Management State Office
GS—U.S. Geological Survey
GS-RCM—U.S. Geological Survey, Regional Conservation Manager
AGS—Area Geothermal Supervisor
GS-AG—U.S. Geological Survey Area Geologist
GS-DG—U.S. Geological Survey District Geologist
FWS—Fish and Wildlife Service
FWS-RO—Fish and Wildlife Service Regional Office
FWS-AO—Fish and Wildlife Service Area Office
EAR—Environmental Analysis Record (prepared by BLM)
EA—Environmental Analysis (prepared by GS)
GEAP—Geothermal Environmental Advisory Panel (Sec. Order 2962)

1. *Priorities and Scheduling of Lease Sales and Non-Competitive Leasing.* (Primary responsibility—BLM.)

Primary contacts will be the AGS, the FWS-RO, the BLM-SO involved.

(a) *Competitive Lease Sale Scheduling.* BLM-SO may on its own motion, on recommendation from GS, or through nominations from industry, select areas for and schedule competitive lease sales in Known Geothermal Resource Areas (KGRA's). The BLM-SO will consult with GS-RCM as to KGRA leasing priorities, recommendations for lease stipulations, total area to be covered by the EAR, and overall priority and scheduling of the EAR and the sale. The BLM-SO will consult with FWS-AO and RO concerning fish and wildlife resources and related habitat, and regarding recommended stipulations and mitigating measures to protect these resources.

Generally, the areas to be covered by the EAR, prepared by BLM-DO, should include the maximum number of non-competitive lease applications in the vicinity of the KGRA. Determiniation of priority of sheduling lease sales will generally be based upon the geothermal potential of the area, its environmental sensitivity, and industry, interest. If nominations are either solicited or received from industry, BLM-SO will send an information copy of nominations to AGS, Menlo Park, and the FWS-AO.

(b) *Scheduling for Non-Competitive Leasing.* Where non-competitive leasing only is involved, BLM-SO should consult with AGS and FWS-RO to determine area, priority, and scheduling of EAR's. Where withdrawn lands are involved, the BLM-SO shall consult with the appropriate land management agencies with he basic authority to permit leasing. The criteria for scheduling of EAR's to be prepared by the BLM-DO should include geothermal potential of the area, its environmental sensitivity, and industry interest. AGS will furnish, upon request by BLM-SO, a priority listing of potential geothermal areas with copies to the FWS-RO.

2. *Environmental Analysis Considerations.*

(a) *Pre-Lease Environmental Analysis Record (EAR).* (Primary responsibility—BLM.)

(1) Upon initiation or revision of an EAR for either competitive or non-competitive leasing, BLM-DO will notify in writing the AGS and the FWS-AO of the area covered by the EAR. The AGS and FWS-AO will furnish BLM-DO with technical advice and information for consideration in the EAR, including recommended stipulations and mitigating measures. BLM-DO should specify deadline for such input with a minimum of 30 days advance notice. Maximum lead time should be provided.

(2) BLM-DO will furnish a copy of the draft EAR, with proposed special lease stipulations, to the AGS and FWS-AO and FWS-RO for review and comments prior to submission of EAR to BLM-SO.

(3) BLM-SO will furnish AGS the final BLM stipulations which are to be attached to non-competitive leases, or included in the notice of competitive lease sale, for the AGS review and concurrence with the stipulations. FWS-RO will be furnished a copy of the stipulations for review and comment.

(4) BLM-SO will furnish AGS and FWS-RO with two copies each of the final EAR.

(b) *Post-Lease Environmental Analysis (EA).* (Primary responsibility—AGS)

(1) For each proposal which requires a Plan of Operations, an Environmental Analysis (EA) will be prepared by the AGS. The AGS will request the technical advice on fish and wildlife matters, surface management, and environmental expertise of the BLM-SO and FWS-AO. The FWS-AO and the BLM-SO will provide technical advice and information in their areas of expertise to AGS for consideration in the EA which will include the recommended surface protection and reclamation requirements.

(2) When the GEAP chooses to review the draft EA, BLM-DO and FWS-RO will also be sent copies of the AGS draft EA for its review and comment.

(3) In every case, BLM-SO and FWS-AO and GEAP will be provided with a copy of the final EA.

3. *Competitive Lease Sales.* (Primary responsibility—BLM.)

In steps (a) through (h) below, the GS contact will be the AGS, and the FWS contact the appropriate FWS-AO. In step (d)

below, the BLM contact will be the BLM–DO involved. For all other lease sale matters, the appropriate BLM–SO involved will be the primary contact.

(a) To facilitate the sale procedure BLM–SO shall notify AGS and FWS–AO in writing at least 90 calendar days prior to sale date concerning:

(1) Areas within KGRA to be considered for competiitve lease sale.

(2) Problems as they may relate to parceling; i.e., grandfather rights, environmentally sensitive areas (described by legal subdivision), pending law suit or restraining orders, etc.

(3) Any indentifiable proposed lease stipulations even though there may be subsequent additions to or modification thereof.

(4) Request GS–RCM recommendations for parceling of tracts or leasing units and for rental and royalty rates at least 60 days prior to scheduled sale date.

(b) It will be BLM–SO responsibility to establish priority of processing and scheduling with input from the GS–RCM and FWS–RO.

(c) GS–RCM will recommend rental and royalty rates and parceling into tracts or leasing units for the competitive sale, submitting such information with 30 calendar days from date of request, whenever possible, to BLM–SO.

(d) EAR preparation will be the responsibility of the BLM–SO as outlined in Section 2(a).

(e) Publication of Lease-Sale Notice will be the responsibility of the BLM–SO. AGS concurrence must be received prior to publication. The BLM–SO will send a copy of the lease sale notice and lease stipulations to the AGS and the FWS–AO for final review, allowing at least 10 working days for comment.

(f) GS–RCM will prepare a pre-sale geothermal resources economic evaluation for all tracts in the sale. Prior to the schedule sale the GS–RCM or his designee shall be available to meet with the BLM–SO and present the technical evaluation of the offered tracts and be prepared to discuss the geologic, engineering, and economic factors upon which the evaluation have been prepared.

(g) Immediately after the sale, the GS–RCM evaluation committee will meet to study the results of the sale. The committee will review its geologic, geophysical, economic and engineering data on all tracts and identify those tracts recommended for acceptance and for rejection supporting the recommendations with appropriate technical information. Immediately following this evaluation, the BLM–SO and GS–RCM committee will meet jointly and the GS–RCM or his designee shall present the GS technical evaluation of and recommendations on each tract for which bids have been received. The GS–RCM will submit his recommendations in writing to the BLM–SO.

(h) BLM–SO will send two copies of the executed lease, including lease terms, to the AGS for his records.

4. *Non-Competitive Lease Applications* (Primary responsibility—BLM.)

(a) *Serial Register Page.*—The BLM–SO receives applications for non-competitive leases, prepares Serial Register Pages, and processes applications (at end of filing period) to determine if acceptable and if lands are available. Where an agency other than BLM administers withdrawn or acquired lands, BLM–SO will obtain a title report from that agency. The BLM–SO wil send information copy of Serial Register Page to BLM–DO, AGS, and the FWS–AO.

(b) *Competitive Interest Overlaps.*—After reviewing each month's applications BLM–SO will send GS two copies (one to AGS and one direct to the GS–AG or GS–DG listed below) of those applications which result in competitive interest overlap as defined by 43 CFR 3200.0–5(k)(3); a copy of the land status plat showing applications and overlaps will also be sent to the GS–AG or GS–DG listed below. GS–RCM will review competitive interest overlap as soon as practical after receipt from BLM–SO. GS–RCM will notify BLM–SO as soon as KGRA's have been defined.

For applications within States of	*Send overlap information to*
Montana	GS–DG, Billings, Montana.
Wyoming	GS–AG, Casper, Wyoming.
Utah	GS–DG, Salt Lake City, Utah.
Colorado	GS–AG, Denver, Colorado.
New Mexico	GS–AG, Roswell, New Mexico.
Alaska	GS–AG, Anchorage, Alaska.
California, Oregon, Washington, Idaho, Nevada, Arizona.	GS–AG, Menlo Park, California.
Eastern States	GS–AG, Washington, D.C.

(c) *Environmental Considerations.*—BLM–DO will prepare an EAR requesting input and technical advice and information from the AGS, the FWS–AO and other agencies as necessary.

(d) *KGRA Clear Listing—Issuance of Lease* BLM–SO will prepare lease forms and develop lease stipulations in consultation with the AGS, which will be sent to the AGS for final review and concurrence. Upon receipt of AGS concurrence, BLM–SO will forward lease form for applicant's signature. Upon receipt of lease signed by applicant, BLM–SO will forward lease forms to the AGS for final clear listing. The AGS will forward lease forms to the appropriate GS–AG or GS–DG who will then submit a KGRA clear listing report and return the lease forms to the BLM–SO. The GS–AG or GS–DG will also provide the AGS with an informational copy of the clear listing report. The BLM–SO will then issue the lease providing the AGS with two copies, including the stipulations.

5. *Pre-Lease Exploration Permit* (Primary responsibility—BLM)

(a) Upon receipt of a Notice of Intent to Conduct Geothermal Resources Exploration Operations, the BLM–DO will forward a copy of the Notice of Intent and any attachments to the AGS and the FWS–AO. This may include appropriate stipulation or documents relating to access routes across BLM lands.

The AGS and FWS–AO will notify the BLM–DO within five working days of any recommended stipulations considered desirable. The BLM–DO will send the AGS a copy of the approved permit.

(b) It will be the responsibility of the BLM–DO to see that the operator conducts exploration in accordance with regulations and terms of the permit. AGS and FWS–AO personnel are available, on request, to assist in supervision of operations under such permit.

(c) The BLM–DO will send the AGS a copy of the Notice of Completion of Exploration Operations for his records (Form 3200–10).

6. *Post-Lease Notice of Intent to Conduct Geothermal Resources Exploration Operations* (Primary responsibility—GS)

(a) Upon receipt of a Notice of Intent to Conduct Geothermal Resource Exploration Operations from an operator on an existing lease (as required by 30 CFR 270.78), the AGS will immediately forward a copy of the Notice and the required Plan of Operation to the BLM–DO and FWS–AO. The BLM–DO and FWS–AO will recommend any additional surface protection, reclamation requirements, and fish and wildlife protection measures including mitigations within their area of expertise.

(b) Upon receipt of the Notice of Intent and the required Plan of operation, an Environmental Analysis (EA) will be prepared by the AGS.

(c) It will be the responsibility of the AGS to see that exploratory operations on the lease concerned are conducted in accordance with regulations, GRO Orders, the approved Plan of Operation and Notice of Intent. The AGS will notify the BLM–DO in writing if the permittee does not comply with surface protection, fish and wildlife protection measures, reclamation requirements, and the corrective action taken or recommended. In cases of emergency, where serious surface or environmental damage occurs, or appears imminent, the BLM–DO may, if the AGS or his representative is not immediately available, issue a stop order to the lessee or his representative and then immediately notify the AGS.

7. *Plan of Operation and Application for Permit to Drill (APD)* (Primary responsibility—GS)

(a) Upon receipt by the AGS of an Application for Permit to Drill, the AGS will immediately send a copy of the Plan of Operation (per 30 CFR 270.34) and APD (from 9–331C with proprietary information deleted as necessary) to the BLM–DO, the FWS–AO and the FWS–RO.

(b) For exploratory wells, and for all other drilling operations where GS, BLM, or FWS considers such necessary, the AGS will schedule with BLM–DO, FWS–AO, and the operator, a joint on-site inspection and discussion of the proposed operation and proposed access routes over BLM lands. The operator will normally be encouraged to discuss the proposed action and conduct the on-site inspection with the BLM–DO, AGS, and FWS–AO, prior to writing his drilling program and Plan of Operation.

(c) If BLM–DO, FWS–AO, or AGS consider that additional information is necessary in the Plan of Operation, the AGS shall request the operator to provide such input as deemed necessary.

(d) When such additional information is requested, the operator will submit a final Plan of Operation or supplements to the Plan of Operation to the AGS who will forward a copy of same to BLM–DO and the FWS–AO.

(e) The BLM–DO and the FWS–AO will notify the AGS in writing of any special conditions which are recommended for inclusion in the approved plan of Operation.

(f) Upon receipt of the Plan of Operation, an EA will be prepared by the AGS. The EA prepared for subsequent well operations or for the post-lease Notice of Intent to Conduct Geothermal Resource Exploration Operation may vary in level of detail depending on the nature of the operation, the sensitivity of the area, and other appropriate considerations.

(g) The AGS will prepare and sign a letter of approval of the Plan of Operation containing conditions of approval mutually agreeable to both the BLM–DO and the AGS, and send the signed letter to the BLM–DO for approval.

(h) BLM–DO will sign the letter to complete the joint approval of Plan of Operation and forward an approved copy to lessee and an executed copy to the AGS and FWS–AO. The BLM–DO also forwards other documents relating to access over BLM lands outside the leased area to the operator with an information copy to the AGS and FWS–AO.

(i) The AGS will then approve the Application for Permit to Drill (Form 9–331C) and furnish a copy to the BLM–DO and the FWS–AO.

(j) The AGS will be responsible for compliance inspections of all operations conducted under the Plan of Operation and Application to Drill in the Area of Operations. However, BLM–DO and FWS–AO may inspect operations to assure conditions of the approved Plan of Operation are being met and will notify AGS of any non-compliance observed. The AGS will seek and utilize BLM–DO and the FWS–AO on surface management reclamation and fish and wildlife matters, and will request inspection assistance when considered necessary within their areas of expertise. AGS is the sole contact with operators except in cases of emergency. BLM–DO may issue instructions, notices, or orders to the operator only under the following emergency circumstances and conditions: (1) emergency situation exists that clearly threaten immediate serious or irreparable damage to the environment and resources or to the health and safety of employees and/or the public; or (2) the AGS representative is not timely available to take the necessary immediate action. The BLM–DO may in such emergency situations order the immediate cessation or correction of activities responsible for the emergency situation and may order repair or correction of damages, such orders to be followed by prompt telephoned and documented notification to the AGS of the action taken. BLM–DO will be responsible for all acitivities outside the Area of Operation, within the leasehold.

(k) Any desired significant changes in a Plan of Operation must be jointly approved by both BLM–DO and AGS.

8. *Plans of Operation for Surface Installations or Subsequent Well Work*

A Plan of Operation as per 30 CFR 270.34 will be required for all surface construction operations and subsequent well work. Procedure for approval will be as per 7(a) through (h) above. Joint on-site inspections may not be required, unless specifically considered necessary by AGS, BLM–DO or FWS–AO. The AGS will be responsible for compliance inspections in the Area of Operations. BLM will have the same option covered in 7(j).

9. *Plans of Development, Injection, or Production*

The operator will be required to submit (1) a Plan of Development prior to entering the development stage of its operation as determined by mutual agreement between the operator and the AGS, (2) a Plan of Injection where fluid injection is proposed, and (2) a Plan for Production prior to commencing production for commercial utilization of the geothermal resource. Procedure for joint BLM–DO and AGS approval will be essentially as per 7(a) through (h), described above for the Plan of Operation. The AGS will be responsible for compliance inspections in the Area of Operations.

10. *Designation of Operator*

The AGS will furnish BLM–DO a copy of any Designation of Operator received.

11. *Filing and Termination of Bonds*

(a) BLM–SO will routinely advise the AGS of the filing of any lease compliance (3206.1–1(b)) or protection bonds (3206.1–1(c)). The AGS will not permit operations on a lease until advised by BLM–SO that such bonds have been filed.

(b) The period of liability under any bond shall not be terminated by BLM until the AGS has advised the BLM–SO and FWS–AO that all terms and conditions, insofar as operations on the lease are concerned, have been fulfilled.

12. *Relinquishments*

BLM–SO will furnish the AGS a copy of any lease relinquishment filed. The AGS will furnish BLM–SO and the FWS–RO a report as to satisfactory restoration and abandonment of any affected portion of leased lands.

13. *Annual Environmental Report*

The AGS will furnish the BLM–DO a copy of the leassee's annual report of compliance with environmental protection requirements as required under 30 CFR 270.76. These reports will be available for inspection at either office for FWS–AO inspection.

14. *Annual Report of Diligent Exploration*

AGS will advise BLM–SO of the amount of expenditures considered qualified for diligent exploration pursuant to 43 CFR 3203.5.

15. *Designation of Coordinating Offices for Purposes of the Memorandum*

(a) For the U. S. Geological Survey, the office of the Assistant Division Chief of Operations, Conservation Division is designated as the coordinating office.

(b) For the Bureau of Land Management, the Division of Minerals Resources is designated as the coordinating office.

(c) For the U.S. Fish and Wildlife Service, the Office of Biological Services is designated as the coordinating office.

16. *General Provisions*

All assistance rendered under this Agreement will be carried out in full compliance with the objectives, policies, and responsibilities of the Department. Any unresolved matters concerning geothermal program where there is a mutual interest shall be referred for resolution to the next supervisory level involved.

The above cooperative procedures are in accord with S.O. 2948 between BLM and GS and supersedes all other implementing cooperative procedures involving geothermal leasing, administration, and supervision.

The AGS, BLM–SO and FWS–RO will meet, as necessary, to surface internal problems which occur as a result of implementing the requirements of this Agreement and to develop strategies for mitigating those problems.

This Agreement shall become effective upon execution hereof by the Directors. At least three months prior to the first and subsequent anniversary dates hereof, the AGS, BLM–SO, and FWS–RO shall apprise their respective coordinating offices of any suggested modifications in this Agreement which would improve its workability, reduce duplication of effort, and enhance the ability of the Department to perform its assigned functions relating to the leasing of Federal lands for geothermal resources and approval of operations in a more timely manner.

George W. Milias,

Acting Director, Fish and Wildlife Service.

Dated: June 7, 1976.

George L. Turcott,

Acting Director, Bureau of Land Management.

Dated: May 28, 1976.

W. A. Radlinski,

Acting Director, Geological Survey.

Dated: June 1, 1976.

Interagency Agreement Related to Classifications and Inventories of Natural Resources

Purpose

The purpose of this Agreement is to provide for liaison and cooperation between Bureau of Land Management, Fish & Wildlife Service, Forest Service, and Soil Conservation Service in survey, inventory, appraisal, assessment, and planning activities with particular emphasis on renewable resources. Principal objectives of this Agreement will be to provide guidelines and to assure administraive action to minimize duplication and overlapping efforts and to enhance and encourage overall data collection, data sharing, appraisal efficiency, program compatibility, and expedite technology transfer.

In carrying out the terms of this Agreement, each Agency will provide up to two representatives with authority to speak for their Agency Head in activities discussed below under "Area of Responsibility." Other Agencies will be included, as needed, to ensure coordination and communication.

Area of Responsibility

The concerned Agencies, by the formulation of appropriate technical working groups and the prompt resolution of differences, will provide for liaison and

cooperation for those activities related to resource inventories, surveys, and monitoring; assessment and appraisal; program evaluation; development of program strategies; preparation of statements of policy; and resource planning. Status reports will be prepared to keep Agency Heads informed of joint activities. Should unresolvable conflicts arise, they will be elevated to the Agency Heads for resolution.

Recognizing that each Agency has different objectives in design, development, and implementation of inventory, assessment/appraisal, and resource planning activities, this Agreement will provide for coordination of the following areas:

1. Land Classification System;
2. Data element definitions and units of measure;
3. Intensity and subject matter of surveys and inventories;
4. Statistical reliability;
5. Land-base being inventoried;
6. Compatibility for data exchange;
7. Compatibility of analytical assumptions;
8. Identification of Agency activities;
9. Data acquisition procedures—tie to Interagency Remote Sensing Committee;
10. Division of responsibilities;
11. Criteria for evaluation, sensitivity, and cost-benefit analysis;
12. Preparation of needed interagency agreements;
13. Involvement and coordination with States;
14. Coordination of budgets to avoid duplication and to take advantage of joint opportunities;
15. Program evaluation;
16. Statements of policy;
17. Development of program strategies; and
18. Resource planning.

Special Assignments

The Agency representatives will also advise and consult with the Director of the Rocky Mountain Forest and Range Experiment Station on the activities of the Station's Evaluation of alternative research directions, assignment of priorities and personnel, establishment of technical working arrangements, as needed, and related matters.

Procedures

The Agency representatives will meet on the last Thursday of each month. Staff from each Agency will participate, as appropriate, on subject items to be coordinated. Existing working relationships and agreements that now exist between the Agencies will not be preempted. Additional working relationships will be established as needed.

The meetings will be chaired alternately by the Agencies. Minutes will be taken of each meeting and distributed to Agency Heads and others as deemed necessary. Additional meetings will be called or regular meetings canceled or rescheduled by mutual agreement of Agency representatives.

This agreement shall be effective on the date of the last signature hereto. Any agency may withdraw from the agreement upon written notice to the others. The agreement may be terminated upon mutual consent of the parties.

Frank Gregg,

Director, Bureau of Land Management.

Dated: June 6, 1978.

R. A. Resler,

Acting Chief, Forest Service.

Dated: June 6, 1978.

Lynn A. Greenwalt,

Director, Fish & Wildlife Service.

Dated: June 6, 1978.

R. M. Davis,

Administrator, Soil Conservation Service.

Dated: June 6, 1978.

October 30, 1978.

In Reply Refer To:
FWS/PL

Memorandum

To: Agency Representatives.
From: Fish and Wildlife Service.
Subject: Interagency Agreement Related to Classifications and Inventories of Natual Resources.

Attached is a copy of the amendment to the subject agreement adding the United States Geological Survey as a member.

Attachment.

Interagency Agreement Related to Classification and Inventories of Natural Resources

Effective the date of the last signature hereto the above agreement is amended to include the United States Geological Survey.

Frank Gregg,

Director, Bureau of Land Management.

Dated: October 24, 1978.

R. A. Resler,

Chief Forest Service.

Dated: October 26, 1978.

Lynn A. Greenwalt,

Director, Fish & Wildlife Service.

Dated: October 24,1978.

R. M. Davis,

Administrator Soil Conservation Service.

Dated: October 25, 1978.

J. R. Balsley,

Acting Director, Geological Survey.

Dated: October 24, 1978.

Memorandum of Understanding Between the Environmental Protection Agency and U.S. Department of the Interior

I. Purpose

This Memorandum of Understanding has been developed in accordance with the provisions of the Interagency Memorandum, of Agreement prescribed in section 304(j)(1) of Pub. L. 92–500, and executed on August 30, 1973, by the Administrator, Environmental Protection Agency (EPA) and the Secretaries of the Army, Agriculture and the Interior. The purpose of this Memorandum is to: coordinate the programs of the U.S. Fish and Wildlife Service, the National Park Service, and the Heritage Conservation and Recreation Service (HCRS) with the water quality management process administered by the Environmental Protection Agency under sections 201, 208, and 303 of the Clean Water Act; facilitate the participation of these Interior Bureaus in the State and local establishment of water quality goals and the development and implementation of State and local programs to achieve those goals; and assure adequate consideration, under the Clean Water Act, of program needs of these Interior Bureaus.

II. Provisions

A. The U.S. Fish and Wildlife Service, National Park Service, and Heritage Conservation and Recreation Service will to the extent resources permit:

1. Establish a central point in the National and Regional Offices to facilitate Bureau involvement in the water quality management planning process, seek to derive Interior program benefits from improved water quality, and coordinate and integrate regional and field program activities with water quality management programs.
2. Participate in State and local review and State revision of water quality standards providing technical assistance and information on the identification of water uses and water quality criteria necessary to protect water uses including outdoor recreation needs, protection and propagation of aquatic life and wildlife, and preservation of natural and cultural resources under the administrative jurisdiction or trustee-ship of the Agency.
3. Participate in the development, implementation, and evaluation of State and areawide water quality management plans, provide appropriate technical assistance and information, and serve on advisory committees where appropriate.
4. Comment to EPA on State adopted water quality standards and state and areawide water quality management plans submitted to EPA for approval.
5. Provide EPA with appropriate technical and other material for inclusion in guidance and other memoranda circulated to EPA Regional Offices and State and areawide agencies.
6. Within 5 months after the effective date of this agreement recommend guidelines to EPA for designating Outstanding National Resource Waters.
7. Within 6 months from the date of publication of mutually approved guidance under E. 12, identify waters under jurisdiction of the Assistant Secretary which should be considered for designation as Outstanding National Resource Waters. Participate in identifying such waters in the State water quality standards review and revision process.
8. Submit a work plan for implementing this agreement within 90 days of the signing of this memorandum and prepare an annual progress report reviewing activities of the previous year under this agreement and updating the work plan.

B. United States Fish and Wildlife Service (FWS)—In addition, the U.S. Fish and Wildlife Service will to the extent resources permit:

1. Conduct research and provide technical assistance and information on development of water quality criteria.

2. Advise EPA and State and areawide water quality management planning agencies of FWS monitoring results which indicate pollution levels that are detrimental to fish, wildlife, or their habitat.

3. In cooperation with HCRS, develop integrated water quality/water quantity modeling methods and criteria for determining minimum and optimum stream flows and other physical parameters that are necessary for protection of fish and wildlife and recreational objectives.

4. Assist States and areawide water quality management planning agencies as requested in identifying endangered and threatened species and their critical habitats identified pursuant to Pub. L. 93–205 in the planning area which are impacted by water quality. Recommend water quality standards and other water quality management plan provisions to the States and areawide agencies where necessary to protect and enhance such species and habitats. FWS will assist, where appropriate, in the development of those provisions.

5. In waters under FWS jurisdiction, comply with applicable Federal, State, interstate and local requirements including State water quality standards as provided in section 313 of the Clean Water Act.

6. Coordinate FWS activities which affect or concern water quality with appropriate water quality management planning agencies.

7. Take an active role in selected special study projects under the water quality management planning process and FWS programs to:

(a) Identify water quality management planning activities to protect resources of concern to the FWS;

(b) Assist in the development of work plans; and

(c) Participate in the development and implementation of the water quality management planning program in cooperation with local, State and other federal agencies.

8. Encourage State Fish and Wildlife agency involvement in the development, review and revision of water quality standards and development and implementation of water quality management plans.

9. Encourage consideration of public boat ramp and nature trail construction in facilities planning.

10. Consistent with section 208 and related provisions of the Clean Water Act of 1977 and to the extent resources are made available through FWS budget channels:

(a) Complete a National Wetlands Inventory, develop interpretive reports, and make such information available to planning agencies as specified in the Clean Water Act;

(b) Provide technical assistance to EPA Regional Offices and State 208 agencies through training, handbooks, workshops, and direct consultation and advice;

(c) Develop environmental requirements and management techniques for key species in wetlands or riparian habitats.

(d) Develop and demonstrate supplemental nonpoint source Best Management Practices to protect or enhance fish and wildlife resources.

(e) Develop and demonstrate methods and strategies to utilize sewage wastewater for fish and wildlife habitat enhancement.

(f) Initiate research to provide supplemental data on the effects of environmental contaminants on fish and wildlife and their supporting ecosystems from key pollutants listed in Table 1 of the House Committee Print 95–33 (Committee on Public Works and Transportation) and any additional pollutants designated under 307(a).

C. Heritage, Conservation and Recreation Service—In addition, the HCRS will to the extent resources permit:

1. Identify recreation and open space opportunities and methods. Provide general advice concerning the protection of natural and cultural resources.

2. Prepare program guidelines for State and local governments encouraging the use of Land and Water Conservation Fund grants for the development of recreation and open space opportunities in conjunction with existing and planned wastewater treatment works.

3. Coordinate program activities with the water quality management planning and the statewide Comprehensive Outdoor Recreation Plan process to maximize outdoor recreational benefits derived from improved water quality and protect natural and cultural resources.

4. Develop guidance, in coordination with EPA and the FWS, encouraging and assisting State and areawide water quality management planning agencies in enhancing outdoor recreation opportunities and protecting natural and cultural resources. HCRS regional offices will distribute the guidance to park and recreation agencies and encourage those agencies to address outdoor recreation in the water quality management process.

5. Encourage appropriate State and local park, recreation, and natural resource agencies and public constituencies to maximize HCRS program benefits derived from improved water quality and to coordinate with and participate in water quality management planning.

6. Provide EPA with appropriate technical material relating to primary and supplemental public recreational opportunities and protection of natural and cultural resources.

7. Convene, in cooperation with EPA, regional conferences to develop an awareness of the primary and supplemental public recreation opportunities of State and local water quality management planning programs.

8. Encourage through guidance the provision of adequate facilities to accept and treat wastes from watercraft equipped with containment devices.

9. In cooperation with FWS, develop integrated water quality/water quantity modeling methods and criteria for determining minimum and optimum stream flows and other physical parameters that are necessary to achieve viable fish, wildlife and recreational objectives.

10. Participate in the development of State and areawide water quality management plans to assure proper consideration and protection of natural and cultural resources which include properties listed in or eligible for the National Register of Historic Places and the National Register of Natural Landmarks. Assist as requested with water quality management plan implementation.

11. Encourage consideration of public boat ramp and nature trail construction in facilities planning.

D. National Park Service (NPS)—The National Park Service will to the extent resources permit:

1. Assist State and areawide water quality management planning agencies in the review and revision of water quality standards to identify:

(a) Water quality conditions necessary to preserve and protect natural and cultural resources within the National Park System;

(b) Appropriate water uses consistent with the NPS responsibility;

(c) Waters which should be considered for designation as Outstanding National Resource Waters.

2. Participate in the development and implementation of State and areawide water quality management plans as necessary to assure proper consideration and protection of natural and cultural resources within the National Park System.

3. Serve on advisory committees in water quality management planning areas where water quality impacts units of the National Park System.

4. Encourage State natural resource management agency involvement in the review and revision of water quality standards and development and implementation of water quality management plans.

5. Take an active role in select demonstration-type projects under water quality management planning and NPS programs to:

(a) identify water quality management planning programs to protect resources under NPS jurisdiction;

(b) assist in the development of work plans;

(c) participate in the development and implementation of water quality management plans to maintain, restore, and enhance the chemical, physical and biological integrity of waters associated with or affecting the involved units of the National Park System.

6. Comply with State water quality standards in waters within units of the National Park System.

7. Coordinate NPS activities which affect or concern water quality with appropriate water quality management planning agencies.

8. Identify endangered and threatened species and their habitats in units of the National Park System for appropriate State and areawide water quality management planning agencies.

9. Assure that adequate facilities exist in units of the National Park System to accept and treat wastes from watercraft equipped with containment devices.

10. Exercise such other legal authorities and responsibilities as are or may be available to assure the maintenance, restoration, and/or enhancement of existing water quality in units of the National Park System.

E. Environmental Protection Agency—The Environmental Protection Agency will to the extent resources permit:

1. Establish contact points in the National and Regional offices for coordinating the activities under this memorandum.

2. Provide assistance and all necessary information including National guidance to facilitate the timely involvement of Interior Bureaus in the development of water quality management plans. Assist these Interior Bureaus in securing placement on appropriate State and areawide water quality management planning agency mailing lists.

3. Assure that State and areawide water quality management planning agencies actively seek the advice and involvement of these Interior Bureaus and their State and local counterparts in the water quality management planning process including State/EPA Agreement and areawide work program formulation, advisory groups, and development and implementation of water quality management plans.

4. Assure that State and areawide water quality management planning agencies coordinate their activities with the appropriate Interior Bureau activities affecting the planning area.

5. Provide these Interior Bureaus with the opportunity to review and comment on proposed criteria and information developed under sections 304(a) and 403 of the Clean Water Act.

6. Provide these Interior Bureaus with the opportunity to review and comment on proposed regulations, guidance and technical publications under sections 208 and 303 of the Clean Water Act.

7. Respond to Interior Bureau comments transmitted under paragraphs 5 and 6 above.

8. Encourage State and areawide water quality management planning agencies to consider nonstructural solutions to water pollution control problems that will preserve and enhance fish and wildlife habitat, open space and outdoor recreation.

9. Ensure that State water quality standards revisions describe the water quality necessary to meet requirements of the Act, including protection of existing and designated beneficial uses and designated Outstanding National Resource Waters.

10. Assure that State and areawide water quality managment planning agencies consider State Comprehensive Outdoor Recreation Plan (SCORP) priorities and State fish and wildlife plan priorities and Comprehensive Statewide Historic Preservation Plan priorities.

11. Consult with these Interior Bureaus in the development of guidelines identifying open space and recreation opportunities that can be expected to result from improved water quality, the planning of wastewater treatment works, and waste management policies under section 201(f) of the Clean Water Act.

12. Consult with Interior Bureaus for the purpose of developing EPA guidelines for identifying Outstanding National Resource Waters; within 9 months after the effective date of this agreement, issue the mutually approved guidelines for consideration by the States in the development of water quality standards.

13. During the next scheduled (after mutually approved guidelines are published under E. 12) review and revision of Water Quality Standards encourage States to apply the guidelines and consider designating waters identified under A. 7 of this agreement by the Assistant Secretary; encourage States to submit a written justification for failure to designate waters identified under A. 7 as Outstanding National Resource Waters; upon request of the Assistant Secretary, review (in consultation with the Assistant Secretary and the State) the State's action and, in the absence of a State designation, take under consideration the promulation of designations pursuant to Section 303(c)(4) of the Clean Water Act, where appropriate.

14. Provide the Regional Directors of these Interior Bureaus with the opportunity to review and comment on water quality management plans and State water quality standards submitted to the EPA Regional Administrators for review and approval. The EPA Regional Administrators will carefully consider comments submitted by these Interior Bureaus in the EPA review and approval process. Upon request if the Director of FWS, HCRS, or NPS, the Deputy Assistand Administrator for Water Planning and Standards will review unresolved concerns and will seek to resolve them prior to approval. The Assistant Administrator for Water and Waste Management will participate upon request of the Assistant Secretary.

15. Support these Interior Bureaus in obtaining resources to implement the provisions of this agreement.

16. Submit a work plan to the Assistant Secretary for implementing EPA responsibilities under this agreement within 90 days from the signing of this memorandum and prepare an annual progress report reviewing activities of the previous year under this agreement and updating the work plan.

Within five years from the effective date of this agreement, the Deputy Administrator and the Assistant Secretary shall review the effectiveness of this agreement in achieving the stated purposes. If, based upon that review or at any time during the course of implementation of this agreement, either the Deputy Administrator or the Assistant Secretary determines that the memorandum needs modification, the Deputy Administrator and the Assistant Secretary shall within 90 days after official notice negotiate such amendments considered appropriate.

Cecil D. Andrus,

Secretary, U.S. Department of the Interior.

Dated: November 10, 1978.

Douglas M. Costle,

Administrator, U.S. Environmental Protection Agency.

Dated: November 13, 1978.

Memorandum of Agreement Between Environmental Protection Agency and Bureau of Sport Fisheries and Wildlife, Department of the Interior

In accordance with the advice of the President to Congress in his July 9, 1970 Message Relative to Reorganization Plans Nos. 3 and 4, this Agreement takes cognizance of several scientific and technical environmental matters of common concern to the Agency and the Bureau: research, including monitoring and field appraisal, on effects of chemical contaminants (pesticides, PCB's, heavy metals, and other pollutants) on fish and wildlife; questions of pollution and its abatement at Bureau installations; establishment of water quality criteria and standards as these may affect fish and wildlife; chemical contamination in food chains; and the registration of chemicals and drugs. This Agreement recognizes the merit of avoiding duplication and of exchanging information and expertise in the interest of the public service.

The elements of the Agreement are as follows:

1. Research and Monitoring of Environmental Contaminants

The Bureau's four primary centers for research on the effects of environmental pollutants (Laurel, Maryland; Denver, Colorado; Columbia, Missouri; and Ann Arbor, Michigan) will continue and, as possible, broaden efforts at understanding and anticipating the effects of pollutants on survival, reproduction, physiology, behavior, and other factors critical to the well-being and management of fish and wildlife and the conservation of wildlife populations. The Bureau will seek to understand the mode of action, methods of inhibition, and movements through the ecosystem of chemicals and formulations in common or anticipated use.

The Bureau agrees to provide, to the designated offices or officers of the Agency, regularly scheduled data and progress reports based upon current Notifications of Research Projects (NRP's) submitted to the Science Information Exchange of the Smithsonian Institution.

The Bureau will continue to provide to the Agency, on request, all available information and advice that may be helpful in evaluating pollutants or in preparing for hearings. The Bureau will allow employees of the Agency to utilize the Bureau's specialized reprint files and will permit them to photocopy reprints in reasonable numbers on Bureau machines, as available, without charge.

The Agency agrees to provide, to the designated offices or officers of the Bureau, information concerning current or anticipated pesticide or other pollutant problems upon which research would be desirable.

In the interests of efficiency, economy, and avoidance of duplication, the concern of the Bureau and its expertise in research on the effects of pollutants on wildlife and freshwater fish, particularly on effects that are important to conservation, management, and recreational use of fish, wildlife, and associated food organisms and environment, are recognized. The Agency will depend especially heavily on the Bureau for research,

data, information, and analyses in relation to wildlife.

Both parties agree that the EPA is concerned and has expertise with respect to many environmental areas including effects of pollutants on man and laboratory mammals, effects of pollutants on the aquatic environment, determination of pollutant sources, regulation of pesticides, control of pollutants, studies of air and water quality, and control of air and water quality. The Bureau recognizes that some of these fields do and will require tests with fish.

When the Agency requires research or analyses within the expertise of the Bureau, the Agency may ask the Bureau to undertake this work in its entirety or to participate in Agency research or analysis. The Bureau will make a concerted effort to provide such service, retaining the option for in-house or contract services. The cost of such work will be borne by the requesting party. A similar relationship will prevail when the Bureau requires special work within the expertise of the Agency.

The Bureau has not only the expertise for evaluating the effects of toxicants on fish and wildlife resources, but also the capability to conduct on-site studies by using its own professional field people who are already trained and strategically located throughout the country.

The Bureau will continue to monitor residue levels of organochlorine insecticides, heavy metals, and other contaminants in birds and freshwater fish under the National Pesticide Monitoring Program in cooperation with the Council on Environmental Quality (CEQ). As part of its research and monitoring programs, it will conduct field observations on the effects of pollutants upon fish and wildlife. The Bureau will review all plans involving the proposed use of pesticides on Bureau lands.

The Bureau will make monitoring data available to the Agency as quickly as possible after chemical analyses are completed, assembled, and reviewed. The Agency will consult the Bureau for its views on the interpretation of monitoring data with respect to hazards to fish and wildlife. The Agency needs meaningful data in considering the possible impact of pesticides and other contaminants upon man and other living organisms. The Bureau and the Agency will take such steps as they deem necessary to ensure free exchange of information on a scientist-to-scientist basis, which will benefit both agencies in meeting their responsibilities on environmental matters.

The Agency reserves the right to be the first to release or to publish data resulting from work it has performed or financed independently of the Bureau. The Bureau reserves the same right in respect to work it has performed or financed. Work done jointly by the Agency and the Bureau, or done by one with the financial aid of the other, will be released or published only if agreed to by both parties. If the Agency and the Bureau differ on the advisability of releasing given data that have resulted from joint action, either party may release the data 30 days after giving written notice to the other party. Notwithstanding this agreement, such data may be entered into any statutory or judicial review procedure without the 30 days notice.

2. Federal Aid in Pesticide Programs

Nothing in this Agreement will limit the authority of the States to carry out research, development, and management programs using chemical agents, including herbicides and other pesticides, nor the authority of the Bureau to enter into agreements with the States to finance such programs under Federal Aid in Fish and Wildlife Restoration, and other grant or contractual programs, subject to guidelines published by EPA for Federal agencies or mutually acceptable requirements for specific projects.

3. Pollution Elimination at Bureau Installations

The Bureau recognizes the Agency's expertise in, and its own responsibilities for prevention, control and abatement of environmental pollution at Bureau installations. The Bureau will need the Agency's advice and assistance in interpretation of water quality standards and effluent limitations, review of proposed pollution elimination facilities, and other aspects of wastes and effluents.

In addition, each of the parties to this Agreement will provide for the timely exchange of information which would be of apparent benefit to either agency (for example: new knowledge or new developments in such areas as general water chemistry, hydraulics, monitoring devices, heating or cooling mechanisms, filtering methods or equipment, pumps, and aerators).

4. Provision of Test Fish

The Bureau agrees to provide to the Agency reasonable numbers and available species of fish from its National Fish Hatcheries, as may be required for the Agency's research. Requirements for unusual numbers, species, or sizes of fish will be specified at least 12 months in advance of the time the fish are needed.

5. Registration of Chemicals

The Bureau and its Federal Aid-supported State programs have urgent need for certain chemicals for fish and wildlife management (for example, herbicides for vegetation control in hatchery waters, control agents for pest animals). Bureau research centers and field stations will continue to do research pertinent to the registration and clearance of these chemicals. The Agency agrees to furnish the Bureau prompt authoritative statements from the Agency on minimum requirements for clearance and registration of such materials as the Agency regulates. The Agency agrees to provide guidelines for the research and testing needed to secure clearance and registration; to review research protocols from the Bureau promptly; and to inform the Bureau, upon request, of the status of any particular pesticide or device within the registration process.

The Agency, in its responsibility for registration of pesticidal chemicals, requires expert advice in establishing guidelines and protocols for evaluating the effects of these chemicals on fish and wildlife. The Agency recognizes the experience, responsibility, and interest of the Bureau in this field and may consult the Bureau in the preparation and trial of protocols for laboratory, field, and simulated field tests with fish and wildlife. The Bureau may assist in the evaluation of given tests proposed for inclusion in protocols designed for use with fish and wildlife. The Bureau agrees, within the limits of its resources, to conduct methodological research on this subject as mutually agreed upon; to provide copies of publications and reports on this subject that result from its own research; and on request to provide knowledgeable professionals for membership on panels and task forces.

The Agency recognizes that the Bureau requires much reliable information on pesticides and pollutants in the course of its work, and that the Bureau cannot meet this need by duplicating the vast amount of toxicological work already performed by industry on given chemicals. The Agency will, therefore, release to the Bureau, on request, as much information on given pesticides and other materials as is legally permissible and economically practicable.

6. Water Quality Criteria and Standards

The Bureau recognizes the Agency's responsibility for promulgating water quality criteria, for approving State water quality standards and establishing standards when necessary, and for conducting or sponsoring research that will lead to more effective standards. The Agency recognizes the Bureau's responsibility to conduct research to determine the water quality required for the health and productivity of the fish and wildlife resource. The Agency will consult the Bureau for aid in defining water quality criteria for protection of the fish and wildlife.

In discharging their responsibilities in these areas, the Agency and the Bureau agree to maintain close liaison to avoid needless duplication of research effort; to keep each other apprised of research progress; to be responsive to each other's needs in planning future research; and, when mutually beneficial, to share facilities and equipment, or to collaborate on research programs.

7. Joint Actions

In reviewing plans for federally constructed, permitted, licensed or supported water resource development projects, the Bureau will provide information to the Agency on the water quality criteria and flow regimens necessary for fish and wildlife and the fish and wildlife mitigation or enhancement benefits these will provide. Since these evaluations also will be used in the Bureau report to the sponsoring or licensing agency, any modification of such evaluations in reports of the Agency should be limited to those concurred in by the Bureau.

Each signatory party is obligated to call the attention of the other to needed actions in all areas of common concern. Each will identify for the other the areas in which they are unable to act and will inform the other of activities they are undertaking. When the nominally responsible agency is unable to carry out work in an important area involving fish and wildlife, this Agreement provides for

interim cooperative agreements for reassignment of the work, for the transfer of funds, and for loan of equipment and manpower to accomplish the task. In such instances, the transfer of resources will be implemented by a separate interagency agreement which specifically describes the work to be undertaken.

When informed of large losses of fish or wildlife presumably caused by pollution, each agency will promptly inform the other and will state its plans for investigating the situation. These investigations may be made singly or jointly, as each agency deems best in specific cases.

Whenever any ad hoc or standing committee involving both fish and wildlife resources and water quality is established by either agency, the other agency may be invited to nominate a representative to sit on the committee as a regular member.

This Memorandum of Agreement, entered into in good faith for the public good, the mutual benefit of the agreeing agencies, and the promotion of efficiency in Government, may be amended by common consent or terminated in whole or in part after not less than 60 days notice of intention by either party.

Approvals:

For the Environmental Protection Agency.

John R. Quarles, Jr.,

Deputy Administrator, Environmental Protection Agency.

Dated: October 10, 1973.

For the Bureau of Sport Fisheries and Wildlife.

Lynn A. Greenwalt,

Director, Bureau of Sport Fisheries and Wildlife, Department of the Interior.

Dated: January 31, 1974.

Department of Agriculture Soil Conservation Service Water resources Project Type Activities

Channel Modification Guidelines

Agency: Soil Conservation Service (Department of Agriculture) and Fish and Wildlife Service (Department of the Interior).

Action: Notice of Final Guidelines for Use of Channel Modification as a Means of Water Management in water resource project type activities of the Soil Conservation Service (SCS). The guidelines are not intended to have the force of rules or regulations, but are published for the information of the interested public.

Summary: An interdisciplinary team of specialists from the Department of the Interior's Fish and Wildlife Service (FWS) and the Department of Agriculture's Soil Conservation Service has worked cooperatively over the past several months to develop the attached guidelines for channel modification. The guidelines are based on these professional's own experienced judgment, plus the suggestions of many other interested Federal and State agencies, organizations, and individuals whose views were solicited. The heads of both agencies, Lynn A. Greenwalt and R. W. (Mel) Davis, have personally guided this effort and support the guidelines.

For the guidelines to be effective, reasoned judgment will be required among professional planners, biologists, and others. Compromises will need to be negotiated. We expect users of the guidelines to suggest refinements. After a reasonable period of use, we will review their effectiveness and rewrite them if the need is apparent. The guidelines should be studied thoroughly and applied intelligently. In general, they provide that:

1. SCS and FWS will use an interdisciplinary planning process which permits a balancing of the need to both maintain a viable, naturally functioning ecosystem and provide for projected food and fiber, economic, and other social needs.

2. Measures other than channel work will be suggested, analyzed, evaluated, an accepted if channel work will cause measurable habitat losses and if other alternatives will contribute to project objectives with less damaging effects. Channel work normally will be a "last resort" measures.

3. Channel work will not be undertaken when it would destroy or modify critical habitat for endangered or threatened species.

4. Wetland types 3–20 will not purposely drained, and any indirect drainage of these types will be avoided unless appropriate mitigation or compensation is provided. Types 1 and 2 will be evaluated as to their ecological importance and preservation strongly recommended in accordance with provisions in the guidelines.

5. The intent and spirit of the Federal Wild and Scenic River Act and similar State legislation will be respected.

6. Important fish and wildlife habitat values will be maintained or enhanced. Conservation easements or other comparable means will be utilized wherever necessary to provide reasonable protection for wetlands subject to secondary drainage predicted to occur as a result of, or be facilitiated by, channel modification.

Effective date:

For further information contact: Dr. F. Eugene Hester, Associate Director, Environment and Research, U.S. Fish and Wildlife Service (202–343–5715).

Mr. Joseph W. Haas, Assistant Administrator for Water Resources, Soil Conservation Service (202–447–4527).

Supplementary information: On August 8, 1977, the Soil Conservation Service and the Fish and Wildlife Service published in the **Federal Register** (42 FR 40119) proposed guidelines for use of channel modification as a means of water management in water resource project type activities of the Soil Conservation Service. During the 37-day commenting period numerous comments were received from Federal agencies, State agencies, organizations, and individuals. All written comments were given consideration in developing the final guidelines. The full text of all comments received is on file and available for public inspection in: Room 5226, South Agriculture Building, Washington, D.C., Room 849, 1730 K Street, N.W., Washington, D.C.

Accordingly, the following final guidelines are published for information purposes.

Robert L. Herbst,

Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior.

M. Rupert Cutler,

Assistant Secretary for Conservation, Research, and Education, U.S. Department of Agriculture.

Channel Modification Guidelines

Prepared by U.S. Department of the Interior, Fish and Wildlife Service; U.S. Department of Agriculture, Soil Conservation Service.

Published in the **Federal Register**, Vol. 43, No. 41, Wednesday, March 1, 1978, pp. 8276–8280

Channel Modification Guidelines

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Channel Modification Guidelines

I. Introduction

A. Purpose. These guidelines are promulgated by the Soil Conservation Service (SCS) and the Fish and Wildlife Service (FWS) to guide their personnel in identifying when and where channel modification may be used as a technique for implementing water and related land resource projects. They will be used in the planning of all SCS projects or measures which qualify for either technical, financial, and/or credit assistance under the authorities for flood prevention projects, small watershed projects, and resource conservation and development projects. These program authorities contain provisions for maintaining and enhancing fish and wildlife resources as well as achieving other water management objectives.

B. Policy. It is the policy of SCS and FWS that care and effort will be made to maintain and restore streams, wetlands, and riparian vegetation as functioning parts of a viable ecosystem upon which fish and wildlife resources depend.

It is also the policy of SCS and FWS to use an interdisciplinary planning process which will permit a balancing of the need to maintain a viable, naturally functioning ecosystem and projected food and fiber, economic, and other social needs.

The application of these guidelines, the resource inventory, interpretation, and planning assistance provided by SCS and FWS will ensure identification and consideration of alternatives to channel modification.

C. Applicability. These guidelines become effective as of the date they are approved. They will be applied to: (1) all new planning starts; (2) all projects in the planning phase, unless SCS and FWS agree it is not important

and feasible to apply the guidelines; (3) all projects approved for construction, (a) when supplements or revisions are prepared which would result in an increase in the amount or type of channel modification which would increase the potential adverse environmental impact; or (b) when SCS and FWS agree that (i) important fish and wildlife habitat is involved and threatened; (ii) project modification is feasible; and (iii) project modification to minimize adverse environmental impact has not been accomplished as a result of reviews mandated by the National Environmental Policy Act or other congressional, Presidential, or Secretarial initiatives.

After the guidelines have been in use for a year or more, their effectiveness will be reviewed, and changes will be made if determined to be necessary. These guidelines may be terminated at the request of either agency.

II. Background

Congress has recognized that erosion, floodwater, and sediment can cause damage in the watersheds of the rivers and streams of the United States. It has found that loss of life and damage to property constitute a menace to the national welfare and that the Federal Government should cooperate with States and their political subdivisions for the purposes of preventing such damages and of furthering the conservation, development, utilization, and disposal of water. In so doing, this action will also preserve, protect, and improve the Nation's land and water resources and the quality of the environment.

Congress has also recognized that rivers and streams, wetlands, and riparian vegetation constitute a valuable resource which is vital to the public interest in naturally functioning ecosystems, water transport, and maintenance of fish and wildlife populations. Dependent upon the situation, wetlands can serve as: (1) natural flood detention areas; (2) sediment and debris traps; (3) water purifiers and in recycling nutrients; (4) groundwater recharge areas; (5) nursery areas for aquatic animal species; (6) important habitats for a wide variety of plant and animal species, some of which have been depleted to the point that their continued existence is endangered; and (7) areas which produce highly valuable crops of timber, fish, and wildlife.

High flows in rivers and streams and periodic overflow have significant value in creating and maintaining meandering channels and in cleansing and redistributing substrates. This action by water provides riffles, pools, or other habitat for fish spawning and rearing and production of aquatic invertebrates. It also provides diverse plant successional areas and other types of shoreline habitat that fulfill fish and wildlife food and cover requirements. However, it is also recognized that many areas adjacent to streams and wetlands are well-suited for and have a long history of agricultural and urban uses.

Channel modification, used in a sensitive manner, is one method that can be utilized in solving specific water management problems. It may be needed to restore a water course impaired or damaged naturally or through man's unwise use or management of adjacent or upstream lands. It may also be needed to provide a safe and health environment and for the maintenance of existing agricultural productivity.

However, channel modification can cause serious damage to fish and wildlife resource values. In addition to the direct impacts on the stream and immediate environs, the practice has, on occasion, led directly or indirectly to major drainage of wetlands, clearing of bottomland forests for intensive agriculture, and increased flooding and siltation in downstream areas. Channel modification for flood control, drainage, and irrigation projects has often resulted in severe conflict with the function of the associated ecosystems, changing or reducing both the variety and abundance of fish and wildlife resources.

Because of the variety of values associated with water, it is incumbent upon the SCS and the FWS to continue to share their technical expertise to help ensure decisions which will result in the maximum benefits to assure long-term agricultural productivity and optimum environmental quality.

III. Guidelines

A. Alternatives. The guidelines for channel modification will be used when formulating alternative plans under the Water Resources Council's Principles and Standards. The planning process will include an inventory of resources, including fish and wildlife habitats and their geographic delineation. It will also identify appropriate means for minimizing adverse impacts on habitat values. Measurement of habitat values will be determined on a case-by-case basis in accordance with habitat evaluation procedures promulgated by FWS and developed jointly with SCS.

Alternative plans will be formulated to: (1) emphasize environmental quality; (2) optimize national economic development; and (3) provide varying mixes of the components of the environmental quality and national economic development objectives. For each alternative plan, there will be a display of accounting of relevant beneficial and adverse effects. A comparison of the displays will identify trade-offs between the environmental quality and economic development objectives. Within this framework and in compliance with the requirements of the National Environmental Policy Act (NEPA), equal consideration will be given to environmental and economic and technical aspects in the decisionmaking process.

In compliance with the mandates of NEPA and the Water Resources Council's Principles and Standards, the FWS will assist the SCS develop, evaluate, and recommend alternatives, if any, to channel modification when it is expected to cause, directly or indirectly, measurable losses of fish and wildlife resources. Channel modifications will not be considered if a practical alternative exists. A practical alternative is one which meets *all* of the following tests: (1) is consistent with the Water Resources Council's Principles and Standards; (2) makes a significant contribution to project objectives; and (3) results in less damage to fish and wildlife habitat. Thus, channel modification will normally emerge as the last resort measure.

The following three broad types of alternatives will be considered singly or in combination:

1. Soil and Water Conservation practices.

2. Nonstructural—nonstructural measures may include, but are not limited to, land use regulation, land acquisition, the maintenance of aquatic areas, floodplain zoning, floodproofing existing buildings, flood forecasting, flood warning, flood hazard information, flood insurance, tax adjustments, emergency assistance, and relocation of properties and people.

3. Structural—structural alternatives to channel modification include, but are not limited to, dams, floodways, dikes, levees (including set back levees), flood walls, pumping plants, diversions, and wetland development, maintenance, and restoration.

B. Types of Channel Modification. Channel modification is defined in these guidelines to include actions such as riprapping, selective snagging, clearing and snagging, widening, deepening, realignment, and lining, listed *generally* in order of ascending impact on fish and wildlife resources.

1. Selective Snagging—The selective removal of obstructions from a channel to increase its capacity to convey water. This includes, but is not limited to, the removal of downed timber and accumulations of debris or obstructions.

2. Clearing and Snagging—The removal of obstructions from the channel and stream banks, including the removal of vegetation and accumulations of bedload material, to increase its capacity to convey water. It may include the removal of sediment bars, drifts, logs, snags, boulders, piling, piers, headwalls, and debris.

3. Riprapping—The placement of irregular permanent material such as rock in critical areas along the watercourse to protect the earth materials against excessive erosive forces.

4. Widening—The overall widening of a channel to restore or increase its capacity to convey water. This usually involves clearing, snagging, and excavation of a portion of the channel side slope(s). Where practical, widening is performed on one side only with appropriate consideration given to alternating from one side to the other.

5. Deepening—The overall deepening of a channel to increase its capacity to convey water and/or provide drainage. Deepening usually involves clearing or snagging and excavation of a portion of the channel bottom and the channel side slope(s).

6. Realignment—The construction of a new channel or a new alignment and may involve the clearing, snagging, widening, and/or deepening of the existing channel where the new alignment coincides with the existing channel. It may include straightening the alignment to restore or increase the capacity of the channel to convey water.

7. Lining—Placement of a nonvegetative protective lining over all or part of the perimeter of a channel to prevent erosion or

to increase the capacity of the channel to convey or conserve water.

C. Channel Modification as an Alternative. The following criteria will be utilized in the planning process for determining when channel modification can be considered an alternative. It used, channel modification will be the minimum required, either alone or in combination with other measures. It will be accomplished using the least damaging construction techniques and equipment in order to retain as much of the existing characteristics of the channel and riparian habitat as possible. Construction practices may include, but are not limited to, such things as seasonal construction, minimum clearing, reshaping spoil, limiting excavation to one bank (on alternating sides where appropriate), and prompt revegetation of disturbed areas.

Channel modification may be considered as an alternative for project purposes for which the SCS is currently authorizied by law and which are in conformance with agency (SCS) policy and regulations, provided the modification is designed to resolve specific problems and *would not cause* directly or indirectly any of the following to occur:

1. Jeopardize the continued existence of endangered species and threatened species designated or formally proposed [1] by the destruction or modification of habitat of such species which is determined to be critical under the Endangered Species Act of 1973 or species similarly classified under law of the State(s) in which the project is located.

2. Result in restricted access to use of streams or stream segments developed specifically for recreation or fish and wildlife use by the general public.

3. The intent or purpose is to drain or otherwise alter wetland types 3 through 20,** or the result of the modification would be to indirectly alter wetlands types 3 through 20 and provisions for appropriate mitigation or compensation by establishment of similar habitat values in the project area are not provided. Wetland types 1 and 2 with important fish and wildlife habitat values will be treated in accordance with item 3 below, and their preservation will be strongly recommended when they are adjacent to types 3 through 20 or are needed to maintain a balanced aquatic or semi-aquatic ecosystem.

Also, channel modification will not be considered as an alternative unless it can be accomplished with little or no direct or indirect adverse*** effect on:

1. Stream or stream segments now designated or undergoing study under the Wild and Scenic Rivers Act or officially designated pursuant to other Federal or State(s) legislative actions for their important natural, esthetic, or recreational values.

2. Streams located in or flowing through or contiguous to established wilderness areas, parks, refuges, or other areas set aside pursuant to Federal or State(s) legislative actions for fish and wildlife esthetic or recreational values.

3. Important fish and wildlife habitat values, including riparian habitat, in the project impact area, State, or Nation after providing for all appropriate mitigation, compensation, or preservation measures. Conservation easements or other comparable means will be utilized wherever necessary to provide reasonable life of project protection for wetlands or riparian areas subject to secondary drainage predicted to occur as a result of, or be facilitated by, channel modification. (Measurement of habitat values will be determined on a case-by-case basis in accordance with habitat evaluation procedures to be promulgated by FWS and developed jointly with SCS.)

IV. Coordination and Interaction

The FWS and the SCS recognize that the application of the above guidelines can most effectively be accomplished through cooperative effort during all planning phases of a water resource project. The FMS and the SCS will work cooperatively with State fish and wildlife agencies to inventory and assess the fish and wildlife resources and to plan alternatives, enhancements, replacement, or necessary mitigation measures.

The level of effort to be devoted by FWS to each watershed project will be proportional to the value of the resources and expected impact on fish and wildlife resources. If FWS determines at any stage of planning that it cannot, for any reason, participate, it will so notify SCS in writing stating reasons for discontinued participation. Even though FWS discontinues participation in planning, they will eventually, as prescribed by law, become involved with reviewing and commenting on the watershed plan. In such instances, FWS will not oppose the project plan on the basis of channel modifications unless it is clearly evident that the plan is not in conformance with the provisions of these guidelines after consultation with SCS determining this to be the case.

The following procedures will be used in the planning of water resource projects. The coordination identified is between the field levels of FWS and SCS; however, *both agencies recognize that planning will always involve State fish and wildlife agencies as well as the interested public and sponsoring agencies at all stages througout the planning process.*

[1] Applicable only during a 6-month period immediately following the date a proposal is published in the Federal Register by FWS in compliance with the Endangered Species Conservation Act of 1973.

** Wetland types as described in FWS Circular #39 or subsequent publications.

*** Rule of reason must be used in applying these guidelines and determining the actual net effects and their significance at the field level considering the value of the resource and importance of the project objectives.

Coordination of Field Level Planning [1]

Process	SCS action	FWS action
Preapplication	Potential application under consideration. Notifies FWS that potential application is being considered and issued invitation to meetings..	Participate in meetings.
	Assists sponsors in developing information when appropriate. (Normally requires from one to several days.) Request from FWS available fish and wildlife information and viewpoints concerning potentials for and impacts of a probable project.	Furnishes available information and FWS viewpoint concerning potentials for and impacts of a probable project. If requested, participates jointly with SCS and State fish and wildlife agency studies needed and reports findings as may be required. (Field level letter.)
Application	Receives application. Notifies FWS in writing that application has been received and when field examination is to begin. Issues invitation to FWS to participate in all meetings and in study and evaluation of available information. (Field examination may require a few days to several weeks.).	Participates in meetings.
	Initiates field examination and assembles available information, coordinates study and evaluation of available information and data. Begins environmental assessment.	Participates in field examination. Assembles and furnishes available fish and wildlife information and data. Participates in study and evaluation of available information and data and in identification of problems and study needs and potential solutions worthy of further study.
	Identifies problems and needs, potential solutions, and broad alternatives worthy of further study. Request FWS to work cooperatively with SCS and State fish and wildlife agency in any special studies required in this step.	Works cooperatively with SCS and State fish and wildlife agency in any special studies required and in preparing an appropriate report.
	Prepares field examination report (includes pertinent fish and wildlife information from FWS) and provides copy to FWS.	Provides inputs (letter report) for the field examination report.
	Requests FWS to participate in developing a plan of study. Prepares the study plan.	Participates with SCS in developing a plan of study. FWS will advise as to scope and detail of specific studies needed, capability of FWS to perform studies, and its desire to participate in design of any contracts to secure necessary information.
	Requests planning authority (submits views of FWS with request for planning authorization).	

Coordination of Field Level Planning [1]—Continued

Process	SCS action	FWS action
Planning	Receives notice of planning authorization. Notifies FWS in writing. Initiates and coordinates Preliminary Investigation (PI) and continues environmental assessment. Notifies FWS in writing. (PI may require from several weeks to 2 years.).	Participates in meetings and preparation of joint FWS–State fish and wildlife agency–SCS fish and wildlife inventory, assessment, base line data, and report.
	SCS initiates preparation of PI report and update of the study plan. Requests FWS participation in PI and update of plan of study.	Furnishes additional inputs to problems, needs, alternatives and impacts as the PI process progresses and jointly makes recommendations for mitigation, compensation, and enhancement. Furnishes inputs for the PI report and updating of study plan.
	Sends PI report to FWS and others	Participates with SCS to review the PI report with the public.
Detailed Planning	Coordinates the detailed planning stage and continuation of the environmental assessment. Notifies FWS that detailed planning is to commence and issues invitation to participate in detailed planning and in meetings.	Participates with SCS and others in detailed planning of alternatives and the components. Works cooperatively with State fish and wildlife agency and SCS to formulate the alternatives and to assess fish and wildlife impacts. Works cooperatively with SCS and State in preparation of recommendations for mitigation, compensation, and enhancement for initial draft plan and, when prepared, an EIS. Participates in meetings. Provides detailed report in accordance with Fish and Wildlife Coordination Act and Section 12 of P.L. 83-566.
	Prepares initial draft plan and, when required, an EIS. Initiates local field review and issues an invitation to FWS to participate in this review. Provides FWS with initial draft plan and an EIS, if prepared.	Provides review comments on initial draft and participates in local field review.
Review (Formal)	Prepares a draft plan and EIS, if required, and circulates for interagency review.	Provides comments to Interior and works with SCS in an attempt to resolve issues, if warranted.
	SCS prepares final plan and EIS, if required. Forwards plan and EIS through system for approval and authorization.	Review plan and EIS according to FWS and Interior instructions.
Operations	Receives notice of authorization for installation. Notifies FWS. (Regional and area offices.) Prepares construction plans and invites FWS to review them.	Reviews pertinent construction plans.
	Notifes FWS of supplement when the channel modification guidelines are applicable. (See page 2.) Prepares supplemental plans when necessary and circulates for local field review.	Participates in formulating supplemental plan when the channel modification guidelines are applicable. Same involvement as in planning and provides inputs for supplemental plan. Also provides comments on supplemental plan when circulated for local field review.
	Forwards supplemental plan for approval. Provides FWS copy of supplemental plan.	
Maintenance	Advises FWS and State fish and wildlife agency of scheduled maintenance inspections during the life of the project.	Participates in maintenance inspections at FWS discretion. If appropriate, makes recommendations for changes in O&M agreement if necessary to ensure that proper maintenance is accomplished.

[1] All steps apply to planning for small watershed projects. Appropriate steps will be followed for P.L. 78–534 and Resource Conservation and Development measures planning.

NOTES.—1. SCS notifies FWS when planning is suspended, project action terminated, or other stop actions are taken.

2. The level of effort to be devoted by the FWS to each watershed project will be proportional to the value of the resources and expected impact on fish and wildlife resources. If FWS determines at any stage of planning that it cannot, for any reason, participate, it will so notify SCS in writing stating reasons for discontinued participation.

V. Resolution of Issues

General. It is recognized that issues may develop which cannot be resolved at the field level. When issues arise, it will be the practice of the FWS and the SCS to refer such cases and issues to the next higher respective administrative level for resolution and ultimately, if necessary, to the Secretaries of Agriculture and Interior. The Secretary of Agriculture will seek the advice and counsel of the Secretary of the Interior in reaching his decision. Consultation between the two agencies will, at each level, occur throughout the decision process.

Procedure. 1. Most of the problems in applying the guidelines will be identified at the field planning level. When this occurs, the SCS Planning Staff Leader will consult directly with the FWS Field Supervisor (Ecological Services) and attempt to resolve the issue.

2. Should the SCS Planning Staff Leader and the FWS Area of Field Supervisor be unable to reach agreement, the issue should be referred and coordinated as follows:

USDA in Consultation With USDI

State Conservationist, SCS	Regional Director and/or Area Manager, FWS as appropriate
Administrator, SCS	Director, FWS
Assistant Secretary for Conservation, Research and Education	Assistant Secretary for Fish and Wildlife and Parks
Secretary of Agriculture	Secretary of the Interior

The decision on whether channel modification will be part of a project plan shall rest with the Secretary of Agriculture. If disagreement still exists at the Secretary's level, the FWS views and recommendations will be appended to the project plan.

At all levels in the decision process, the desires and needs of the local sponsors, environmental groups, State and Federal agencies, and interested public will be taken fully into account.

Dated: February 21, 1978.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

February 22, 1978.

R. M. Davis,

Administrator, Soil Conservation Service.

Water Project Planning and Analysis, Federal Interagency Agreements, 2.541c

Joint Policy of the Departments of the Interior and of the Army Relative to Reservoir Project Lands

Acquisition of lands for reservoir projects. In so far as permitted by law, it is the policy of the Departments of the Interior and of the Army to acquire, as a part of reservoir project construction, adequate interest in lands necessary for the realization of optimum values for all purposes including additional land areas to assure full realization of optimum present and future outdoor recreational and fish and wildlife potentials of each reservoir.

1. *Lands for reservoir construction and operation.* The fee title will be acquired to the following:

a. Lands necessary for permanent structures.

b. Lands below the maximum flowage line of the reservoir including lands below a selected freeboard where necessary to safeguard against the effects of saturation, wave action, and bank erosion and to permit induced surcharge operation.

c. Lands needed to provide for public access to the maximum flowage line as described in paragraph 1b, or for operation and maintenance of the project.

2. *Additional lands for correlative purposes.* The fee title will be acquired for the following:

a. Such lands as are needed to meet present and future requirements for fish and wildlife as determined pursuant to the Fish and Wildlife Coordination Act.

b. Such lands as are needed to meet present and future public requirements for outdoor recreation, as may be authorized by Congress.

3. *Easements* in lieu of fee title may be taken only for lands that meet all of the following conditions:

a. Lands lying above the storage pool.

b. Lands in remote portions of the project area.

c. Lands determined to be of no substantial value for protection or enhancement of fish and wildlife resources, or for public outdoor recreation.

d. It is to the financial advantage of the Government to take easements in lieu of fee title.

4. *Blocking out.* Blocking out will be accomplished in accordance with sound real estate practices, for example, on minor sectional subdivision lines; and normally, land will not be acquired to avoid severance damage if the owner will waive such damage.

5. *Mineral rights.* Mineral, oil and gas rights will not be acquired except where the development thereof would interfere with project purposes, but mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access.

6. *Buildings.* Buildings for human occupancy as well as other structures which would interfere with the operation of the project for any project purpose will be prohibited on reservoir project lands.

This joint agreement will be published in the **Federal Register.**

Approved: February 16, 1962.

Stewart L. Udall,

Secretary of the Interior.

Stephen Ailes,

Acting Secretary of the Army

February 19, 1962.

Appendix—Part A–26—Broad Liaison and Coordination

Exhibit 1—Agreement Between Fish and Wildlife Service and Corps of Engineers, August 20, 1954, A–26.1

This agreement is entered into for the purpose of promoting sound planning on fish and wildlife matters related to river basin projects of the Corps of Engineers. The agreement is designed to cover the application of the Coordination Act of August 14, 1946 (60 Stat. 1080), to these projects for the guidance of all personnel in the Corps of Engineers and the Fish and Wildlife Service.

Recommendations of the Fish and Wildlife Service

1. Recommendations of the Fish and Wildlife Service shall be as specific as is practicable as to purpose, lands to be utilized or acquired, costs, and results expected, and insofar as feasible shall be presented to the public and to State agencies for coordination. If necessary, supplementary hearings shall be held jointly by the Fish and Wildlife Service and by the Corps for this purpose. Costs of carrying out the recommendations of the Fish and Wildlife Service shall be estimated by the Corps except for recommendations involving facilities for fish and wildlife which are separable from other project features.

2. The District Engineer shall incorporate in the body of his signed report the substance of the report of the Fish and Wildlife Service. Findings of the Fish and Wildlife Service shall indicate both gains and losses to fish and wildlife, including sport fishing opportunities, expected to result from Corps of Engineers' reservoirs.

3. The District Engineer shall incorporate in the body of his signed report language specifically accepting each of the recommendations in the report of the Fish and Wildlife Service (including recommendations for land acquisition) * which are considered satisfactory to him. If any of the Service's recommendations are not acceptable, the District Engineer shall incorporate in the body of his signed report his reasons for considering them unacceptable. If any recommendations are not specific, it is understood that the District Engineer's opinion can be given only tentatively, subject to definite project studies after authorization. The Corps of Engineers cannot recommend substantial remedial measures for wildlife losses, except with an estimate of cost, or with the understanding that the additional cost will be nominal.

4. For reports prepared by District Engineers prior to this agreement, but not transmitted to the Congress by the Secretary of the Army, the signed report or supplemental report of the Chief of Engineers shall deal with recommendations of the Fish and Wildlife Service in the manner specified in 2 and 3 above for reports of the District Engineer.

5. The report of the Fish and Wildlife Service shall be incorporated in full in the appendix of the report of the Corps of Engineers.

Statement of Project Purposes

6. Where the effects of a project on fish and wildlife resources are significant, the report of the Corps of Engineers on that project shall include fish and wildlife conservation as one of the purposes of the project. Recommendations for fish and wildlife conservation shall be consistent with current standards and procedures established by the Bureau of the Budget for including such improvements in water resource development programs.

General Plans

7. General plans, as specified in Section 3 of the Coordination Act (60 Stat. 1080) shall be developed jointly by the Corps of Engineers, the Fish and Wildlife Service, and the appropriate State agency for all project lands and waters where management for fish and wildlife purposes is proposed. The parties hereto will endeavor to see that a general plan agreement is entered into by the three parties in all such cases, irrespective of whether the lands and waters have particular value in carrying out the national migratory bird management program.

8. Standard procedures for development of general plans shall be developed jointly by the Office of the Chief of Engineers and the Fish and Wildlife Service, and copies of such procedures will be made available to all field offices of both agencies. It is agreed that every endeavor will be made to develop such procedures by not later than 1 December 1954. This plan shall be referred to as the General Plan for Fish and Wildlife Management to avoid confusion with other types of reservoir plans.

Leases of Project Lands

9. Leases of project lands by the Corps of Engineers for agricultural purposes shall specify that these lands shall be open to public hunting and fishing in accordance with applicable State and Federal laws, provided that a lessee may request permission to post such lands, giving his reasons in detail. Such a request will be considered jointly by the Corps of Engineers, the Fish and Wildlife Service and the appropriate State fish and game agency before being acted upon by the Corps of Engineers.

Approved: August 6, 1954.

John L. Farley,

Director, Fish and Wildlife Service.

Approved: August 6, 1954.

Ralph A. Tudor,

Acting Secretary of the Interior.

Approved: August 12, 1954.

S. D. Sturgis,

Chief of Engineers.

Approved: August 20, 1954.

Robert T. Stevens,

Secretary of the Army.

Memorandum of Understanding

With Regard to Procedures for Cooperation Between the Atomic Energy Commission and the Department of the Interior Pertaining to Location and Operation of Proposed Nuclear Installations Subject to Licensing and Regulation by the Commission

(1) Desiring that information and technical capabilities possessed by the Department may be put at the disposal of the Commission to assist it in discharging its licensing and regulatory responsibilities to protect health and safety of the public, the two signatory Agencies hereby agree to follow procedures whereby: in response to Commission requests, information and assistance within the scope of the Department's special capabilities will be made available to the Commission's Director of Regulation.

(2) As new studies, investigations of consultations are desired by the Comnmission, in connection with its licensing and regulatory functions, the Commission's Director of Regulation will proceed to arrange for the desired cooperation by the appropriate Service, Bureau, or Office (henceforth in this Memorandum the term "Bureau" is understood also to apply to Departmental units called "Service" or "Office") of the Department in the following manner.

(3) The Director of Regulation will advise the Director of such Bureau of specific sites

* The project authorization and general authorities available to the Corps of Engineers including the Coordination Act (60 Stat. 1080) allow the submission of requests by the Corps of Engineers to Congress for additional funds for fish and wildlife conservation on previously authorized projects, but do not give statutory authority to construction agencies either for (a) acquisition of additional land for replacement of habitat or as compensation for fish and wildlife damage caused by a project or for (b) major changes in project scope, cost or purpose, unless the project document, the authorizing legislation, or other legislation, provide specific statutory authority.

or areas for which information, studies, or other technical assistance are needed. The Director of regulation, in Coordination with the Bureau, will develop the scope of information, study, or survey desired.

(4) The Director of Regulaton will provide to the Bureau all pertinent available reports, documents, and other information relating to such sites or areas. The Director of Regulation will also arrange with applicants or licensees for access by authorized personnel of the Bureau to sites, excavations, drill samples, etc., as may be necessary for the work to be performed .

(5) Staff consultation between the staffs of the Director of Regulation and of the Bureau will be held at suitable times and places as work proceeds. From time to time, the Director of Regulation may request the Bureau personnel to participate in informal staff conferences and technical discussions with the applicant or licensee and with the Advisory Committee on Reactor Safeguards. Bureau personnel may also be asked to present formal testimony at public hearings.

(6) The Bureau will prepare such reports on the work under this arrangement as may be mutually agreed upon. These may in different cases consist of preliminary surveys, memoranda, or formal reports for public release.

(7) The timing of public release of material prepared for publication by a Bureau in accordance with this procedure will be determined by the Director of Regulation after consultation with the Bureau Director, or his designated representative. Normally such releases will by made at the same time that the Commission's "Hazards Analysis" and other consultant reports are distributed to the press and the public.

(8) It is understood that the Bureau will be reimbursed for costs incurred in connection with services preformed hereunder in accordance with existing or future agreements between the Bureau and the Commission.

Dated: March 27, 1964.

Approved:

Gleen T. Seaborg,

Chairman, Atomic Energy Commission.

Dated: March 20, 1964.

Approved:

Stewart L. Udall,

Secretary of the Interior.

WO–54—Section 304(j) of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500) Agreement of September 25, 1973, Involving Policy and Guidelines for Coordination Between Federal Water Programs and Section 208 Areawide Programs

Agreement Between the Departments of Interior, Agriculture, the Army, and the Environmental Protection Agency

Purpose. Section 304(j) of Pub. L. 92–500 states that the Administrator of the Environmental Protection Agency, hereinafter identified as the Administrator, shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army and the Secretary of the Interior to provide for maximum utilization of the appropriate programs authorized under other Federal laws to be carried out by such Secretaries for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under Section 208 of this Act. It is understood that other agreements may be developed between the Administrator and the individual Secretaries delineating areas of mutual interest and specific agency responsibilities under this and other statutory authorities.

Goal. The goal of this Agreement is to implement the intent of Congress as expressed in Section 304(j).

Planning assistance. In each planning area under Section 208(a)(2) the Environmental Protection Agency will, as a condition of the grant proposal under Section 208(f)(3), require that the planning agency provide for the creation of an advisory committee and invite the Departments of Agriculture, Army and the Interior to participate by designating representation. Each Department may or may not participate as it deems appropriate. Participation by these Departments will serve as a means of providing for the experience and programs of the individual Departments to be made available, as resources permit, to assist the areawide planning agency in plan development and to assure that relevant Federal and State agency programs and the areawide plan are compatible.

Implementation assistance. The Departments of Agriculture, Army and the Interior have various authorized programs that can implement portions of plans approved under Section 208. These programs extend to both private and Federal land ownership. These programs shall be utilized to the degree that resources may be available through the agency programs, or be made available supplementally through Section 304(j) to achieve and maintain water quality as provided for in plans developed under Section 208. The Environmental Protection Agency will coordinate with the appropriate Secretary or Secretaries to insure that their individual programs supplement and complement the implementation of approved Section 208 plans. Where feasible the Secretaries of Agriculture, Army and the Interior, or their representatives may enter into collective or individual agreements with the waste treatment management agencies designated under Section 208(c) to implement provisions of the approved plan.

Fund transfer. The Administrator is authorized to supplement from funds available under Section 304(j)(3) any otherwise appropriated funds available to Agriculture, Army and/or the Interior to carry out programs provided for in approved Section 208 plans. The Administrator shall trnasfer funds to the Secretaries for individual program accelerations and/or modifications. Program accelerations and modifications will be conditioned upon implementation needs set forth in the approved Section 208 plans. Arrangements for transfer of funds from the Environmental Protection Agency which may be appropriated under Section 304(j)(2) will be developed as an amendment to this Agreement at the time areawide plans are available for implementation.

Effective date. This Agreement will be effective on signature of the parties. The parties to this Agreement are the Administrator of the Environmental Protection Agency and the Secretaries of Agriculture, Army and the Interior.

Conditions. Nothing in this Agreement for implementation of Section 304(j) is to be construed as intending to limit the activities of the Secretaries to only Section 208 activities nor to relinquish any of the authorities and responsibilities granted to the Secretaries in the Federal Water Pollution Control Act Amendments of 1972. Failure of the Administrator to act under the authority of Section 304(j)(2) will not be construed as affecting, other than by non-receipt of supplemental funds, the programs of the Departments of Agriculture, Army, or the Interior.

Amendments of this Agreement will be possible by mutual consent of all parties signatory to this document. Such amendments may be initiated by any signatory to the Agreement.

Dated: September 18, 1973.

Earl L. Butz,

Secretary of Agriculture.

Dated: September 7, 1973.

Howard H. Callaway,

Secretary of the Army.

Dated: September 25, 1973.

John C. Whitaker,

Secretary of the Interior (Acting).

Dated: August 30, 1973.

John Quarles,

Administrator, Environmental Protection Agency (Acting).

WO–79—Memorandum of Understanding Between the Department of the Interior and the Energy Research and Development Administration Regarding Establishment of Program Coordination and Implementation

I. Background

The Department of the Interior (DOI) has by law responsibilities for the conservation and management of natural resources in the United States, including 500 million acres of Federal land, the Outer Continental Shelf lands, Indian lands, the territories, and the Trust territories of the Pacific Islands; for the research and investigation necessary to understand and develop energy, minerals, and water resources of the United States; for the health and safety of persons engaged in mining and extraction; and for the protection of fish and wildlife.

The Energy Research and Development Administration (ERDA) has by law responsibilities for planning and developing a vigorous, environmentally sound, national program in energy research and development. in the exercise of its responsibilities, ERDA is directed to utilize the technical and management capabilities of other Federal agencies.

II. Purpose

The purpose of this Memorandum of Understanding is to establish a policy of cooperation between DOI and ERDA, to describe the general conditions under which cooperative efforts will be formulated, and to outline overall management approaches and procedures that will govern program coordination and implementation.

This Memorandum of Understanding does not apply to ERDA National Security programs, including Naval Reactors and related activities.

III. Policy

It is the policy of the two agencies that they will work together in mutually supporting ways in the formulation and execution of programs (and projects) that contribute to the national effort for the development and utilization of energy resources. it is agreed that this policy of cooperation will be implemented in ways which utilize the existing capabilities and facilities of each agency to the greatest possible extent, either in making these resources available to each other or for the joint planning and execution of activities. Specifically, the agencies will coordinate their activities in the following areas, where each agency has closely related responsibilities and interests, and will not undertake programs in those areas without prior notification of that agency.

1. Technology, Research and Development, and Basic Sciences. ERDA's responsibilities include the development of technology for the enhanced recovery, conversion, utilization, and conservation of fossil fuels; for increased utilization of solar energy; for nuclear fusion; for the utilization of geothermal energy; for expanding the development and utilization of nuclear power; for reliable and efficient electric power transmission and distribution systems; and for programs in the areas of basic science research as well as environmental and health research. ERDA is also responsible for the development of technology necessary for optimal integration of supply technologies into the energy system, and the development of technologies directed toward conserving energy resources and improving end-use efficiencies.

DOI's scientific and technological programs include resource and reserves assessment and the delineation of areas and geologic environments favorable for the occurrence of energy resources; improving mining and drilling technology, both for economical and efficient recovery and for mine health and safety; metallurgical research; development of coal preparation technology; exploration R&D; mined land rehabilitation and restoration; research on the ecological impact of energy development and on means of minimizing environmental damage; definition of geological and hydrologic processes that relate to the storage and disposal of radioactive waste; the development of criteria and knowledge for the safe siting of nuclear power plants; and geothermal and pumped-storage research.

Both agencies have responsibility for developing technology for the more efficient utilization of electrical power.

2. Federal Land Management. DOI has responsibility for the planning, management, and/or trusteeship of the Public Land, the National Park System, the National Wildlife Refuge System, certain other reservations and withdrawals from public lands, the Outer Continental Shelf, acquired lands and Indian lands, and the Federal Mineral Estate. ERDA's programs for energy research, development, and demonstration affect the utilization of various Federal lands for which the DOI is responsible through: (1) the use of these lands by ERDA for demonstration plants and other activities which need to be considered early in the process of preparing multiframework plans and (2) the impact that ERDA's efforts, to further the development of alternative forms of energy, will have on DOI programs for leasing energy resources.

3. Environmental Coordination. Both agencies are responsible for developing methods to enumerate the environmental consequences of major energy developments, for preparing Environmental Impact Statements on major Federal actions, and for proposing solutions to mitigate undesirable environmental consequences. Both agencies also serve as major reviewers of EIS statements, particularly EIS statements on major Federal actions involving the development of energy resources and/or technologies. In addition, Interior has responsibility for commenting on the impact of Federally-assisted and Federally-permitted water and related land resource development projects on fish and wildlife resources and for recommending means of minimizing these impacts.

4. Energy Supply and Demand. DOI has broad responsibility for identifying, inventorying, and assessing fuels and energy resources and reserves and estimating both long- and short-range fuel and energy demands, supplies, and constraints, and for developing supply expansion programs pursuant to the Mineral Leasing Acts, the Defense Production Act, and other legislation. ERDA's responsibilities include formulating energy supply and demand assessments, developing energy supply strategies and plans, and pursuing technological developments to solve the Nation's energy problems.

5. Energy Conservation. DOI has programs for enhanced recovery of energy resources, more efficient utilization, reduced energy requirements, and substitution of energy minerals. DOI also has responsibility for electrical research, development, experimentation, tests, and investigation related to construction, operation, and maintenance of transmission systems and facilities. ERDA's energy conservation programs include research, development and demonstration of more efficient use of both existing and new sources of energy in industry, buildings, transportation, and the generation of electricity, together with more efficient storage, transmission, and distribution of energy.

6. Water for Energy. The Nation's water resources are becoming an increasingly important constraint in the development of alternate energy sources. ERDA must appraise present and future water demands for energy technology and help coordinate and balance them with competing uses. DOI provides basic national data on water supply and quality as well as assuming the basic responsibility for developing water projects for the generation of hydroelectric power and to supply water for agricultural, industrial, and municipal uses in the West. DOI also is responsible for assuring that biotic resources including fish and wildlife receive appropriate consideration in all Federal water resource development projects and activities.

IV. Policy Management and Review

A. Once each year, the Secretary of the Interior and the Administrator of ERDA will meet to review the scope and progress of activities covered by this Memorandum of Understanding and any associated Interagency Agreements.

B. To provide liaison, policy guidance, and management review of activities coming within the purview of this Memorandum of Understanding, the Secretary of the Interior and the Administrator, ERDA, will each name his respective cochairman of an Interior-ERDA Steering Group. Other members of the Steering Group will be chosen by the cochairmen and will normally be Assistant Secretaries (Assistant Administrators/Bureau Heads/or Division Chiefs). The Steering Group will meet as necessary, but at least quarterly with the cochairmen present.

C. The cochairmen of the Steering Group will name working committees and make assignments to them, including the study and recommendations of the respective roles and responsibilities of each agency in specific areas of work. The recommendation of these working committees will be subject to approval of the cochairmen of the Steering Group.

D. Each year before finalizing and prior to submission of the agency budgets to OMB, both DOI and ERDA will review each others' budget and submit comments or recommendations for modifications based on the related programs of the two agencies. The Steering Group will establish procedures for this budget coordination.

E. DOI and ERDA will coordinate their activities related to State interests in energy development in such areas as notifying Governors of current and future programs, answering State inquiries, and requesting State assistance and cooperation in energy planning and implementation. The Steering Group will establish procedures for such coordination.

V. Communications and Documentation

A. None of the provisions of this Memorandum of Understanding are intended to preclude, inhibit, or substitute for regular and direct communications between DOI and ERDA program officials involved in managing cooperative or related work activities.

B. Under the cognizance of the cochairmen of the Steering Group, DOI and ERDA program officials are encouraged to develop Interagency Agreements to govern the initiating and implementing of large or major programs to be carried out under this Memorandum of Understanding. These

Agreements will provide operational and management guidelines and specify the reporting requirements.

C. In other cases, program plans with appropriate detail will serve as program documentation and will set forth the specific arrangements under which implementation will take place. Such plans will set forth necessary arrangements and procedures for handling various levels of decisions. Such management arrangements will clearly set forth the decision and delegation levels considered appropriate for each cooperative program and will clearly describe the management and reporting coordination processes between DOI and ERDA.

VI. General Guidelines

Under the cognizance of the Steering Group the current programs in the areas outlined in Section III will be jointly reviewed on the basis of priorities identified by the Steering Group. The review will include program definition and objectives, responsibilities, and support arrangements. Where necessary, the Steering Group may request that the agencies modify existing plans and operations to effect better coordination and cooperation. For the areas outlined in Section III, the Steering Group will review new or proposed programs to determine where joint planning is necessary. For these programs, the Steering Group, on behalf of the agencies, will:

1. Establish the scope, objectives, and relative priority of new programs.

2. Determine the contribution each agency can make to the successful completion of each such program and will specify the necessary support.

3. Establish the lead agency for each program. This determination will be based on factors including the origin and history of the statutory authority and funding, and the skills and experience needed. Duplication and overlap will be avoided. It is recognized that lead agency responsibility may shift as a program develops.

VII. Program Funding

The details of the levels of funding to be provided by the agencies with respect to approved programs will be set forth in specific Interagency Agreements. Following such agreements, DOI and ERDA will provide mutual support in budget justification and hearings before OMB and Congress with respect to programs on which the agencies have reached agreement.

VIII. Procurement Policy

Program activities undertaken by DOI for ERDA or vice versa under the provisions of this Memorandum of Understanding may involve contractual arrangements with non-government entities, organizations, or institutions. When such arrangements are necessary, they shall be conducted in a manner consistent with the policy, regulations, and procedures of the contracting agency.

IX. Public Information Coordination

Timely release of information to the public regarding program jointly implemented under this Memorandum of Understanding will be by mutual agreement of the cochairman of the Steering Group or their designees.

X. Amendment and Termination

A. This Memorandum of Understanding may be modified or amended, by written agreement between DOI and ERDA.

B. This Memorandum of Understanding may be terminated by written notification of either party.

XI. Effective Date

This Memorandum of Understanding is effective when signed by both agencies.

Dated: September 15, 1976.

Thomas S. Kleppe,

Secretary.

Dated: September 15, 1976.

Robert C. Seamans, Jr.,

Administrator.

Memorandum of Understanding Between Bureau of Land Management and the Fish and Wildlife Service, Interagency Committee for Program Coordination for the Establishment of the Joint BLM/FWS Subcommittee on Program and Budget Development

A. The Fish and Wildlife Service and the Bureau of Land Management have several programs of mutual interest for which coordination of program development and budget preparation is important. Adequate coordination requires fully coordinated BLM–FWS Program and Budget proposals to the Department of the Interior, Office of Management and Budget, and Congress. To help accomplish this coordination, there is established the Joint BLM–FWS Subcommittee on Program and Budget Coordination as a standing subcommittee of the BLM–FWS Interagency Committee for Program Coordination. The responsibilities of the subcommittee are to:

1. Identify programs within the missions and competence of the two agencies which should be planned and/or undertaken jointly.

2. Insure that the planning and budgeting for these programs are fully coordinated.

This Committee's role is oriented toward budgetary matters, e.g., program budget preparation, budget justifications and formulation of Annual Work Plans. Its involvement with program development is from a program budget viewpoint.

B. The following general program areas will be subject to periodic subcommittee review and coordination. A more detailed listing of specific programs and a fuller identification of general program areas will be prepared and updated as needed by the subcommittee.

1. *Energy and Minerals Management.*—Included are onshore and offshore leasing management programs for both energy and non-energy minerals. Of particular interest is the number and location (where identified) or proposed leases and the necessary environmental studies and their timing which must precede such leases. Other areas where mutual knowledge is beneficial include research and development efforts, environmental protection requirements and lease management functions.

2. *Land and Realty Management.*—Included in this category are pipeline and utility corridors, responses to private energy initiatives, and preparation and review of environmental impact analyses and statements required by right-of-way and other land use requests on the part of industry.

3. *Wildlife Management.*—Significant changes in livestock grazing patterns, and changes in animal damage control techniques or emphasis are areas of mutual interest, as are the implementation plans for the Sikes Act and any changes in program or resources associated with jointly managed lands.

4. *Endangered Species.*—Included are specific management needs and programs for high priority species.

5. *Planning for Multiple Use Management.*—Included are programs for the development, update or revision of formal planning systems which guide and direct land and natural resource allocation decisions.

C. Coordination by this subcommittee will be a continuous process ranging from the inception of programs through the development of annual budgets to the execution of programs via annual work plans. Critical periods within these three coordination phases and the information to be developed and/or exchanged are identified on the attached exhibits.

D. The subcommittee on Program and Budget coordination will be chaired jointly by the Chief, Division of Budget and Program Development, BLM and the Assistant Director, Planning and Budget, FWS. There will be equal membership from both agencies drawn as required from the program divisions of the two agencies. The subcommittee may appoint joint working groups to study and report on assigned topics.

Dated: October 30, 1975.

George L. Turcott,

Cochairman, Associate Director, BLM.

Dated: October 30, 1975.

F. Victor Schmidt,

Cochairman, Assistant to the Director, FWS.

Memorandum of Understanding Between Bureau of Land Management and Fish and Wildlife Service on Establishment of the Joint BLM/FWS Subcommittee on Energy and Mineral Development

Sec. 1 *Purpose.* In order to improve and formalize coordination in the planning and operating functions of the minerals program of the Bureau of Land Management (BLM) and the programs of the Fish and Wildlife Service (FWS) there is hereby established the Joint BLM/FWS Subcommittee on Energy and Minerals Development.

Sec. 2 *Scope.* The following general program areas will be subject to periodic subcommittee review and coordination. These program areas include both onshore and offshore minerals management programs for both energy and non-energy minerals. A more detailed listing of speciic programs and a fuller identification of the general program areas will be prepared and updated as needed by the subcommittee.

A. Environmental Research and Monitoring.—Includes baseline, monitoring and special studies.

B. Environmental Data Collection.—Includes reviews or compilations of existing data.

C. EIS Review and Coordination.—Includes both informal and formal reviews.

D. Mineral Operations Activities.—Includes all phases of program operations by both agencies that may affect each other.

Sec. 3 *Organization.* The Subcommittee on Energy and Minerals Development will be chaired jointly by the Assistant Director, Minerals Management, Bureau of Land Management and the Associate Director, Environment and Research, Fish and Wildlife Service. There will be equal membership from both agencies drawn as required from the appropriate staffs of the two agencies. The subcommittee may appoint joint working groups to study and report on assigned topics.

Sec. 4 *Meetings.* Coordination by this subcommittee will be a continuous process with meetings called as necessary by either subcommittee cochairman.

Dated: October 6, 1975.

George L. Turcott,

Cochairman, Associate Director, BLM.

Dated: October 6, 1975.

F. V. Schmidt,

Cochairman, Deputy Director, FWS.

Memorandum of Understanding Between Director, Bureau of Land Management and Director, Fish and Wildlife Service Relating to Interagency Committee for Program Coordination

Inasmuch as the Bureau of Land Management (BLM) and the Fish and Wildlife Service (FWS) have responsibilities for programs of important significance to wildlife and their habitat, it is the national interest that such programs be closely coordinated and mutually supportive. To this end, there is hereby established a BLM–FWS Interagency Committee for Program Coordination with the following responsibilities:

1. To coordinate related programs within the full range of interface between the two agencies.

2. To arrange for cooperation, support, and standards in the operational conduct of programs relating to wildlife.

3. To provide for exchange of data, information, findings, and services of mutual concern.

4. To coordinate budget and program execution activities.

The Committee will have the authority to make decisions within its areas of responsibility where the Cochairmen of both agencies agree. Disagreements, if any, will be resolved by the Directors of the two agencies.

The Committee will have the authority to establish and change working groups to report to its on specific proposals or problem areas, as required.

The Committee will be jointly chaired by the Associate Director, BLM, and the Deputy Director, FWS. There will be equal membership from both agencies, preferably with officials at the policy level concerned with the activities involved. It will meet at least once every two months at the call of the Cochairman.

Dated: December 3, 1974

Curt Berklund,

Director, Bureau of Land Management.

Dated: January 23, 1975.

Lynn A. Greenwalt,

Director, U.S. Fish and Wildlife Service.

Memorandum of Understanding (MOU) Between the Bureau of Land Management (BLM) and the Fish and Wildlife Service (FWS) on Coal

I. Purpose

The purpose of this agreement is for BLM and FWS to assure the effective consideration of fish and wildlife resources in coal related activities on public lands in a manner that recognizes existing cooperative relationships with the States. It is also to promote harmonious working relationships and program efficiency in the public interest.

A. Responsibilities.—The key to achieving the purpose of this agreement is clear definition of BLM and FWS roles and responsibilities within respective statutory authorities. Broad responsibilities are defined below. Specific responsibilities and relationships are set forth in section II of this agreement.

1. The BLM has the statutory responsibility for inventory, planning, and multiple-use management of the public lands and public land resources, including coal and fish and wildlife. In connection with this responsibility, BLM must have the capability to efficiently inventory, manage and protect fish and wildlife habitat.

2. FWS has statutory responsibilities for protection of migratory birds, including eagles, and threatened or endangered species and their habitats. The Fish and Wildlife Coordination Act responsibilities of FWS extend to some water development projects on public lands.

3. FWS and BLM have general responsibilities to conduct research and to compile information on the status of the fish, wildlife and plant resources and those factors affecting them in their respective area of responsibility. These general assessments for wildlife and vegetative conditions and trends extend to concerns within major coal regions.

4. Both Agencies have wildlife advocacy roles within their statutory authorities or other assigned functions.

B. General Principles.—1. The cooperative relationship between the two Agencies is built upon the concept that field level input into the BLM land use planning system will achieve the basic objectives of each Agency, and the Department of the Interior (DOI). The BLM has a statutory responsibility to see that fish and wildlife resources are effectively considered in all stages of its land management programs and activities. Procedures consistent with this MOU will be established by BLM State Directors and FWS Regional Directors to provide for regular exchange of information and advice as early as feasible in the BLM planning process. FWS input will reflect BLM's responsibility of the need to balance wildlife interests with other concerns in coal development and multiple-purpose land management. In those cases where there are disagreements, such disagreements should be expressed through the chain of command of the two Agencies beginning at the lowest appropriate field level.

2. BLM has responsibility for assuring the collection, inventory, and susbsequent analysis of fish, wildlife and vegetative data on the public lands. FWS also has responsibilities for collection and analysis of data to meet its requirements. FWS concerns in this area relate to the adequacy of the data and analysis as these relate to responsibilities of FWS relative to endangered species, migratory birds, and other species. FWS is also concerned with the general adequacy of data and analysis for management and protection of wildlife, wildlife habitat, and threatened and endangered plant species on a national and regional basis. These responsibilities and concerns can best be met by FWS participation in appropriate components of the planning system as identified in subsequent sections of this MOU. Both Agencies will coordinate inventory system development and applicable data gathering activities to foster a common and compatible resource data base, to share information, and to minimize conflicts and disagreements concerning adequacy of wildlife data related to coal development decisions from the outset. BLM will seek FWS participation in the actual conduct of data collection activities to meet its requirements where such participation is mutually advantageous. In turn, FWS will seek BLM participation in data collection and analysis to meet its requirements where it is appropriate.

3. The BLM State Offices and the FWS Regional Offices or their delegated Offices will be the primary Offices through which field coordination will take place. Each is responsible for ensuring that appropriate Offices of their organization are involved whenever appropriate. On matters pertaining to coal related field studies or investigations, the FWS Regional Director or the BLM State Director will determine which items of mutual interest are administered by their respective Office and which items should be referred to other field organizational units (i.e., BLM Denver Service Center, FWS Research Centers and National Teams). Upon referral, the Directors or Leaders of the field unit will be the coordination focal point for that activity or activities within the respective Bureaus. Additionally, the Directors or Leaders of these field units will apprise FWS Regional Directors and BLM State Directors of planned or ongoing coal related studies, projects, and activities. Frequent informal consultation on matters of mutual concern is to be encouraged at all levels.

4. BLM State Directors and FWS Regional Directors will keep each other appraised of actions planned or taken with State wildlife agencies on wildlife matters of concern in coal areas. Whenever coal-related research actions and nonoperational studies are proposed with State wildlife agencies by field

units within BLM and FWS that are not administered by the FWS Regional Director or BLM State Director, it shall be the responsibility of the Director or Leader of that field unit to keep both the Regional and State Director informed. BLM will ensure State wildlife agency involvement in the coal programs. Officials of both Agencies will also keep each other informed of their respective activities relating to coal resources on public lands.

5. FWS will otherwise assist BLM in a manner consistent with the MOU, through cooperative procedures mutually agreed by BLM State Directors and FWS Regional Directors, or as appropriate, Directors or Leaders of other BLM or FWS field units. Some examples include participation in certain field projects, providing highly specialized expertise, developing methodologies for data collection and interpretation and assessing major impacts on wildlife for preventing or mitigating damage to important habitats, and conducting and sharing research findings to support BLM identified needs.

C. General Coordination.—1. *Meetings.* There shall be annual coordination meetings between State and District BLM Offices and appropriate FWS Regional and Area Offices, and such other Offices as deemed appropriate, timed to coincide with the budget cycle, to discuss programs and plans relative to coal and other items of mutual concern to both Agencies. WO level meetings shall be held by the BLM/FWS Coordinating Committee.

2. *Written Communication.* When FWS advice/recommendations are solicited on subjects related to this agreement, the FWS will be afforded 30 days unless specified otherwise in which to make its views known to BLM to the extent time deadlines imposed on BLM permit. If no response is received within the 30 days or other specified time period, BLM will assume that FWS either concurs or has no comments to offer.

3. *Supplemental Agreements.* BLM and FWS field organizations or other appropriate organizational units may enter into supplemental agreements where needed to specify interrelationships in detail or for specific project type activities. Such agreements must be within the policy parameters of this agreement. Both BLM State Directors and FWS Regional Directors will make every effort to ensure coordination is achieved at their lowest appropriate field units. Where mutually agreeable, BLM State Directors and FWS Regional Directors will delegate coordination functions to their field units.

II. Functional Coordination

This section outlines Agency responsibilities and working relationships by functional area.

A. Preleasing.—1. Subject: Resource Inventories—

a. *Description:* Inventories must be conducted to determine the nature and extent of living and nonliving resources; to provide a basis for land use planning and decisionmaking; and to identify the nature, extent, and condition of all resources located in planning areas with potential for coal development.

b. *Responsibilities:* The Federal land Policy and Management Act (FLPMA) directs BLM to maintain resource inventories on a continuing basis. FWS has legislative responsibilities to conduct nationwide inventories related to migratory birds, wetlands, and threatened and endangered species. Both Agencies may also be assigned responsibilities for inventory via Presidential or Departmental direction. BLM has responsibility for inventory work relative to data necessary for public land management. This includes inventory and planning responsibilities for threatened and endangered species on public lands in coal areas pursuant to regulations regarding Section 7 of the Endangered Species Act (ESA). FWS will provide support in terms of cooperative development of new methodology and inventory techniques and supply applicable data to BLM. FWS Regional Directors and BLM State Directors will take steps to ensure that appropriate organizational units, e.g., FWS Area Offices and BLM District Offices will periodically coordinate their activities and capabilities. Joint efforts in this regard will be guided by the Interagency Agreement Relative to Classification and Inventory of Natural Resources, effective June 6, 1978. In accordance with that agreement, both Agencies will work in partnership to ensure that needed data are obtained in a cost effective and expedient manner.

The BLM's planning system contains several inventory steps applicable to coal activities. These steps, including their overall purposes, are outlined together with the nature of specific FWS inputs at the field or BLM planning unit levels:

Step	BLM responsibility	FWS input(s)
1. Preplanning Analysis	Determine wildlife resource data needs; develop planning/inventory schedule for wildlife resources; estimate financial requirements.	Help identify general wildlife situations in coal areas, and recommend data elements needed to address wildlife issues.
2. Unit Resource Analysis (URA)	Identification of existing wildlife resource conditions and potentials on planning areas basis.	Held identify knows significant wildlife habitats (existing and potential) and provide other assistance, technical support, and advice.

2. Subject: Land Use Planning.

a. *Description:* Land use plans must be developed as a requisite for management and decisionmaking regarding allocation and use of resources location on public lands, in accordance with planning mandates in the FLPMA, the Federal Coal Leasing Amendment Act of 1975, and the Secretary's decision of October 22, 1977, which calls for plans prior to identification of lease tracts. In BLM, such plans are called management framework plans (MFP's).

b. *Responsibility:* The FLPMA directs development, with public involvement, of BLM land use plans which provide, by tracts or areas, for the use of the public lands. Such plans must address: multiple-use and sustained-yield, areas of critical environmental concern (ACEC), interdisciplinary concerns, present and potential uses for wildlife and other resources, and certain other requirements. To the extent consistent with law, these plans must be coordinated with land use inventory and management programs of other Federal Agencies and State and local governments. Therefore, FWS will provide comment on URA's/MFP's in potential coal production areas by participating in a consultative manner to minimize conflicts and disagreements. Such comments will be considered and incorporated, as deemed appropriate, into decisionmaking by BLM District Managers, as well as comments from other Federal and State agencies and private organizations.

3. Subject: Identification of Areas to be Excluded From Leasing and Lands Unsuitable for Mining—

a. *Description:* Certain areas that may be excluded from leasing or identified as unsuitable for mining because of: (1) statutes or (2) policy determinations such as for high socioeconomic or ecological values associated with wildlife, archaeology, cultural and other resources, and (3) for reasons of public health and safety.

b. *Responsibility:* The FLPMA directs that critical environmental areas be identified during BLM land use planning. The Federal Coal Leasing Amendments Act requires planning prior to coal leasing. Also, the interagency agreement between BLM, Geological Survey (GS), and the Office of Surface Mining Reclamation and Enforcement (OSM), approved July 1978, delineates Agency responsibilities for identification of "areas unsuitable for mining" as directed by the Surface Mining Control and Reclamation Act (SMCRA). In accordance with these authorities and relationships, BLM must decide which areas of public lands are areas which are of environmental concern and, thus, which may be unsuitable for mining or excluded from leasing.

The Department is providing BLM with criteria relative to land suitability for leasing.

Such criteria will serve as a basis for unsuitability designations or excluding lands from leasing. Within the parameters of Departmental criteria, FWS may provide to BLM information which it feels should be considered in making these designations during the land use planning process.

4. Subject: Tract Selection—

a. *Description:* This involves identification and selection of specific tracts for short and long term leasing, preference right leasing, and land use decisions by BLM District Managers. Selection of such tracts will be after decisions are reached on areas unsuitable for mining, or excluded from leasing.

b. *Responsibilities:* BLM is responsible for selection of tracts suitable for leasing after decisions are made as to "areas unsuitable for mining." Using information available through the land use planning process and from specific recommendations from FWS, States, and others, tracts will be selected then ranked for priority of leasing. Thus, through participation in the planning and tract selection process, FWS will have opportunity to provide information and opinions in the tract decision process.

5. Subject: Lease Stipulations, Terms, and Conditions—

a. *Description:* This involves preparing special stipulations and terms regarding environmental performance standards and other protective provisions in coal related leases.

b. *Responsibility:* The FLPMA directs that all actions necessary be taken to prevent unnecessary or undue degradation of the public lands. BLM is the official representative of the Secretary in dealing with lease applicants and, as such, is responsible for placing protective provisions and stipulations on coal leases.

Such stipulations and provisions are developed based upon decisions flowing from the MFP, upon findings in environmental impact analysis, and the technical examination.

BLM is responsible for incorporating stipulations and conditions into leases after consideration of all recommendations, including those from FWS. FWS recommendations or suggested modifications will be solicited for appropriate analysis in coal lease stipulations.

6. Subject: Environmental Analysis—

a. *Description:* This involves preparation of regional or, when warranted, site specific prelease environmental analysis report (EAR) or environmental statements (ES) concerning lease tract selections.

b. *Responsibilities:* Sec. 102(2)(c) of the National Environmental Policy Act (NEPA) requires agencies taking major Federal actions significantly affecting the quality of the human environment to prepare ES's on those actions. Extraction or mining of coal and related activities, such as issuance of rights-of-way and water developments to support such industrial activities are also among the actions to be considered. Present "lead agency" responsibilities for preparation of such analyses rest with BLM except in special exceptions where another agency may be designated as lead agency. These responsibilities must be carried out in consultation with all appropriate agencies and organizations, including the FWS. The following procedures are hereby established to ensure close working relationships between the two Agencies in this regard:

(1) BLM will keep FWS appraised of current and projected ES schedules via the regularly scheduled meetings of the FWS-BLM Coordinating Committee and other means, as appropriate.

(2) BLM will request FWS data and other inputs into the applicable ES's at the earliest possible date. Where FWS has special expertise or unique talent needed for the ES, such will be made available to the BLM ES team under terms and conditions mutually agreeable to the concerned FWS Regional Director and BLM State Director. This may include detail of FWS personnel to assist in ES preparation.

(3) FWS and BLM budget requests for ES's and associated work will be coordinated to reflect their respective responsibilities in the most cost-effective approach and to foster clear communications between the two Agencies. The FWS-BLM Coordinating Committee will be the principal vehicle for ensuring such coordination at the Washington Office (WO) level. Coordination at the field level will be in accordance with procedures agreed to by FWS Regional Directors and BLM State Directors.

(4) BLM will provide FWS review copies of draft ES's at the earliest possible time for official review and comment within specified time frames.

7. Subject: Endangered Species Consultation—

a. *Description:* BLM must consult with FWS on any action which may affect threatened or endangered species or their habitats.

b. *Responsibilities:* Whenever it is found that threatened or endangered species or their habitat may be affected by coal leasing or mining activities, the concerned BLM State Director must initiate written formal consultation in accordance with Interagency Cooperation Regulations dated January 4, 1978. To the extent that the concerned BLM State Director and the FWS Regional Director can agree, and as provided for in the above regulations, an aggregate approach to consultation in coal areas will be followed. Whenever FWS rules that additional data are needed upon which to issue a biological opinion, such data must be provided by BLM before the consultation process can be concluded. It is jointly agreed that not all habitat modifications are prohibited, only those which diminish habitat for the species in question. The FWS will provide methodology, expertise and recommendations, upon request, to help resolve operational problems caused by endangered species in coal areas.

B. Post Leasing.—1. Subject: Compliance With Lease Stipulations—

a. *Description:* This involves monitoring exploration and associated activities to ensure compliance with lease stipulations and/or special terms and conditions.

b. *Responsibilities:* BLM is responsible for ensuring that lessees abide by lease terms and conditions. Where in the course of other activities, FWS personnel find or become aware that a lessee is not in compliance with lease terms or conditions, such personnel should immediately advise the nearest BLM Office. The BLM will then take necessary action.

2. Subject: Emergency Environmental Situations—

a. *Description:* Some situations may arise in leased areas that involve either imminent danger to public health or safety or where conditions, practices, or violations of regulations or lease terms are causing or may cause significant, imminent environmental harm to land, air or water, or other resources or significant waste of coal. In such cases, it may be necessary to order cessation of such activities or violations and to order immediate remedial action.

b. *Responsibility:* The BLM has such authority when authorized mine inspectors are unable to take action before significant harm or damage will occur. If in the course of other activities FWS personnel become aware that such conditions exist, the appropriate BLM State Director and/or District Manager is to be so informed immediately and who will take appropriate action to resolve the situation.

3. Subject: Review of Reclamation Plans and Abandonment Procedures—

a. *Description:* Lessees must prepare adequate plans for reclaiming mined areas which meet the reclamation requirements of the SMCRA and multiple-use management requirements of FLPMA.

b. *Responsibilities:* The OSM has primary Federal authority to inspect and approve abandonment procedures. BLM must concur in such abandonment procedures as related to protection and postmining use of the lands regarding fish, wildlife and other natural resources. BLM resource staffs will analyze the adequacy of such procedures. Where such procedures are found to be inadequate, BLM will suggest needed changes and improvements. FWS will be afforded an opportunity to provide comments to BLM as to the adequacy of proposed procedures prior to BLM concurrence, in accordance with procedures agreed to by appropriate BLM and FWS field officials. BLM will notify/negotiate/resolve with applicable agencies and groups, including FWS, any issues which would serve as grounds for BLM nonconcurrence.

III. Research and Development

Annual meetings shall be held at the field and WO levels to coordinate research surveys, investigations, and studies being conducted that is of mutual program interest to both Agencies. This includes such work being conducted by the FWS WELUT and the EELUT, cooperative research units, or other applicable entities of FWS and BLM's Denver Service Center. Such meetings shall be initiated, scheduled, and organized by mutual agreement of appropriate officials of both Agencies. Agenda items should provide for discussion/resolution of Agency needs and priorities relative to coal activities and associated wildlife considerations.

When it is of mutual interest, the FWS and the BLM may conduct cooperative research in coal areas.

Each Agency will be given an opportunity to identify and review research proposals relating directly to its lands or management responsibilities developed by the other for the purpose of avoiding duplication and to determine if similar research is being conducted by other agencies. Pertinent research results of either Agency will be made available to the other on a timely basis, including significant interim findings. The FWS will provide a periodic report summarizing wildlife research pertinent to coal.

IV. Information Transfer

It is recognized that a wide variety of biological, ecological, and scientific information, published and unpublished, exists within both Agencies. This includes information and data relating to resource conditions and trends, wildlife and habitat inventories and baseline studies, economic or other values, demand/supply, and use statistics. Free exchange of this information in compatible and standardized formats is essential.

It is, therefore, mutually agreed that procedures will be developed under the direction of the national BLM/FWS Coordinating Committee for more formalized transfer of information between BLM and the FWS at all levels.

V. Permits Regarding Work in Navigable Waters

The Secretary of the Interior has delegated to the FWS Director and Regional Directors authority to act for the Department in the review and reporting on permit applications administered by the USA–CE (503 DM 1, August 3, 1973). Procedures and necessary evaluations of permit application for coal operations on public lands, as required under Secs. 402 and 404 of the Federal Water Pollution Control Act and by the Rivers and Harbors Act of 1899, shall be coordinated at the FWS Area Office and BLM District Office or other appropriate level before a formal application is made to the U.S. Corps of Engineers.

VI. Relationships to State, Other Agencies, and Institutions

Nothing in this MOU is intended to modify in any manner the present or future cooperative programs of either Agency with States, other public agencies, or educational institutions. Both Agencies share the concern that State fish and wildlife resource agencies be consulted on a routine basis to strengthen coordination and cooperative relationships. Every effort will be made to prevent duplicative requests or contracts to these State agencies for information and data assistance relative to coal.

VII. Obligation of Funds

Nothing in this agreement shall be construed as obligating either party to the expenditure of funds in excess of appropriations authorized by law or otherwise commit either Agency to actions for which it lacks statutory authority.

VIII. Effective Date, Review, Amendment, and Termination

This agreement shall become effective upon the date subscribed by the last signatory, and shall remain in force until terminated by either Agency upon 90 days written notice. It shall be reviewed by all parties no later than Calendar Year 1981 for adequacy and timeliness. Amendments to existing wording within this agreement may be proposed by either Agency at any time and shall become effective upon joint approval.

IX. Budget Coordination

To insure maximum compatibility of budgetary requests and the subsequent distribution and utilization of funds, the following coordinating functions shall apply:

A. *Joint Review of Budget Materials.* 1. Prior to formulating coal related budget instructions, the BLM and FWS shall jointly review the coal program to determine program objectives and budget assumptions.

2. Each Agency shall provide the other an opportunity to review budgetary material relating to all activities on behalf of coal leasing and coal development. Where coal related work is supported by a number of activities, these will be identified to facilitate review of budgetary plans.

3. To the extent possible, review opportunity shall be given sufficiently in advance of budgetary due dates to permit meaningful input and discussion before such budget material must be finalized.

4. Neither Agency shall advance a program which is directly linked or referenced to the activities, actions, or authorities of the other Agency without advance consultation and mutual understanding as to the nature of that program and actions to be undertaken within the scope of this agreement.

5. Budget materials as used herein apply to Departmental Program Strategy Papers, Office of Management and Budget (OMB) Estimates, Budget Justifications for Congressional review, and any amendments or supplementals thereto.

B. *Budget Year Consultation.* 1. Where the budget (or appropriations act) for the upcoming fiscal year (FY) in one Agency contains funds or positions earmarked for direct transfer to the other Agency, such funds and positions shall be identified in writing prior to the start of the FY for budget planning.

2. Where funds and manpower are to be retained in the Agency, but are to be committed toward those efforts related to coal leasing and coal development, each Agency shall, to the extent known, inform the other as to the approximate level of direct funding, its distribution, and expected accomplishments for the upcoming FY. Each Agency's plans shall be communicated to respective field offices to facilitate further coordination at the State-Regional level.

3. Funds earmarked for cooperative research shall be identified and transferred to the Agency designate as "lead Agency" for the research project.

C. *Coordination Points.* Coordination activities, as described in this section, shall be the primary responsibility of:

For BLM—Chief, Division of Budget and Program Development and

For FWS—Assistant Director—Planning and Budget.

X. Conflict Resolution

Should interagency controversy arise at any working level, the facts regarding such controversy shall be forwarded to the next higher level of authority for resolution.

Dated: September 26, 1978.

Frank Gregg,

Director, Bureau of Land, Management.

Dated: September 26, 1978.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

Dated: October 2, 1978.

I Concur:

Guy R. Martin,

Assistant Secretary, Land and Water Resources.

Dated: October 3, 1978.

Robert Herbst

Assistant Secretary for Fish and Wildlife and Parks.

Memorandum of Understanding Between the Chief of the Forest Service, U.S. Department of Agriculture and the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

The National Marine Fisheries Service, a component of the National Oceanic and Atmospheric Administration, is an agency of the Federal Government with primary responsibilities for research and development, protection, conservation and management of the living marine, including estuarine, inland commercial, and certain anadromous fisheries resources.

The Forest Service, U.S. Department of Agriculture, is the agency of the Federal Government responsible for the administration of the National Forest System lands, including fish habitat within the boundaries and many aspects of wildland and associated waters research. The Forest Service cooperatively works with State and private landowners regarding sound forestry, aquatic and wildlife habitat practices on non-Federal forested lands.

The purpose of this memorandum is to establish and record, agreed upon principles and policies of collaboration, and coordination of aquatic environment and related land resource activities with living marine, including estuarine, certain anadromous and inland commercial fisheries resources. The mutually agreed upon principles and policies of the two agencies under this memorandum, within the limits of their resources, will be as follows:

1. Administration: a. The National Marine Fisheries Service will act in an advisory capacity to the Forest Service in matters pertaining to development, protection, conservation, and management of the living marine, including estuarine, and certain anadromous and inland commercial fisheries

resources on lands administered by the Forest Service. The responsibility and authority for the correlation and integration of fish habitat management with outdoor recreation, watershed management, wildlife habitat management, timber production, livestock forage production, and other uses of these lands will rest at all times with the Forest Service.

b. Studies of water-use projects on National Forest lands affecting the National Marine Fisheries Service's area of responsibility required to be made under the Fish and Wildlife Coordination Act as amended (16 U.S.C. 661 et seq.) the Federal Power Act (16 U.S.C. 811), and any other legislative authority will be planned and conducted by the National Marine Fisheries Service in cooperation and consultation with the Forest Service.

2. Research: The National Marine Fisheries Service and the Forest Service will conduct cooperative research relating to fishery resources and supporting habitat management wherever and whenever it is of mutual interest to the two agencies. Close coordination will be especially necessary in the research on living marine including estuarine and certain anadromous fishery resources. Cooperative research will be guided by the following:

a. Generally, research involving the two agencies will be coordinated with the National Marine Fisheries Service emphasizing the fish and related animal phase and the Forest Service emphasizing the habitat and land use phases.

b. Where the finances limit the participation of either agency in coordinated research, joint planning and evaluation of results will remain the guiding principle.

3. General: The National Marine Fisheries Service and the Forest Service agree: a. To review annually the current and long-range program of land management and research on the living marine, including estuarine and certain anadromous fishery resources to provide maximum opportunity for coordination of related programs. Such reviews to be held by the Regional Director of National Marine Fisheries, and/or his representatives; the Regional Forester; Area Director; and/or Station Directors for the Forest Service, not later than May 15 of each year.

b. To identify areas where cooperative administrative studies, demonstration areas, or research projects can be mutually beneficial and prepare supplemental Memorandum of Agreement to define the project purpose and the contribution of personnel, equipment, funds, and supplies each shall make to the effort. The Regional Forester, Area Director, or Station Director for the Forest Service and the Regional Director for the National Marine Fisheries Service are delegated authority to negotiate and sign supplemental agreements under the legal, fiscal, and other limitations governing each.

c. To develop a mutually acceptable plan of work to include cooperative research field surveys of living marine including estuarine and certain anadromous and inland commercial fishery areas and anticipated Forest Service requests for advice and assistance in complex environmental problems.

d. To meet as needed at the national level.

The parties hereto have executed this Memorandum of Agreement which shall continue in force and effect until terminated by either agency upon ninety (90) days written notice to the other.

Dated: October 5, 1973.

U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service.

Robert W. Schoning,

Director,

U.S. Department of Agriculture, Forest Service.

Dated: June 20, 1973.

R. M. Hensley,

Acting Deputy Chief.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[40 FR 55804-55807]

Oil and Gas Exploration and Development Activities in Territorial and Inland Navigable Waters and Wetlands

Dated: November 21, 1975.

Lynn A. Greenwalt,

Director, U.S. Fish and Wildlife Service.

1. *Introduction.* 1.1 The U.S. Fish and Wildlife Service recognizes that an adequate and dependable supply of petroleum products is essential to meet the economic and standard of living needs of this Nation. The Service also recognizes the need for a strong, uniform policy for planning, evaluating, and reporting on oil and gas exploration and production activities affecting navigable waters and related natural resources. This pamphlet is directed toward meeting and satisfying the Nation's environmental and energy needs by presenting the Service's guidelines for geophysical, drilling and completion operations, pipeline construction, onshore facilities, and other associated exploration and development activities. These guidelines discourage the exploitation of one resource at the expense of another and encourage the use of environmentally sound planning criteria. Basically, these guidelines focus on the conservation, development, and improvement of fish and wildlife, their habitats, naturally functioning ecosystems, other environmental values, and related human uses of the Nation's waters and wetlands.

2. *Basis.* 2.1A. Federal permits are required for works proposed in the Nation's navigable waters and associated wetlands. Placing of any structure in or over such waters and wetland areas or excavating from or depositing material in such areas is unlawful unless a permit has been issued by the Department of the Army, Corps of Engineers, under authority of Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403). The U.S. Coast Guard, Department of Transportation, has special authority to regulate the location and clearances of bridges and causeways over navigable waters of the United States under Section 9 of the 1899 Act (33 U.S.C. 401) and the Department of Transportation Act (49 U.S.C. 1653).

B. Permits issued by the Environmental Protection Agency (EPA) or by a State agency under EPA overview also are required under Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251) for pollutant discharges into navigable waters. This Act also provides for certification by EPA or the State, that activities otherwise federally permitted will not abridge water quality requirements (Section 401), for permitting by the Corps of Engineers (Corps) of the placement of dredged and fill materials in defined disposal areas (Section 404), and for regulation by EPA of the disposal of sewage sludge which would result in pollutants entering navigable waters (Section 405).

C. Applications for permits described in the preceding paragraphs are made, as appropriate, to the District Engineer, Corps of Engineers; the District Commander, U.S. Coast Guard; or the Regional Administrator, Environmental Protection Agency (or the State water quality agency) for the District or Region in which the work or activity is proposed. *All persons or other entities, including Federal and other government agencies, are required to obtain the appropriate permits prior to commencing any construction or other activity in navigable waters.*

D. All of the above described Federal regulatory programs are subject to the provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321) which mandate, respectively, full consideration of fish and wildlife and environmental values in weighing the balance of the public interest in deciding whether a permit should be issued for a proposed activity.

3. *Authorities and responsibilities of the Department of the Interior.* 3.1A. The Secretary of the Interior, acting through the Bureau of Land Management, the U.S. Geological Survey, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, the National Park Service, and the Bureau of Outdoor Recreation, has broad authority in the administration of public lands, reservations, and the mineral resources of such lands held in trust, and in providing consultation and advice on the protection of the Nation's fish, wildlife, scenic, natural, historic, recreational, and other environmental resources.

B. One such law administered for the Department of the Interior by the U.S. Fish and Wildlife Service is the Fish and Wildlife Coordination Act. This Act specifically requires (16 U.S.C. 662): "* * * *whenever the waters of any stream or body of water are proposed or authorized to be* impounded, diverted, the channel deepened, or the stream or other body of water otherwise *controlled or modified for any purpose whatever,* including navigation and drainage, by any department or agency of the United States, *or by any public or private agency under Federal permit or license, such department or*

agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and *with the head of the agency exercising administration over the wildlife resources of the particular State* * * * with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof * * *." [1] (Similar responsibilities under the Fish and Wildlife Coordination Act are administered by the National Marine Fisheries Service for the Department of Commerce.)

C. Additional authorities mandating the concern of the Department of the Interior for environmental values include the Migratory Bird Conservation Act (16 U.S.C. 701), the National Historic Preservation Act of 1966 (16 U.S.C. 470), the Fish and Wildlife Act of 1956 (16 U.S.C. 742a), the Wilderness Act (16 U.S.C. 1131), the Anadromous Fish Conservation Act (16 U.S.C. 757a), the Estuary Protection Act (16 U.S.C. 1221), the Wild and Scenic Rivers Act (16 U.S.C. 1271), the Endangered Species Act of 1973 (16 U.S.C. 1361), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

The U.S. Fish and Wildlife Service also has advisory and consultative roles under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451) and the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401), and shares the mandates of the Fish and Wildlife Coordination Act with the States.

4. *Objectives and policies of the Fish and Wildlife Service concerning the usage and development of the Nation's waters and wetlands.* 4.1 The following outline presents the overall objectives and policies of the Fish and Wildlife Service in its advisory, consultive, and review role regarding works and activities in the Nation's waters and associated wetlands.

4.2 *Objectives.* 4.2A. The objectives of the U.S. Fish and Wildlife Service in relation to oil and gas exploration, development, and production activities are to prevent or minimize damages to fish and wildlife resources, their associated habitat, and other environmental resources, and to preserve public trust rights of use and enjoyment of such resources in and associated with navigable and other waters of the United States. The Service strives to meet these objectives by encouraging the industry to use every practical means, method, and alternative to prevent harmful environmental impacts and degradations.

B. More specifically the Service has the following long-range objectives respecting navigable waters, their tributaries, and related wetlands:

(1) Providing assistance to other Federal agencies in their enforcement of regulatory programs to prevent unauthorized activities from occurring, damaging, or posing a threat of damage to the naturally functioning aquatic and wetlands ecosystems and other environmental resources, values, and uses.

(2) Ensuring that all authorized works, structures, and activities are (a) judged to be the least ecologically damaging alternative or combination of alternatives (e.g., all appropriate means have been adopted to minimize environmental losses and degradations) and (b) in the public's interest in safeguarding the environment from loss and degradation. Water dependency of a work, structure, or activity will be considered when criterion (a) above has not been met.

In determining whether criteria (a) and (b) have been met, the Service will always consider: (1) The long-term effects of the proposed work, structure, or activity; (2) its cumulative effects, when viewed in the context of other already existing or foreseeable works, structures, or acitivities of the same kind; and/or (3) its cumulative effects, when viewed in the context of other already existing or foreseeable works, structures, or activities of different kinds.

4.3A. *Policies.* (1) The U.S. Fish and Wildlife Service exercises and encourages all efforts to preserve, restore, and improve fish and wildlife resources and associated aquatic and wetlands ecosystems, and supports State actions designed to protect areas of special biological significance.

(2) The Service opposes activities and developments in or affecting the Nation's waters and wetlands which would individually, or cumulatively with other developments on a waterway or group of related waterways, needlessly destroy, damage, or degrade fish and wildlife resources, associated aquatic and wetland ecosystems, and the human satisfactions dependent thereon.

(3) The Service places special emphasis on the protection of vegetated and other productive shallow waters and wetlands and on fish and wildlife species for which the Secretary of the Interior has delegated and specifically mandated responsibilities. These include:

(a) Wetlands as described in Wetlands of the United States, Circular 39 of the U.S. Fish and Wildlife Service, published in 1956, republished in 1971.

(b) Estuarine and Great Lakes area as defined in the Estuary Protection Act, the Coastal Zone Management Act of 1972, and Sec. 104(n) of the Federal Water Pollution Control Act.

(c) Migratory birds, anadromous and Great Lakes fishes, and endangered species as defined respectively in the Migratory Bird Treaty Act, Anadromous Fish Conservation Act, and the Endangered Species Act of 1973, respectively.

5. *Procedures for review of permit applications.* 5.1A. The U.S. Fish and Wildlife Service considers that each notice of application should demonstrate that the proposed works are water-oriented or water-dependent, served a recognized public need, and minimize environmental damages as, set forth in item 4.2B.(2). In instances where this is not demonstrated and/or additional items of information are needed to determine project impacts on fish and wildlife resources (ref. Sections 6.1A. (1)–(4)), the Service will immediately advise the applicant of informational needs or at least within 15 days following receipt of a notice of application (public notice or letter of permission). Such requests will be promptly confirmed by letter to the regulatory agency with a copy being provided the applicant.

However, if Service investigations and reviews indicate avoidable fish and wildlife losses, the Service will recommend to the Corps of Engineers, the Environmental Protection Agency, or the U.S. Coast Guard, as appropriate, that the permit be denied. In cases where denial is recommended to the Corps of Engineers, the July 13, 1967, Memorandum of Understanding between the Secretaries of the Departments of the Army and the Interior provides that the applicant will be notified, and an effort will be made to reach a solution at the District and Regional levels, respectively. If resolution at that level fails, the case will be forwarded for the consideration of the Chief of Engineers, Department of the Army, and Under Secretary, Department of the Interior. The final administrative decision in such cases rests with the Secretary of the Army. It must be emphasized that the Service does not have the responsibility, as do the regulatory agencies, of making the final determination of the overall acceptability of a proposal, all factors considered. These guidelines are not intended nor should they be interpreted to be addressed to such a final decision. They are intended to reflect the Service's responsibility to contend for the special public interest in fish and wildlife resources, their related and associated habitats and ecosystems, and the environmental values dependent thereon; and to be compatible and reasonably consistent with relevant provisions of Federal laws, decisions of Federal courts, and the rules, regulations, and administrative practices of Federal regulatory agencies.

B. The Department of the Interior has no similar agreements with the Environmental Protection Agency or the Department of Transportation (U.S. Coast Guard), but envisions that referral of unresolved issues from those agencies will be handled under procedures similar to those set forth in the agreement with the Department of the Army, with the final decision resting with the Secretary or the Administrator of the regulatory agency.

6. *Information necessary to assess fish and wildlife effects of proposed works and activities requiring Federal permit.* 6.1A. The U.S. Fish and Wildlife Service assists and promotes an orderly and expeditious review of Federal permit applications. Toward this goal, the following items of information may be requested, if applicable, in conjunction with an application.

(1) Overall map (based on a U.S. Coast and Geodetic navigation chart or Geological Survey quadrangle map) showing project location in relation to:

(a) Water depths at and in the vicinity of the proposed project.

(b) Direction of sheetflow in wetland areas and of water currents in river and coastline areas, and duration and amplitude of ebb and flood tides in estuarine and bay areas.

(c) Location of freshwater outflows, including surface drainageways, streams,

[1] Wildlife and wildlife resources are defined by the Act to include: "birds, fishes, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent."

aquifers, and springs where known or identified within the area of project influence.

(d) Location of shellfish lease areas within the area of project influence.

(2) Aerial photograph of project area, if available.

(3) Scale drawings and project area maps showing proposed works in relation to ordinary high water, mean high or mean of the higher high water, and ordinary low water, mean low or mean of the lower low water elevations and lines (as locally proper and where technologically possible), and the following detailed information:

(a) A description of methods and kinds of equipment to be used, means of access to activity sites, proposed geophysical operations, and duration and season of activities.

(b) Types, locations, and dimensions, including vertical cross sections of shallow water and wetland areas to be excavated and/or filled (e.g., canals, channels, roadways, fill and spoil areas, and dikes).

(c) Details of all planned facilities where construction or operation could alter or disturb shallow waters and wetlands.

(4) For purposes of environmental protection:

(a) Information known by an applicant concerning known threatened and/or endangered species, including their associated habitats in the area of project influence, should be provided.

(b) Plans for maintenance of natural drainage patterns and freshwater-saltwater exchanges in waters and wetlands (prevention of unnatural saltwater or freshwater intrusion and dewatering of wetlands).

(c) Plans for minimization of erosion, sedimentation, and turbidity, including stabilization of construction sites.

(d) Other plans or measures to prevent or minimize losses of fish and wildlife and public utilization, and other environmental values, including special construction and operation procedures.

(5) Names, addresses, and telephone numbers of the applicant's liaison.

7. *General guidelines.* 7.1A. Permits issued for oil and gas exploration and development operations in territorial waters and wetlands should be limited to a reasonable time period essential to the work proposed. These permits also should provide such explicit conditions as will minimize damages to fish and wildlife resources.

B. Proposals for other associated activities and works involved in mineral exploration and developments should meet the applicable general provisions to minimize environmental degradation particularly from: The spillage of oil; release of refuse including polluting substances and solid wastes; spoiling on productive wetlands; dredging of productive shallows; alteration of current patterns, tidal exchanges, and freshwater outflow, and erosion and sedimentation.

C. The U.S. Fish and Wildlife Service will consider the following criteria to ascertain if works requiring a Federal permit in shallow waters and wetlands can be implemented without significant damages to fish, wildlife, and the environment:

(1) In instances where proposed structures, facilities, or activities will utilize land fill procedures which involve the adverse alteration or destruction of estuarine or wetland areas, the applicant should demonstrate that practicable alternate upland sites are not available for proposed works.

(2) Permit applications for an unauthorized existing excavation, fill, structure, facility, or building will be examined on an individual basis. The condition, present use, and future potential of a particular work, and alternatives to its continued existence will be considered in determining whether or not to recommend denial of the permit, removal of the unauthorized work, and possible restoration.

D. This Service will recommend denial of Federal permits for proposed projects as follows:

(1) Projects which needlessly degrade or destroy wetland types identified in the Fish and Wildlife Service's Circular 39, Wetlands of the United States, published 1956, republished 1971. The decision whether a project needlessly degrades or destroys wetland types will be made with reference to the three criteria set forth in item 4.2B.(2).

(2) Projects not designed to prevent or minimize significant fish, wildlife and environmental damages.

(3) Projects which do not utilize practicable, suitable, and available upland sites as alternatives to wetland areas.

(4) Projects located on upland which do not assure the protection of adjacent wetland areas.

8. *Specific project guidelines.* 8.1A. The Service will utilize the following specific project guidelines when reviewing permit applications:

(1) *Geophysical operations.* (a) Gas or airguns, sparkers, vibrators, and other electromechanical and mechanical transducers should be used where practicable.

(b) When explosive charges must be used, the smallest charge consistent with acceptable recording should be used.

(c) Use of explosives should be avoided in important fish and wildlife spawning, nesting, nursery, and rearing areas during periods of high concentration or intense activity by the fish and/or wildlife of concern.

(d) All explosive charges should be fired in compliance with applicable State and Federal regulations.

(2) *Docks and piers.* (a) The size and extension of a dock or pier should be limited to that required for the intended use.

(b) Project proposals should include transfer facilities for the proper handling of litter, wastes, refuse, spoil drilling mud, and petroleum products.

(c) Piers and catwalks will be encouraged in preference to solid fills to provide needed access across biologically productive shallows and marshes to navigable water.

(3) *Bulkheads or seawalls.* Construction of bulkheads, seawalls, or the use of riprapping generally will be acceptable in areas having unstable shorelines. Except in special circumstances such as eroding shorelines, structures should be located no further waterward than the mean or normal high water line, and designated so that reflected wave energy does not destroy stable marine bottoms or constitute a safety hazard. In areas which have undergone extensive development, applications for bulkheads will be acceptable that esthetically and/or ecologically enhance the aquatic environment.

However, denial of permits for the construction of bulkheads on barrier and sand islands, where such will adversely affect the natural transport and deposition of sand materials, will normally be recommended.

(4) *Cables and transmission lines.* Installation of aerial or submerged cables and transmission lines located and designed to provide maximum compatibility with the environment will be acceptable. Particular emphasis will be placed on measures to protect fish and wildlife resources, esthetics, and unique natural areas. In operational areas, routes should make maximum use of existing rights-of-ways.

(5) *Access roads.* (a) Existing roadways should be utilized.

(b) Timber, other matting, or special low impact vehicles should be utilized where possible when temporary access is required in shallows and wetlands.

(c) When access roads to a drilling site must be constructed, the roads should be minimal in size and number.

(d) Selection of location and design of proposed roadways should be based on wet-season conditions to minimize disruption of normal sheetflow, waterflow, and drainage patterns or systems.

(e) Adequate culverts must be placed in all roadways to minimize disruption of natural sheetflow, waterflow, and drainage patterns or systems.

(f) Shoulder and slope surfaces should be stabilized with natural vegetation plantings or by seeding of native species, where possible, or by riprapping.

(g) Upon abandonment of a project site, temporary access roads will be evaluated for their wildlife potential and will be recommended for their retention or removal.

(6) *Bridges.* (a) Designs and alignments should minimize disruption of sheetflow, waterflow, and drainage patterns or systems.

(b) Approaches to permanent structures in wetland areas should be located, to the maximum extent possible, on pilings rather than solid fill causeways.

(7) *Jetties, groins, and breakwaters.* Jetties, groins, and breakwaters that do not create adverse sand transportation patterns or unduly disturb the aquatic ecosystem will be acceptable.

(8) *Levees and dikes.* (a) Designs and alignments should minimize disruption of natural sheetflow, waterflow, and drainage patterns or systems.

(b) Shoulder and slope surface should be stabilized following construction with natural vegetation plantings or by seeding of native species, where possible, or by riprapping.

(c) Upon abandonment of a project site, levees and dikes will be evaluated for their wildlife potential and will be recommended for their retention or removal.

(9) *Lagoons, impoundments, waste pits, and emergency pits.* (a) Construction should minimize disruption of natural sheetflow, waterflow, and drainage patterns or systems.

(b) Areas should be excavated to an impermeable soil formation at the time of construction, or lined or scaled.

(c) Operation and use must be in strict compliance with applicable local, State, and Federal regulations.

(10) *Navigation channels and access canals.* (a) Designs and alignments should minimize disruption or natural sheetflow, waterflow, and drainage patterns or systems.

(b) Designs should meet demonstrated navigational needs.

(c) Designs should prevent the creation of pockets or other hydraulic conditions which would cause stagnant water problems.

(d) Designs should minimize shoreline or other erosion problems and interference with natural sand and sediment transport processes.

(e) Designs, where recommended, should use temporary dams or plugs in the seaward ends of canals or waterways until excavation has been completed.

(f) Designs should minimize changes in tidal circulation patterns, salinity regimes, or related nutrient and aquatic life distribution patterns.

(g) Alignments will be recommended by the Service that avoid or minimize damages to shellfish grounds, beds of productive aquatic vegetation, coral reefs, and other shallow water and wetland areas of value to fish and wildlife resources.

(h) Alignments should make maximum use of existing natural channels.

(i) Construction should be conducted in a manner that minimizes turbidity and dispersal of dredged material.

(j) Construction should follow schedules, which may be recommended by the Service. These schedules will aim at minimizing interference with fish and wildlife migrations, spawning, and nesting or the public's enjoyment and utilization of these resources.

(11) *Excavation of fill material.* Excavation and dredging in shallow waters and wetlands will be discouraged and the Service will recommend that any permit issued contains conditions to minimize adverse effects and activities in important fish and wildlife spawning, nesting, nursery, and rearing areas, and prohibit construction during critical periods of migration, spawning, and nesting activity.

(12) *Disposal of spoil and refuse material.* In-bay, open-water, and deep-water disposal generally will be considered acceptable by the Service only after all upland and other alternative disposal sites have been explored and rejected for good cause. Deep-water disposal will be acceptable only at sites specifically selected, including those selected for deposit of suitable material for habitat improvement, where agreed upon by all concerned agencies.

(13) *Drilling and injection wells, and production facilities.* (a) Directional drilling techniques should be used where practicable.

(b) Drilling and production facilities should utilize equipment that prevents or controls, to the maximum extent practicable, the discharge of pollutants.

(c) All drilling muds should be stored in tanks or diked non-wetland areas.

(d) Upon abandonment of a project site, pertinent facilities will be evaluated for their wildlife potential and will be recommended for retention or removal.

(14) *Pipelines.* (a) Pipeline routes that avoid or minimize damages to important spawning, nesting, nursery, or rearing areas will be encouraged by the Service.

(b) In established operational areas, pipeline routes should make maximum use of existing rights-of-way.

(c) In all areas, pipelines should be confined to areas which will minimize environmental impact; special care should be taken in unaltered areas.

(d) Where recommended, pipeline access canals should be immediately plugged at the seaward end and subsequently maintained to prevent freshwater or saltwater intrusion.

(e) Where recommended, bulkheads, plugs, or dams should be installed and maintained at all stream, bay, lake, or other waterway or water body crossings.

(f) Pipeline placement should be designed with a wide margin of safety against breakage from mud slides, currents, earthquakes, or other causes. In areas of high natural seismic activity, pipelines should be designed and situated, to the maximum extent possible, to be "earthquake proof."

(g) Pipeline placement by the push method in marshlands will be encouraged.

9. *Assistance to applicants and prospective applicants.* 9.1A. All applications for works or activities subject to Federal jurisdiction over navigable waters will be considered within the framework of foregoing policies and guidelines. It is the position of the Service that these guidelines, if followed, will facilitate the orderly review of permit applications for oil and gas exploration and development activities. Protection is a national responsibility that cannot be shirked or comprised if future generations are to enjoy a satisfying and healthy environment. The Service considers that adherance to these guidelines is requisite to this national responsibility and the Nation's goal of environmental quality.

B. The Service stands ready at all times to assist permit applicants in formulating environmentally sound proposals and in avoiding unnecessary delays in developing environmentally compatible plans. Contacts should be made through the appropriate Regional Office of the Fish and Wildlife Service. The addresses and telephone numbers of the Service's Regional Offices and a map of the States each Region covers are contained, respectively, in Appendices 1 and 2 below.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

REVIEW OF FISH AND WILDLIFE ASPECTS OF PROPOSALS IN OR AFFECTING NAVIGABLE WATERS

(40 FR 55810–55824)

Navigable Waters Handbook

1. *Introduction.*

1.1 *Purpose and arrangement of material.* A. This brings together the policy and procedural guidelines and pertinent reference materials applicable to the program of the Division of Ecological Services, Fish and Wildlife Service, regarding dredge, fill, materials discharge and disposal and related Federal and federally permitted work and activities conducted in and adjoining the Nation's waters.

B. The guidelines are presented in this 10-section main part of the handbook, and the reference materials are organized in 9 appendixes: A through I. Appendixes A, B, and C include, respectively, form letters and reports, recording forms and other procedural aids, and standard recommendations. Appendix D contains legal and related references; Appendix E, official policy statements of Interior; Appendix F, official policy statements of other entities; Appendix G, technical references; Appendix H, general educational material; and Appendix I, procedural references, including definitions of terms.

1.2 *Developments and activities covered—* A. *Summary of coverage.* These guidelines are applicable to all works and dredge, fill and other activities affecting navigable waters that are sanctioned, permitted, assisted, or conducted by the Federal Government. The central focus of the handbook is on the navigation permit program of the Corps (Corps of Engineers, U.S. Department of the Army) conducted under the Act of March 3, 1899, and related Acts (App. D–2a), but the coverage includes:

(1) Works and activities in navigable waters, federally permitted by the Corps under Sec. 10 of the Act of March 3, 1899, App. D–2a. These include various works and activities secondarily permitted by the Corps such as: Mineral exploration and development on outer continental shelf and other public lands for which leasing and certain basic permitting authority rests with the Secretary of the Interior; rights of way on public lands for which authority rests in a number of Federal land administering agencies including several bureaus of Interior, the Forest Service and others; and use, occupancy, and filling of and removal of sand, gravel, and coral from tidelands, submerged lands, and filled lands in or adjacent to Guam, the Virgin Islands, and American Samoa which is permitted by the Secretary of the Interior under Sec. 2 of the Act of November 20, 1963, App. D–2w.

(2) Discharges of pollutants and the disposal of materials in navigable waters and the transportation for and dumping of materials in ocean waters will be the subject of a separate handbook, but they are covered in summary here because of their relation to the fully covered activities:

(a) Discharge of pollutants into navigable waters, federally permitted by the EPA (Environmental Protection Agency) or by the State with oversight by the EPA under Sec. 402 of the FWPCA (Federal Water Pollution Control Act, as amended by Pub. L. 92–500)—the NPDES Permits (National Pollutant Discharge Elimination System Permits), App. D–2s.

(b) Disposal of dredged and fill material in navigable waters and transportation of dredging material for ocean dumping, federally permitted by the Corps with oversight (and veto power) by the EPA under Sec. 404 of the FWPCA, App. D–2s and under Sec. 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), App. D–2x.

(c) Transportation of materials other than dredged material for dumping in ocean waters and dumping of such materials in the territorial sea federally permitted by EPA under Sec. 102 of the MPRSA, App. D–2x.

(d) Disposal of sewage sludge which would result in any pollutant entering navigable waters, federally permitted by the EPA or by a State with oversight by the EPA under Sec. 405 of the FWPCA, App. D–2s.

(3) Bridges and causeways over navigable waters federally permitted by the U.S. Coast Guard (Coast Guard) under Pub. L. 89–670, App. D–2m, and basically under Sec. 9 of the 1899 Act, App. D–2a.

(7) Other federally conducted or sanctioned work such as channels, highways, airports, transmission lines, etc.

(8) Steam electric plants and other facilities using natural waters for cooling will be the subject of a separate handbook. They are covered here in summary fashion because they frequently require a permit from the Corps under Sec. 10 of the 1899 Act and a NPDES permit under Sec. 402 of the FWPCA as well as a construction permit and operating license from the NRC (Nuclear Regulatory Commission) if nuclear fueled.

B. *Corps, EPA, and Coast Guard permits.* (1) The Secretary of the Army is authorized by the Act of March 3, 1899, to issue permits to construct piers, jetties, or similar structures, or to dredge and fill in the navigable waters of the United States. This authority is assigned to the Corps, except that the Coast Guard, Department of Transportation, issues permits for construction of bridges and causeways over navigable waters as provided in Pub. L. 89–670, the Department of Transportation Act.

(2) The 1899 Act makes it unlawful for anyone to conduct any work or activity in navigable waters of the U.S. without a Federal permit. Government agencies, Federal, State, and local, as well as persons, corporations, and other entities must apply for a permit when they propose works or an activity in such waters, and they must obtain a permit prior to commencing the construction or other activity.

(3) Dikes, dams, and similar obstructions to navigation require the consent of the Congress as well as approval of plans by the Chief of Engineers and the Secretary of the Army (see App. D–4a, Sec. 9) unless the navigable portions of the involved water body lie wholly in one State. In the latter case the structure may be built under authority of the State legislature but the plans and any modification thereof must still be approved by the Chief and the Secretary.

(4) When the District Engineer (CE) or District Commander (CG) receives an application for a permit, he routinely issues a public notice given the details of the work to be performed under the permit. These notices are distributed to the appropriate Service regional and area offices and to other bureaus of Interior, the EPA, the National Oceanic and Atmospheric Administration (NOAA), and other Federal or State agencies and interested individuals, usually with a 30-day deadline for receipt of any comments and recommendations.

(5) The authority of the Corps to issue permits for the discharge of refuse into or affecting navigable waters under section 13 of the Act of March 3, 1899, was greatly modified by the Federal Water Pollution Control Act Amendments of 1972 (Sec. 2 of Pub. L. 92–500, October 18, 1972).

No Section 13 permits may be issued henceforth by the Corps for the discharge of pollutants into navigable waters from point sources. Section 13 permits in existence and pending applications for such permits for point sources were made one with the NPDES permit system administered by EPA or the State with EPA oversight under Section 402 of the FWPCA. Section 13 remains a viable prohibition against any type of unauthorized discharge or deposit covered by this section for which application for permit has not been made and against certain other violations. Permits for disposal or deposit of dredged or fill material in navigable waters, issued by the Corps under Section 10 of the 1899 Act, now require approval of EPA under provisions of the FWPCA relating to these permits and those for disposal of sewage sludge. Note also that under Section 403 of the FWPCA, special provision is made for control of ocean discharges, through NPDES permits. Transportation for and dumping of materials in ocean waters are controlled by EPA and the Corps under provisions of the Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. 92–532, October 23, 1972; App. D–2x).

(6) The Coast Guard processes applications for bridges and causeways much the same as the Corps does applications for other work (see flow chart App. B–4a). Service review and reporting on CG applications is similar to those for the Corps, with the substitution of proper agency references.

(7) The processing of NPDES permit applications by the EPA or the States and of ocean dumping permits by EPA will provide for review and comment by the Service at the Regional Office level much the same as with applications handled by the Corps. Each Regional Office must assure itself that it is properly notified of permit applications and apprised of actions related to the Service interest in these new programs approved in 1972 (see App. D–2s and D–2x).

(8) The Department has no interagency agreement with the Department of Transportation (Coast Guard) or with the EPA on procedures for Secretarial review as it has with the Department of the Army (Memorandum of Understanding of July 13, 1967, see App. E–3) so that any issues that cannot be resolved at the Regional Office must be submitted to the Central Office for resolution on a case-by-case basis.

C. *Permits involving both Federal public lands or other Federal responsibility and navigable waters.* (1) Various private works and activities are permitted on Federal public lands, e.g., mineral exploration and development, canal and transmission line crossings, hydroelectric power development, etc. Other works involve federally assigned responsibility, e.g., nuclear steam-electric powerplants. These works and activities when they impinge on navigable waters also require a permit under Section 10 of the 1899 Act. They also may require other permits for discharges or materials dumping and water quality certifications and marine sanctuary certifications under the FWPCA or the MPRSA.

(2) Construction, operation, and maintenance of physical structures of hydroelectric projects licensed under the Federal Power Act do not require such separate permits because all public interest aspects including navigation are provided for under the Act. However, plans for any dam or other structure of the FPC project that affects navigation must have the approval of the Chief of Engineers and the Secretary of the Army. Also, any dredging, filling, discharge, or disposal related to an FPC project but not constituting construction, operation, or maintenance of the project's physical structures does require Federal permits of the Army. Some FPC licensed works and related activities also may require an NPDES permit and water quality certification.

(3) Outer continental shelf and other public land leases for oil and minerals exploration and development are executed by the Secretary of the Interior through the Bureau of Land Management and permits for drilling and other mineral developments are issued by the Geological Survey with the advice of other Interior bureaus.

Also Interior bureaus, the Forest Service, and other Federal land management agencies issue rights-of-way and other permits which, in particular cases, involve navigable waters. It is apparent, therefore, that related navigation permits issued by the Corps and Coast Guard and NPDES permits issued by EPA or a State to cover these may involve two separate Service reviews.

(a) Any Service review of inhouse Interior leasing and permitting actions, excepting rights-of-way, usually has taken place at the Washington level. Procedures for interbureau coordination within Interior on the selection of areas to be offered for lease sales and as to conditions to be included in drilling and other exploration and development permits to be issued by GS are the subject of an interbureau memorandum of understanding (App. E–2) and detailed procedural guidelines are being developed.

(b) Rights-of-way applications made to Interior bureaus and the Forest Service are normally reviewed by the Service at Regional Office level on a case-by-case basis under

somewhat loosely defined procedures similar to those for Federal projects.

(c) Dr. King's September 23, 1971, instructional memorandum and enclosures on outer continental shelf lands (App. E–9) explain the procedures with respect to applications for Section 10 permits of the Corps on these Interior approved activities. Essentially, District Engineers of the Corps review applications for permit on outer continental shelf activities only from the standpoint of navigation and national security.

The Secretary of the Army desires and has asked Interior to provide the District Engineer with assurance in writing for each application related to outer continental shelf lands "that fish and wildlife and other environmental matters were reviewed and that there is no objection * * *" to the issuance of a permit. Interior has agreed to this procedure based on the fact that the Secretary has adequate authority to protect the environment through leasing and regulatory authorities on the outer continental shelf lands. No doubt the Corps will want similar assurance on other applications where the primary approval is given by Interior. Likewise, the Coast Guard will want such assurance in similar situations.

(4) No definite arrangements have been made for interbureau review in Interior of the permits for use, occupancy, filling, and excavation of tidelands and submerged lands of Guam, the Virgin Island, and American Samoa issued by the Secretary although those related to the Virgin Islands have been informally conducted at regional level. Efforts are underway to develop suitable comprehensive procedures.

(5) As noted above, activities primarily approved by Interior may also require a Corps permit, processed at regional level. In these cases the Corps permit is issued subsequent to the Interior permit and, as noted, is only addressed to navigation and national security with Interior having full responsibility for environmental matters. Other permits and certifications under the FWPCA and the MPRSA also may be involved.

In all of these cases where two or more Federal permits are required for a particular works or activity, great care must be observed that the Service position is consistent. If it is found impossible to be consistent due to change of circumstances as between separate reviews, the change of position should be reviewed within the Department and clearly explained to the Corps of Engineers. Similar care should be taken with review of environmental impact statements which may be handled at a different time or by a different reviewer than the related permit or license.

D. *Federal and other dredge and fill activities.* (1) The Corps itself conducts dredge and fill activities both by contract and with its own equipment largely in relation to its responsibilities for flood control and maintaining navigation channels, harbors, and beaches and other civil and military works. These activities and works are subject to provisions of the FWPCA and MPRSA as well as NEPA and the Coordination Act. Public notices of intention to conduct such work usually are distributed in the same way as notices of permit application and deadlines for response are similarly short.

Dredge and fill work conducted in relation to original construction or major modification of Federal or federally assisted navigation and flood control projects normally is known to the Service long in advance, and reviews of proposals for such work are programmed, budgeted, and scheduled in consonance with the lead agency reporting schedules.

(2) As to dredge and fill activities conducted on non-navigable waters in relation to transmission and pipeline crossings and other riparian installations, the Service may not receive adequate early notice. Belated notice may be received through circulation and review of environmental impact statements prepared under NEPA. Notice on highway and airport projects should be received from the Department of Transportation under provision of Sec. 4(f) of the Department of Transportation Act (App. D–2m) and Sec. 16(c)(4) of the Airport and Airway Development Act (App. D–2t). Notice may also come in certain cases from applications to the Bureau of Land Management or other land management bureaus of the Department, including the Service, or the Forest Service for rights-of-way across Federal lands.

(3) Dredge, fill, and other activities conducted in or so as to affect navigable waters by Federal agencies in relation to their land management and other functions also are subject to provisions of Sec. 10 of the 1899 Act and to those of the Federal Water Pollution Control Act. Thus, for example, the Service's activities in improving tidal marshlands on its coastal refuges require a Federal permit if they involve navigable waters and wetlands. Similarly, the Service's facilities on navigable waters require a NPDES permit from EPA. The Service, as well as other Interior bureaus and other Federal agencies, must be especially vigilant to avoid real or apparent violations of the law lest their sincerity and dedication to environmental preservation and restoration become suspect.

E. *Detection of violations of the Interstate Land Sales Full Disclosure Act.* (1) The Department of Housing and Urban Development (HUD), Office of Interstate Land Sales Registration (OILSR) has requested and the Service has agreed to cooperate through its permit review activities in the detection of violations of the Interstate Land Sales Full Disclosure Act (App. D–2u). Essentially the Service has agreed to provide all practicable cooperation and specifically to provide to the Administrator of OILSR copies of all reports to the Corps on suspected unauthorized activities and of all comments on major permit applications.

(2) Detailed procedural guidelines on this coordination are provided in Instructional Memorandum RB–46 (App. E–23).

1.3 *Ecological services activities involved.* Sec. 2 of this handbook presents an overview of the objectives and policies of the Service applicable to the activities covered in the handbook. Detailed policy guidelines are presented in Sec. 5 and detailed procedural guidelines are presented in other sections as follows:

Sec. 3, preliminary screening of proposals.

Sec. 4, field investigations.

Sec. 7, reporting, including reviews of environmental impact statements and reporting apparently illegal activities.

Sec. 8, Surveillance of illegal work and monitoring of ongoing and completed work.

Sec. 9, education of the public.

Sec. 10, hearings and court testimony.

2. *Objectives and policies.*

2.1 *Objectives* of the Department and Service in relation to dredge and fill and other water-related activities are to protect and preserve fish and wildlife habitat, conserve fish and wildlife resources, and protect public trust rights of use and enjoyment in and associated with navigable and other waters of the United States.

A. The Service strives to meet these objectives by encouraging developers to use every possible means, method, and alternative (including non-development) to prevent harmful environmental impacts and degradations, to restore habitat, and increase opportunities for public use through proper development and land use control.

B. The Service also assists, within the limits of its resources, the programs of other agencies, and especially those of other Interior bureaus dedicated to the public interest in man's environment.

C. More specifically the Service, through taking of every appropriate, useful action, has the following long-range objectives or goals:

(1) Respecting navigable waters, their tributaries and related wetlands of the United States:

(a) Stopping and remedying all illegal activities which are damaging or posing a threat of damage to the naturally functioning aquatic and wetland ecosystems or the dependent human uses and satisfaction, and assisting the actions of other bureaus in protection of environmental resources, values, and uses for which they and the Department of the Interior have responsibilities, including natural, cultural, and general recreational resources, values, and uses, and the water quality aspects of such values and uses.

(b) Ensuring that all authorized works, structures, and activities are (1) judged to be the least ecologically damaging alternative or combination of alternatives (*e.g.*, all appropriate means have been adopted to minimize environmental losses and degradations) and (2) in the public's interest in safeguarding the environment from loss and degradation. Water dependency of a work, structure or activity will be considered when criterion (1) above has not been met.

In determining whether criteria (1) and (2) have been met, the Service will always consider: (a) the long-term effects of the proposed work, structure, or activity; (b) its cumulative effects when viewed in the context of other already existing or forseeable works, structures, or activities of the same kind; and/or (c) its cumulative effects, when viewed in the context of other already existing or forseeable works, structures, or activities of different kinds.

Respecting all other waters and wetlands of the Nation not determined to be navigable waters in the context of Federal law, particularly with respect to proposals activities, and sanctioning actions of the Federal Government and where the concerned resources involve a national interest: long-range objectives or goals are identical to those above-stated for navigable waters, insofar as legally possible.

2.2 *Policies.* A. The Service exercises and encourages all efforts to preserve, restore, and improve the fish, wildlife, and naturally functioning aquatic and wetland ecosystems and assists in the preservation of other environmental resources of the Nation, for the benefit of man.

(1) The Service reviews, investigates, and cooperates fully in providing ecological advice on formulation of Federal and federally permitted, assisted, and sanctioned plans for activities and developments in the Nation's waters and wetlands under provisions of the Fish and Wildlife Coordination Act, App. D–2e.

(2) The Service prepares comments and recommendations on proposals for Federal and federally permitted, assisted, and sanctioned activities and developments in the Nation's waters and wetlands.

(3) The Service provides technical guidance and assistance to government agencies and concerned citizens on environmental aspects of management of waters and wetlands. It encourages development and adoption of comprehensive regional and statewide plans for the management of such waters and lands as anticipated by the Water Resources Planning Act, the Estuary Protection Act, the Coastal Zone Management Act of 1972, as provided by certain State and local zoning actions, and as may be provided by any comprehensive national land-use act.

(4) The Service encourages and provides technical guidance and assistance to local and State programs, symposia, and other organized efforts designed to further public education and awareness of environmental values and actions to abate threats to waters and wetlands of the Nation.

The Service assists all Federal agencies involved in planning construction or permitting and licensing activities in the Nation's waters and wetlands to meet their responsibilities under Section 7 of the Endangered Species Act of 1973. This includes helping to ensure that the continued existence of an endangered or threatened species is not further jeopardized nor will the actions to be taken result in the destruction or modification of such species habitat that is determined critical. Such assistance should enable these agencies to avoid initiation of proposals which could place such species or their critical habitat in jeopardy.

(6) The Service assists particularly other bureaus of the Department of the Interior in meeting their special responsibilities for the Nation's environmental values, including cultural and natural values, general recreation values, and water quality, among others.

B. The Service actively discourages activities and developments in or affecting the Nation's waters and wetlands which would individually or cumulatively with other developments on a waterway or group of related waterways unnecessarily destroy, damage, or degrade fish, wildlife, naturally functioning aquatic and wetland ecosystems, and/or the dependent human satisfactions. In this, the Service assists other Interior bureaus and seeks their aid in protecting all environmental resources under the purview of the Department of the Interior.

(1) The Service considers navigable waters to include all waters, water bodies, and wetlands subject to Federal jurisdiction under provisions of the River and Harbor Act of 1899 and the Federal Water Pollution Control Act Amendments of 1972, as clarified by Federal regulations and court decisions or as modified by Federal law.

(a) For nonwater-dependent works, particularly where biologically productive wetlands are involved and alternative upland sites are available (as may be suggested from field appraisal—see Sec. 4.1A—by a Service biologist), the Service usually recommends denial of a permit unless the public interest requires further consideration. Further consideration may be indicated by an approved land use plan (see Sec. 5.2A(2)) or in the absence of such a master plan, from the determination made by the responsible Federal regulatory agency after carefully weighing all factors relevant to the public interest and reflecting the national concerns for both protection and utilization of important resources (see paragraphs (f) and (g)(3) of 33 CFR 209.120, App. D–4a(2)).

(b) For water-dependent works, the Service discourages the occupation and destruction of biologically productive wetlands and shallows. The Service usually recommends that the site occupied involve the least loss of area on the least valuable of the alternative sites; that avoidable loss or damage to such productive wetlands and shallows, their fish and wildlife, and their human uses be prevented; and that any damages or losses of such resources, proved unavoidable, be reasonably mitigated or compensated.

(2) The Service places special emphasis on vegetated and other productive shallow waters and wetlands and on fish and wildlife species for which the Secretary of the Interior has delegated and specifically mandated responsibilities:

(a) Wetlands as described in "Wetlands of the United States." Circular 39 of the U.S. Fish and Wildlife Service, published in 1956, republished in 1971.

(b) Estuarine and Great Lakes areas as defined in the Estuary Protection Act, the Coastal Zone Management Act of 1972, and Sec. 104(n) of the Federal Water Pollution Control Act, App. D–2o, D–2v, and D–2s.

(c) Migratory birds, anadromous and Great Lakes fishes, and endangered species as defined respectively in the Migratory Bird Treaty Act, Anadromous Fish Conservation Act and the Endangered Species Act of 1973, App. D–2b, D–21 and D–2q.

(3) The Service alerts NMFS and State wildlife agencies and consults with them on all matters related to their interest and responsibilities in keeping with provisions of the Fish and Wildlife Coordination Act, App. D–2E. In like manner, the Service alerts and consults with the NPS on potential degradations of cultural and natural values, The BOR on recreational aspects, and other agencies, particularly Interior bureaus, on any special environmental or other involvements of the proposed work in their special interest such as BR and GS on water quality and BLM and BIA as well as NPS on involved lands and resources under their jurisdiction (Section 6—Coordination, Liason, and negotiation).

(4) The Service discourages exclusionary occupation of navigable waters and their shorelines by riparian owners or by anchored boats (see Rec. XVIII of House Report 91–1433, App. D–6) and other cumulatively harmful uses of such waters and shorelines.

(5) The Service requests guarantees that the authorized work is actually carried out as promised and as required by conditions of the permit, provisions of law, or agreements formalized in writing. In appropriate cases, a performance bond may be requested of a private permittee as a condition of the permit. With a Federal project the Service will strive to have important fish and wildlife provisions specifically mentioned in the authorizing act.

(6) The Sevice conducts and urges surveillance of unauthorized activities and developments in navigable waters; indentifies and investigates illegal dredging, filling, other work and installations in such waters; reports the illegal work to the Corps or Coast Guard; and otherwise supports Federal actions against violators of Federal law in cooperation with the Solicitor and U.S. Attorneys.

(7) The Service assists and promotes surveillance of navigable waters for unauthorized discharges of harmful pollutants, escape of harmful pollutants from non-point, fixed and deposited sources on upland, spills of oil and hazardous substances, dumping of materials in ocean waters and other water pollution sources endangering fish and wildlife or their uses in cooperation with the EPA, Corps, NMFS, and Coast Guard; reports water pollution situations harmful to environmental and human-use values to the responsible regulatory agency; and otherwise assists and supports Federal actions against violators of the Federal Water Pollution Control Act and the Marine Protection, Research, and Sanctuaries Act of 1972.

Authorities and references supporting the foregoing Objectives and Policies are included in App. D, E, F, and G.

3. *Preliminary screening of proposals.*

3.1 *General outline of screening procedure.* A. Upon receipt of notice of permit application or initiation of a study, the proposed work project or activity is first logged and scheduled for investigations and reporting if appropriate. (The logging form presented in App. B–1 is to be used by all Offices.)

It is absolutely essential to maintain complete, up-to-date records to assure timely actions and afford an accurate basis for summarizing accomplishments. A flow chart showing action sequence in review of permit applications is given in App. B–4a.

B. All public notices of applications for permits received from the Corps, EPA, or

Coast Guard are then screened to exclude from further consideration those where the proposal obviously will have no impact or at most an inconsequential impact on fish and wildlife resources. Such "no-interest" notices are to be appropriately marked to show determination, initialed by the reviewer, its log entry completed, and the notice filed. A response usually is advisable on such notices (see below).

(1) On the basis of notice received, the Ecological Services biologist screens each proposal in his office preliminary to further action so as to determine:

(a) The adequacy of the information supplied and available for proper review.

(b) The apparent environmental significance—what resources would be affected and how seriously? Is the impact of the proposal significant in view of its anticipated direct and secondary effects and in light of existing or potential cumulative effects of similar or other developments affecting the same resources?

(c) The apparent social and economic significance—who would benefit and in what way?

(d) The degree of water dependency.

(e) The apparent need for the work in terms of public health, safety, and welfare.

(f) Whether an environmental statement has been prepared and whether one is necessary or advisable.

(g) The desirability of and apparent opportunities for modifying the design, construction methods, and operating procedures of the proposal and/or selecting an alternative site to minimize environmental damages or restore and improve environmental and social values.

(2) It is the Service position that it is proper to assess the total impact of the total development, including any part to be located on uplands and any secondary effects. The totality of existing and projected cumulative impact of all developments effecting a waterway or group of related waterways and the dependent resources thereof also must be considered.

(3) With Federal proposals for study or work, both new and maintenance, there normally is water dependency and a presumption of Service interest. Excepting periodic maintenance work, the Service activity normally will have been scheduled and budgeted in program documents.

(4) There may appear to be no necessity to respond to notices having no Service interest, but it is usually desirable for a number of reasons to record the lack of interest particularly if response is requested by the lead or regulatory agency. (See App. A–1 for suggested form letters for no action cases.)

(5) It is essential to respond within the set times especially where there is Service interest even if the response is only a request for more time. Such timely response will assure that the Corps, EPA, Coast Guard or planning agency will not have cause to act prior to receipt of the Service report.

C. If the applicant has failed to supply needed information this fact is promptly conveyed to the regulatory agency together with a request that the permit application be held in abeyance until the information (including an EIS if found necessary) has been received or otherwise obtained by the Service and adequate opportunity has been afforded for review, consultation, and presentation of recommendations. (See suggested form letter in App. A–2 and information required of applicants by Corps regulation in paragraph (h) of 33 CFR 209.120, App. D–4a(2).)

(1) The Service makes every effort to assist applicants and other project sponsors in a timely manner in formulating environmentally acceptable plans and resolving related problems, but it cannot cooperate or act in the absence of needed information nor without adequate time. The Service will request extensions of time as required to effect a proper investigation and to consummate necessary coordination and negotiations. (See App. A–3 for suggested form letter.)

(2) Where biologically productive wetlands or other ecologically important resources and values are involved, it is the Service position that the burden of proof is on the applicant to demonstrate that his proposal is environmentally sound and in the public interest (see paragraphs (g)(3)(iv) and (h)(3) of 33 CFR 209.120, App. D–4a(2).) Consequently, any delay occasioned by the Service's request for necessary information may derive from the applicant's failure to properly prepare his proposal for consideration of its acceptability. (See the reverse side of the information request form. App. A–2, and information check list, App. B–3).

3.2 *Suggested aids to screening.* It is of great assistance to expeditious screening of applications for permits in navigable waters, as well as to reporting on them, to prepare and maintain in each field office habitat type maps, with related notes and data descriptive of each type, for all waters and wetlands under the purview of that office. The maps should be of sufficient scale and detail to permit ready and certain decisions as to the likelihood of damage and the kinds of habitat and associated species expected to be affected based on the information on, and keyed to, the map.

Useful source books and maps should be kept at hand organized for ready reference. Good general sources include:

A. "The National Atlas" (U.S.G.S. 1970) provides physical data on costal areas of the United States, pp. 78–84, which although gross for our purposes provide useful checks on landforms, shoreline characteristics, bottom sediments, surface currents, tidal types and ranges, surface sea temperatures and salinities, and wave heights. Similarly, publications on national and local distribution of plans and animals frequently include maps showing general distributtion by species that can serve as gross checks. (See Sec. 9.2D for additional sources.)

B. Many States are now collecting detailed data on their wetlands and most of them have habitat type data published in their files, or in the knowledge of their field personnel and research people. These and other data should be collated and entered on the field office's habitat type maps. Intensive studies on especially critical areas can often be conducted in cooperation with NMFS, State, and university personnel. The latter may be encouraged to involve students in special cases to add to the data base.

4. *Field investigations.* The depth and detail of field investigation varies considerable, mainly in relation to the apparent severity of the anticipate environmental impact and the available Service resources, but also with whether the proposal is Federal or non-Federal.

Normally appropriate studies are programmed, budgeted, and scheduled in advance for Federal proposals while field studies for non-Federal proposals must be done on an ad hoc basis.

Service personnel will at all times act and promote actions by others to achieve an orderly processing of Federal permit applications and planning of federally assisted and Federal projects.

4.1 *Non-Federal proposals—permit applications.* The Service position of the burden of proof being on the applicant to demonstrate the environmental soundness and public interest merit of his proposal implies that the applicant must arrange for any needed detailed field investigations. (See paragraphs (h)(2) and (h)(3), particularly paragraph (h)(2)(vi), of 33 CFR 209.120, App. D–4a(2).) This position certainly must be maintained with respect to planning, design and monitoring studies, but certain investigations must nevertheless be conducted by the Service and others in support of the environmental interests.

A. A reconnaissance of the project area must be made by the responsible Service biologist to provide a first-hand viewpoint and appreciation of the site values and potentials. A field surveillance and appraisal report form (App. B–2) will be completed at the time of the reconnaissance investigation for each permit application which proves to have Service interest to assure that all significant factors are considered. The form should be reviewed prior to taking to the field and partly filled in with the required information that is only obtainable from the permit application and other off-site sources. This completed form is made a part of the permit file.

(1) The field investigator will accomplish the following items of work on-site:

(a) Assess the relative environmental significances of the selected site in contrast to apparent alternative sites.

(b) Assess any possibilities for modifying the proposal to lessen environmental impacts (see Sec. 5 for review guidelines).

(c) Obtain information from knowledgeable local persons on species distribution and diversity, resource uses and values, and public interest relative to priviate interest.

(d) Determine if work has been started and, if so, its apparent legality.

(e) Document the on-site observations through map notations, photographs, records of interviews, sampling data, physical measurements, and completion of the standard field surveillance and appraisal report form (App. B–2).

(f) Note any potential involvements of other Interior bureaus particularly NPS (cultural and natural values), BOR (wild and

scenic rivers, scenic values, general recreation values), BIA and BLM (lands and resources), and BR and GS (water and water quality) and later alert and consult with these agencies.

(2) The appraisal form is designed as both a checklist and a record of the on-site investigation; it must be completed in the field in appropriate part to avoid errors of recall.

(a) Although the field appraisal form may appear to be tedious in detail, the worth of the conscientiously completed form is invaluable to preparation of Service comments and recommendations and to any negotiations that may ensue. Therefore, it is essential that the form be completed as fully as possible in every case selected for field investigation and substantive comment.

(b) Since the details required to be completed are a function of the enviornmenal significance of the proposal, relatively less consequential proposals will involve completion of fewer details of the form.

(c) Where appropriate, the Ecological Services biologists may find it efficient to arrange a joint reconnaissance of the project site with the applicant and representatives of appropriate State agencies, NMFS, EPA, the Corps, or others.

B. *Need for detailed field studies.* (1) Where the reconnaissance appraisal indicates that highly productive habitat would be degraded or lost if the proposal were carried out as planned, it may be necessary for the Service to conduct or arrange for more detailed studies to support its position and to:

(a) Affirm conclusion of species diversity and resource value.

(b) Provide a firmer basis for negotiation with the applicant on project modifications.

(c) Justify recommendations of permit conditions or denial of permit.

(d) Provide data required for administrative or judicial review.

(2) It is the Service position that there exists a national recognition that wetlands and shallow water habitats have such high ecological and social values as to admit of their destruction or degradation only where there is no question that the public interest demands it.[1]

(3) Widespread national recognition is very helpful to the necessarily expedited review of permit applications since it is not reasonably possible for the Service to conduct field studies sufficient to provide unequivocal ecological answers. A useful discussion of study limitations and values as well as methods is included in App. G–1, taken from a publication of the Atomic Energy Commission.

(4) In view of the national recognition of wetlands values and the inherent limitations of time and resources, the Service will not normally attempt to prove its case in relation to permit applications by assembling detailed, on-site ecological or use data. On-site reconnaissance, as discussed above, will nevertheless be detailed enough to generally and accurately define the resource conditions and values. Proof normally will be supported by reference to indepth studies such as those of ecologist, Dr. Eugene Odum and others (App. G–4 and G–5), the logic of universal dependence of marine and estuarine ecosystems and related resource values on shallows and wetlands, and the great body of long-standing law recognizing the public trust rights in the lands involved (App. D–1b and D–3b).

(5) Permit applications involving steam-electric, steel, paper, petroleum, chemical, and other industrial plants having thermal and other pollutant effects on natural waters often require pre- and post-projects studies, monitoring of environmental changes, and mathematical and hydraulic model studies. The predictive studies should be conducted on-site where possible, and control studies for the monitoring should be conducted at the site pre-project and at an appropriate nearby site post-project.

Certain dredge and fill projects and many Federal navigation, hurricane protection, and beach erosion-control projects also should be subjected to model and monitoring studies to predict and measure environmental impacts—all with a view to improving designs in the interest of the environment.

(6) Detailed studies are generally the responsibility of the project sponsor. The Service has neither the fiscal and manpower resources nor the responsibility to conduct model, monitoring or other detailed studies, but it does have the responsibility to insist not only that they be conducted but that they be done in a scientific, objective manner.

Nevertheless, detailed field investigations by the Service are required in support of testimony in judicial and quasijudicial hearings and occasionally for other purposes, as outlined above. Guidelines for such detailed investigations are outlined in Sec. 10.2 of this handbook.

4.2. *Federal Surveys and Project Proposals*—A. *Programmend work.* (1) The Service has the responsibility under the Fish and Wildlife Coordination Act, the Anadromus Fish Conservcation Act, the Estuary Protection Act, the Fish and Wildlife Act of 1956, the Watershed Protection and Flood Prevention Act and other authorities to conduct field investigations related to Federal and federally assisted water development surveys and project studies. These investigations are normally programmed, budgeted, and acheduled in harmony with the schedule of the lead Federal agency.

(2) The investigations conducted by the Service in relation to studies of Federal agencies are generally of greater depth and detail than those described above for non-Federal proposals. They should be of comparable detail to those conducted by the lead agency. Principles and guidelines for these investigations are presented in the Division Manual, Secs. 2.300 through 2.999.

B. *Maintenance and emergency work.* Certain types of Fedeal work such as the maintenance dredging of navigation channels conducted by the Corps and emergency flood disaster activities in streams conducted by the Corps, Bureau of Reclamation, and the Soil Conservation Service must be investigated and reported upon on an ad hoc basis and in a manner similar to that described above for non-Federal proposals, except that responsibility for needed fish and wildlife studies largely devolves on the Service, NMFS, and the State fish and game agency. Counsequently, the Ecological Services field supervisor must maintain liaison with the Federal and State agencies and their personnel responsible for these kinds of activities to assure himself that proper notice is afforded and opportunity provided to make field investigations and timely recommendations.

4.3 *Investigations of unauthorized work and activities.* A. Service personnel must maintain continuous surveillance of navigable waters of their area of responsibility to detect any unauthorized work in a timely manner (see also Secs. 5.2B, 6.3, 7.3 and 8 and App. B–4b and B–5).

(1) Offices of the Division should make necessary arrangements to serve as clearinghouses for alerts from Service personnel and cooperating NMFS and State personnel who detect unauthorized work and Division personnel must investigate and report on each such alert.

(2) Service personnel should arrange for all possible assiatance from and cooperation with NMFS and State personnel as well as others with like interests to increase their effectiveness.

(3) Service personnel should cooperate fully with the Corps, Coast Guard, and the EPA in such surveillance and with the Department of Justice in any subseqent enforcement actions.

B. Field surveillance investigations of an apparently unauthorized work or activity must be circumspect on site and confined to making as complete an assessment of the facts as possible. In no event should the investigating biologist voice any allegations of illegality, accuse a person of improper action, or take any other direct action to stop or alter the observed ongoing activity.

C. A field surveillance and appraisal report form (App. B–2) is completed on site as fully as possible keeping in mind the items outlined in Sec. 4.1A, above. Particular attention must be given to obtaining full coverage of the activity site and area of influence with good photographs and to obtaining other evidence (water and biological samples) demonstrating the kind, location, and effects of the observed activity. If possible, the investigating biologist should use a camera providing positive prints directly upon exposure (Polaroid) or take care that the photographic as well as other evidence submitted to other persons for processing is properly certified by use of a "transfer of evidence" form (see note on the back of the first page of App. B–2 form).

D. Following discovery and appraisal of an apparently illegal activity, the regulatory agency will be immediately contacted to determine if the work is being done lawfully. If it is not, the Regional Director will

[1] As evidenced in Federal law, App. D–2f, o, and v; in Federal regulations, see paragraph (g)(3) of 33 CFR 209.120, App. D–4a(2); by the President's Environmental Message of Feburary 8, 1972, App. D–4a; and otherwise in executive policy, particularly EPA's wetlands policy, App. F–2a, b, and c; as well as in wetlands laws of many States. See also App. G, especially G–4 and G–5, for the scientific basis of this recognition.

promptly request the regulatory agency to issue a cease and desist order. A flow chart of surveillance actions is given in App. B–4b, and related guidelines are presented in sections 5.2B, 6.3, 7.3, and 8.

5. *Policy guidelines for Review of proposals.*

5.1 *Basis.* A. In discussing a proposal with its sponsor and in developing written comments and recommendations to assure that the proposal can be implemented without significant damages to fish, wildlife, and related environmental resources under purview of the Service and the Department (being alert for potential adverse environmental effects in the province of other Interior bureaus so as to coordinate and exploit mutual concerns), Service personnel will observe the policy guidelines set out in this handbook. (App. D, E, and F provide legal references and official policy statements relevant to these guidelines.) In a like manner, the Service will maintain close cooperation and coordination with other State and Federal agencies (Section 6—Coordination, Liaison, and Negotiation).

B. To account for local or regional peculiarities of geography, resources, and social, political, institutional and economic constraints, special adaptations and modifications of these guidelines may be proposed for approval and may be subsequently adopted. Also, more detailed guidelines covering particular situations may be proposed in the future and adopted as required, such as for mineral exploration and development, powerplants, high marsh areas, etc.

C. The Service's policy and procedural guidelines expressed in this handbook are intended to be compatible and reasonably consistent with relevant provisions of law, decisions of the courts, and rules, regulations and administrative practices of Federal regulatory agencies. But the Service does not have the responsibility, as do the regulatory agencies, of making the final determination of the overall acceptability of a proposal, all factors considered. These guidelines are not intended nor should they be interpreted to be addressed to such final decision. They are intended to reflect the Service responsbility to contend for the special public interests in fish and wildlife, their related habitats and ecosystems, and the human uses and environmental values dependent on such resources.

D. Service personnel must critically note that each guideline is qualified to admit of reasoned interpretation on the merits of a particular proposal in its particular ecosystem setting and must be so interpreted in each case. Blanket, absolute opposition to any specific type of development or site situation must not be construed from the language of any policy or policy guideline of this handbook. Each proposal must be weighed on its individual merts not only in the light of the main thrust of applicable guidelines but in light of the qualifications of these guidelines, the specific biological and environmental conditions of the proposal site, and the particular expected environmental impacts of the proposal.

5.2 *General policy guidelines*—A. *New work proposals.* (1) Encroachments into navigable waters and wetlands will be discouraged where such encroachments would significantly damage biologically productive shallows and wetlands or unreasonably infringe on public rights of access, use, and enjoyment.

(2) Sites and design will be encouraged to be in compliance with any applicable comprehensive regional or statewide plant for land use and/or shoreline development which properly balances public needs and properly accommodates site and upland drainange, waste discharges, and erosion forces (as indicated by plans developed by the State under the Coastal Zone Management Act of 1972 and be a State under and State land use act that may be applicable).

(3) A proposal which in combination with other developments would, due to cumulative effects, unreasonably degrade environmental resources, or diminish the human satisfactions dependent on such a resources on a waterway or group of related waterways will not be acceptable to the Service and will be strongly discouraged.

(4) Nonwater-dependent structures, facilities, or activities generally will be considered by the Service to be unaccpetable uses of public waters unless it has been demonstrated that the proposed use is required in the public interest (see Sec. 2.2B(1) and no alternative site mutally acceptable to the Service and the applicant is available.

Although in many cases a restaurant, motel, trailer park, golf course, or other service facility may be more attractive to its customers if it has water frontage, this attraction does not necessarily require encroachment into navigable waters and wetlands. A set-back location that preserves public access to the water usually can provide as good or better water view, assure greater safety from storm hazards, and otherwise accord more fully with both the private and public interest.

(5) Proposals to fill ecologically valuable wetlands or site sewage lagoons or other treatment works on them will be discouraged, and where no feasible upland site for such works is available, the Service will urge adoption of tertiary treatment processes which do not require lagoons or other extensive works with consequent destruction of wetlands (see EPA's wetlands policy, App. F–2a, b, and c).

(6) The Service will object to or request denial of Federal permit for any proposed project not properly designed or located to avoid preventable significant damages to fish, wildlife, and/or other environmental values.

B. *Unauthorized work and activity in navigable waters and applications for after-the-fact permits therefor.* Unauthorized excavation, fill, structure, facility, building, or ongoing activity in or affecting navigable waters will be considered to be in violation of the law as prescribed in the River and Harbor Act of 1899. App. D–2a; the Federal Water Pollution Control Act (Sec. 301), App. D–2s; and the Marine Protection, Research and Sanctuaries Act (Sec. 101), App. D–2x. See also Secs. 4.3, 6.3, 7.3, and 8 of this handbook for other aspects of unauthorized work.

(1) Where necessary to achieve removal of unauthorized harmful works and/or obtain other appropriate remedy, the Service will request the responsible Federal regulatory agency to institute enforcement action, including judicial procedures through the Justice Department if required.

(2) The Service may, where immediate action is warranted to avert great loss of fish and wildlife or their habitat, request the Solicitor, Department of the Interior, to take any appropriate steps to speed legal action.

(3) Where after-the-fact application is made for existing work which resulted in significant environmental damage, the Service will confer with the responsible Federal regulatory agency to assist it in determining the need and the possibilities for restoration and compensation of damages to fish and wildlife, their habitat, and related human use values.

(4) If legal action is not taken or is taken and fails adequately to remedy the damage, the Service will continue to aid negotiations with the applicant, seek appropriate conditioning of any permit, and take such other remedial measures as are available.

(5) Where satisfactory means and measures for restoration and compensation have been imposed upon or negotiated with the applicant, Service personnel will urge that the permit include conditions to assure their implementaion.

(6) The Service may ask that the applicant be required to furnish a performance bond when there appears to be substantial risk of non-performance.

(7) In case of judicial action, Service personnel must expect to testify with appropriate Departmental clearances required and to have developed substantial evidence in support of the environmental aspects of the case. In such event, expert opinion is only a feeble substitute for firsthand testimony based on in-depth investigation (see Sec. 10).

C. *Proposals determined to be acceptable.* The Service will urge that the applicant be required to provide assurances, through acceptance of permit conditions, that the works will be built and operated in such a way as to minimize the impact on fish and wildlife and the detriments to the public interest in the lands and waters affected.

(2) In cases where compensational measures are developed with the applicant to protect the resources, the natural functioning ecosystem, and other environmental values, Service personnel may recommend that a performance bond be required of the applicant to guarantee implementation of the compensational measures.

(3) Assurances for Federal projects will be obtained by the Service through clear and specific inclusion of means and measures in project authorizing documents and diligent follow-up during construction and operation.

5.3 *Detailed policy guidelines.* Service personnel will observe additional detailed guidelines in screening and reviewing permit applications and Federal proposals as

indicated below for particular types of protects (Note that where excavation of fill or deposition of spoil are involved in a proposal, the guidelines of items I or J are applicable in addition to the guidelines listed for the specific main proposed works or activity):

A. *Docks, moorages, piers, and platform structures.* (1) In crowded areas, individual single-purpose docks will be discouraged, and multiple-use facilities common to several property interests providing common pollution control works and minimizing occupation of public waters will be actively encouraged.

(2) Joint-use moorage facilities will be encouraged for subdivisions, motels, and multiple dwellings in preference to individual moorage.

(3) The size of docks and piers and their extension beyond the normal high water line will be recommended to be restricted to that required for the intended use.

(4) Anchor buoys will be encouraged in preference to docks.

(5) Piers or catwalks will be encouraged in preference to fills to provide needed access to navigable water.

(6) Dry storage on upland will be encouraged for small boats in preference to water moorage in crowded areas.

(7) Removal of docks, piers, or platform structures in existence without a Federal permit will be recommended where practicable and especially where the particular structure is found to interfere with or preclude preservation, management, or utilization of fish and wildlife resources and otehr environmental values.

(8) Removal will also be recommended of all piers and similar structures receiving little use, in a state of disrepair, and/or serving no demonstrated public purpose.

(9) Overwater location of apartments, shops, restaurants, and other nonwater-dependent facilities on pile structures or fills will generally be viewed by the Service as destructure intrusions upon the aquatic environment. Denial of a permit for a structure intended solely for such uses will be recommended unless it is clearly shown that the particular structure is required in the public interest (see Sec. 2.2B(1)(a) and Sec. 5.2A) and no alternative site mutually acceptable to the Service and the applicant is available.

(10) Permits for docks, piers, and other overwater structure will be recommended to be conditioned to require removal once the structure no longer serves the purpose for which it was originally permitted.

(11) Houseboat anchorage and moorage in public waters outside of publicly established harbor areas for more than 30 days will be discouraged.

(12) Service review of applications for the repair or replacement of previously permitted docks, piers, and moorages will be expedited.

B. *Marinas and port facilities.* (1) Designs that minimize disruption of currents, restriction of the tidal prism, excavation in shallow waters and wetlands, removal of barrier beaches, and filling of shallow waters and wetlands that do not occupy waters with poor flushing characteristics or sites with high situation rates; and that preserve environmental values in general will be strongly encouraged.

(2) Facilities for the proper handling of boat and site-generated sewage, litter, other wastes and refuse, petroleum products and precipitation runoff will be insisted upon with all marina and port proposals, including modifications to existing facilities, insofar as required by law.

(3) Regional and statewide planning for balanced land use and specifically to locate suitable spoil disposal sites, reduce unneeded dredging, and properly locate any new or expanded port, other necessary navigation and other water-dependent facilities will be encouraged. Shipping and support facilities including marine railways and launching ramps will be encouraged to make full utilization of developed areas to forestall disturbing new areas of high environmental value.

C. *Bulkheads and seawalls.* (1) Bulkheads and seawalls generally will be acceptable in areas having unstable shorelines, but their construction will be discouraged where marsh, mangrove, or other naturally protective and productive areas would be disturbed. In the latter situations, any neccesary bulkhead should not reflect wave energy so as to destroy productive wetlands. In rapidly eroding situations where natural, protective vegetation or other controls are inadequate, bulkheads placed in navigable waters may be acceptable if properly designed to mitigate but not aggravate natural forces and processes.

(2) In extensively developed areas, rip-rap and/or designs utilizing natural vegetation will be encouraged in lieu of bulkheads of wood, concrete, or metal. Bulkheads will be acceptable that esthetically and/or ecologically enhance the aquatic environment.

(3) On barrier and sand islands and sand beaches, bulkheads which would adversely affect the littoral drift and natural deposition of sand materials will not be acceptable.

D. *Cables, pipelines, transmission lines, bridges and causeways.* (1) The Service will enourage the establishment of transportation-utility access corridors crossing navigable and other waters and wetlands at sites that localize and minimize environmental impact by limiting the encroachments to least valuable and productive areas.

(2) To be acceptable, aerial or submerged cables, pipelines, and transmission lines must be located and designed for maximum compatibility with the environment. In assessing environmental compatibility, Service personnel will give particular emphasis to the provisions made to protect water quality, fish and wildlife resources (notably, interference with migration routes) and to prevent interference with fishing and other public uses. Where unique natural areas, cultural sites, or significant impacts on scenic beauty or public access appear to be involved, Service personnel will alert and cooperate with concerned Interior bureaus and other agencies.

(3) Alternation of the natural water flow circulation patterns or salinity regimes through improper design or alignment will be discouraged.

(4) Enhancement of public access by the installation of fishermen catwalks, boat launching ramps, or other structural features will be encouraged.

(5) Bridge approaches required to be located in wetland areas will be recommended to be placed on pilings rather than constructed as solid fill causeways.

E. *Jetties, groins, and breakwaters.* Jetties, groins, and breakwaters that do not interfere with or, preferably, that enhance public access, and do not create adverse sand transportation patterns or unduly disturb the aquatic ecosystem will be acceptable. Service personnel will place particular emphasis on preventing project-related erosion and other harmful impacts caused by the installation—such as destruction of sand dunes and beaches and filling of shallows and tidal wetlands due to changes in littoral currents and drift—as well as on protecting fish and wildlife resources and uses.

F. *Lagoons and impoundments.* Lagoons or impoundments for waste treatment, cooling, or aquaculture which would occupy or damage significant wetlands or other ecologically productive areas in navigable waters will be unacceptable to the Service and denial of permit normally will be recommended. (A NPDES permit is required to discharge from these; see EPA's wetlands policy, App. F–2 a, b, and c.)

G. *Navigation channels and access canals.* (1) Construction or extension of canals primarily to obtain fill material will be discouraged or opposed as appropriate.

(2) Designs and alignments should adequately serve the needs of commercial and sport fisheries and other water recreation as well as other demonstrated public needs.

(3) Designs should not create pockets, interior channels, or other hydraulic conditions which would cause stagnant water problems.

(4) Designs should not create or aggravate shoreline erosion problems or interfere with natural processes of beach nourishment.

(5) Channel alignments and spoil sites should avoid shellfish grounds, eelgrass beds, beds of other productive aquatic vegetation, coral reefs, fish spawning and nursery areas, fish and wildlife feeding areas, and other shallow water and wetland areas of value to fish and wildlife resources and uses.

(6) Alignments should make maximum use of natural or existing deep water channels.

(7) Designs should include temporary dams or plugs in the seaward ends of canals or waterways and competent confining dikes around spoiling sites to serve until excavation has been completed and all sediment has settled out.

(8) Designs should not alter tidal circulation patterns adversely, create change in salinity regimes, or change related nutrient and aquatic life distribution patterns.

(9) Construction should be conducted in a manner that minimizes turbidity and dispersal of dredged material into productive areas and on schedules that minimize interference with fish and wildlife migrations, spawning, nesting, or human uses.

(10) In addition, the Service will recommend that the applicant or permittee be

required to supply the Service with a schedule of the dredging anticipated during the life of the permit (frequency, duration, type of dredge, amounts of material, etc.) and where appropriate give a two-week notification prior to the commencement of work at each location or phase of construction. Recommendation also will be made to required Service notification when work is completed and the amount of materials removed. Similar advice and notice will be requested for previously coordinated Federal projects.

H. *Drainage canals and ditches.* Construction of canals and ditches that would drain or facilitate drainage of any of the wetland types identified in the Fish and Wildlife Service's Circular 39, "Wetlands of the United States," will be discouraged, and denial of permit usually will be recommended by the Service. Channels draining such wetlands will be acceptable to the Service only where the following situation has been conclusively demonstrated: Insect vector control or some other public health, safety, or welfare measure is required as a public necessity and drainage would be the least damaging or only practicable means of accomplishment. But in these instances, the quantity and quality of any discharged waters should be controlled as required by the FWPCA and so as not to adversely affect the aquatic ecosystem unduly (a NPDES permit covering such discharges may be required).

I. *Excavation of fill material.* (1) Excavation and dredging in shallow waters and wetlands will be discouraged and any permits issued or Federal work approved will be recommended to be conditioned to prohibit activities in fish and wildlife nursery areas and during periods of migration, spawning, and nesting activity.

(2) Whenever the excavation of fill materials from productive submerged or intertidal wetland areas or from wetland types identified in Circular 39 (see Sec. 2.2B(2)) is considered detrimental to fish and wildlife resources and unacceptable, permit denial for such work will be recommended by the Service.

(3) Uncontrolled stockpiling of dredged material in shallow water or on wetlands to achieve full bucket loads will not be acceptable. Unloading barges should be employed wherever possible to avoid such stockpiling of materials. Where stockpiling is required, the use of competently diked upland areas usually will be recommended.

(4) Excavations should not create stagnant sumps or cul de sacs that trap and kill aquatic life.

(5) Dredging operations should be conducted so as to prevent petroleum spill, deposit of refuse, and avoidable dispersal of silt or other fines or other discharges of harmful materials (a NPDES permit may be required).

J. *Filling and deposition of spoil and refuse materials.* (1) Filling in navigable waters generally will be discouraged and will be strongly objected to where the proposed development is nonwater dependent or would not serve a demonstrated public need.

(2) Whenever the filling of waters and wetlands is considered detrimental to fish and wildlife resources and unacceptable, permit denial for such work will be recommended by the Service.

(3) Spoil confinement works should be properly designed, constructed, and maintained to avoid discharge of fines, other particulates, or harmful material to natural waters and be located on dry upland. The location of outlets and other means of control of the effluent from the spoil retention area should yield water quality that will preserve the aquatic ecosystem (a NPDES permit may be required).

(4) Toxic, oxidizable organic, and other highly harmful materials must be disposed on dry upland areas behind impervious dikes or by other safe and environmentally protective means.

(5) Dikes should be vegetated immediately to prevent erosion.

(6) In-bay, open-water, and deep-water disposal generally will be considered acceptable by the Service only after all upland and other alternative disposal sites have been explored and rejected for good cause. Deep-water disposal will be acceptable only at sites designated under State or Federal regulations or at sites specifically selected, including those selected for deposit of clean material for habitat improvement, where agreed upon by all concerned agencies.

(7) Sediment and/or effluent analysis will be recommended to be required in cases where there is suspected contamination by heavy metals or other toxicants. In cases where contaminant levels are high, the Service will either urge disposal on fully confined impervious upland sites or by other safe and approved means, or recommend denial of permit application.

(8) Turbidity and dispersal of dredged material will be recommended to be controlled in relation to open-water dredging and disposal by means of fine-meshed curtains or other effective means.

(9) The foregoing guidelines on spoil deposition are also particularly applicable to Federal channel excavation and maintenance.

K. *Mineral exploration and development, territorial waters.* (1) To be acceptable, blanket permits issued for mineral exploration and development (including oil, gravel, sand, fossil shell, phosphates, sulfur, salt, placer metals, etc.) must be limited to the shortest time period essential to the work proposed and should provide by explicit conditions of the permits for such of the following that can be utilized to minimize environmental degradation: Areal exclusions; special exploration and development procedures (e.g. slant drilling); use of special equipment (e.g. use of shallow draft barges and low-impact swamp vehicles on wetlands); and limitations on dredging, filling, and spoiling (i.e. use of existing channels wherever possible rather than new ones, avoidance of productive wetlands and shallows for filling and spoiling, etc.).

(2) To be acceptable, proposed activities and works must be described as fully as possible in the original permit application, and to the extent that these cannot be described for the entire extent of the work and period of the permit, the underscribed extension and modifications when known and proposed must be subject to provision of adequate notice and opportunity for on-site assessment of potential environmental impact by the Service or its designee, and the permit must be further conditioned as may be required to protect environmental resources on the basis of such recommendations as the Service may make.

(3) To be acceptable, proposals must meet the applicable general and detailed guidelines set out hereinabove for other particular activities and works involved in the proposed mineral exploration and development.

(4) To be acceptable proposals must make adequate provisions to keep environmental degradation to the minimum, particularly that from spillage of oil; release of refuse including polluting substances and solid wastes; spoiling on productive wetlands; dredging of productive shallows; and alteration of current patterns, tidal exchanges, freshwater outflow, erosion and sedimentation.

L. *Mineral and other developments, including rights of way, on public lands.* (1) As discussed more fully in Section 1, Interior bureaus and other Federal land management agencies are involved variously in leasing lands and granting permits for rights of way, mineral exploration and development, hydroelectric power development, and other activities on public lands of the United States. To the extent that these activities would involve identifiable effects on navigable waters they also require a permit from the Corps or Coast Guard under the 1899 Act and/or the Federal Water Pollution Control Act Amendments of 1972, and in certain cases a NPDES permit from EPA or the State.

(2) These guidelines do not cover procedures for the intra-Interior review of outer continental shelf and other public lands, mineral leases, and permits nor rights-of-way permits, but it is expected that Service personnel will apply any of the pertinent policy guidelines of this handbook as are appropriate.

(3) Corps, Coast Guard, and EPA permit applications covering such activities should be reviewed in the field for potential site-specific impacts as with any other permit, keeping in mind, however, that general protective conditions are included in the Interior permits which are deemed adequate for all known situations and contingencies and that known highly damageable areas have been excluded from the lease offers and use permits for lands of the Territories.

(4) If a particular case appears to the reviewing biologist to involve substantial impacts of a nature not certainly covered by conditions of the Interior permit, he should initiate action to so notify the district or regional office of the concerned regulatory agency and the responsible office of the concerned Interior bureau or for the Territory. If the responsible local Interior office cannot satisfy the Service concern, the matter should be referred to the Central

Office for resolution and the district or regional office of the regulatory agnecy should be so apprised.

M. *Log handling, moorage, and storage.* (1) Log handling, moorage, and storage sites proposed to be located on salmon-spawning and other fish productive streams, shellfish grounds, or shallow water and wetland areas of value to fish and wildlife resources and uses will not be acceptable to the Service.

(2) Log handling, moorage, and storage in public waters will be discouraged, particularly where such activities would obstruct or impede public access, fishing, hunting, and other legitimate public uses of the water body; degrade and destroy fish and wildlife resources; or otherwise degrade environmental values.

(3) Environmentally sound practices of log handling will be encouraged through recommendations for conditioning of any required Federal permit or contract and otherwise, as follows:

(a) Use of positive controls over bark, other debris, and leachates, including proper confinement, collection and disposal of all floatable, soluble, and settleable refuse. Rapidly flowing water, steep shores or other sites must be avoided for log dumping where positive controls cannot be effected.

(b) Use of easy let-down devices for placing logs in water to avoid safety and environmental hazards of violent free-fall dumping.

(c) Limiting the quantity of logs and the duration of their moorage and storage in public waters to the minimum required for efficiency.

(d) Use of upland sites for bundling of logs and disassembling the bundles.

N. *Steam electric powerplants and other facilities using navigable waters for cooling.* Although these facilities will be treated in detail in a separate Steam Electric Powerplant and Cooling Facilities Handbook, broad, general guidelines are included here:

(1) As a general rule, once-through cooling systems will be discouraged and closed-cycle cooling will be encouraged where the facility is proposed to be sited on or so as to affect biologically productive navigable waters. In particular, any facility will be strongly discouraged which would significantlly change the environment and values of an estuarine area or other biologically productive navigable water by withdrawal and discharge of large volumes of water—thereby depleting aquatic life by entrainment and impingement; altering the natural or existing regime of salinity, temperture, and dissolved oxygen and the patterns of water currents, tidal exchange, volume, tidal excursion, and freshwater flow; disturbing the populations, dynamics, and distribution of aquatic life; scouring productive water bottoms or otherwise endangering the viability and productivity of the ecosystem; and lessening the human satisfaction dependent thereon.

(2) A facility to divert water from and release heated water to navigable waters where proposed to be sited so as to affect harmfully salmonid spawning, rearing, or migration waters or any water or wetland supporting highly sensitive and/or highly valued species of fish or wildlife will not be acceptable to the Service unless such facility is fitted with a closed-cycle cooling system and otherwise incorporates protective features that insure against any significant harm to such species at all times and under all foreseeable conditions.

(3) To be acceptable any facility incorporating once-through cooling involving navigable waters must:

(a) Be sited where wetland destruction, other habitat damage, interference with fish and wildlife and their uses, and overall environmental harm will be at the minimum compared to other possible sites in the region:

(b) Involve a plan layout based on preoperational baseline studies defining current, temperature, salinity, tidal, migratory fish or wildlife, and other patterns sufficient to select the smallest and most desirable heat mixing zone, providing adequate zone of passage, and other plan arrangements, including those of the transmission lines and other appurtenant facilities, that will minimize harmful impact on fish and wildlife, their habitats and uses as well as overall environmental damages;

(c) Incorporate design features and operating programs and rules to avoid all avoidable harm to fish and wildlife, habitats, and uses as well as other environmental resources and uses; specifically:

(i) Incorporate a cooling system design employing the best available technology and combination of facilities to minimize harmful effects on the environment, including: Mechanical rather than chemical scale and algae controls; intake-outlet arrangements which minimize impingement, and entrainment, and damage to productive bottoms; fish bypasses and other saving devices as well as screens at intakes;

(ii) Schedule shutdowns to avoid harm to aquatic life as fully as possible;

(iii) Meet all applicable water quality requirements and goals; and

(iv) Adequately monitor the operations to satisfy the burden of proof upon the permittee or licensee that the foregoing and other appropriate environmental standards are met.

6. *Coordination, liaison, and negotiation.* It is difficult to overemphasize the value of taking steps at the earliest possible time to gain participation in the planning process to permit offering suggestions of modifications and alternatives and discouraging selection of naturally productive sites or harmful methods of development. This is difficult with piecemeal private developments, but even with these, publicizing Service concerns in the media, assisting concerned citizens who responsibly involve themselves in surveillance, accepting speaking engagements, arranging symposia, educating local planning, zoning, and administrative boards, and other means can be of help in the long run.

With the Federal activities close liaison by the Division Field Supervisor with the Federal planning agencies usually leads to early notice of actions and invitation to informal consultation during formulation of plans. This early consultation can be the most productive effort made by Division personnel in relation to Federal activities. If possible the consultation should be between the Division biologist and the lead agency planner assigned to the specific survey or project.

The Ecological Services biologist also must maintain early and continuing liaison and coordination with NMFS and State biologists in connection with each assignment. Summary coordination guidelines follow:

6.1 *Coordination with the State, NMFS, EPA, Corps, other Interior bureaus, and other concerned governmental agencies.* A. Early in his review of a proposal, the Division biologist consults with his counterparts in other agencies to:

(1) Gather information from knowledgeable experts.

(2) Identify mutual interests and information sources and obtain useful data and views.

(3) Transmit project data to cooperating entities not otherwise supplied.

(4) Arrange any appropriate joint field studies.

B. As his preliminary assessment and field reconnaissance are completed and he prepares his draft report and recommendations the Division biologist continues coordination and liaison with agencies having coordinate and related responsibilities to:

(1) Assess the public interest and other professional opinion on the merits of the proposal and consider proper means of resolving any environmental issues.

(2) Alert other agencies, particularly other Interior bureaus, to any special environmental concerns in their interest discovered in the Service assessment or reconnaissance and explore any mutual environmental involvements of the proposal with such agencies.

(3) Formulate any appropriate joint position on the proposal among agencies having coordinate responsibilities.

6.2 *Coordination with the applicant or Federal Lead Agency.* A. Early consultation with the Federal lead planning agency can often forestall wasteful efforts addressed to environmentally unsound design or site; yet this advantage is normally long past with permit applicants. Improvements in the latter situation may result from educational efforts by concerned entities and court decisions favorable to the environment which encourage prospective applicants to seek early consultation.

B. Negotiation with the applicant or lead agency planner is conducted as appropriate throughout the Service review process.

(1) If the field appraisal has confirmed that the proposal will have adverse effects on fish and wildlife, their habitat or the naturally functioning ecosystem, efforts must be made either through the regulatory agency (in permit applications) or by direct contact with the applicant or lead agency planners, to have the plan modified to minimize damage to the resource base.

(2) The posture to be maintained by the Service representative in negotiating with applicants or lead agency planners should:

(a) Encourage acceptance of the validity of the national recognition of intrinsic high public value of shallow water and wetlands habitats through citation of Zabel 1 Tabb, other Federal case and statutory law, local law (statutory wetlands and zoning laws and related case law), and findings of the Reuss Committee and ecologists (see App. D and G).

(b) Avoid acceptance of monetary value as the full measure of significance of ecological and other environmental impacts.

(c) Avoid expedient resolution of issues with the sponsor of the work or activity which do not satisfactorily resolve the environmental issues.

C. If the applicant or sponsor rejects suggestions for making his plans environmentally acceptable, it must be made clear that the burden of proof is on him to demonstrate that such suggestions are infeasible and that his proposal is of overriding public interest. Without such demonstration the Service policy requires that denial of the application be requested or objection to the project be raised as otherwise proper.

D. The assistance of other governmental agencies having coordinate responsibilities and interest should be requested, even urged, in direct participation and support of negotiations. Also, interested private conservation groups should be advised of the Service position.

E. Following successful negotiations, the agreed upon plan modifications for environmental purposes can be handled by:

(1) The applicant submitting a new application with acceptable plan to the permitting authority, which is then specifically comprehended by the permit and its conditions, or

(2) The applicant submitting in writing to the permitting authority his intention to adopt specific plan modifications, thus amending the application, which is then specifically comprehended by the permit and its conditions, or

(3) The Service and Department recommending and the permitting authority adopting the necessary specific conditions or stipulations as part of the permit which fully and specifically comprehend the plan modifications required for environmental and fish and wildlife protection and conservation purposes.

6.3 *Coordination on unathorized work and activities.* A. The conduct of Service personnel in exercising surveillance investigations must be cautious and above reproach. Their on-site actions must be limited to gathering information on suspected unauthorized work without unduly exciting workmen or the sponsors of the work. (See Sec. 4.3.)

B. Enforcement actions are generally the prerogative of the Corps, EPA, Coast Guard, and Justice. Once Service personnel have obtained the pertinent biological and other information necessary for action on the case and the Regional Director has alerted and formally notified the Corps, EPA, or the Coast Guard, as appropriate, with copy to the Regional Solicitor and to the appropriate U.S. Attorney, the Service should normally defer to the regulatory agency for further action. Where NMFS interests are involved, a copy of the formal notification or report on a violation should be sent to NMFS when the regulatory agencies are informed. Where expedited action is justified by immediacy of the threat to highly valued resources, the Regional Director may seek assistance from the Office of the Solicitor. (See also Secs. 5.2B, 7.3, and 8.)

7. *Reporting procedures.*

7.1 *Reports and correspondence.* A. Guidelines for preparation and transmission of routine letters and reports are included in Secs. 3.000–3.999 of the Division Manual. The manual guidelines cover all kinds of river basin activities and should be followed where applicable.

B. Special letter and report formats applicable to review of permit applications are included in App. A. Standard Forms, checklists, and flow chargs are included in App. B, and commonly appropriate standard recommendations for permit applications are included in App. C.

C. *General guidelines on report conclusions and recommendations.* Any of the following situations may serve as a basis for Service recommendation of denial of a Federal permit or objection to the authorization of a Federal project for similar work in navigable water. (More detailed general and specific guidelines for determining acceptability of plans are included in Sec. 5, above):

(1) The project or activity will directly destroy, damage, or degrade fish and wildlife, their habitat, or other significant environmental values, including part or all of a natural functioning ecosystem.

(2) The project will lead to, encourage, or make possible the destruction, damage or degradation of fish and wildlife, habitat, or other significant environmental values, including part or all of a natural functioning ecosystem.

(3) Public use of a natural or other environmental resource will be restricted or curtailed.

(4) Public benefits will not clearly exceed public losses, ignoring any private gains not clearly related to health, safety, or protection of property.

(5) The project purposes are not water related or dependant.

(6) Alternative upland sites are available for the proposal which would involve less environmental costs and generally better satisfy the public interest.

D. *Format and disposition of reports.* (1) Service reports on NPDES permits are submitted by the Regional Director directly to the EPA or the State. Those on nuclear steam-electric plants are submitted through the Director to the Departmental Office of Environmental Project Review for inclusion in the Departmental report.

(2) Service reports on Federal and federally assisted projects are submitted directly to the appropriate office of the sponsoring Federal agency by the Regional Director.

(3) Procedures for review, submission of comments, and resolution of issues on navigation permit applications made to the Corps of Engineers, Department of the Army, are prescribed for all bureaus and offices of the Department of the Interior in 503 DM 1. This Departmental Manual release implements the July 13, 1967 Memorandum of Understanding between the Departments of the Army and the Interior with respect to review of applications for permits for dredging, filling, excavation, and other related work in the navigable waters of the United States issued by the Corps of Engineers. This release assigns responsibility regarding such review to the Director, Fish and Wildlife Service, and delegates responsibility for coordination among Departmental field offices and for submission of formal Departmental communications with District and Division Engineers of the Corps to the Service's Regional Directors.

(4) A different procedure is to be followed where both the permit application and the related draft environmental impact statements are to be reviewed concurrently as described in Sec. 7.2, below.

(5) Under 503 DM 1 the Service normally has a dual role: providing the consultation and review functions mandated by the Fish and Wildlife Coordination Act and coordination and consolidation of views and recommendations of all Departmental bureaus and offices, including those of the Service, into a formal Departmental letter of comment under Fish and Wildlife Service letterhead.

(6) Informal communications with the Corps by the bureaus and offices are not precluded by 503 DM 1; in fact, each bureau and office is directed to make its own arrangements for receipt of public notices and is encouraged to conduct any necessary informal discussions with Corps personnel.

(7)(a) The role of the Service Regional Directors under 503 DM 1 is to coordinate, collate, and transmit all formal Department communications, including requests for extension of time to respond or for more information and the formal Departmental letters of comment (and/or reports) on navigation permits to District Engineers and where appropriate, to Division Engineers.

(b) The Service Regional Director must assure himself that all interested bureaus and offices of the Department have had adequate opportunity to offer comments and that all substantive comments, timely received, are reflected in the formal Departmental response to the Corps on each permit application.

(c) Any unresolved cases of disagreement among field offices of Interior bureaus will necessarily be submitted promptly to headquarters as will any other case which the Corps has indicated it will refer to Washington under the Memorandum of Understanding or which has become so controversial that either the Corps or the applicant is likely to refer it to Washington (See Sec. 7.1E(3)–(6), below).

(8) The Service does not have the above-outlined coordinating function with respect to EPA or the Coast Guard. Nor does it have such function with any other regulatory agency or in relation to review of any Federal or federally assisted project proposals.

(9) The Regional Director's coordinated letter to the responsible Corps officer

prepared under 503 DM 1, although on FWS letterhead, is the official Departmental report on a permit application and is to be so identified in the text of the letter.

(a) The first sentence of the letter report stating the Departmental position should include the Public Notice number and date, the Corps District, the waterway or other locational references, and the State.

(b) Service surveys and investigations on permits, prepared in accordance with provisions of the Fish and Wildlife Coordination Act, are to be incorporated in the letter report to the District Engineer.

(c) In the common case where the substantive comments are limited to those of the Service and any compatible views of other Interior bureaus and offices, the letter will incorporate the Service report and the other comments and views and will state that its content represents the Departmental position, or reflects fully the Departmental views and findings on the identified permit application.

(d) Service letters on such matters as unauthorized activities, failure of a permittee to abide by permit conditions, requests for extension of time, etc., may also note Departmental sanction of the concern or request.

(10) Service letters of comment and reports on other than Corps permits do not necessarily represent the Departmental position and should not so indicate unless Departmental sanction has been determined.

(11) The Departmental letter and/or Service report may be released to cooperating State and Federal agencies and the general public once the Departmental or Service letter has reached the District or Division Engineer of the Corps, Regional Administrator of EPA, or District Commander, Coast Guard.

E. *Recording permit actions and filing of reports.* (1) Records must be maintained in the area and regional offices of the disposition of each public notice received, actions taken, reports filed, and any required follow-up activity accomplished.

(a) Regional offices must maintain records of both Service and Departmental actions in keeping with the role of the Regional Directors as Departmental coordinators for Corps permits.

(b) In addition to maintaining a comprehensive log of permit actions, each public notice received should be filed bearing a notation of its disposition and a reference keying it to the entries made on it in the log (public notices deemed not to involve a Departmental or Service interest are nevertheless logged to assure completeness of records and ease of retrieval in event of later action).

(2) Central Office files must not be burdened. As instructed in Dr. King's memorandum of November 14, 1972 (App. E–16) only those file materials on permits specifically requested by the Central Office should normally be submitted. Exceptions are noted in par. 7.1E(5), below.

(3) The Director should be promptly alerted to permit applications and violations involving properties administered by the Service or another bureau of the Department (i.e., refuges, hatcheries, parks, recreation areas, etc.) and to situations involving policy and other significant Departmental or Service interest.

(4) Alerts on permit involvements of other bureaus of the Department should be forwarded through the Director to the Assistant Secretary for Fish and Wildlife and Parks only where the other bureau so requests, or where after notification of the other bureau that bureau agrees that inadequate attention was accorded an environmental problem.

(5) The Director should be promptly alerted to controversial permit situations which the Corps as indicated it will refer to Washington under the Memorandum of Understanding or where the applicant or the regulatory agency has so clearly objected to the Service or another bureau's recommendations that the matter will likely be referred to Washington for resolution. Where referral to Washington is deemed to be imminent the alert, in exception to par. 7.1E(2), above, should be accompanied by essential file materials and a concise summary of the case and the Department's involvements (see 503 DM 1).

(6) In cases defined above where file materials are submitted to the Central Office, only single copies of the following are required: The Public Notice and any fact sheet, a project location map (with site superimposed on quadrangle sheet or navigation chart), the completed Field Appraisal form, the Service report, any other pertinent correspondence or hearing records, and the Departmental report.

F. *Resolution of issues following report release.* (1) Follow-up with the regulatory agency is to be made on a continuing basis to determine the disposition of cases of concern to the Service and the Department. Copies of permits issued are to be obtained for Service files, with copy to the Central Office if appropriate.

(2) Every effort is to be made to resolve problems at the field level. However, if this is not possible, the Corps in accordance with the July 13, 1967, Memorandum of Understanding, will refer the controversial permit matters to the Under Secretary. The following procedure is followed after Interior's report is filed with the District Engineer:

The District Engineer, in deciding whether a permit should be issued, shall weigh all relevant factors in reaching his decision. In any case where Directors of the Secretary of the Interior advise the District Engineers that proposed work will impair the water quality in violation of applicable water quality standards or unreasonably impair the natural resources or the related environment, he shall, within the limits of his responsibility, encourage the applicant to take steps that will resolve the objections to the work. Failing in this respect, the District Engineer shall forward the case for the consideration of the Chief of Engineers and the appropriate Regional Director of the Secretary of the Interior shall submit his views and recommendations to his agency's Washington Headquarters.

The Chief of Engineers shall refer to the Under Secretary of the Interior all those cases referred to him containing unresolved substantive differences of views and shall include his analysis thereof, for the purpose of obtaining the Department of the Interior's comments prior to final determination of the issues.

In those cases where the Chief of Engineers and the Under Secretray are unable to resolve the remaining issues, the cases will be referred to the Secretary of the Army for decision in consultation with the Secretary of the Interior.

(3) The Associate Director—Environment and Research is to represent the Service on a review committee to advise the Secretariat of the course of action to be followed in the efforts at resolution.

(4) Although procedures have not been agreed upon with regulatory agencies other than the Corps for cases of failure or resolution in the field, any such cases should be referred promptly to the Director with full particulars so that he may attempt resolution of the controversial matters at Washington level.

7.2 *Environmental impact statements.* A. Federal agencies have a responsibility to seek consultation with the Service in relation to their preparation of environmental statements required by Sec. 102(2)(C) and other provisions of the NEPA (National Environmental Policy Act) and the Service has a responsibility by law and expertise to advise such agencies.

B. The Service also has a responsibility to review draft environmental statements and to prepare comments thereon as a part of the Departmental comments made in response to requests for official review and comment on prepared draft environmental impact statements.

C. Distinction must be maintained between these two types of respsonsibility, as follows:

In the first, the Service should provide such advice as it considers appropriate directly to the Federal agency at field level upon its request. Where Service responsibilities are known or suspected of being involved the Service may offer any appropriate advice or remind the agency of its responsibility to consult with the Service and other environmentally expert and responsible bureaus and agencies.

In the second, the Service must make its contribution through the Department's Office of Environmental Project Review. It should comment on the accuracy of the statement with respect to fish and wildlife and related matters, on the completeness and comprehensiveness of the statement in relation to these matters, and on the compliance with the requirements of the NEPA and the guidelines of the Council on Environmental Quality.

D. Consistency must be observed as fully as possible by Service personnel not only in meeting these responsibities but in reporting on the one or more Federal permits required for the proposal at issue. This will require some considerable care and attention in cases particularly where different persons or different times are involved in the several actions. Concurrent actions by different individuals must be closely coordinated. But in many cases, earlier action on review of a

permit application must be carefully reviewed and accounted for in preparation of comments on a subsequent permit application or draft environmental statement.

If circumstances have changed so that current comment necessarily must differ from an earlier comment, a full explanation of such circumstances must be given and a persuasive justification made for the current position taken. In no case should the reviewer fail to search out and thoroughly consider the validity of earlier actions before taking a different position. On the other hand, a faulty earlier position cannot be ignored, it must be forthrightly addressed and disposed with minimum embarrassment to the Service and Department. It is expected that the problems of non-consistency will be less likely to occur in the future in that coordination among regulatory and review agencies will encourage if not demand concurrent review actions on related permit applications and environmental impact statements.

E. Regional offices of the Service should expect to receive documents and requests for concurrent review of permit applications and draft environmental impact statements to come to them from the Office of Environmetal Project Review in Washington, particularly those involving major and extensive proposals. In these cases, the procedure described in paragraph 1.4D of 503 DM 1 will be followed, but in addition, the Service report mandated by the Fish and Wildlife Coordination Act will either be incorporated into the official Departmental comments as an identified section or where appropriate because of the length of the report or other reason, a summary of the report thus incorporated and the report itself filed directly by the Service with the appropriae office of the responsible Federal regulatory agency.

7.3 *Reporting unauthorized work or activity.* A. Although a detailed report is usually not prepared on unauthorized work, complete records must be maintained (see App. B–5), a field surveillance and appraisal report prepared (App. B–2), and a request made to the regulatory agency by the Regional Director for enforcement action if it is determined that the work or activity is in fact being conducted unlawfully (i.e. without permit or in violation of the permit). It usually will be found more effective for the Regional Director to transmit his request by certified mail (see App. A–5 and A–6).

B. If action is not taken in a reasonably timely maner, the Regional or Field Solicitor should be requested to intercede to elicit any essential expedited action. See the flow chart of actions on apparent illegal activities, App. B–4b. If court action ensues the investigating biologist is likely to be called to testify; see Sec. 10 for advice on such participation.

8. *Follow-up of permit work and surveillance of illegal work.* Successful achievement of the Service objectives and goals in relation to dredge and fill activities requires continuing, consistently diligent surveillance of waters and wetlands throughout the Nation by Service biologists in coordination with responsible Federal regulatory agencies to maintain a comprehensive monitoring of all activities conducted in waters under their purview.

8.1 A variety of techniques have been suggested and used to intensify surveillance coverage with the limited Service resources. These include:

A. Intensive, complete coverage of critical areas—preferably periodic (bi-weekly, monthly, or as resources permit) but varied as to timing to avoid strict regularity.

B. Comprehensive, semi-intensive coverage of an entire length of coast, river, or lake—periodic as under Sec. 8.1A, above.

C. Random, occasional coverage of a critical area or length of coast, river, or lake incidental to field reconnaissance of permit applications and other field studies.

D. Comprehensive coverage with assistance of NMFS, district biologists of the State, and/or concerned citizens, and/or Service personnel of other divisions LE, Refuges, Technical Assistance—periodic (quarterly, semiannual, or as resources permit).

8.2 Assistance in surveillance and in intensifying regulatory agency monitoring can be furthered in a number of ways:

A. Sponsoring work shops and symposia.

B. Issuing special reports documenting the value of shallow waters and wetlands in key areas, such as estuaries, and otherwise supporting the need for regional, environmentally sensitive land management planning and control.

C. Eliciting support from government agencies with coordinate interests, conservation groups, and other influential entities in urging intensified surveillance for illegal work and monitoring of permitted activities by the regulatory agency.

9. *Education of the public.*

9.1 *Basis.* Informing the general public and decisionmakers of the ecological, hydrological, and legal bases of the concepts underlying the Service's intensified efforts to save the naturally functioning aquatic and related terrestrial ecosystems of shallow waters and wetlands of the Nation is essential to attaining Service goals.

This is as true for the potholes of the Midwest "duck factory" as it is for the bottomland hardwoods of the Southeast, the extensive, estuarine complexes of the Atlantic, Gulf, and Alaska Coasts, the discrete estuaries of Maine and Pacific Coasts, the bays and shoreline marshes of the Great Lakes, and the oxbows and islands of our major rivers.

9.2 *Means.* A. The Ecological Services biologist must take every opportunity to inform the public of the scientific and legal bases and assist others who are concerned to do so. But he should not merely react to opportunities, for many times these will only permit restatement of the facts to those who already are informed or are at least environmentally oriented and sympathetic. The facts of wetland and other environmental values should be brought to local governments and others who may encourage environmentally damaging development.

B. The legal references of App. D and the technical references of App. G should be perused and frequently consulted in this regard by every Division biologist, and App. H and I are useful aids to the biologists and to his efforts of educating the public and public officials.

C. To be effective in educating others, the biologist must first fully educate himself and continually renew and add breadth and depth to his vision and understanding. The involved ecosystems are in no way simple nor well-understood by even those physical and biological scientists in the forefront of research on these matters. Nevertheless, much is known and the literature is extensive, particularly on coastal and estuarine ecosystems.

D. The following items of literature cover much of the basic knowledge which must be comprehended by all Division biologists involved in dredge and fill activites:

Annon., 1956. *Wetlands of the United States.* Circ. 39, USFWS (Repub. 1971).

Leopold, L. B. and W. B. Langbein, 1960. *A Primer on Water. USGS.*

Swenson, H. A. and H. L. Baldwin, 1965. *A Primer on Water Quality.* USGS.

Teal, J. M. and M. Teal, 1969. *Life and Death of the Salt Marsh.* Audubon/Ballantine (Paperback Ed.).

Annon., 1970. *National Estuary Study.* USFWS. 7 Vols. (especially App. A. Vol. 2; App. B, Vol. 3; and App. I, Vol. 6).

Annon., 1970. *Our Waters and Wetlands: How the Corps of Engineers Can Prevent Their Destruction and Poilution.* U.S. Congress, House Report 91–917 (see App. D–6).

Wharton, C. H., 1970. *The Southern River Swamp—A Multiple-Use Environment.* Georgia State University.

Annon., 1972. *Increasing Protection for Our Waters, Wetlands and Shorelands: The Corps of Engineers.* U.S. Congress, House Report 92–1323 (see App. D–6).

Clark, John, 1974. *Coastal Ecosystems, Ecological Considerations for Management of the Coastal Zone.* The Conservation Foundation.

Many other citations could be listed, of course, but the above, mainly written for the general reader, provide a basic essential overview from which the biologist can branch out to more definitive works. Additional technical sources are cited in the above-listed references and in the App. G–4 and G–5 articles.

E. Many methods and techniques can be used to educate the public, some of which have been noted above in relation to follow-up and surveillance activities:

(1) The media should be utilized as fully as possible to inform the public of ecological principles through articles on locally newsworthy, current situations. Contacts can be made through concerned citizens or directly with news media to properly present the environmental viewpoint of dredge and fill issues. Discretion must be used, however, to avoid jeopardizing any ongoing negotiations with the applicant or lead agency.

(2) Participation in school programs can be helpful in furthering the education of the public on ecological principles. Here are some of the ways:

(a) Lectures and slide talks to primary, secondary, and college-level classes.

(b) Show-me field trips and summer field study classes made in cooperation with schools and summer camps organized by charitable groups, churches, etc.

(c) Field investigations, particularly inventory studies of important habitats, organized with schools to utilize student classes in ecology or field biology for the collection and identification of species, mapping of habitat types, etc.

(3) Lectures, slide talks, and show-me fields trips can be profitably arranged with adult groups, especially with organizations of adults such as Rotary, Kiwanis, religious groups, etc.

F. In connection with the foregoing direct involvements with the public, further publicity can be arranged with news media and the education success can be heightened by distribution of printed material.

Such printed material is available in the Service's popular pamphlets on estuaries, endangered species, and the like, as well as from State sources, Sierra Club, Soil Conservation Service, local conservation groups, and many others.

Also, special publications can be prepared by the Service such as those prepared by the Northeast Region on the Long Island wetlands, by the Pacific Region on Southern California estuaries and coastal wetlands, and by the Southeastern Region on guideline for permit applications.

10. *Participation in judicial and other hearings.*

10.1 *Basis.* A. Involvements with navigation permits frequently requires participation by Service personnel in the resolution of issues through hearings.

B. Participation in judicial hearings, and presumably in those quasi-judicial hearings and proceedings of regulatory agencies such as the Corps, EPA, AEC, and FPC, must be authorized in writing by the Regional Director (see Service Manual 6 AM–3.1). If the Director on advice of the Regional Director decides that participation is not proper, the Solicitor, acting for the Secretary, reviews the decisions and provides counsel on related legal actions.

C. The Office of the Solicitor should be kept advised of any judicial involvements of the Service; his office should be called upon to serve as liaison with U.S. and other attorneys and to provide any other needed counsel. Any publicity of hearing matters must be restricted to that approved by counsel.

D. This section is addressed to participation by Service personnel on matters of fact or expert optinion in hearings in relation to Government business and records. Participation by Service employees as expert witnesses in proceedings between private litigants is normally prohibited. Yet an employee may be permitted to testify as an expert on his own time at his own expense if he clearly avoids representing his testimony as in any way stating official position.

10.2 *Gathering information in support of testimony at hearings.* A. On-site, first-hand observations and data usually will provide far more persuasive evidence in judicial hearings than evidence from the literature, although familiarity with the literature and other sources of information is also essential to well rounded testimony.

B. In preparation for cases to be brought to court or other formal hearing the Service biologist must not only search out all available knowledge from cooperators and other sources, but he must also make as detailed and comprehensive field studies as time and his resources of manpower and equipment will permit.

C. Field investigations on-site ideally include:

(1) An inventory (population estimates by species) and delineation on maps of the distribution of all important species of plants and animals in the impact area;

(2) Determination of the salient physical and chemical characteristics of impact area waters—temperatures, salinities, current patterns, tidal ranges, sediment transport and shoaling patterns, turbidity, dissolved oxygen, degree of pollution, stream discharge rates, turnover or flushing rates, etc.;

(3) Estimation of human uses and satisfactions including sport and commercial harvests;

(4) Comparison of topographic and other data furnished by the project sponsor with that observed on-site to detect any discrepancies;

(5) Assessment of the physical, biological, and esthetic impacts of the proposed works from on-site observations made while visualizing and imagining the planned works in place and noting the agreement of plan orientation points, borrow areas, fill areas, roads, etc., to observed physical, biological, and other environmental features of the site, including tide marks, vegetation lines (by species), depth lines, water current lines, etc.; and

(6) Documentation by written field notes, photographs, map notations, instrument readings, biological samples, records of interviews etc., including completed field appraisal forms for each significantly different instance of field observation (see App. B–2 and B–3).

10.3 *Preparation of material for legal briefs or submission for the record.* A. The witness must prepare his testimony and record material in the closest possible harmony with his attorney.

B. Since each hearing officer or judge has wide latitude in laying down requirements of format, time of submittal, number of copies, and other matters related to presentation of record material within the differing guidelines of the several regulatory or judicial forums, only a few general guiding principles can be set forth here:

(1) The points of fact or opinion to be developed must be jointly selected by the attorney and witness, seeking those that can be presented most persuasively and eschewing weak points and those on which the attorney and witness are not both fully conversant.

(2) The points selected must be thoroughly researched by the witness and explored fully with the attorney to reach common understanding and develop the proper means of presentation.

(3) The points selected must also be critically examined with help of counsel to discover potential weaknesses and develop rebuttal answers to questions that may be posed by opposing attorneys.

(4) With guidance from his attorney, the witness must prepare his brief and record material strictly in accordance with the standards and requirements of the hearing officer or court.

10.4 *Oral testimony.* A. Advice on this point is given in the Service Manual (6 Am. 3.1B) as follows:

In an appearance on the witness stand, an employee should keep this advice in mind:

(1) Be sure the question is understood before giving an answer.

(2) Do not be rushed into answering; stay calm and deliberate.

(3) Be as courteous and responsive as possible.

(4) Stick to facts and do not venture into hearsay and opinion. (An exception might be in the case of expert opinions.)

B. The Manual advice is good. However, the Ecological Services biologist usually will be testifying as an expert witness and need not hesitate to express opinion he believes to be well founded on his training and experience.

C. Some additional advice particularly related to adversary proceedings follows:

(1) Avoid involved answers which open up debatable points or burden the proceedings. Yet do not assume the hearing officer knows or already understands the facts of the situation or the basic ecological principles; give simple, concise, and fully intelligible answers that form a complete record.

(2) Be alert for questions which permit fuller development of your position.

(3) Do not try to answer unanswerable questions or those for which you do not know the factual answer, unless the question admits of developing your position in a tangential way.

(4) Shun belligerency; it is never helpful to your credibility or position.

(5) Avoid evasive, counter-punching, or "cute" answers which can only alienate the hearing officer or judge; such answers will not help your position.

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federal register

Friday
May 18, 1979

Part VI

Department of Health, Education, and Welfare

Health Care Financing Administration

Medicare Program; Proposed Schedule of Limits on Skilled Nursing Facility Inpatient Routine Service Costs—Cost Reporting Periods Beginning on or After October 1, 1979

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

Medicare Program; Proposed Schedule of Limits on Skilled Nursing Facility Inpatient Routine Service Costs for Cost Reporting Periods Beginning on or After October 1, 1979

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Notice of Proposed Schedule of Limits on Skilled Nursing Facility Inpatient Routine Service Costs.

SUMMARY: The Health Care Financing Administration proposes an initial schedule of limits on skilled nursing facility (SNF) inpatient routine service costs that may be reimbursed under the Medicare program.

This proposed schedule replaces the proposed schedule published in the Federal Register on August 27, 1976 (41 FR 36237). The limits cover adjusted SNF inpatient routine service costs, and would apply to entire cost reporting periods beginning on or after October 1, 1979.

They would not apply to the cost of ancillary services or capital-related costs. Revised schedules of limits will be published on a periodic basis.

DATE: We will carefully consider any written comments or suggestions received on or before July 17, 1979.

ADDRESSES: Please refer to file code MAB–012–N and address your comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2372, Washington, D.C. 20013. Comments will be available for public inspection, beginning approximately 2 weeks from today in room 5231 of the Department's offices at 330 C Street, SW, Washington, D.C. on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (telephone 202–245–0950).

FOR FURTHER INFORMATION CONTACT: Carl Slutter, Medicare Bureau, Health Care Financing Administration, Room 403 East Highrise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 301–594–9441.

SUPPLEMENTARY INFORMATION:

Background

Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) authorizes the Secretary to set prospective limits on the costs that are reimbursed under Medicare, based on estimates of the costs necessary in the efficient delivery of needed health services. The limits may be applied to the direct or indirect overall costs or to costs incurred for specific items or services furnished by a Medicare provider. Regulations implementing this authority are set forth at 42 CFR 405.460.

Under this authority, proposed limits on SNF inpatient general routine service costs were published in the Federal Register on August 27, 1976 (41 FR 36237). Numerous comments were received which questioned the proposed methodology, and suggested alternative approaches. As a result of our experience in the hospital cost limit program, the proposed scheduled of limits.

1. Limits on adjusted SNF inpatient routine service costs. Such costs do not include capital-related costs;

2. A wage index, developed from service industry wages, to adjust the wage portion of the limits to reflect differing wage levels among the areas in which the SNFs are located;

3. A classification system based on whether a SNF is located within a Standard Metropolitan Statistical Area (SMSA) or a Non-SMSA area, and on the basis of whether the SNF is hospital-based or free-standing. In the New England area, New England County Metropolitan Areas (NECMA) are used to determine urban location. Bed size is not used as a variable;

4. A market basket index developed from the costs of goods and services purchased by hospitals to account for the impact of changing wage and price levels on SNF costs. This index will be used to adjust SNF cost data from the cost reporting periods represented in the data collection to the cost reporting periods to which the limits will apply; and

5. Establishing the limits at 115% of the average per diem cost of the comparison group.

Discussion of Proposed Limits

The proposed limits are the result of the Department's continuing evaluation of the cost limits program and the Department's concern for the rising costs of health care and consideration of comments (see items 3, 4, and 6) received on the Notice, published in the **Federal Register** on August 27, 1976.

1. *Use of Adjusted SNF Inpatient Routine Service Costs.*

This proposed schedule would apply to SNF inpatient routine service costs (as defined in 42 CFR 405.452(d)(2), plus an inpatient routine nursing salary cost differential) adjusted by the exclusion of capital-related costs. Capital-related costs include interest, depreciation, insurance, rent and fixed asset related costs which are normally included in the depreciation accounts for Medicare reimbursement purposes.

A large part of the difference in routine service costs among otherwise similar SNFs is attributable to capital-related costs (which vary, among other reasons, because of the age of the physical plant). With the removal of these costs, a major source of disparity between costs of otherwise similar providers has been eliminated.

2. *Use of Wage Index in Calculation Cost Limits.*

We propose to use an area by area index developed from data supplied by the Bureau of Labor Statistics to adjust the portion of the cost limit attributable to wages. The data used would be those for the "service industry," a standard BLS reporting category that includes SNFs.

This is the same index used for the proposed limits for hospitals which were published in the **Federal Register** on March 1, 1979 (44 FR 11612). Because of the comparability between SNFs and the other types of employment covered under the service industry, it is reasonable to expect SNF costs to increase at approximately the same rate of increase as the service industry as a whole.

The wage index is based on data for the year 1977 and is the latest available data. Data for 1978 will not be available until late in 1979.

The index we propose to use was developed by computing the national SMSA (or NECMA) average wage for the service industry and dividing this average into the average service industry wage for each SMSA (or NECMA). The result is expressed as an index number, which is used to adjust the wage portion of the group limit. For non-SMSA areas, the index was developed by computing the national non-SMSA average wage for the service industry and dividing this average into the average service industry wage for all non-SMSA counties in a State. The index then applies to all non-SMSA counties in the State.

We propose to use the Routine Cost Weight for wages and salaries from the Market Basket Index (62.8%) to determine the wage portion of all group limits. This percentage is multiplied by each basic group limit to determine the wage cost portion of the limit. The wage cost portion is then adjusted by the application of the appropriate wage index. We welcome comments on this proposal.

An example of how the wage index is used in adjusting the cost limits is set forth below and the wage indices for urban and rural areas are set forth in Tables IIIA and IIIB.

3. *Use of Separate Limits for Hospital-Based and Free-Standing SNFs.*

The proposed schedule includes separate limits for hospital-based and free-standing facilities. The proposed limits published on August 27, 1976, did not include separate limits. At that time we requested comments on the issue of separate limits. No hard data were submitted to justify the cost differentials between hospital-based and free-standing SNFs. In the interim we have considered sources of this cost differential, such as the allocation methodology for overhead costs and the argument that hospital-based SNFs have more seriously ill patients who require more frequent and intensive routine care. While these potential sources of the cost differential do not, either singly or in total, account for the entire amount of the differential, there is a certain amount of validity in each as a source of part of the differential. Since at least a portion of the higher costs of hospital-based SNFs appears to be attributable to elements which are not controllable through more efficient operation, the establishment of separate limits was necessary to recognize these costs which appear to be unique to and beyond the control of the hospital-based SNF. Further study will be made in this area and subsequent limits may be changed to reflect the results of these studies.

4. *Bed Size Not Used In Classification.* Bed size was not used as a classifier in the proposed limits published on August 27, 1976. An analysis of SNF cost data at that time found a random distribution of per diem costs of small, medium and large bed size SNFs. A subsequent study conducted by the Department of Health, Education, and Welfare was again unable to establish a strong correlation between bed size and cost. In the absence of such a correlation, separate limits based on bed size are inappropriate.

5. *Use of a Market Basket Index.* We have identified two market basket indices which can be used to adjust cost limits for the effects of changing wage and price levels. One of these is an index based on goods and services used by all long-term care facilities. The other is based on a "market basket" of goods and services typically used by a hospital, and is the same index which was used for the hospital cost limits. We believe, based on levels of care furnished, that the hospital index is a much more accurate predictor of SNF costs. Therefore, we propose to use the hospital market basket for the SNF limits pending the development of an index which will reflect the mix of goods and services purchased by SNFs. Comments on this proposal are welcomed.

The market basket is comprised of the most commonly used categories of hospital routine operating expenses. The categories we are using are based on those currently used by the American Hospital Association in the analysis of costs, by the U.S. Department of Commerce in publishing price indexes by industry, and by the health Care Financing Administration in its cost reports.

The categories of expenses are then weighted according to the estimated proportion of hospital routine operating costs attributable to each category. These weights are based on surveys by the AHA, the Department of Commerce's input-output studies, and from our analysis of Medicare cost reports. Column 2 of the table specifies the weights for each category.

The next step in developing the market basket index is to obtain historical and projected rates of increase in the resource prices for each category. The table, in columns 3 and 4, identifies the price variables used in this process and the source of the forecast for the period August 1978 through December 1979. As more current data becomes available, we will update the forecasts. We are also reviewing whether and how to make retrospective adjustments in the cost limits if our forecasts turn out to be erroneous. Comments on this point are welcome.

Derivation of "Market Basket" Index for Routine Inpatient Hospital Care

Category of costs	Routine cost weight (percent) [1]	Wage-price proxy variable used	Price-wage forecaster for 1978 and 1979
1. Wages and salaries	62.8	Average payroll expense per full time equivalent community hospital worker through 1978; index of hourly earnings of service workers, Bureau of Labor Statistics, 1979 [2].	HCFA currently, DRI [3] beginning mid-March 1979.
2. Fringe benefits-social security	4.7	Employer contributions for social insurance per worker in non-agricultural establishments.	DRI.
3. Fringe benefits-pensions	2.3	Same as cost category No. 1 above (wages and salaries)	HCFA currently, DRI beginning mid-March 1979.
4. Fringe benefits-health insurance	1.2	Weighted average of American Hospital Association's cost per adjusted patient day (weight is .67) and per capita expenditures for physicians services (weight is .33).	HCFA.
5. Fringe benefits-all other	1.0	All items consumer price index, all urban	DRI.
6. Professional fees	0.6	Index of hourly earnings of production and non-supervisory workers, Bureau of Labor Statistics.	DRI.
7. Premiums for malpractice insurance.	2.2	Historical time-series data on malpractice premiums, American Hospital Association.	HCFA.
8. Food	4.8	Food and beverages component of consumer price index, all urban.	DRI.
9. Fuel and other energy	2.6	Fuels and related products and power component of wholesale price index.	DRI.
10. Rubber and miscellaneous plastics.	1.8	Rubber and plastic products component of wholesale price index.	DRI.
11. Business travel	1.6	Consumption of transportation services component of implicit price deflator.	DRI.
12. Apparel and textiles	1.6	Textile products and apparel component of wholesale price index.	DRI.
13. Business services	4.4	All services component of consumer price index, all urban	DRI.
14. All other, miscellaneous, expenses.	8.4	Commodities less food and beverages component of consumer price index, all urban.	DRI.
Total	100.0		

[1] The weights were derived from special studies by the Health Care Financing Administration using primarily 1977 data from the American Hospital Association and data from HCFA Medicare cost reports.

[2] For the period through 1977 average payroll expense per full time equivalent community hospital worker was taken from the American Hospital Association's annual survey as reported in *Hospital Statistics* (1978 edition). For 1978 the percent change in payroll expense per full time equivalent hospital worker was projected by HCFA using data reported in *Hospitals* magazine in the mid-month issues. For 1979 the percent change in the index of hourly earnings for service workers was projected by HCFA. Beginning in Spring 1979, Data Resources, Inc., 29 Hartwell Avenue, Lexington, Mass., will be forecasting the percent change in the index of hourly earnings for service workers.

[3] Data Resources, Inc., 29 Hartwell Avenue, Lexington, Massachusetts.

6. *Setting the Cost Limits at 115% of the Group Average Per Diem Cost.* The schedule published on August 27, 1976, proposed limits at the 90th percentile plus 10 percent of the median. The proposed limits were set at this liberal level because the classification system did not fully take into account variations in SNF's costs, due principally to the age of the facility and area wage differentials. The change from the concept of limits on inpatient routine service costs to limits on "adjusted routine service costs" results in similar costs being subject to the limits. These costs, together with the direct adjustment of the wage portion of the group limits, justify a change in the level at which the limits will be set. We are therefore proposing that the limits be set at 115% of the average per diem cost of the group.

Our preliminary analysis of the impact of this proposed schedule of limits indicates that it may have a disparate effect on different regions of the country. We welcome suggestions on this point.

7. *Exceptions, Exemptions and Classification Adjustments.* The provisions of the 20 CFR 405.460 providing that exceptions, exemptions and classification adjustments may be made to the application of the limits where certain required conditions are present, apply to SNFs as well as to hospitals.

Methodology for Determining Per Diem Routine Service Cost Limit

1. *Data.* The proposed limits have been determined by using actual SNF inpatient routine service cost data obtained from the latest Medicare cost reports available as of January 31, 1979, less capital-related costs. The cost data were then adjusted by means of the market basket index discussed above. These costs report data were projected from the midpoint of the cost report period used in the data collection to the midpoint of the first cost reporting period to which the limits will apply.

The percentage increases in the market basket over the previous year which were used for this projection are:

1975	10.6
1976	8.9
1977	8.2
1978	8.5
1979	8.9
1980	8.6
1981	8.5

2. *Group Basic Limit.* A basic limit was calculated for each group established in accordance with the SNF's urban/nonurban location and type (hospital-based/free-standing). This limit, which is 115% of the average per diem cost of the comparison group, was obtained by averaging the adjusted routine service costs of all SNFs in the group and determining 115% of the average per diem cost.

3. *Adjusted Limit.* The basic limit has been divided into its wage and and nonwage components on the basis of the Routine Cost Weight for wages and salaries from the Market Basket Index—62.8%. The wage component of the basic limit is adjusted using a wage index developed from wage levels for service industry workers in the areas in which the SNFs are located. The adjusted limit which will apply to any SNF will be the sum of the nonwage component of the basic limit, plus the adjusted wage component.

Example—Calculation of Adjusted Limit

Limit from Schedule—$60
Labor Portion—$40 (published in Tables I and II.)
SMSA Wage Index—1.2000

Computation of Adjusted Limit

$60 − $40 = $20 Nonlabor Portion of Limit
$40 × 1.20 (wage index) = $48.00 = Adjusted Labor Portion
$48 + $20 = $68 Adjusted Limit for the SMSA Facility Type Group

The wage indices for each SMSA/NECMA and for the non-SMSA areas of each State are published in Table III.

4. *Adjustment for Cost Reporting Year.* If a SNF has a cost reporting period beginning on or after November 1, 1979, the published limit will be revised upward by a factor for each elapsed month between the midpoint of the period which the published limits cover—March 31, 1980—and the midpoint of the SNF's cost reporting period. This factor is derived by dividing the projected increase in the appropriate market basket index by 12 and is used to account for inflation in costs which will occur after the date on which the limits become effective.

Example 1

SNF A's cost reporting period begins January 1, 1980; midpoint is June 30, 1980. The base group limit for SNF A's group is $50.

Computation of Revised Group Limit

Group Limit—$50
Plus Adjustment for 3 month period (March 30–June 30)
3 × .717 = 2.151%
1.02151 × $50 = $51.08

The revised basic group limit applicable to SNF A for the cost reporting period beginning January 1, 1980, is $51.08.

Example 2

SNF B's cost reporting period begins September 1, 1980; midpoint is February 28, 1981. The base group limit for SNF B's group is $50.

Computation of Revised Group Limit

Group Limit—$50
Adjustment for 1980—9 months (March 30–December 31)
9 × .717 = 6.453%
Adjustment for 1981—2 months (January 1–February 28)
2 × .708 = 1.416%
Adjustment for 11 month period (March 30, 1980–February 28, 1981)
6.453 + 1.416 = 7.869%
1.07869 × 50 = $53.93

The revised basic group limit applicable to SNF B for the cost reporting period beginning September 1, 1980, is $53.93.

This basic group limit will be divided into its labor and nonlabor portions, using the percentage published in Table I and II, and the labor portion will be adjusted by use of the wage index. The sum of the adjusted labor portion plus the nonlabor portion will be the SNF's adjusted per diem routine operating cost limit.

If a SNF uses a cost report period of less than 12 months duration, a special calculation of the adjustment factor must be made. Projections are computed to the midpoint of a cost reporting period and the factor is based on an assumed 12 month reporting period. For cost reporting periods other than 12 months, the calculation must be done specifically for the midpoint of the cost reporting period. The SNF's intermediary will obtain this adjustment factor from the Health Care Financing Administration.

Schedule of Limits

Under the authority of section 1861(v) of the Social Security Act, the following proposed group per diem limits would apply to the adjusted SNF inpatient routine service cost (including the inpatient routine nursing salary differential) for cost reporting periods beginning on and after October 1, 1979. The adjusted limits (using the wage index published in Table III) would be computed by the fiscal intermediaries and each SNF would be notified of its applicable limit.

Table I.—*Group Limits for Hospital-Based SNF's*

Location	Group Limit	Labor portion	Percent labor portion
SMSA	$88.86	$55.80	.628
Non-SMSA	$65.32	$41.02	.628

Table II.—*Group Limits for Free-Standing SNF's*

Location	Group Limit	Labor portion	Percent labor portion
SMSA	$47.60	$29.89	.628
Non-SMSA	$38.76	$24.34	.628

Table III A—Wage Index for Urban Areas

SMSA	Index
Abilene, TX	.7559
Akron, OH	.9742
Albany, GA	.8224
Albany-Schenectady-Troy, NY	.9550
Albuquerque, NM	1.0481
Alexandria, LA	.7489
Allentown-Bethlehem-Easton, PA-NJ	.8416
Altoona, PA	.8502
Amarillo, TX	.7898
Anaheim-Santa Ana-Garden Grove, CA	1.0101
Anchorage, AK	1.7764
Anderson, IN	.7855
Ann Arbor, MI	1.0857
Anniston, AL	.7798
Appleton-Oshkosh, WI	.9212
Asheville, NC	.9093
Atlanta, GA	.9759
Atlantic City, NJ	.8049
Augusta, GA-SC	.8839
Austin, TX	.8504
Bakersfield, CA	.9121
Baltimore, MD	.9665
Baton Rouge, LA	.9750
Battle Creek, MI	1.0044
Bay City, MI	1.0310
Beaumont-Port Arthur-Orange, TX	.8257
Billings, MT	.9025
Biloxi-Gulfport, MS	.8468
Binghamton, NY-PA	.8276
Birmingham, AL	.9251
Bloomington, IN	1.0658
Bloomington-Normal, IL	.8218
Boise City, ID	.9156
Boston-Lowell-Brockton-Lawrence-Haverhill, MA-NH	1.0141
Bradenton, FL	.8683
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1298
Brownsville-Harlingen-San Benito, TX	.6988
Bryan-College Station, TX	.8758
Buffalo, NY	.8571
Burlington, NC	.7857
Canton, OH	.8630
Cedar Rapids, IA	.8151
Champaign-Urbana-Rantoul, IL	.9087
Charleston-North Charleston, SC	.8464
Charleston, WV	.9283
Charlotte-Gastonia, NC	.9046
Chattanooga, TN-GA	.8149
Chicago, IL	1.0979
Cincinnati, OH-KY-IN	.9563
Clarksville-Hopkinsville, TN-KY	.7542
Cleveland, OH	1.0232
Colorado Springs, CO	.8310
Columbia, MO	1.0303
Columbia, SC	.8596
Columbia, GA-AL	.7714
Columbus, OH	.9985
Corpus Christi, TX	.8026
Dallas-Fort Worth, TX	.9371
Davenport-Rock Island-Moline, IA-IL	.7533
Dayton, OH	.9837
Daytona Beach, FL	.8240
Decatur, IL	.8056
Denver-Boulder, CO	.9715
Des Moines, IA	.8855
Detroit, MI	1.1438
Dubuque, IA	.8023
Duluth-Superior, MN-WI	.8420
Eau Claire, WI	.9476
El Paso, TX	.7724
Elmira, NY	.7930
Erie, PA	.8518
Eugene-Springfield, OR	.9753
Evansville, IN-KY	.8336
Fargo-Moorhead, ND-MN	.8720
Fayetteville, NC	.8083
Fayetteville-Springdale, AR	.7981
Flint, MI	1.0678
Florence, AL	1.0039
Fort Collins, CO	.8553
Fort Lauderdale-Hollywood, FL	1.0810
Fort Myers, FL	.8779
Fort Smith, AR-OK	.8052

Table III A—Wage Index for Urban Areas—Continued

SMSA	Index
Fort Wayne, IN	.8115
Fresno, CA	.8673
Gadsden, AL	.8053
Gainesville, FL	.9670
Galveston-Texas City, TX	1.0808
Gary-Hammond-East Chicago, IN	.8962
Grand Forks, ND-MN	.8665
Grand Rapids, MI	.8697
Great Falls, MT	.9034
Greeley, CO	.8428
Green Bay, WI	.8967
Greensboro-Winston-Salem-High Point, NC	.8729
Greenville-Spartanburg, SC	.9082
Hamilton-Middletown, OH	.9748
Harrisburg, PA	.9240
Hartford-New Britain-Bristol, CT	.9285
Honolulu, HI	.9120
Houston, TX	1.0404
Huntington-Ashland, WV-KY-OH	.8520
Huntsville, AL	.9635
Indianapolis, IN	.9052
Jackson, MI	1.0383
Jackson, MS	.8793
Jacksonville, FL	.9034
Jersey City, NJ	.9516
Johnson City-Kingsport-Bristol, TN-VA	.8683
Johnstown, PA	.8846
Kalamazoo-Portage, MI	.9726
Kankakee, IL	.7169
Kansas City, MO-KS	.9220
Kenosha, WI	.8854
Killeen-Temple, TX	.8520
Knoxville, TN	.7916
Kokomo, IN	.8114
La Crosse, WI	.9461
Lafayette, LA	1.0175
Lafayette-West Lafayette, IN	1.0446
Lake Charles, LA	.8265
Lakeland-Winter Haven, FL	.8174
Lancaster, PA	.7927
Lansing-East Lansing, MI	1.0212
Laredo, TX	.6532
Las Vegas, NV	1.0793
Lawrence, KS	1.0441
Lawton, OK	.6948
Lewiston-Auburn, ME	.7622
Lexington-Fayette, KY	.9446
Lima, OH	.8311
Lincoln, NE	.7449
Little Rock-North Little Rock, AR	.9181
Long Branch-Asbury Park, NJ	1.0838
Longview, TX	.7353
Lorain-Elyria, OH	.9117
Los Angeles-Long Beach, CA	1.1442
Louisville, KY-IN	.8242
Lubbock, TX	.7523
Lynchburg, VA	.7893
Macon, GA	.7806
Madison, WI	1.0658
Manchester-Nashua, NH	.7704
Mansfield, OH	.8471
McAllen-Pharr-Edinburg, TX	.7461
Melbourne-Titusville-Cocoa, FL	1.0946
Memphis, TN-AR-MS	.9055
Miami, FL	1.1009
Midland, TX	.8377
Milwaukee, WI	.9970
Minneapolis-St. Paul, MN-WI	.8441
Mobile, AL	.7987
Modesto, CA	.8796
Monroe, LA	.8512
Montgomery, AL	.8403
Muncie, IN	.9429
Muskegon-North Shores-Muskegon Heights, MI	.9065
Nashville-Davidson, TN	.8783
Nassau-Suffolk, NY	1.0338
New Bedford-Fall River, MA	.7909
New Brunswick-Perth Amboy-Sayreville, NJ	1.0730
New Haven-Waterbury-Meriden, CT	.9417
New London-Norwich, CT	.8878
New Orleans, LA	.8900
New York, NY-NJ	1.2086
Newark, NJ	1.1663
Newport News-Hampton, VA	.8537
Norfolk-Virginia Beach-Portsmouth, VA-NC	.8542
Northeast Pennsylvania, PA	.8598
Odessa, TX	.9752
Oklahoma City, OK	.8904
Omaha, NE-IA	.8888
Orlando, FL	.8690
Owensboro, KY	.7394
Oxnard-Simi Valley-Ventura, CA	.9923
Panama City, FL	.7320

Table III A—Wage Index for Urban Areas—Continued

SMSA	Index
Parkersburg-Marietta, WV-OH	.7794
Pascagoula-Moss Point, MS	.7954
Paterson-Clifton-Passaic, NJ	1.0070
Pensacola, FL	.8461
Peoria, IL	.9152
Petersburg-Colonial Heights-Hopewell, VA	.7886
Philadelphia, PA-NJ	1.0175
Phoenix, AZ	.9320
Pine Bluff, AR	.8387
Pittsburgh, PA	.9970
Pittsfield, MA	.7645
Portland, ME	.8198
Portland, OR-WA	.9903
Poughkeepsie, NY	.9211
Providence-Warwick-Pawtucket, RI	.8324
Provo-Orem, UT	.9816
Pueblo, CO	.8720
Racine, WI	.9439
Raleigh-Durham, NC	.9989
Reading, PA	.9500
Reno, NV	.9566
Richland-Kennewick, WA	1.3653
Richmond, VA	.8660
Riverside-San Bernardino-Ontario, CA	.8499
Roanoke, VA	.7368
Rochester, MN	1.0714
Rochester, NY	.9296
Rockford, IL	.8617
Sacramento, CA	.9664
Saginaw, MI	1.0666
St. Cloud, MN	.7772
St. Joseph, MO	.7785
St. Louis, MO-IL	.8734
Salem, OR	.9315
Salinas-Seaside-Monterey, CA	.8420
Salt Lake City-Ogden, UT	.8727
San Angelo, TX	.7260
San Antonio, TX	.9274
San Diego, CA	.9598
San Francisco-Oakland, CA	1.1055
San Jose, CA	1.1245
Santa Barbara-Santa Maria-Lompoc, CA	1.0012
Santa Cruz, CA	.7777
Santa Rosa, CA	.9172
Sarasota, FL	.9377
Savannah, GA	.8912
Seattle-Everett, WA	1.0421
Sherman-Denison, TX	.7631
Shreveport, LA	.8317
Sioux City, IA-NE	.7653
Sioux Falls, SD	.7849
South Bend, IN	.7881
Spokane, WA	.9020
Springfield, IL	.8404
Springfield, MO	.8363
Springfield, OH	.8460
Springfield-Chicopee-Holyoke, MA	.8850
Steubenville-Weirton, OH-WV	.8369
Stockton, CA	.9115
Syracuse, NY	.9333
Tacoma, WA	.8922
Tallahassee, FL	.9038
Tampa-St. Petersburg, FL	.9101
Terre Haute, IN	.8011
Texarkana, TX-Texarkana, AR	.7598
Toledo, OH-MI	.9936
Topeka, KS	.8904
Trenton, NJ	1.0810
Tucson, AZ	.8892
Tulsa, OK	.9445
Tuscaloosa, AL	.9002
Tyler, TX	.8757
Utica-Rome, NY	.7914
Vallejo-Fairfield-Napa, CA	.9829
Vineland-Millville-Bridgeton, NJ	.8606
Waco, TX	.8454
Washington, DC-MD-VA	1.2233
Waterloo-Cedar Falls, IA	.8668
West Palm Beach-Boca Raton, FL	.9669
Wheeling, WV-OH	.8078
Wichita, KS	.9092
Wichita Falls, TX	.7143
Williamsport, PA	.8109
Wilmington, DE-NJ-MD	.8864
Wilmington, NC	.8340
Worcester-Fitchburg-Leominster, MA	.8074
Yakima, WA	.8275
York, PA	.7633
Youngstown-Warren, OH	.9222

Table III B—*Wage Index for Rural Areas*

State	Index
Alabama	1.1085
Alaska	2.0477
Arizona	.9757
Arkansas	.8865
California	1.0310
Colorado	.9443
Connecticut	1.0736
Delaware	1.0483
Florida	1.0226
Georgia	1.0082
Hawaii	.9781
Idaho	1.1509
Illinois	.8257
Indiana	.9112
Iowa	.9583
Kansas	.9309
Kentucky	.9683
Louisiana	1.0592
Maine	.9476
Maryland	.9856
Massachusetts	.9704
Michigan	1.1298
Minnesota	.7740
Mississippi	.9904
Missouri	.8754
Montana	1.0581
Nebraska	.8087
Nevada	1.2869
New Hampshire	.9531
New Jersey	1.0024
New Mexico	1.0318
New York	1.0244
North Carolina	.9599
North Dakota	.9332
Ohio	1.0486
Oklahoma	.8933
Oregon	1.1500
Pennsylvania	1.1025
Rhode Island	.9183
South Carolina	.9116
South Dakota	.8907
Tennessee	.9736
Texas	.8416
Utah	.8675
Vermont	.9717
Virginia	1.0337
Washington	1.0900
West Virginia	1.0825
Wisconsin	1.0362
Wyoming	1.0136

(Sections 1102, 1814(b), 1861(v)(1), 1866(a), and 1871 of the Social Security Act: 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a) and 1395hh.)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance.)

Dated: April 23, 1979.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

Approved: May 10, 1979.

Hale Champion,

Acting Secretary.

[FR Doc. 79-15449 Filed 5-17-79; 8:45 am]

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federal register

Friday
May 18, 1979

Part VII

General Services Administration

Improving Government Regulations; Semiannual Agenda

GENERAL SERVICES ADMINISTRATION

[32A CFR Chapter 1]

[41 CFR Chapter 101]

Agenda of Significant Regulatory Activity

AGENCY: General Services Administration.

ACTION: Semiannual agenda.

SUMMARY: This agenda announces the significant regulatory actions that GSA plans for the 6-month period from mid-May 1979 to mid-November 1979. This agenda was developed under the guidelines in Executive Order 12044, Improving Government Regulations (43 FR 12661, Mar. 24, 1978). GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the early stages of the rulemaking process.

FOR FURTHER INFORMATION CONTACT: John T. Gilmartin, Director, Paperwork Management Division (202–566–0857).

SUPPLEMENTARY INFORMATION: On December 4, 1978, GSA published its final report on implementation plans for Executive Order 12044 at 43 FR 56728. As explained in the report, GSA will publish a semiannual agenda of significant regulatory activity during May and November of each year. The agenda lists, for each of GSA's services and staff offices, new significant regulations that are being considered, changes that are planned to existing significant regulations, significant regulations that will be reviewed during the upcoming 6-month period, and the status of items from the previous agenda.

Dated: May 11, 1979.

Clarence A. Lee, Jr.,

Acting Administrator of General Services.

Federal Preparedness Agency

A. New Regulations

No new significant regulations are being considered.

B. Changes to Existing Regulations

1. Procurement in high-unemployment areas (32A CFR Part 134). A proposed rule was published in the **Federal Register** on April 2, 1979 (43 FR 19207).

a. *Need for change:* Being revised in accordance with Executive Order 12073 and to preserve the mobilization aspects of the labor surplus area program.

b. *Legal basis:* Public Law 95–89 and Executive Orders 10480, 11051, 11725, and 12073.

c. *Contact point:* James J. Delaney, Planning Officer (202–566–0760).

d. *Regulatory analysis:* Will not be prepared.

2. Health Manpower Occupations (32A CFR Part 106).

a. *Need for change:* Update list of health manpower occupations and simplify the language.

b. *Legal basis:* Defense Production Act of 1950 and Executive Orders 11490 and 11921.

c. *Contact point:* Frederick J. Haase, Resources Management Division (202–566–0760).

d. *Regulatory analysis:* Will not be prepared.

C. Regulations Scheduled for Review

Since the November 17, 1978, agenda report, no additional significant regulations are scheduled for review.

D. Status of Agenda Items Published on November 17, 1978 (43 FR 53821).

1. Changes to existing regulations.

a. Stabilization Regulations for Prices, Rents, Wages, and Salaries (32A CFR Part 151).

(1) Deletion of Part 151 was published in the **Federal Register** on December 20, 1978 (43 FR 59378).

(2) *Contact point:* Dorinda L. Lowery, Management Services Division (202–566–1975).

2. Regulations scheduled for review.

(a) Dispersion and Protective Construction; Policy, Criteria, and Responsibilities (32A CFR Part 101).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

b. Maintenance of the Mobilization Base (32A CFR Part 102).

(1) *Estimated completion date for Review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

c. Emergency Action for Maintenance of the Mobilization Base (32A CFR Part 102a).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

d. Defense Production; Priorities and Allocations Authority (32A CFR Part 103).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

e. Guidance on Priority Use of Resources in Immediate Postattack Period (32A CFR Part 104).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

f. National Security Policy Governing Scientific and Engineering Manpower (32A CFR Part 105).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

g. Health Manpower Occupations (32A CFR Part 106).

(1) *Expected completion date for review:* Review was completed. A proposed rule was published in the Federal Register on February 28, 1979 (44 FR 11241). (See item B2, above.)

(2) *Contact point:* Nina Winkler, Office of the Director (202–566–1627).

h. Policy Guidance for a National Emergency Blood Program (32A CFR Part 107).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

i. Program for Expansion of Supplies of Materials Needed for Defense Purposes in the Event of a Major Disaster (32A CFR Part 108).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

j. Provision of Materials Under Government Control as Needed to Supplement Supplies Commercially Available in the Event of a Major Disaster (32A CFR Part 109).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

k. Policy on Use of Government-Owned Industrial Plant Equipment by Private Industry (32A CFR Part 110).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

l. General Policies for Strategic and Critical Materials Stockpiling Policy (32A CFR Part 111).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

m. Use of Priorities and Allocation Authority for Federal Supply Classification (FSC) Common Use Items (32A CFR Part 112).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

n. Policy Guidance and Delegation of Authorities for Use of Priorities and Allocations to Maximize Domestic Energy Supplies (32A CFR Part 113).

(1) *Expected completion date for review* postponed from November 30, 1978, to November 1979.

(2) *Contact point:* Edward K. Zabrowski, Acting Assistant Director for National Resources Preparedness (202–566–0800).

National Archives and Records Service

A. New Regulations

No new significant regulations are being considered.

B. Changes To Existing Regulations

1. Public Use of Archives and FRC Records (41 CFR 105–61.1)—in which only § 105–61.104, Access to National Security Information, has been defined as significant—is being revised to reflect new procedures on declassification of security classified documents.

a. *Need for change:* Executive Order 12065, National Security Information, mandated new declassification procedures.

b. *Legal basis:* Federal Property and Administrative Services Act of 1949, as amended (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)).

c. *Contact point:* Adrienne C. Thomas, Director, Planning and Analysis Division (202–523–3214).

d. *Regulatory analysis:* Will not be prepared.

2. Public Use of Donated Historical Materials (41 CFR 105–61.2) is being revised to correct certain citations.

a. *Need for change:* Executive Order 12065, National Security Information, mandated new declassification procedures that must be cited.

b. *Legal basis:* Federal Property and Administrative Services Act of 1949, as amended (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)).

c. *Contact point:* Richard A. Jacobs, Deputy Assistant Archivist, Office of Presidential Libraries (202–523–3073).

d. *Regulatory analysis:* Will not be prepared.

C. Regulations Scheduled For Review

No significant regulations are presently being reviewed.

D. Status of Agenda Items Published on November 17, 1978 (43 FR 53821)

See items B1 and B2, above.

Office of Controller—Administration

A. New Regulations

1. Procedures for implementation of section 504 of the Rehabilitation Act of 1973.

a. *Need for regulations:* The Rehabilitation Act of 1973 requires each Federal agency administering programs or activities that resulted in awarding Federal financial assistance to develop regulations designed to implement section 504 of the act.

b. *Legal basis:* Rehabilitation Act of 1973, Public Law 93–112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93–516, 29 U.S.C. 794.

c. *Contact point:* Linda Goodwin, Equal Opportunity Staff (202–566–0488).

d. *Regulatory analysis:* Will not be prepared.

B. Changes To Existing Regulations

No significant regulations are scheduled to be changed.

C. Regulations Scheduled for Review

No significant regulations are scheduled for review.

D. Status of Agenda Items Published on November 17, 1978 (43 FR 53821)

No items were listed on the previous agenda.

Automated Data and Telecommunications Service

No significant regulatory actions are planned.

Federal Property Resources Service

No significant regulatory actions are planned.

Federal Supply Service

No significant regulatory actions are planned.

Office of Acquisition Policy

No significant regulatory actions are planned.

Office of General Counsel

No significant regulatory actions are planned.

Public Buildings Service

No significant regulatory actions are planned.

Transportation and Public Utilities Service

No significant regulatory actions are planned.

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federal register

Friday
May 18, 1979

Part VIII

Department of Health, Education, and Welfare

Public Health Service

Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable to Pay and Community Service by Assisted Health Facilities

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 124

Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable To Pay and Community Service by Assisted Health Facilities

AGENCY: Public Health Service, HEW.

ACTION: Final rules.

SUMMARY: The Secretary of Health, Education, and Welfare is issuing new rules establishing requirements for health care facilities assisted by the Department under Titles VI and XVI of the Public Health Service Act to fulfill assurances required to be given in their applications for assistance that they would make their services available to all persons in the community and that they would make available a reasonable volume of services to persons unable to pay. Public comment received on the proposed rules and the Department's own experience in monitoring compliance with the current rules, has indicated the need for revision of the current rules applying to those assurances. Therefore, the Secretary is issuing the rules below to carry out his duty under section 1602(6) of the Act and to establish standards of compliance that will promote better delivery of services under the assurances and more effective monitoring of compliance with the assurances.

EFFECTIVE DATES: For Subpart F ("Uncompensated Services"): (a) For facilities whose next fiscal year begins on or after September 1, 1979, these rules are effective at the beginning of that fiscal year.

(b) For facilities whose next fiscal year begins after May 18, 1979, but before September 1, 1979, these rules are effective no later than September 1, 1979. At facility option, these rules may be implemented as early as the beginning of the facilities' next fiscal year. For facilities covered by this paragraph, the annual compliance standard, and excess and deficit provisions, in § 124.503 are effective at the beginning of the facilities' next fiscal year. Credit for uncompensated services provided by a facility before it implements these new rules, or before September 1, 1979 if later, will be given towards the new compliance standard to the extent that those services are provided in accordance with the procedures under the current rules at 42 CFR 53.111.

For Subpart G ("Community Services"): September 1, 1979 for all facilities.

FOR FURTHER INFORMATION CONTACT: Ms. Florence B. Fiori, Director, Bureau of Health Facilities Financing, Compliance, and Coversion, Room 6–50, Center Building No. 1, 3700 East-West Highway, Hayattsville, Maryland 20782, 800–638–0742 (Md. Res. call: 800–492–0359).

SUPPLEMENTARY INFORMATION: On October 25, 1978, the Secretary proposed new rules to implement the requirement of section 1602(6) of the Public Health Service Act (42 U.S.C. 300o–1(6)). 43 FR 49954. That section requires the Secretary to prescribe:

> The general manner in which each entity which receives financial assistance under this title [XVI] or title VI shall be required to comply with the assurances required to be made at the time such assistance was received and the means by which such entity shall be required to demonstrate compliance with such assurances.

The proposed rules proposed requirements concerning the assurances given by assisted facilities that they would provide a reasonable volume of services to persons unable to pay and a community service. Title VI assisted facilities gave assurances that—

> (1) The facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant; and (2) there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint. Section 603(e), PHS Act; 42 U.S.C. 291c(e)(3).

The assurances required of Title XVI assisted facilities are that—

> At all times after such application is approved (i) the facility or portion thereof to be constructed, or modernized, or converted will be made available to all persons residing or employed in the area served by the facility, and (ii) there will be made available in the facility or portion thereof to be constructed, modernized, or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint. Section 1604(b)(1)(J), PHS Act; 42 U.S.C. 300o–3(b)(1)(J).

In addition to inviting comments on the proposed rules, the Department held public hearings in Washington, D.C. on December 5 and 6, 1978. A summary of comments received, both through the hearings and the approximately 1,000 written comments submitted, appears in Appendix I.

The Department found the public participation very helpful in developing these final rules. A wide range of interests was represented at the hearing and in the written comments. Individual consumers related their personal experiences and difficulties in attempting to get health services from assisted facilities; consumer organizations and consumer legal representatives from different parts of the country described member or client problems with the administration of the program by state and federal officials, and by facilities; hospital administrators, financial management experts, and national and state hospital associations contributed their views of the effectiveness of the current program and the impact of the proposed rules on facilities' financial positions and ability to deliver services efficiently; and state and local governments, health systems agencies and other major health organizations contributed their expertise and perspectives. Although it was not possible to accept all of the suggestions made at the hearing or in written comments, the final rules reflect the Department's attempt to be responsive to as many of the concerns expressed as was consistent with its responsibilities to assure effective enforcement of the assurances and the financial and administrative integrity of the assisted facilities.

Summary of Objectives and Policies of the Final Rules

The basic objective of these rules is to assure that recipients of Titles VI and XVI who give the uncompensated services and the community service assurances provide those services within the contest of sound planning for and management of the delivery of health care services. Based on public comments, as well as his own experience in monitoring the existing assurances program, the Secretary believes that changes in the regulations are necessary to assure effective provision of those services consistent with the statutory requirements.

In making changes to the regulation the Secretary has sought to minimize the burdens imposed on facilities to the extent possible, in keeping with the President's policy of imposing on recipients of the Federal funds only those burdens necessary for proper and efficient program implementation. He has also sought to preserve the flexibility of facilities to provide those services consistent with their own and local needs, without sacrificing the

interests of the intended beneficiaries in a fair and effective delivery of those services. To minimize misunderstanding of what facilities are required to do and to facilitate monitoring and enforcement, the rules articulate clear-cut compliance standards wherever possible.

Finally, these rules provide for Federal enforcement and administration of the assurances program in recognition of Congress demonstrated concern over past lax enforcement and its imposition of specific monitoring responsibilities on the Department. However, States able to assist the Secretary will be given and opportunity to do so. Moreover, the final rules clearly disclaim any intention to interfere with enforcement programs established by States under State law so long as the State programs do not prevent the Secretary from enforcing minimum Federal standards for assisted facilities.

Uncompensated Services

The specific objectives of the uncompensated services rules are to prescribe a minimum level of uncompensated services to be provided and to interfere as little as possible in the method by which they are provided. This is clear in the compliance standards of the rules.

The rules eliminate the present choice of compliance standards, and substitute a single, dollar-volume compliance level, so that both facilities and recipients will know how much uncompensated care will be available. The dollar-volume standard is the one included in the proposed rules—the lesser of three percent of operating costs or ten percent of the federal assistance under Title VI, XVI and supplementary programs. In order to keep the volume of uncompensated services provided from further declining each year, the compliance level for years after the effective date of the regulations is adjusted using the percentage change in the national Consumer Price Index for medical care.

The standard of performance required under these rules will be measured over the full 20 year period during which assisted facilities under Title VI are obligated to provide uncompensated services. However, facilities may meet the "20 year" standard in more than 20 years, if lack of community need or financial limitations preclude speedier compliance (so long as they comply with all of the requirements in the regulations). Thus, if a Title VI facility provides less than the annual standard *for any reason* it will be required to make up the deficit (adjusted by the inflation factor) even if that means the 20 year period will be extended.

Similarly, facilities that provide more than the minimum standard in any year may obtain credit for these additional services against their total obligation, thus permitting them to fulfill their assurances in less than the 20 years. This excess credit provision should encourage facilities to provide early and adequate provision of services when the need for them exists in the community and permit facilities to adapt their uncompenated services obligation to other institutional or governmental requirements for providing services to poor persons.

In summary, under the new procedures facilities will in essence determine the dollar balance of their 20 years' obligation, and credit towards that balance the amount provided in any year. The remaining balance will be adjusted using the CPI. Uncompensated services will be provided until the balance is exhausted. This new approach has permitted the Department to eliminate the burdensome and speculative process that was originally proposed for advance applications and approvals of lower levels of compliance when financial problems at the facility or demand for uncompensated services in a particular community is not great enough to meet the annual compliance standard. Review of facility performance will, in most cases, be after-the-fact, when hard facts are available. If community demand appears to be lower than the annual standard, an affirmative action program will be required to assure that those needing the services are alerted to its availability, and services provided after implementation of a satisfactory plan will be assumed to meet community need. When a deficit is incurred because of claimed financial problems, the facility will be permitted to make up those deficits in future years when it is able to, but a swifter pace will be required when the financial infeasibility claim proves unjustified.

The Secretary believes this approach is the best way to assure that a "reasonable volume" of services is actually made available during the period of obligation. This new system will apply only to years of the 20 year obligation remaining for Title VI facilities after the rules become effective. (Since facilities assisted under Title XVI do not have a time-limited obligation, those facilities will be required to make up deficits only if due to noncompliance with the regulations.)

The emphasis on the amount of care provided, rather than the method by which it is provided, has resulted in procedural requirements that leave facilities maximum discretion in devising their uncompensated services programs. The regulations include those procedures that the Secretary believes will promote public awareness of the uncompensated services requirement, equitable eligibility determinations, and self-enforcement by beneficiaries, and that will minimize the burden on limited HEW and State resources.

Facilities are required to publish plans for allocating uncompensated services that describe the types of services available, when during the year they will be available, and whether reduced cost care will be given in addition to free care. Consistent with the objectives of local option and facility flexibility, facilities may tailor those plans according to their best judgment, so long as community need is considered by the facility in the plan's development. We have provided an opportunity for advisory participation by the HSA for the area and by others in the community to assure that community preferences can be heard, but final decisions are up to the facility. The final regulation increases the scope of facility discretion as to the contents of an allocation plan and permits revisions to the plans whenever the facility deems it advisable.

In order to ensure that persons who qualify for uncompensated services know about them, the rules require published, posted and individual notices. Prompt eligibility determinations on request are also required. To minimize the administrative burdens of these requirements, though, the individual notice requirement does not apply when uncompensated services are not available in the facility; the posted notices will be supplied by the Secretary in English and Spanish; and the prior determination requirement for crediting uncompensated services has been eliminated as proposed. Under the new procedures, persons unable to pay may request and can obtain a determination of eligibility before services are provided or after collection action has begun.

Eligibility for uncompensated services will be determined using national income-based criteria, so that both facilities and recipients may readily determine who is eligible. Two tiers of eligibility are established using the CSA poverty guidelines. Facilities must provide services without charge to persons with incomes in the lower tier (below the poverty level), but have the option of providing services at no, partial or full charge to persons with

incomes in the upper tier. This will permit facilities to target their limited uncompensated services to the neediest.

Reporting, recordkeeping and investigation provisions have been designed with the intention of minimizing both the Department's and the facilities' burdens of proving compliance, maximizing the Department's and the public's ability to ascertain compliance, and making most effective use of limited enforcement resources. All of the details of required reports are not established in these rules, but will be set in connection with the development and clearance of an assurances monitoring reporting form. However, these reports, needed to assist the Department in conducting periodic investigations, will only be required every three years (instead of every year) for facilities meeting their annual compliance standard, and in any year that the annual level is not reached or the Secretary determines a report is needed for sound administration. Clear recordkeeping requirements are also established to avoid the current problem of distinguishing between uncompensated services qualifying for credit and "bad debts," "courtesy allowances" and other write-offs that do not qualify.

The final rules also recognize that because of expected volume, all complaints cannot possibly be resolved promptly by the Secretary. Therefore, complainants will be given the opportunity to request early dismissal to permit them to file a court action if desired. In addition, in order to permit concentration of resouces on serious program implementation problems, the final rules permit the Secretary, on his own initiative, to dismiss complaints that cannot be reached on a timely basis and to focus his investigation resources on far reaching compliance issues. To avoid unncessary and premature litigation, however, facilities will be given prompt notice of the filing of a complaint, and a minimum 45 day period in which to try to obtain voluntary settlement if they wish.

Community Services

With one important exception, the final rules are not significantly changed from the proposed rule. Under the final rules, assisted facilities must make their services available on a nondiscriminatory basis; they must participate, if qualified, in major governmental and third party reimbursement programs (medicaid, medicare, Blue Cross, etc.) and they must not rely on admissions policies that have the effect of excluding persons in the community who need services on grounds other than availability of the service in the facility, or inability to pay or qualify for uncompensated services. As requested by providers, consumers and governmental agencies, the regulation includes specific illustrations of the admissions practices that may have the prohibited exclusionary effects, and possible alternatives available to facilities to remedy the problem.

The Secretary has determined that one new provision is needed to correct a problem that has arisen under the current rules. Facilities that provide emergency services will not be in compliance with their assurance to make their services available to residents of the community if they deny needed emergency services to any such person. Uncompensated services credit may be claimed for such services if the individual served is eligible and the facility's obligation has not been satisfied, or the facility may, if it does not include emergency services in its uncompensated services allocation plan, bill and institute collection procedures to obtain payment for these cases. In either event, however, emergency treatment cannot be withheld, whether or not the individual can demonstrate in advance of treatment the ability to pay for the services.

The reporting, recordkeeping, and enforcement provisions parallel those in the uncompensated services regulations.

Analysis of Comments and Rules

Appendix I to the rules below is a more complete statement of the basis and purpose of the provisions of the final rules. It includes a summary of the significant comments received and the Department's response to those comments, and an explanation of the basis for significant changes from the proposed rules.

Effective Date

The community service rules are effective for all facilities on September 1, 1979. In establishing the effective date for the uncompensated services rules the Secretary took account of two competing needs, namely the facilities' and Department's need for orderly and efficient implementation of the new procedural requirements, and beneficiaries' needs for prompt and effective provision of health services by assisted facilities. To avoid unnecessary disruption of facilities' accounting and bookkeeping practices that would occur if the rules took effect in the middle of a fiscal year, the new rules will be effective at the beginning of a facility's next fiscal year beginning on or after September 1, 1979. This should also give facilities enough time to conform their practices to the new procedural requirements and to develop the necessary allocation plan with community comment.

Many facilities begin their next fiscal year during June, July, or August, and many of those facilities may not be able to fully implement the new procedural requirements at the beginning of the next fiscal year given the short time remaining. Therefore, for these facilities the new procedures are also effective on September 1, 1979. For this first year, publication of proposed allocation plans is required 60 days before September 1, 1979, rather than 60 days prior to the beginning of the fiscal year. Any facility able to implement the new procedures earlier in their next fiscal year may, and is encouraged, to do so.

The additional time into the fiscal year given to these facilities to implement the new rules is not a basis for reducing their total uncompensated services obligation in their next fiscal year. The Department will measure compliance for these facilities' next fiscal year using the annual compliance standard in these new rules, and will apply the deficit make up provisions for the entire fiscal year. Credit will be given for uncompensated services provided before the revised rules are required to be implemented in accordance with the rules that are currently in effect. Any deficit incurred in the next fiscal year will be required to be made up. This procedure therefore gives facilities with fiscal years beginning too soon to implement the new rules sufficient time to do so, while at the same time this extra lead time does not excuse facilities from their uncompensated services obligation for the period beginning with the next fiscal year and ending on September 1, 1979.

Regulatory Analysis

In accordance with the requirements of Executive Order No. 12044, the Department has prepared a Regulatory Analysis of the final rules. This analysis is published as Appendix II.

Reevaluation

The Secretary recognizes the need for monitoring the impact of these rules and reassessing their effectiveness on a continuing basis. Therefore, the Department will develop an evaluation plan that will provide it with the information required, and will obtain public comment on that plan and on the impact of the regulations. The Department's intention is to begin its review of these rules, particularly the

inflation factor and the various administrative compliance costs, in 1981, and complete it by the end of 1982. Should the evaluation results demonstrate that costs unexpectedly and significantly exceed current estimates, the Department will reconsider the applicable provisions earlier than 1982.

Accordingly, 42 C.F.R. Part 124 is amended as set forth below.

Dated: May 10, 1979.

Charles Miller II,

Acting Assistant Secretary for Health.

Approved: May 10, 1979.

Hale Champion,

Acting Secretary.

Part 124 of Title 42, *Code of Federal Regulations,* is amended by adding a new Subpart F and a new Subpart G, to read as follows:

Subpart F—Reasonable Volume of Uncompensated Services to Persons Unable To Pay

Sec.

Authority: Sec. 215, 1525, 1602(6), Public Health Service Act as amended; 58 Stat. 690, 88 Stat. 2249, 88 Stat. 2259; (42 U.S.C. 216, 300m–4, 300o–1(6)).

Subpart F—Reasonably Volume of Uncompensated Services to Persons Unable To Pay

§ 124.501 Applicability.

(a) The provisions of this subpart apply to any recipient of Federal assistance under Title VI or XVI of the Public Health Service Act that gave an assurance that it would make available, in the facility or portion of the facility constructed, modernized or converted with that assistance, a reasonable volume of services to persons unable to pay for the services.

(b) The provisions of this subpart apply to facilities for the following periods:

(1) *Facilities assisted under Title VI.* Except where the deficit and excess compliance provisions provide for a longer or shorter period, a facility assisted under Title VI of the Act shall provide uncompensated services at the annual compliance level required by § 124.503(a) for:

(i) Twenty years after the completion of construction, in the case of a facility for which the Secretary provided grant assistance under section 606 of the Act; or

(ii) The period from completion of construction until the amount of a direct loan under sections 610 or 623 of the Act, or the amount of a loan with respect to which the Secretary provided a guarantee and interest subsidy under section 623 of the Act, is repaid, in the case of a facility for which such a loan was made.

(iii) "Completion of construction" means:

(A) The date on which the Secretary determines the facility was opened for service;

(B) If the opening date is not available, it means the date on which the Secretary approved the final part of the facility's application for assistance under Title VI of the Act;

(C) If the date of final approval is not available, it means whatever date the Secretary determines most reasonably approximates the date of final approval.

(2) *Facilities assisted under Title XVI.* The provisions of this subpart apply to a facility assisted under Title XVI of the Act at all times following the Secretary's approval of the facility's application for assistance under Title XVI, except that if the facility does not at the time of that approval provide health services, the assurance applies at all times following the facility's initial provision of health services to patients, as determined by the Secretary.

§ 124.502 Definitions.

As used in this subpart—

"Act" means the Public Health Service Act, as amended.

"Allowable credit" for services provided to a specific patient means the lesser of the facility's usual charge for those services, or the usual charge multiplied by the percentage which the total allowable cost as reported by the facility in the facility's preceding fiscal year under Title XVIII of the Social Security Act (42 U.S.C. 1395) and Subpart D of the implementing regulations (42 CFR 405.401 *et seq.*) bears to the facility's total patient revenues for the year.

"Applicant" means a person who requests uncompensated services or on whose behalf uncompensated services are requested.

"Facility" means an entity that received assistance under Title VI or XVI of the Act and provided an assurance that it would provide a reasonable volume of services to persons unable to pay for the services.

"Federal assistance" means assistance received by the facility under Title VI or Title XVI of the Act and any assistance supplementary to that Title VI or Title XVI assistance received by the facility under any of the following acts: the District of Columbia Medical Facilities Construction Act of 1968, 82 Stat. 631 (Pub. L. 90–457); the Public Works Acceleration Act of 1962 (42 U.S.C. 2641, *et seq.*); the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121, *et seq.*); the Appalachian Regional Development Act of 1965, as amended (40 U.S.C. App.); the Local Public Works Capital Development and Investment Act of 1976 (Pub. L. 94–369). In the case of a loan guarantee with interest subsidy, or a direct loan sold and guaranteed by the Secretary with an interest subsidy, the amount of Federal assistance under Title VI or Title XVI for a fiscal year is the total amount of the interest subsidy that the Secretary will have paid by the close of that fiscal year, as well as any other payments which the Secretary has made as of the beginning of the fiscal year on behalf of the facility in connection with the loan guarantee or the direct loan which has been sold.

"Fiscal year" means the facility's fiscal year.

"Health Systems Agency" or "HSA" means an agency fully or conditionally designated by the Secretary under section 1515 of the Act.

"Operating costs" for any fiscal year means the total operating expenses of a facility as set forth in an audited financial statement, minus the amount of reimbursement, if any, received (or if not received, claimed) in that year under Titles XVIII and XIX of the Social Security Act.

"Persons unable to pay" means persons who meet the income criteria set out in § 124.506 of this subpart.

"Request for uncompensated services" means any indication by or on behalf of an individual seeking services of the facility of the individual's inability to pay for services. A request for uncompensated services may be made at any time, including following institution of a collection action against the individual.

"Secretary" means the Secretary of Health, Education, and Welfare or his delegatee.

"State agency" means the agency of a State fully or conditionally designated

by the Secretary as the State health planning and development agency under section 1521 of the Act.

"Uncompensated services" means services that are made available to persons unable to pay for them without charge or at a charge which is less than the allowable credit for those services. The amount of uncompensated services provided in a fiscal year is the total allowable credit for services less the amount charged for the services following an eligibility determination. In determining the amount of uncompensated services, the Secretary includes only those services provided to individuals with respect to whom the facility has made a written determination of eligibility.

§ 124.503 Compliance level.

(a) *Annual compliance level.* (1) A facility is in compliance with its assurance to provide a reasonable volume of services to persons unable to pay if it provides for the fiscal year uncompensated services at a level not less than the lesser of—

(i) Three percent of its operating costs for the most recent fiscal year for which an audited financial statement is available; or

(ii) Ten percent of all Federal assistance provided to or on behalf of the facility, adjusted by a percentage equal to the percentage change in the national Consumer Price Index for medical care between the year in which the facility received assistance or 1979, whichever is later, and the most recent year for which a published Index is available. For purposes of this paragraph, the Federal assistance in the case of a loan which is guaranteed or made and sold by the Secretary will be deemed to have been provided in the year in which the Secretary made the loan.

(b) *Deficit in compliance.* (1) *Facilities assisted under Title VI.*—If in any fiscal year a facility assisted under Title VI of the Act fails to meet its annual compliance level, it shall provide uncompensated services in an amount sufficient to make up that deficit (as adjusted under paragraph (d)). The facility may make up a deficit at any time during its period of obligation or in the year or years (if necessary) immediately following, except where the facility failed to provide uncompensated services at the required level although financially able to do so, or where the facility did not comply with the requirements of this subpart.

(2) *Facilities assisted under Title XVI.* If in any fiscal year a facility assisted under Title XVI of the Act fails to meet its annual compliance level but has otherwise complied with the requirements of this subpart, the amount of uncompensated services provided in that year constitutes compliance with this subpart.

(c) *Excess compliance.* (1) Whenever a facility provides in a fiscal year uncompensated services in an amount exceeding its annual compliance level, it may apply the amount of excess (as adjusted under paragraph (d)) to reduce its annual compliance level in any subsequent fiscal year. The facility may use any excess amount to reduce its annual compliance level only if the services in excess of the annual compliance level are provided in accordance with the requirements of this subpart.

(2) A facility assisted under Title VI may in any fiscal year apply the amount of excess credited under this paragraph to satisfy the remainder of its obligation to provide uncompensated services. In any fiscal year, the amount of uncompensated services required to satisfy the remainder of the facility's obligation is its annual compliance level for that fiscal year provided multiplied by the number of years remaining in its period of obligation, plus any deficits required to be made up under this section.

(d) *Calculation and adjustment of deficit and excess.* (1) The amount of a deficit or excess in uncompensated services in any fiscal year is the difference between the facility's annual compliance level for that year and the amount of uncompensated services the facility provided in that year.

(2) The amount of any deficit the facility makes up, and the amount of any excess compliance applied to reduce a facility's annual compliance level, must be adjusted by a percentage equal to the percentage change in the National Consumer Price Index for medical care between the fiscal year in which the facility had a deficit or provided the excess, and the fiscal year in which the facility makes up the deficit or applies the excess to reduce its annual compliance level or satisfy its remaining obligations.

§ 124.504 Affirmative action requirement.

(a) A facility that fails to meet its annual compliance level in any fiscal year shall adopt and implement an affirmative action plan, except where it claims and reports to the Secretary that it was financially unable to provide uncompensated services at the annual compliance level.

(b) The affirmative action plan must include provisions that reasonably can be expected to enable the facility to meet its annual compliance level. An affirmative action plan may include, among other approaches devised by the facility:

(1) Wide notice pf the availability of uncompensated services at the facility. Notice under this paragraph may include:

(i) publication of notices in newspapers of general circulation in the area;

(ii) announcement of the availability of uncompensated services in other communication media in the area (such as radio and television stations); and

(iii) notification of the availability of uncompensated services to organizations in the area that would be likely to refer persons in need tof uncompensated services to the facility (such as legal services organizations, community action agencies, and other public and private social services agencies).

(2) If the facility's allocation plan restricts the types of services that will be provided as uncompensated services, or restricts uncompensated services to persons in Category A, expansion of the allocation plan to include other types of services or persons in Category B.

(3) Expansion of the area served by the facility for the purpose of providing uncompensated services; and

(4) Establishment of arrangements with other providers of health care under which those providers (if willing and able to do so) will refer to the facility persons requesting uncompensated services.

(c) The facility shall implement its affirmative action plan when it submits it to the Secretary under § 124.510(a), and shall provide uncompensated services in accordance with the plan, incorporating any changes the Secretary may require, until the annual compliance level is reached in a fiscal year.

§ 124.505 Notice of availability of uncompensated services.

(a) *Published notice.* A facility shall, no later than 60 days before the beginning of its fiscal year, publish in a newspaper of general circulation in its area notice of its uncompensated services obligation. The notice shall include, at a minimum:

(1) The plan of allocation the facility proposes to adopt;

(2) The amount of uncompensated services the facility intends to make available in the fiscal year or a statement that the facility will provide uncompensated services to all persons

unable to pay who request uncompensated services; and

(3) An explanation if the amount of uncompensated services the facility intends to make available in a fiscal year is less than the annual compliance level, either because it is not financially able to meet this level or because it has credited excess compliance from another fiscal year. If a facility has satisfied its remaining uncompensated services obligation since the last published notice under this paragraph, or will satisfy the remaining obligation during the fiscal year, the explanation must include this information.

(b) *Notice to HSA.* (1) The facility shall simultaneously provide a copy of the notice under paragraph (a) to the HSA for the area. The HSA may seek public comment, comment to the facility on the extent to which the allocation plan will or will not meet community needs, or take any other appropriate action.

(2) The facility may revise the plan published under paragraph (a) based on comments received from the HSA or the public. The facility shall send a copy of the plan as adopted to the HSA at the beginning of the fiscal year.

(3) A facility may change its allocation plan during a fiscal year after providing notice to the HSA of the revised plan.

(c) *Posted notice.* (1)(i) The facility shall post notices, which the Secretary supplies in English and Spanish, in appropriate areas in the facility, including but not limited to the admissions area, the business office and the emergency room.

(ii) If in the service area of the facility the "usual language of households" of ten percent or more of the population, according to the most recent figures published by the Bureau of the Census, is other than English or Spanish, the facility shall translate the notice into that language and post the translated notice on signs substantially similar in size and legibility to, and posted with, those supplied under paragraph (c)(1)(i) of this section.

(iii) The facility shall make reasonable efforts to communicate the contents of the posted notice to persons who it has reason to believe cannot read the notice.

(2) If a facility determines that it has provided uncompensated services in an amount sufficient to meet its annual compliance level for the fiscal year or its allocation for any period specified in its allocation plan, and that it will not continue to provide uncompensated services during the fiscal year of the appropriate period, it may post an additional notice stating that it has satisfied its obligation for the fiscal year or appropriate period, and when additional uncompensated services will be available.

(d) *Individual notice.* (1) In any period during a fiscal year in which uncompensated services are available in the facility, the facility shall provide individual written notice of the availability of uncompensated services to each person who seeks services in the facility on behalf of himself or another. The individual written notice must:

(i) State that the facility is required by law to provide a reasonable amount of care without or below charge to people who cannot afford care;

(ii) Set forth the criteria the facility uses for determining eligibility for uncompensated services (in accordance with the financial eligibility criteria and the allocation plan);

(iii) State the location in the facility where anyone seeking uncompensated services may request them; and

(iv) State that the facility will make a written determination of whether the person will receive uncompensated services, within two working days of a request for uncompensated services.

(2) The facility shall provide the individual written notice before providing services, except where the emergency nature of the services provided makes prior notice impractical. If this exception applies, the facility shall provide the written notice to next of kin or to the patient as soon as practical, but not later than when first presenting a bill for services.

(3) The facility shall make reasonable efforts to communicate the contents of the individual written notice to persons who it has reason to believe cannot read the notice.

§ 124.506 Financial eligibility criteria for identifying persons unable to pay.

(a) A person unable to pay for health services is a person who falls into either of the following categories:

(1) *Category A*—A person whose individual or family income, as applicable, for the 12 months preceding the determination of eligibility is not more than the current poverty income guideline of the Community Services Administration (as set forth in 45 CFR 1060.2–1 *et seq.*) that applies to the individual or family. The facility shall provide uncompensated services to persons in this category without charge.

(2) *Category B*—A person whose individual or family income, as applicable, for the 12 months preceding the determination of eligibility is greater than the current poverty income guideline of the Community Services Administration (as set forth in 45 CFR 1060.2–1 *et seq.*) that applies to the individual or family but not more than twice that guideline. If persons in Category B are included in the allocation plan, the facility shall provide uncompensated services to these persons without charge, or in accordance with a schedule of charges, as specified in the allocation plan.

(b) A person is eligible for uncompensated services if his annual income is at or below the level established under paragraph (a) when calculated by either of the following methods:

(1) Multiplying by four the person's income for the three months preceding the determination of eligibility; or

(2) Using the person's actual income for the 12 months preceding the determination of eligibility.

§ 124.507 Allocation of services: plan requirement.

(a) A facility shall provide its uncompensated services in accordance with a plan that sets out a method by which the facility will distribute its uncompensated services among persons unable to pay. In developing its plan the facility shall take into consideration comments it receives from the HSA or others with respect to community need. The plan must:

(1) Include the type of services that will be made available;

(2) Specify the method, if any, for distibuting those services in different periods of the year;

(3) State whether persons eligible under Category B criteria will be provided uncompensated services, and if so, whether the services will be available without charge or at a reduced charge;

(4) If services will be made available to Category B persons at a reduced charge, specify the method used for reducing charges, and provide that this method is applicable to all persons in Category B; and

(5) Provide that the facility provides uncompensated services to all persons eligible under the plan who request uncompensated services.

(b) A facility may adopt any allocation plan that meets the requirements of paragraph (a). If the facility fails to adopt and publish a plan as required by § 124.505 it will be presumed to have adopted a plan under which it provides all services of the facility without charge to all persons unable to pay who first request such services, until its annual compliance level has been met for the fiscal year.

§ 124.508 Determinations of eligibility.

(a) *Determinations.* In any period or periods in a fiscal year in which uncompensated services are available, the facility shall make a determination of eligibility for uncompensated services within two working days following the request for uncompensated services. The facility shall give the applicant a copy of the determination promptly.

(b) *Content of favorable determinations.* A determination that an applicant is eligible must indicate:

(1) That the facility will provide uncompensated services at no charge or at a specified charge less than the allowable credit for the services;

(2) The date on which services were requested;

(3) The date on which the determination was made;

(4) The income of the applicant; and

(5) The date on which services were or will be first provided to the applicant.

(c) *Reasons for denial.* The facility shall provide each applicant who requests uncompensated services and is denied them, in whole or in part, a written and dated statement of the reasons for the denial when the denial is made. This requirement applies throughout the facility's fiscal year.

(d) *Verification.* A facility may, as a condition to providing uncompensated services to any applicant, require the applicant to furnish any information that is reasonably necessary to substantiate the applicant's income.

§ 124.509 Exclusions from uncompensated services.

A facility may not include the following in computing the uncompensated services it provides:

(a) Any amount that the facility has received, or is entitled to receive, from a third party insurer or under a governmental program, except where the person to whom the facility provides services refused to take reasonable actions necessary to obtain the entitlement.

(b) Any amount in excess of the payment that the facility has received, or is entitled to receive, from a third party insurer or under a governmental program where the facility has agreed or is otherwise required to accept this payment as payment in full for the services;

(c) Any amount for services provided 96 hours or more following notification to the facility by a professional standards review organization (PSRO) that the PSRO disapproved the services under section 1155(a)(1) of the Social Security Act; and

(d) Any amount for which reimbursement would be available under a governmental program (such as medicare or medicaid) in which the facility, although eligible to do so, and required by § 124.603(c)(1) to do so, does not participate.

§ 124.510 Reporting and record maintenance requirements.

(a) *Reporting requirements.* (1) *Timing of reports.*—(i) A facility shall submit to the Secretary a report to assist the Secretary in determining compliance with this subpart once every three fiscal years, on a schedule to be prescribed by the Secretary.

(ii) A facility shall submit the required report more frequently than once every three years under the following circumstances:

(A) If the facility determines that in the preceding fiscal year it did not provide uncompensated services at the annual compliance level, it shall submit a report in the fiscal year in which the deficit is determined.

(B) If the Secretary determines, and notifies the facility in writing, that a report is needed for proper administration of the program, the facility shall submit a report within 90 days after receiving notice from the Secretary, or within 90 days after the close of the fiscal year, whichever is later.

(iii) Except as specified in paragraph (a)(ii)(B) of this section, the reports required by this section shall be submitted within 90 days after the close of the fiscal year, unless a longer period is approved by the Secretary for good cause.

(2) *Content of report.* The report must include the following information, in a form prescribed by the Secretary:

(i) Information that the Secretary prescribes to permit a determination of whether a facility has met the annual compliance level for the fiscal years covered by the report;

(ii) The date on which the notice required by § 124.505(a) was published and sent to the HSA for the area, and the name of the newspaper that printed the notice;

(iii) If the amount of uncompensated services provided by the applicant in the preceding fiscal year was lower than the annual compliance level, an explanation of why the facility did not meet the required level. If the facility claims that it failed to meet the required compliance level because it was financially unable to do so, it shall explain and document its claim;

(iv) If the facility is required to submit an affirmative action plan, a copy of the plan. If an affirmative action plan was in effect during the preceding fiscal year, documentation of actions taken to implement the plan; and

(v) Other information that the Secretary prescribes.

(3) A facility shall provide a copy of any report to the HSA for the area when submitting it to the Secretary.

(4) *Institution of suit.* Not later than 10 days after being served with a summons or complaint, the facility shall notify the Regional Health Administrator for the Region of HEW in which it is located of any legal action brought against it alleging that it has failed to comply with the requirements of this subpart.[1]

(b) *Record maintenance requirements.* (1) A facility shall maintain, make available for public inspection consistent with personal privacy, and provide to the Secretary on request, any records necessary to document its compliance with the requirements of this subpart in any fiscal year, including:

(i) any documents from which the information required to be reported under paragraph (a) of this section was obtained;

(ii) accounts which clearly segregate uncompensated services from other accounts; and

(iii) copies of the determinations of eligibility under § 124.508(b).

A facility shall maintain these records until 180 days following the close of the Secretary's investigation under § 124.511(a).

(2) In any fiscal year a facility may stop providing individual written notice, and may stop making eligibility determinations, only if it maintains records that document on a current basis that it has met its annual compliance level for the fiscal year or appropriate period specified in its allocation plan.

(3) A facility shall, within 60 days of the end of each fiscal year, ascertain the amount of uncompensated services it provided in that fiscal year. Documents that support the facility's determination shall be made available to the public or the HSA for the area on request. If a report is or will be filed under § 124.510 a facility may respond to a request by providing a copy of the report to the requester.

§ 124.511 Investigation and enforcement.

(a) *Investigations.* (1) The Secretary periodically investigates the compliance of facilities with the requirements of this subpart, and investigates complaints.

(2)(i) A complaint is considered to be filed with the Secretary on the date the

[1] The addresses of the Regional Offices of HEW are set out in 45 CFR 5.31.

following information is received in the Office of the Regional Health Administrator for the Region of HEW in which the facility is located:

(A) The name and address of the person making the complaint or on whose behalf the complaint is made;

(B) The name and location of the facility;

(C) The date or approximate date on which the event complained of occurred; and

(D) A statement of what actions the complainant considers to violate the requirements of this subpart.

(ii) The Secretary promptly provides a copy of the complaint to the facility named in the complaint.

(3) When the Secretary investigates a facility, the facility shall provide to the Secretary on request any documents, records and other information concerning its operations that relate to the requirements of this subpart.

(4) Section 1612(c) of the Act provides that if the Secretary dismisses a complaint or the Attorney General has not brought an action for compliance within six months from the date on which the complaint is filed, the person filing it may bring a private action to effectuate compliance with the assurance. If the Secretary determines that he will be unable to issue a decision on a complaint or otherwise take appropriate action within the six month period, he may, based on priorities for the disposition of complaints that are established to promote the most effective use of enforcement resources, or on the request of the applicant, dismiss the complaint without a finding as to compliance prior to the end of the six month period, but no earlier than 45 days after the complaint is filed.

(b) *Enforcement.*

(1) If the Secretary finds, based on his investigation under paragraph (a) of this section, that a facility did not comply with the requirements of this subpart, he may take any action authorized by law to secure compliance, including but not limited to voluntary agreement or a request to the Attorney General to bring an action against the facility for specific performance.

(2) A facility that has denied uncompensated services to any person because it failed to comply with the requirements of this subpart will not be in compliance with its assurance until it takes whatever steps are necessary to remedy fully the noncompliance.

(3)(i) If in a fiscal year a facility fails to provide uncompensated services in an amount sufficient to meet its compliance level, and the Secretary determines—

(A) that, contrary to the report filed under § 124.510, the facility was financially able to provide some or all of the deficit amount in the fiscal year in question; or

(B) that the deficit was due to the facility's failure to comply with a requirement of this subpart—the facility shall provide uncompensated services in an amount sufficient to make up the deficit in the fiscal year following the finding, unless the Secretary determines that it is financially unable to do so. If the Secretary determines that the facility is not financially able to provide all of the deficit in the fiscal year following the finding, the Secretary sets a compliance level for that year and subsequent years that permits the deficit to be made up in as short a period of time as he determines is consistent with the financial stability of the facility. Any deficit is calculated and adjusted in accordance with § 124.503(d).

(ii) Where a facility indicates in its published notice that it will provide uncompensated services in an amount below the annual compliance level because of a financial inability to meet the annual compliance level, and the Secretary determines during the fiscal year that the facility is financially able to provide additional uncompensated services, he may require the facility to provide additional appropriate amounts of uncompensated services during the fiscal year.

(iii) In determining whether a facility was or is financially able to meet its annual compliance level, the Secretary will consider factors such as:

(A) the ratio of revenues to expenses;

(B) the occupancy rate;

(C) the ratio of current assets to current liabilities;

(D) the average cost per patient day;

(E) the number of days of operating expenses in accounts payable;

(F) the number of days of revenues in accounts receivable;

(G) the sinking fund (or depreciation fund) balance;

(H) the debt coverage ratio; and

(I) the availability of restricted or unrestricted funds (such as an endowment) available for charitable use. In making this determination the Secretary will consider any comments submitted by the HSA for the area or by other persons.

(4)(i) Where a facility submits an affirmative action plan, the Secretary reviews the plan. If the Secretary determines that the plan is inadequate, he notifies the facility of additional actions it shall incorporate into the plan, including but not limited to, any of the illustrative approaches listed in § 124.504(b).

(ii) In determining whether an affirmative action plan is acceptable, the Secretary will consider any comments submitted by the HSA for the area or by other persons.

§ 124.512 Agreements with State agencies.

(a) Where the Secretary finds that it will promote the purposes of this subpart, and the State agency is able and willing to do so, he may enter into an agreement with the State agency for the State agency to assist him in administering this subpart in the State. An agreement may be terminated by the Secretary or the State agency on 60 days' notice.

(b) Under an agreement, the State agency will provide the Secretary with any assistance he requests in any one or more of the following areas, as set out in the agreement:

(1) Investigation of complaints regarding noncompliance;

(2) Monitoring of the compliance of facilities with the requirements of this subpart;

(3) Review of affirmative action plans submitted under § 124.504;

(4) Review of reports submitted under § 124.510;

(5) Making initial decisions for the Secretary with respect to compliance, subject to appeal by any party to the Secretary or review by the Secretary on his own initiative; and

(6) Application of any sanctions available to it under State law (such as license revocation or termination of State assistance) against facilities determined to be out of compliance with the requirements of this subpart.

(c) A State agency may use funds received under section 1525 of the Act to pay for expenses incurred in the course of carrying out this agreement.

(d) Nothing in this subpart precludes any State from taking any action authorized by State law regarding the provision of uncompensated services by facilities in the State as long as the action taken does not prevent the Secretary from enforcing the requirements of this subpart.

Subpart G—Community Service

Sec.

Authority: Sec. 215, 1525, 1602(6), Public Health Service Act as amended; 58 Stat 690, 88 Stat. 2249, 88 Stat. 2259; 42 U.S.C. 216, 300m–4, 300o–1(6).

Subpart G—Community Service

§ 124.601 Applicability.

The provisions of this subpart apply to any recipient of Federal assistance under Title VI or XVI of the Public Health Service Act that has given an assurance that it would make the facility or portion thereof assisted available to all persons residing (and, in the case of Title XVI assisted applicants, employed), in the territorial area it serves. This assurance is referred to in this subpart as the "community service assurance."

§ 124.602 Definitions.

As used in this subpart—

"Act" means the Public Health Service Act, as amended.

"Facility" means the an entity that received assistance under Title VI or Title XVI of the Act and provided a community service assurance.

"Fiscal year" means facility's fiscal year.

"Secretary" means the Secretary of Health, Education, and Welfare or his delegatee.

"Service area" means the geographic area designated as the area served by the facility in the most recent State plan approved by the Secretary under Title VI, except that, at the request of the facility, the Secretary may designate a different area proposed by the facility when he determines that a different area is appropriate based on the criteria in 42 CFR 53.1(d).

"State agency" means the agency of a state fully or conditionally designated by the Secretary as the State health planning and development agency of the State under section 1521 of the Act.

§ 124.603 Provision of services.

(a) *General.*

(1) In order to comply with its community service assurance, a facility shall make the services provided in the facility or portion thereof constructed, modernized, or converted with Federal assistance under Title VI or XVI of the Act available to all persons residing (and, in the case of facilities assisted under Title XVI of the Act, employed) in the facility's service area without discrimination on the ground of race, color, national origin, creed, or any other ground unrelated to an individual's need for the service or the availability of the needed service in the facility. Subject to paragraph (b) (concerning emergency services) a facility may deny services to persons who are unable to pay for them unless those persons are required to be provided uncompensated services under the provisions of Subpart F.

(2) A person is residing in the facility's service area for purposes of this section if the person:

(i) is living in the service area with the intention to remain there permanently or for an indefinite period;

(ii) is living in the service area for purposes of employment; or

(iii) is living with a family member who resides in the service area.

(b) *Emergency services.*

(1) A facility may not deny emergency services to any person who resides (or, in the case of facilities assisted under Title XVI of the Act, is employed) in the facility's service area on the ground that the person is unable to pay for those services.

(2) A facility may discharge a person that has received emergency services, or may transfer the person to another facility able to provide necessary services, when the appropriate medical personnel determine that discharge or transfer will not subject the person to a substantial risk of deterioration in medical condition.

(c) *Third party payor programs.*

(1) The facility shall make arrangements, if eligible to do so, for reimbursement for services with:

(i) Those principal State and local governmental third-party payors that provide reimbursement for services that is not less than the actual costs, as determined in accordance with accepted cost accounting principles; and

(ii) Federal governmental third-party programs, such as medicare and medicaid.

(2) The facility shall take any necessary steps to insure that admission to and services of the facility are available to beneficiaries of the governmental programs specified in subparagraph (1) of this paragraph without discrimination or preference because they are beneficiaries of those programs.

(d) *Exclusionary admissions policies.* A facility is out of compliance with its community service assurance if it uses an admission policy that has the effect of excluding persons on a ground other than those permitted under paragraph (a) of this section. Illustrative applications of this requirement are described in the following paragraphs:

(1) A facility has a policy or practice of admitting only those patients who are referred by physicians with staff privileges at the facility. If this policy or practice has the effect of excluding persons who reside (or for Title XVI facilities, are employed) in the community from the facility because they do not have a private family doctor with staff privileges at the facility, the facility would not be in compliance with its assurance. The facility is not required to abolish its staff physician admissions policy as a usual method for admission. However, to be in compliance with its community service assurance it must make alternative arrangements to assist area residents who would otherwise be unable to gain admission to obtain services available in the facility. Examples of alternative arrangements a facility might use include:

(i) authorizing the individual's physician, if licensed and otherwise qualified, to treat the patient at the facility even though the physician does not have staff privileges at the facility;

(ii) for those patients who have no physician, obtaining the voluntary agreement of physicians with staff privileges at the facility to accept referrals of such patients, perhaps on a rotating basis;

(iii) if an insufficient number of physicians with staff privileges agree to participate in a referral arrangement, requiring acceptance of referrals as a condition to obtaining or renewing staff privileges;

(iv) establishing a hospital-based primary care clinic through which patients needing hospitalization may be admitted; or

(v) hiring or contracting with qualified physicians to treat patients who do not have private physicians.

(2) A facility, as required, is a qualified provider under the Title XIX medicaid program, but few or none of the physicians with staff privileges at the facility or in a particular department or sub-department of the facility will treat medicaid patients. If the effect is that some medicaid patients are excluded from the facility or from any service provided in the facility, the facility is not in compliance with its community service assurance. To be in compliance a facility does not have to require all of its staff physicians to accept medicaid. However, it must take steps to ensure that medicaid beneficiaries have full access to all of its available services. Examples of steps that may be taken include:

(i) obtaining the voluntary agreement of a reasonable number of physicians with staff privileges at the facility and in each department or sub-department to accept referral of medicaid patients, perhaps on a rotating basis;

(ii) if an insufficient number of physicians with staff privileges agree to participate in a referral arrangement,

requiring acceptance of referrals as a condition to obtaining or renewing staff privileges;

(iii) establishing a clinic through which medicaid beneficiaries needing hospitalization may be admitted; or

(iv) hiring or contracting with physicians to treat medicaid patients.

(3) A facility requires advance deposits (pre-admission or pre-service deposits) before admitting or serving patients. If the effect of this practice is that some persons are denied admission or service or face substantial delays in gaining admission or service solely because they do not have the necessary cash on hand, this would constitute a violation of the community service assurance. While the facility is not required to forego the use of a deposit policy in all situations, it is required to make alternative arrangements to ensure that persons who probably can pay for the services are not denied them simply because they do not have the available cash at the time services are requested. For example, many employed persons and persons with other collateral do not have savings, but can pay hospital bills on an installment basis, or can pay a small deposit. Such persons may not be excluded from admission or denied services because of their inability to pay a deposit.

§ 124.604 Posted notice.

(a) The facility shall post notices, which the Secretary supplies in English and Spanish, in appropriate areas of the facility, including but not limited to the admissions area, the business office and the emergency room.

(b) If in the service area of the facility the "usual language of households" of ten percent or more of the population, according to the most recent figures published by the Bureau of the Census, is other than English or Spanish, the facility shall translate the notice into that language and post the translated notice on signs substantially similar in size and legibility to, and posted with, those supplied under paragraph (a).

(c) The facility shall make reasonable efforts to communicate the contents of the posted notice to persons who it has reason to believe cannot read the notice.

§ 124.605 Reporting and record maintenance requirements.

(a) *Reporting requirements.*

(1) *Timing of reports.*

(i) A facility shall submit to the Secretary a report to assist the Secretary in determining compliance with this subpart once every three fiscal years, on a schedule to be prescribed by the Secretary. The report required by this section shall be submitted not later than 90 days after the end of the fiscal year, unless a longer period is approved by the Secretary for good cause shown.

(ii) A facility shall also submit the required report whenever the Secretary determines, and so notifies the facility in writing, that a report is needed for proper administration of the program. In this situation the facility shall submit the report specified in this section for the filing of reports, within 90 days after receiving notice from the Secretary, or within 90 days after the close of the fiscal year, whichever is later.

(2) *Content of report.* The report must be submitted on a form prescribed by the Secretary and must include information that the Secretary prescribes to permit a determination of whether a facility has met its obligations under this subpart.

(3) The facility shall provide a copy of any report to the HSA for the area when submitting it to the Secretary.

(4) *Institution of suit.* Not later than 10 days after being served with a summons or complaint, the applicant shall notify the Regional Health Administrator for the Region of HEW in which it is located of any legal action brought against it alleging that it has failed to comply with the requirements of this subpart.[1]

(b) *Record maintenance requirements.*

(1) A facility shall maintain, make available for public inspection consistent with personal privacy, and provide to the Secretary on request, any records necessary to document its compliance requirements of this subpart in any fiscal year, including documents from which information required to be reported under paragraph (a) of this section was obtained. A facility shall maintain these records until 180 days following the close of the Secretary's investigation under § 124.606(a).

§ 124.606 Investigation and enforcement.

(a) *Investigations.*

(1) The Secretary periodically investigates the compliance of facilities with the requirements of this subpart, and investigates complaints.

(2)(i) A complaint is filed with the Secretary on the date on which the following information is received in the Office of the Regional Health Administrator for the Region of HEW in which the facility is located:

(A) The name and address of the person making the complaint or on whose behalf the complaint is made;

(B) The name and location of the facility;

(C) The date or approximate date on which the event complained of occurred, and

(D) A statement of what actions the complainant considers to violate the requirements of this subpart.

(ii) The Secretary promptly provides a copy of the complaint to each facility named in the complaint.

(3) When the Secretary investigates a facility, the facility shall provide to the Secretary on request any documents, records and other information concerning its operations that relate to the requirements of this subpart.

(4) The Act provides that if the Secretary dismisses a complaint or the Attorney General has not brought an action for compliance within six months from the date on which the complaint is filed, the person filing it may bring a private action to effectuate compliance with the assurance. If the Secretary determines that he will be unable to issue a decision on a complaint or otherwise take appropriate action within the six month period, he may, based on priorities for the disposition of complaints that are established to promote the most effective use of enforcement resources, or on the request of the complainant, dismiss the complaint without a finding as to compliance prior to the end of the six month period, but no earlier than 45 days after the complaint is filed.

(b) *Enforcement.*

(1) If the Secretary finds, based on his investigation under paragraph (a) of this section, that a facility did not comply with the requirements of this subpart, he may take any action authorized by law to secure compliance, including but not limited to voluntary agreement or a request to the Attorney General to bring an action against the facility for specific performance.

(2) If the Secretary finds, based on his investigation under paragraph (a) of this section, that a facility has limited the availability of its services in a manner proscribed by this subpart, he may, in addition to any other action that he is authorized to take in accordance with the Act, require the facility to establish an effective affirmative action plan that in his judgment is designed to insure that its services are made available in accordance with the requirements of this subpart.

§ 124.607 Agreements with State agencies.

(a) Where the Secretary finds that it will promote the purposes of this subpart, and the State agency is able and willing to do so, he may enter into an agreement with the State agency for

[1] The addresses of the Regional Office of HEW are set out in 45 C.F.R. 5.31.

the State agency to assist him in administering this subpart in the State.

(b) Under an agreement, the State agency will provide the Secretary with any assistance he requests in any one or more of the following areas, as set out in the agreement:

(1) Investigation of complaints of noncompliance;

(2) Monitoring the compliance of facilities with the requirements of this subpart;

(3) Review of affirmative action plans submitted under § 124.606(b);

(4) Review of reports submitted under § 124.605;

(5) Making initial decisions for the Secretary with respect to compliance, subject to appeal by any party to the Secretary or review by the Secretary on his own initiative; and

(6) Application of any sanctions available to it under State law (such as license revocation or termination of State assistance) against facilities determined to be out of compliance with the requirements of this subpart.

(c) A State agency may use funds received under section 1525 of the Act to pay for expenses incurred in the course of carrying out this agreement.

(d) Nothing in this subpart precludes any State from taking any action authorized by State law regarding the provision of services by any facility in the State as long as the action taken does not prevent the Secretary from enforcing the requirements of this subpart.

Appendix I

SUMMARY OF PUBLIC COMMENTS AND DEPARTMENT'S ACTIONS ON THE UNCOMPENSATED SERVICES AND COMMUNITY SERVICE REGULATIONS

The public comments and the Department's actions on the proposed rules are summarized below. The discussion proceeds sequentially through the regulations. In order to ease understanding of the comments and the Department's response, a brief background statement of the existing and proposed rules precedes each section.

Uncompensated Services

I. Applicability of the rules.

A. Background.

The present rules, set out at 42 CFR 53.111, apply only to Title VI facilities. They apply to facilities assisted with grants for 20 years after completion of construction and to facilities assisted with loans or loan guarantees during the period in which the loan remains unpaid. 42 CFR 53.111(a).

The proposed rules retained the policies of the present rules for Title VI facilities, adding a definition of the term "completion of construction." For Title XVI assisted facilities, the rules applied "at all times" following approval of the Title XVI application, except where the facility assisted did not provide health services when approved. In that case, the rules became applicable when the facility began to provide services. Proposed 42 CFR 124.501.

B. Public comment.

1. Consumers generally opposed the 20 year limit for Title VI facilities as proposed. A large number argued that it should be eliminated entirely, on grounds such as the following: substantial consumer need and hospitals' ability to provide services; the alleged failure of the Department and Title VI State agencies to enforce the obligations in the past; the lack of statutory support for the 20 year limit. Many consumers asserted that prior to 1972, when the 20 year limit was established, the duty to provide uncompensated care was essentially unrecognized and that since 1972 enforcement has been inadequate or inconsistent. Several consumers emphasized that the durational limitation is strictly regulatory. Thus, they argue that facilities which received aid before 1972 did not rely on the limitation. According to consumers, the cases cited in the proposed rules as upholding the 20 year limit merely endorse the Department's authority to apply a limitation but would not bar the removal or alteration by the Department of it.

Other consumers, however, acknowledged that 20 years of actually providing services might be "reasonable", as well as politically more acceptable than restoration of an unlimited duty. They therefore suggested various modifications of the durational limitation. The proposals most commonly made were having the 20 years run from (1) the effective date of the new regulations; (2) the date the facility can document its provision of uncompensated care or the completion of construction, whichever is later; or (3) 1972, when the existing regulations were issued, on the theory that there were no compliance standards (and hence no compliance) before that date. If the 20 year limitation were to run from the effective date of the new regulations, a few comments suggested that the regulations provide for a credit for years in which a facility met the "3%" or "10%" level of care under the present regulations. Consumer comments also urged that if the present 20 year limit is maintained, it be enforced retrospectively.

2. Another consumer suggestion was that the supplemental programs included in the Federal assistance base upon which the 10% compliance level is calculated should be added to § 124.501(a), thereby making these regulations applicable to those supplementary programs.

3. Provider comments consistently supported the proposed retention of the Title VI time limits on the uncompensated services obligation. It was argued that the durational limit is statutorily required, i.e., that the obligation to the government should last only as long as the government's right of recovery (section 609 of the Act) and that the term "reasonable volume" implies an absolute dollar amount of services that is inconsistent with an open-ended obligation. Numerous providers also argued that eliminating or extending the durational limitation now would constitute "impairment of contract", particularly with respect to those facilities assisted after 1972. They argued that any extension of the obligation would impair their long-term financial solvency and divert funds from patient care, and that facilities that have undertaken long-term financial plans and commitments relying on their limited obligations under the present regulations would be significantly harmed.

4. Providers generally opposed the applicability of the uncompensated services assurance without a durational limitation for Title XVI assisted facilities. See proposed § 124.501(b)(2). Some asserted that the perpetual obligation was unauthorized, and that the period of obligation should be the same as for Title VI assisted facilities. Some argued that the Department has misinterpreted the statutory language "at all times," and that the phrase only meant "at all times" during the period in which the obligation applies (that is, 20 years). Providers also expressed the view that it would be prohibitively costly to assume an open-ended obligation and that the net effect of such a rule would be to discourage providers from seeking assistance under Title XVI, a result not intended by Congress. Others argued that the effect of the rule would be to perpetually penalize private-pay patients, who must bear the cost of the uncompensated services provided.

5. A few provider and government comments opposed the clarification of the term "completion of construction" in the proposed rules. They argued that this change would only cause confusion, since for most Title VI facilities the commencement of the obligation is already clearly established.

C. Department's Actions and Response

Although the Department has retained the 20 year period of obligation for Title VI assisted facilities it has made one change that is responsive to those comments that urged that the 20 year period should not be used to "forgive" non-compliance during the 20 year period. Section 124.501(b)(1) now permits lengthening or shortening of the durational limitations for Title VI facilities, to be consistent with the deficit make-up and excess compliance provisions of § 124.503 (b) and (c). The concept underlying those sections is that Title VI facilities undertook to provide a total "volume" of services. The size of that volume is a function of both the annual compliance level and the remaining period of obligation, but it is in essence a fixed amount of services. That being the case, facilities that fail to provide that volume before their 20 year period of obligation expires should not benefit from their failure, while facilities that more than meet their obligation in some years should be credited with the extra amount of services provided. These considerations dictated adjustment of the period of obligation. The discussion below of the compliance level and deficit and excess compliance provisions explains the Department's position more fully.

With respect to those comments it has not accepted the Department responds as follows:

1. While the Department agrees with consumers that it did not have to interpret the uncompensated services assurance as being limited to 20 years, it does not agree that once having done so it can now "wipe the state clean" and completely eliminate or substantially modify that limitation. As pointed out in the preamble to the proposed rules, the courts have consistently upheld the validity of this interpretation of the statute, so it cannot seriously be contended that the limitation itself is contrary to law. The Department recognizes that any facilities that have avoided their obligations in the past will benefit from the limitation. Nevertheless, the proposal to eliminate or recalculate the limitation clearly raises significant legal and practical questions. Moreover, the Department has no grounds for making the factual assumption that would be implied if it eliminated or recalculated the limitation—namely, that *all* facilities have avoided their obligation and therefore should get no credit for past years of compliance. Moreover, it is persuaded that there has been provider reliance on the 20 year rule, certainly by those facilities funded after 1972 and, to some extent, in the long-term financial planning since that time by all assisted facilities.

The suggestion that facilities be credited with compliance for only those years since 1972 in which compliance is clearly established answers some of these problems, but has difficulties of its own. It would require the Department to audit thousands of facilities to establish which years could be credited. This effort would entail a diversion of Department resources that would significantly impair its ability to implement these rules. In addition, many facilities did not retain records sufficient to establish compliance for all those years, nor did the current regulations require that they do so. In many cases, therefore, past compliance will be impossible to establish administratively. The Department expresses no opinion as to the possible remedies available to a private litigant against a particular facility.

Finally, the Department notes that it has accepted—prospectively, to be sure—the theory behind most of the consumer suggestions. Unlike the policy of the present regulation, the durational limitation is no longer absolute; the passage of time will no longer avoid the obligation of a noncomplying facility. Although the Department does not believe it can rectify all the injustices of the past, it has taken steps to assure that they do not recur in the future.

2. The Department has not accepted the suggestion that these regulations apply to the supplemental programs. Those programs lie outside the scope of this regulation, which addresses Titles VI and XVI assistance only. Also, four of the five acts are not totally administered by the Secretary, and thus may lie outside his power to regulate unilaterally. The Department is presently looking into whether it may and should issue regulations to cover the assurances given under these Acts in connection with projects not funded in conjuction with Title VI projects. Finally, to the extent that assistance under those programs is "supplemental" to Title VI or XVI assistance and not "freestanding," it is in effect covered by their inclusion in the term "Federal assistance" as defined in § 124.502.

3. As discussed above, the Department is persuaded by the reasons given by the providers in support of the retention of the durational limitation. Their comments are hence not discussed extensively here. However, the Department has not accepted the provider position completely, in that it has provided for extension of the period of obligation where there is a deficit in the amount of uncompensated services provided. The Department does not believe that any extension of the period of obligation constitutes "impairment of contract" as many providers urged. Assuming for discussion that the government-facility relationship is a contractual one, the obligation facilities assumed was to provide "a reasonable volume" of services. The extension of the period of obligation where a deficit occurs does not increase what facilities are required to provide but rather merely assures that the facilities live up to their end of the bargain.

4. The Department has not modified the unlimited period of obligation proposed for Title XVI assisted facilities. The "at all times" language is statutory. See section 1604(b)(1)(J), discussed in the preamble. The Department does not believe that the "at all times" language means "at all times" for a 20 year period, as argued by many providers. The change in language from that in the Title VI assurance would make no sense if this theory were correct, since that has alway been the interpretation of the Title VI assurance. Moreover, when Congress intended a 20 year period to apply in Title XVI, it clearly said so. See section 1631(a).

5. In defining the term "completion of construction," the Department intended to codify and clarify longstanding administrative practice. Moreover, since the Department believes that its definition accords with the way the term has been administered in the past, it does not believe that the confusion anticipated by some comments will materialize.

II. Definitions

A. Background

The proposed rules carried forward several of the definitions of the current rules either unchanged or with only technical modifications. However, a few terms of the current regulations were modified, and two new terms introduced. The term "operating costs" (which is used as the base for the 3% compliance level) was changed to make clear that the costs to be considered are those of a previous, rather than the current, fiscal year. The term "Federal assistance" was expanded to include assistance under programs supplemental to Title VI. The term "uncompensated services" was modified to eliminate the reference to "reasonable cost" and reflect the new "allowable credit" approach. The term "allowable credit" was proposed, to provide a more precise means of calculating the extent to which services provided to a person unable to pay may be credited toward a facility's uncompensated services quota.

B. Public comment

The public comment focused on the changed and new definitions described above, although one definition unchanged from the current regulations ("applicant") evoked criticism. The definitions below are discussed in the order they appear in the final rules.

1. *"Allowable credit":* This definition drew comment from a number of providers. Most objected to the use of the Medicare allowable cost factor and asserted that computation on a cost basis is unfair to charge-based payors and is unworkable. A common objection was that the allowable credit excludes Medicare nonallowable costs, while the base for computing the option of 3% of operating costs includes Medicare nonallowable costs. This, it was argued, results in a two-step inflation of the obligation (for 3% facilities) and an arbitrary application of Medicare cost principles, and the Department was urged to base the credit on the facility's operating expenses or customary charges. Arguing that the regulations should use the ratio of actual cost to charges in determining credit, providers urged that since uncompensated services patients benefit from upgraded services which may nevertheless be unallowable under Medicare (e.g., telephones), they should participate in their cost. Other specific suggestions were made for use of various ratios based on usual charges or operating expenses to determine allowable credit.

Providers also pointed out that if the definition of allowable credit requires use of post-audit figures then it would be impossible for a facility to tell during the year what the status of its obligation was. However, if the unaudited figures are used (as implied by the proposed rules), then the allowable credit will be based on inaccurate figures.

2. *"Applicant":* This term was generally characterized as difficult and ambiguous. Consumer comments suggested that "applicant" be replaced with "facility" or "federally-assisted facility" to reflect the fact that covered facilities have already received Federal funds.

3. *"Federal assistance":* Providers protested that, unless specifically provided for by the statutes governing the supplemental programs listed, any expansion of the Titles VI and XVI obligations to include such funds is unauthorized. Consumers, on the other hand, argued that the regulations must cover the listed supplemental construction programs, which "look like Hill-Burton, act like Hill-Burton, were filed on Hill Burton forms and were accompanied by the same Hill-Burton promises."

Providers also objected that "Federal assistance" for loans and loan guarantees is inappropriately defined to include the total amount of interest subsidy that has been "or will be" provided over the life of the loan. Providers argued that the definition should cover only interest subsidies that have been made as of the year in which the obligation computation is made. Failure to do this

would, together with the inflation factor, make the cost of the loan money exceed usury rates.

4. *"Operating costs":* Consumer comments proposed that the definition should not exclude payments received from Medicare and Medicaid, arguing that exclusion of such payments implied that they were "inappropriate or inadequate." Another consumer suggestion was that operating costs be defined not in terms of an audited financial statement for a prior year but rather in terms of a combination of actual and projected costs for the current year to avoid minimizing the obligation due to intervening inflation in costs.

5. *"Request for services":* Several consumer comments urged that the terms "request for services" and "promptly"be defined carefully, so that the standard for compliance with the eligibility determination requirement would be clear. Time periods such as 2 and 5 working days were suggested.

6. *"Service area":* Several consumer comments urged that the term "service area" be defined for these regulations. One suggested that it be whatever area the facility said it would serve in its Title VI or XVI application.

7. *"State agency":* A governmental comment urged that the term State agency be expanded to include other agencies accredited by the Secretary.

8. *"Uncompensated services":* some providers interpreted the exclusion of amounts "actually charged" for services to prohibit determinations of eligibility after rendition of a bill, and urged a change in the definition to exclude "amounts actually collected from" rather than "amounts actually charged" such persons. Substantially similar points were made by a few consumers.

C. Department's Actions and Response

1. *"Allowable credit":* The rules clarify that past allowable cost figures must be used, to eliminate the problems with using projected figures noted by providers. Otherwise, the definition remains unchanged. The Department believes that the ratio of allowable cost to revenues is a reasonable one for purposes of calculating what portion of charges should be credited towards fulfillment of the obligation. It believes that costs credited towards the obligation should not take into account costs not directly related to patient care; use of Medicare "allowable costs" accomplishes this. The consumer suggestion that only the allowable cost to revenues ratio be used has been rejected, however, because where care is subsidized the usual charge will be less than the ratio; in such cases the benefit to persons unable to pay is simply the amount not being charged.

2. *"Applicant":* The Department agrees with those comments characterizing the term "applicant" as used in the proposed rules as confusing. That term now is used to denote persons who apply for uncompensated services; the term "facility" is now used to denote the assisted facility.

3. *"Federal assistance":* The Department agrees with consumers that it should include the programs of supplemental assistance in the base for calculation of the "10%" compliance level. As for the provider argument that it has no legal authority to include those programs, the Secretary is clearly authorized to define what is a "reasonable volume of services". Inclusion of the supplemental programs in the base of Federal assistance on which the 10% compliance level is calculated is reasonable, since funding under those programs was, by definition, provided for the Title VI project. The uncompensated services assurance, given for the Title VI project as a whole, can thus reasonably be said to have been given for the supplemental programs also.

The Department is persuaded by the provider comments that the inclusion of future assistance in the amount of "Federal assistance" for purposes of the loan and loan guarantee program is onerous. Accordingly, the definition has been changed to make clear that only accrued assistance is "Federal assistance" for purposes of the 10% compliance level.

4. *"Operating costs":* The consumer suggestion that the definition of operating costs include Medicaid/Medicare reimbursements has been rejected. The exclusion mirrors that in the existing regulations. To eliminate it would change the 3% compliance level, which is not the Department's intent. Rather, except for the inflation factor, the Department believes that the present dollar-volume compliance levels are a reasonable measurement of "reasonable volume" and should therefore not be changed. The suggestion that operating costs be based on combined actual and projected costs has been rejected as unworkable. Because of accounting lags, current and projected numbers are inherently subjective, open to question and subject to revision. It is far more important that facilities, the public and the Secretary know currently and with certainly what a 3% facility's current compliance obligation is than that the method by which that obligation is calculated incorporate any cost increases of the most recent few months.

5. *"Request for uncompensated services":* A definition of this term has been added in response to the many requests that it be defined. The definition is discussed fully in section XI below.

6. *"Service area":* This term has not been defined for the uncompensated services regulations. It is not needed here, because the scope of a facility's service area is not relevant to its obligations under these rules, unlike the community service rules, which require services to be available to all persons residing in the service area. The term has been defined for the community service regulations.

7. *"State agency":* The suggestion that this term include State agencies other than the Title XV State agency has not been accepted. The Department does not believe that a viable arrangement with an agency of a State can be established absent compensation. At present the only authority under which Federal funds may be used for the assurances programs is section 1525 of the Act, the grant to the Title XV State agency.

8. *"Uncompensated services":* This definition has been changed to make clear, as suggested by many comments, that the amount of uncompensated services excludes amounts charged following an eligibility determination, but not charges forgiven as a result of such a determination. The suggestion that only amounts actually collected should be deducted was not accepted because amounts charged after a determination that a person is eligible for uncompensated services, i.e. to a Category B patient, should not be credited towards satisfaction of the facility's obligation if they are not actually collected. These amounts are by definition amounts the individual was considered able to pay under the applicable criteria and therefore are no different than other uncollectible amounts.

III. Compliance Level

A. Background

The current regulations give facilities two options as to the amount of uncompensated services they must provide in a fiscal year: (1) the lesser of "3%" of operating costs of "10%" of Federal assistance; or (2) they may certify that they will turn no one away on the basis of inability to pay and will provide uncompensated services to those so admitted who are eligible for them. 42 CFR 53.111(d). This later option is popularly known as the "open door" option. If a facility selects one of these options, the State agency may not set a higher compliance level for it. 42 CFR 53.111(h)(1).

The proposed rules proposed elimination of the open door option, leaving just one annual compliance level—the lesser of 3% of operating costs or 10% of Federal assistance. See proposed § 124.503(a). Although the 3% standard was left essentially unchanged, it was proposed to modify the 10% standard by requiring that the Federal assistance received be multiplied by an "inflation factor", so that the real value of services to be provided under this standard would stay constant. The inflation factor proposed was the national Consumer Price Index for medical care. If a facility could not meet the annual compliance level, it could ask the Secretary to set a lower level of compliance for it, following the procedures set out in proposed § 124.504.

B. Public Comment

Proposed § 124.503 generated the most comment of any section of the proposed rules. In general, these comments centered on the elimination of the open door option and the inflation factor. The lower level of compliance procedure received extensive comment in conjunction with the comments on the open door option, but those comments are discussed in section V below.

1. *Elimination of the open door option.* a. Providers opposed the elimination of the open door option. Many maintained the option is the most appropriate compliance method for the many hospitals that have an open door policy based on traditional practice or state and local laws. It was also claimed that the open door is the only option "that truly addresses the needs of individual communities," by permitting the facility to fulfill whatever level of need exists in the

community without having to submit to complicated administrative requirements for seeking annual exceptions.

Providers and State agencies claimed the proposed regulations will create problems for facilities that never turn anyone away, such as public-general hospitals, hospitals always maintaining an open door, hospitals that are the sole providers in the community, or hospitals that are mandated by state or local law to maintain an open door. Many providers argued that the elimination of the open door option would result in less uncompensated services being provided. They also urged retention of the option because it is easier to administer, stating that less paperwork and reporting was involved. Many also stated that a particular quota is unnecessary because most facilities provide care regardless of the individual's ability to pay. One community hospital asserted that removal of the open door option would increase its bad debts by $35,000 annually.

Numerous providers objected to the removal of the option on the grounds that there was insufficient need in their communities to enable them to meet the 3% or 10% compliance levels. For example, one acute care 167-bed general hospital in Nebraska pointed out that in 1976 and 1977 its bad debts and charity care combined would not have met the 3% option. Some providers pointed out that community need fluctuates from year to year as employment and other local conditions change, and others that community need may be low in States where welfare benefits are high or people resent or refuse to accept "charity." The open door option, it was argued, enables facilities to adapt to such situations.

Many providers argued that the existing mechanisms are functioning and there has been no showing of substantial violation to substantiate the need for the new regulations. The Department's statistics were cited as showing that few complaints have been made to the State agencies; they were also cited for the proposition that open door facilities are providing their proportionate share of uncompensated services. Others pointed out that if the problem with the option lies in monitoring it, the remedy is not to eliminate it but to set up reporting requirements that will permit adequate monitoring. Alternatively, it was suggested that the option be eliminated for those facilities that abuse it.

Several comments stated that the option was most consistent with the statutory requirement that uncompensated services be "made available," not that they be "provided." Others argued that elimination of the option would constitute impairment of contract.

b. Consumer response to the proposed elimination of the option was mixed. For example, several legal aid societies opposed its elimination, arguing that it is the best opportunity for providing care to the needy. They argued that if the open door method has been misunderstood in the past, as represented in the preamble to the proposed rules, it was a result of inadequate and vague regulations. Although good data concerning facilities' use of the open door option is lacking and facilities have frequently combined free care with bad debts and other uncompensated services, these comments emphasized that proof of compliance would not be impossible, given new regulations concerning recordkeeping, and written determinations of eligibility. Acknowledging that a carryover of any deficit would not be appropriate with the open door option, the comments suggest that the Department require the facilities to reimburse all costs incurred by an individual wrongly deemed ineligible.

A large number of consumers felt that because of past abuse of the open door option, its elimination is, as a general matter, a good idea. For example, some stated they agreed with the proposed policy because it has served as "a long standing 'dodge' for hospitals that sought to evade their responsibilities." One stated that, based on the unaudited reports of a group of Rhode Island hospitals, in only 7 out of 40 instances where open door facilities reported on their uncompensated services level did those facilities provide uncompensated services equal to the amount they would have been obligated to give under the 10% option. In response to the asserted concern by providers that eliminating the option might limit facilities' charitable intentions, comments suggested that the open door option be continued if no less than 3% or 10% is provided and advance, written individual notice is provided to patients.

2. *Inflation Factor.* a. Providers generally objected both to the use of the inflation factor and to the use of the percentage change in the national Consumer Price Index for medical care as the measure of inflation. The general theme of the comments was that a 200% return of the original aid was sufficient, and that use of an inflation factor changed the original terms of the contract and resulted in an impossible burden on facilities.

The inflation factor was characterized as being itself inflationary, resulting in imposition of additional charges on paying patients. Providers claimed that addition of the inflation factor could result in an institution's obligation increasing geomatrically and overwhelmingly. Providers also stated that inflation reduces facilities' ability to provide uncompensated services, particularly should the Administration succeed in restricting the amount facilities can collect in revenue.

Providers also objected that if an inflation adjustment is to be added, the medical care component of the Consumer Price Index is not an appropriate measure of inflation. These comments claimed that the CPI includes inappropriate factors in addition to straight inflation. Providers also alleged that the proposed formula would discriminate against institutions and areas of the country where costs increases have been held to a level below the national average. Some providers suggested that instead of using the CPI, the regulations should provide for application of changes in the cost of money or the prime rate, since those most nearly reflect the opportunity cost of commercial construction money.

b. Consumers generally supported the use of an inflation factor. Some argued that if the 10% compliance level amounts to a higher level of care than the 3% level the facility should be required to choose the former because it is more logical to require free care in proportion to the grant or loan than in proportion to the facility's operating costs.

While praising the concept of the inflation factor, some comments argued that it should be applied retrospectively to the date the federally-assisted construction was completed or to 1972. Pointing to the past increase in the CPI for medical costs they noted the ease with which the computation can be made and stated that the failure to apply inflation retrospectively "condemned consumers to appreciate less than half of the Hill-Burton entitlement."

3. *Other comments.* a. A few comments suggested that the entire approach of proposed § 124.503 was inappropriate for public and private facilities that primarily serve the indigent. In such cases, uncompensated services far in excess of the compliance levels is provided. It was argued that to burden such facilities with the extensive procedural and administrative requirements of these regulations is unnecessary.

b. Several consumers urged that a mechanism for community and/or HSA review and approval of a facility's compliance level be built into § 124.503. It was argued that if "community need" were greater than what the facility was required to provide under that section, the compliance level should be adjusted upwards.

C. Department's Actions and Response

The final rules retain the compliance levels contained in proposed § 124.503(a), although the practical effect of those levels is considerably affected by the deficit and excess compliance provisions discussed below.

1. *Elimination of the open door option.* The Department continues to believe that elimination of the open door option is necessary, for the reasons stated in the preamble to the proposed rules and by many consumers. A clear dollar standard against which facility performance can be measured will simplify monitoring and administration, gain public confidence that a "reasonable volume" of services has in fact been made available, and will result in facilities shouldering relatively equal minimum obligations to serve the medically indigent. This decision will not result in less uncompensated services being provided, as argued by numerous comments. These comments miss the point of the annual compliance level requirement. That requirement is simply a minimum. It does not preclude facilities from exceeding it; indeed, they will get credit if they do. See § 124.503(c). Moreover, facilities are also specifically authorized to adopt a policy under which all persons needing services will receive them regardless of ability to pay. See § 124.507. The Department will only use the dollar compliance level as a standard to assure a minimum level of service.

The Department does not agree with the numerous comments arguing for retention of the open door option because it is cheaper

and easier to administer. Compliance with the option either requires eligibility determinations for virtually every person seeking admission, or individual notice and an opportunity for every such person to request a determination. This option is therefore more difficult and expensive to administer than the other option under the present regulations, which requires determinations only on request. It is clearly no easier or cheaper than these final rules. Indeed, these comments (and the comment suggesting that bad debts would somehow increase when the open door was eliminated) prove the Department's position that the option is "ill understood". They also illustrate the fallacy of the reported statistics, since those statistics by definition do not show how many persons who should have been provided uncompensated services by open door facilities were denied them. Moreover, the statistics themselves are based on aggregate reports by State agencies, and almost certainly reflect some erroneous reporting (e.g., inclusion of bad debts, or other forms of charity care).

The Department recognizes that the open door option, properly applied, would serve a valid purpose where there is insufficient community need fully to meet the compliance level for a particular year. Nevertheless, it does not believe that it is the only reasonable accommodation to such situations. Nor does it believe that insufficient need for a particular year should serve to reduce the total obligation for Title VI facilities. The deficit make-up provisions of the final regulations, together with the affirmative action requirement, therefore permit Title VI facilities to extend their compliance period to adapt to insufficient community need. See § 124.503(b) and § 124.504, discussed in section IV below.

2. *Inflation factor.* The Department continues to believe that the inflation factor is appropriate policy. The effect of the policy is to keep the value of the services provided constant, so that the indigent are not deprived of services by inflation. Moreover, since the value of the services provided will stay approximately constant, the Department cannot agree that what is not an "onerous burden" now will become one in the future. Nevertheless, in view of the costs of this policy (see Appendix II), the Department will reevaluate it in light of experience with it over the next three years.

The Department does not believe that this policy "impairs the contract" between assisted facilities and the government. As noted above, the "contract" is for the facilities to provide a "reasonable volume of services." Adjusting the 10% compliance levels by the inflation factor represents a reasonable Federal interpretation of what a "reasonable volume" is over time, and it also makes this compliance level consistent with the 3% of operating costs compliance level, since the latter automatically incorporates inflation as costs increase.

While the Department recognizes that the CPI for medical care does not perfectly reflect inflation in the cost of services from facilities, that index is the closest approximation available and hence has been retained. It is used rather than the various measures of change in the cost of money proposed, since what is being measured is the required level of *services*, not the underlying base of Federal assistance. Although the Department recognizes that use of a national index penalizes those facilities whose cost have stayed below the national rate, it nevertheless believes that use of a national index is necessary in light of the compelling need to have readily ascertainable compliance standards, which the national CPI for medical care provides.

The consumer suggestions that the inflation factor be calculated from 1972 or an earlier date are rejected. To do so would subject assisted facilities to a suddenly increased obligation for which they have had no opportunity to plan. The argument that facilities be required to comply with the 10% compliance level where it is higher (as well as lower) than the 3% compliance level is also rejected. If such a rule were adopted, the resulting burden for facilities that had received substantial assistance in the past would by definition exceed 3% of their operating costs and—given the margins many facilities operate under—create ongoing financial problems for them.

3. *Other comments.* We disagree with the suggestion that the approach of the regulation, i.e., setting an annual compliance standard and minimum procedural requirements designed to assure compliance with the standard, is inappropriate as applied to those facilities that primarily serve the indigent. The Department notes that, under § 124.503(c) (discussed below), a facility may in effect adopt an "open door" approach to providing uncompensated services, and credit excess amounts of compliance against future years' obligations. This enables those facilities to "buy out" of the program and its procedural requirements early should they wish to do so, but retains the basic approach needed in those facilities that are not designed primarily to serve the indigent and therefore might not provide the required volume of services but for these rules. See § 124.503(c) and section IV below.

The consumer suggestion that "community need" be built into the compliance levels has not been adopted. It appears unworkable, in that it would result in potentially open-ended or not readily ascertainable compliance levels, which would preclude sound financial planning by facilities. Moreover, it is fundamentally unfair to subject facilities to different compliance standards, particularly where the effect of such a test would have the anomalous result of giving the heaviest burden to facilities that are located in the poorest communities and are therefore least likely to be able to afford the extra burden.

IV. Deficits and excesses in compliance

A. Background

The current regulations contain no provision for make-up of any deficit in the amount on uncompensated services provided in a fiscal year, although if a deficit occurs the facility is required to submit an affirmative action plan to the State agency. 42 CFR 53.111(e)(2)(iii). Under the proposed rules, where a facility did not meet the annual compliance level or the lower level established under proposed § 124.504, it was required to make up the deficit in the following year unless the Secretary extended the period for make-up. See proposed § 124.503(b).

B. Public comment.

1. The deficit make-up provision was vigorously opposed by providers and a few State agencies. They argued that it would require facilities to give more care than is reasonably needed. Providers contended in general that this provision constituted impairment of contract or was *ex post facto* legislation. It was argued that where there is no suggestion of noncompliance with the procedures specified by the regulation, the requirement would constitute an unlawful expansion of the obligation. Rather, a number of providers urged that the deficit make-up be applied only where the facility has willfully failed to comply with the regulations, not merely where there had been a shortfall in the amount of uncompensated services provided.

Numerous providers also stated that if the carryover of a shortfall is to be applied, fairness demanded that a reciprocal carryover for *excess* uncompensated services which are provided be added.

2. Consumers uniformly endorsed the notion of a deficit make-up, occasionally suggesting stronger penalties or more vigorous application. For example, consumer comments suggested that the deficit make-up be applied retrospectively and that the amount to be made up include an inflation factor to deter facilities from carrying over deficits to future years when they can be paid in dollars cheapened by inflation. Similarly, other consumer comments proposed that if the durational limitation is to run from completion of the constructon, a facility that selected the 3% or 10% option should be required to make up any deficit incurred since 1972. Arguing for deficit make-up for 1973–78, one comment pointed out that facilities have been on notice of their duty since 1972 and a failure to apply the make-up factor will let many avoid their obligation entirely.

Another consumer suggestion was that, in addition to retrospective application of the make-up, an add-on for facilities that substantially failed in their open door undertakings in the past be applied, requiring that an extra year of 3% or 10% or of open door services be provided for each year of past failure. It was also urged that in order to deter noncompliance, a surcharge of at least 10% of the facility's obligation in addition to its make-up quota be added for facilities that failed to comply with the regulations. Consumers suggested that the deficit make-up also be applied to years when a facility's application for a lower level of compliance was granted.

Another consumer suggestion was that the deficit be made up before section 1122 review or review of any proposed use of Federal funds by a facility is conducted by the HSA or State health planning and development agency. It was argued that only with such

sanctions would there be assurance that the deficit would be provided.

C. Department's actions and response

The deficit make-up requirement has been retained, but the application of it has been significantly modified. See § 124.503(b). The changes in the deficit make-up requirement parallel the other major change to this section, the addition of a provision enabling facilities to take credit for any excess in uncompensated services provided. See § 124.503(c).

The theory of both § 124.503(b) and § 124.503(c) is that facilities are obligated to provide a fixed "volume" of uncompensated services over the entire period of their obligation. As indicated earlier, for Title VI facilities, the precise amount of that "volume" is determined by looking to both their annual compliance level (including the rate of inflation) and their remaining period of obligation. Given a fixed obligation, it is illogical to allow the passage of time to enable facilities which have failed to meet that obligation to avoid it entirely. Similarly, as providers repeatedly pointed out, the logic of the deficit make-up requirement compels the conclusion that facilities that provide more than the compliance level of services in a fiscal year should be able to reduce their obligation in the future by an equivalent amount. The Department has therefore provided for such reduction.

What is critical for Title VI assisted facilities under this new approach is timing. The proposed rules would have permitted facilities to avoid the deficit make-up requirement by applying to the Secretary in advance for a lower compliance level. These rules eliminate that procedure entirely, with the result that Title VI facilities may no longer be excused from any of their obligation. Now, the only question is *when* those services are provided. Under these rules, the answer to that question depends on why the deficit occurred. If the deficit was due to the facility's financial straits or the lack of community need for the services, then the facility may decide when to make up the deficit; if the deficit was due to noncompliance, then the deficit must be made up in the next year, unless the Secretary extends this time.

The obligation of Title XVI facilities is not limited by time (see § 124.501 (b)(2)); the obligation is therefore defined solely by the annual compliance level. However, the statute requires the Secretary to "take into consideration" their financial condition in determining the amount of services they should provide. The regulations implement this by providing that to the extent a Title XVI assisted facility fails to meet its annual compliance level because it was financially unable to do so, the amount of uncompensated services provided constitutes its compliance level for that year. Similarly, where the deficit was due to insufficient community need for the services, the deficit clearly caused no "harm" to the community and it would therefore be anomalous to carry it forward. In such a situation, the amount of services provided likewise constitutes compliance. Where the deficit was due to noncompliance, however, the same make-up rule for Title VI assisted facilities applies to Title XVI assisted facilities.

The rules for Titles VI and XVI assisted facilities are the same with regard to use of the excess to reduce the annual compliance level. Since a facility with excess compliance in a fiscal year has by definition met its annual compliance level under § 124.503(a) for that year, it may decide when to use that excess to reduce its compliance level. A facility may thus "buy out" of the program in future years by providing more uncompensated services now; a specific methodology for this has been provided for Title VI assisted facilities. See § 124.503(c)(2). If a facility claims an excess that it did not in fact provide, the amount erroneously claimed in subject to the deficit make-up provisions. In addition, the regulation specifically provides that excess compliance credit will be given only if the excess was provided in accordance with this subpart. This means that to obtain excess credit the uncompensated services must be provided in accordance with the allocation plan, and that individual notices required by § 124.505(d) were given out and eligibility determinations required by § 124.508 were made throughout the period of time for which excess compliance credit is claimed.

Consistent with the theory underlying the inflation factor as applied to the annual compliance level—that the value of the "volume" of services provided should stay constant—the final rules apply the inflation factor to deficits and excesses. See § 124.503(d). This ensures that inflation does not cheapen the value of an excess to a facility when it is used in a future year; it will also remove any incentive facilities might have not to comply in the present so that their obligation becomes cheaper in the future.

The above policies incorporate many suggestions of the public comments. The consumer suggestion that the deficit be made retroactive has not been accepted. This proposal raises the same resource, recordkeeping and legal problems as were described in connection with the proposed retroactive changes in the applicability requirement in section I above. The other consumer suggestions for a federally mandated penalty and use of the health planning process for sanction purposes are considered to be unauthorized by the statute.

V. Lower level of compliance; Affirmative action plans

A. Background

The present rules provide procedures by which a facility may ask the State agency to establish a compliance level for it lower than the applicable presumptive compliance level of § 53.111(d). 42 CFR 53.111(h)(3). They also provide that where a facility fails to meet its presumptive compliance level in a fiscal year, it must provide an affirmative action plan to the State agency for the next year. 42 CFR 53.111(e)(2)(ii).

The proposed rules provided for a procedure by which a facility could request the Secretary to establish a compliance level for the fiscal year lower than the annual compliance level. The procedures called for local announcement of the request, opportunity for review of it by the local Health Systems Agency (HSA), and decision by the Secretary as to the ultimate level for the fiscal year within approximately 4 months after the year began. The Secretary would establish a lower compliance level where either the facility was financially unable to meet the compliance level or there was insufficient community need for uncompensated services at the compliance level. See proposed § 124.504.

B. Public Comment

A large number of providers objected that the procedures for applying and obtaining a lower level of compliance were extremely cumbersome and lengthy, disrupting a facility's budget 120 days into its fiscal year and requiring facilities to engage in an almost continuous application process. Numerous providers also objected to the involvement of HSAs.

Some providers argued that the criteria for determining whether a lower level of compliance was warranted, particularly the imminent bankruptcy standard suggested in the preamble to the proposed rules, were too stringent, and the regulations too vague about the documentation required. One provider suggested that validation of a facility's request for an exception be carried out during the normal audit by the local Medicare fiscal intermediary.

A number of consumers voiced a fundamental disagreement with the notion of a lower level of compliance based on insufficient need, asserting that no place in the United States has "insufficient need for uncompensated services." Similarly, some consumers believed that there was no statutory basis for an insufficient need exception from the established reasonable amount. Suggesting that availability of public or charity hospitals in the area might justify a request for a lower level, one critic claimed that the lack of need exception would encourage dual hospital systems, one for affluent and whites, one for poor and minorities. As an alternative to a grant of a lower level on the basis of insufficient need, consumers suggested that the service area of the facility be expanded or that other measures be adopted designed to increase utilization of the facility's uncompensated services.

To deter the use of the lower level as a loophole, consumers recommended that, after the facility becomes economically able to provide services at the 3 or 10% level, it be required to make up the amount previously excused. A provider, noting the difficulty of determining in advance when bankruptcy was likely to occur, also recommended deferral of the obligation as part of the lower level procedure. Other comments stressed the need for a definition of "financially unable to provide uncompensated services" and specific criteria to be used in evaluating applications.

C. Department's Actions and Response

The Department has substantially altered § 124.504 in response to the public comments.

It agrees that the prior approval procedure of that section would be unduly burdensome and unworkable. Moreover, the "fixed obligation" approach for Title VI facilities discussed in the preceding section makes the prior approval approach unnecessary, since the obligation can now only be postponed, not avoided. Therefore the approach has been abandoned, and the following adopted in its place.

Calculation of a facility's success in meeting the annual compliance level requirement will now generally be determined by the Department only after the fiscal year ends. (In fact, the Department is presently exploring the feasibility of making a routine investigation part of the Medicare audit process, as suggested by the public comment.) As stated above, if a Title VI assisted facility's failure to meet the compliance level is due to financial inability or insufficient community need, it must make up the deficit in services, but can control the timing of that make-up, within limits. If it is due to noncompliance, the deficit must be made up immediately, as must the deficit for noncomplying Title XVI assisted facilities. See § 124.511(b)(1). If a Title XVI assisted facility's deficit is due to financial inability or insufficient community need, the deficit is excused.

As recommended by the public comment, indicators to enable the Secretary to determine financial inability have been added. They are those presently in use in the Title VI loan program to signal default potential. They contain no bright-line tests, but the Secretary anticipates that they will give him sufficient data to permit him to make an informed judgment as to the financial capability of the facility to meet the annual compliance level. See § 124.511 (b)(1)(iii). The enforcement section of the regulation (§ 124.511) gives the Secretary, despite the general rule that compliance will be determined after the fiscal year, the ability to require a facility to increase the level of services it is providing when it appears that a lower level is not justified by the facility's financial situation.

The Department has not accepted the consumer contention that nowhere in the nation is there a community with a need for uncompensated services in any year that is less than the annual compliance level. Indeed, the experience of the 167-bed Nebraska hospital described above suggests that some areas simply do not have as great an annual need for uncompensated services as provided for in the annual standard. On the other hand, the Department does not have the data or resources to make the complex individual judgments that would be called for to evaluate a particular community's need for uncompensated services. More importantly, the Secretary has determined that a lack of need for uncompensated services at the annual compliance level in a particular year should not permanently excuse a facility from a portion of its total obligation, but rather the facility should satisfy the community's need over a longer period of time.

Under this approach, the only critical question is whether a facility has accurately reflected a community's need for uncompensated services in any year in which it has incurred a deficit. The Department has resolved this question as follows: If a facility fails to meet its compliance level, it is required to devise and implement an affirmative action plan unless its failure was because of financial liability to provide services at the annual level. See § 124.504. The plan may include such steps as appropriate publication of the availability of uncompensated services through local media, expansion of the area served, expansion of the allocation plan to include additional types of services and expanded financial eligibility criteria, and establishment of referral arrangements with nearby overcrowded facilities. The plan is subject to review by the Secretary, who may require the facility to strengthen it or to take such specific additional steps as he finds appropriate under the circumstances. See § 124.511(b)(2). However, if a facility has an approved affirmative action plan in place, it is the Department's view that if it then fails to meet its compliance level, its failure is due to insufficient community need. In other words, compliance with the affirmative action plan requirement establishes the presence or absence of community need for a facility's incompensated services. Of course, if a facility fails to comply with the affirmative action plan requirement although financially able to do so, its deficit will then be considered to be due to noncompliance, and the accelerated make-up requirement of § 124.511(b)(1)(i) will apply.

VI. Published notice

A. Background

The current rules require the State agency to publish annually, in a newspaper of general circulation in a facility's service area, the compliance level established for the facility. 42 CFR 53.111(h)(4). The proposed rules required each facility to publish in a newspaper 60 days before the beginning of its fiscal year notice of the amount of uncompensated services it would make available and its proposed allocation plan. The facility was also required to provide the notice to the local HSA. See proposed § 124.505(a).

B. Public comment

Providers generally considered the published notice requirement to be reasonable. However, some asserted that newspaper notices would encourage inappropriate shifts in referral and utilization patterns in areas where there are both Title VI and non-Title VI hospitals and create excess demand. Some providers also claimed that published notice was redundant, that HSA involvement was inappropriate, and that such notice would cause Title VI assisted facilities to be perceived as "charity institutions." An accounting firm proposed a combined newspaper report for area hospitals, instead of individual notices.

Consumers generally suggested refinement of the requirement. For example, a number of consumer organizations suggested that the required newspaper notice take the form of a block ad of a particular size and/or be run other than in the legal notices column of the newspaper, be required to be "conspicuous" and written in lay language, and be multilingual if necessary. Consumers also suggested that the rules require wider distribution, a public hearing by the HSA and a copy of the published notice to be appended to the facility's compliance report.

C. Department's actions and response

The final rule changes the proposed rule in three respects: (1) facilities are required to explain the basis for any provision of services less than the required compliance level; (2) a requirement is added for provision of an additional notice to the HSA if a facility changes its allocation plan during the fiscal year; and (3) newspaper publication of the final allocation plan is not required since interested members of the public who participated in the development of the proposed plan will have more effective means for ascertaining the final plan. See § 124.505 (a) and (b).

The Department is retaining the proposed policy because it believes that the published notice requirement is the most appropriate vehicle for giving advance notice to community groups of the amount and kind of services a facility intends to provide, so that they may attempt to influence a facility to change its plans before they are put into effect. The changes to the rule described above are consistent with this purpose, in that they serve to alert the public as to relevant issues concerning the facility's uncompensated services obligation.

Since the primary target of the notice is local organizations and groups, which will be a comparatively knowledgeable audience, the Department does not believe that extensive requirements as to wording and size of the notice as suggested by consumers are necessary. Nor do they appear desirable, in light of the additional compliance and monitoring problems they would create.

The Department discounts the possibility, raised by providers, of the published notice changing demand, since the present published notice requirement does not appear to have had that effect. Nor does it agree that the notice is redundant since its main purpose, explained above, is clearly different from that of the posted and individual notices, which are designed to alert patients of the availability of uncompensated services when they are seeking services. With respect to the suggestion for combined notices, the Department notes that § 124.505(a) does not prohibit such notices, as long as its requirements are met. HSAs might be helpful in arranging for such joint notices.

The provider and consumer suggestions regarding HSA involvement are discussed at the end of section X of this appendix, since they are so closely related to many aspects of the comments on that section.

VII. Posted notice

A. Background

The current rules require facilities to post notice (which must be multilingual in a multilingual community) in appropriate areas of the facility regarding the availability of uncompensated services in the facility. The notice must direct inquiries to the business

office and provide the address of the State agency for the filing of complaints. When a facility's quota is met, it has the option of providing an additional notice to this effect. 42 CFR 53.111(i).

The proposed rules retained and clarified these policies, defining the term "multilingual" and spelling out size and legibility requirements. Procedure for complaining to the Secretary was added to the notice language, to reflect the proposed change-over to Federal administration of the program. The provision for additional notice was made mandatory. See proposed § 124.505(b).

B. Public comment

Providers objected to the text of the proposed notice as being "over-regulation" or "cast negatively" and not including the eligibility requirements. It was argued that omission of this information will also create misunderstandings of the obligation and unrealistic expectations, resulting in inappropriate applications and disappointed patients. Providers suggested that failure to explain the eligibility requirements could discourage payment by those who could afford it and who are not, in fact, eligible, while their inclusion would limit confusion and permit self-screening by patients. Numerous providers suggested changes in the language of the notice.

Some providers and governmental agencies stated that if individual notice is provided, posted notice is unnecessary. In general, however, providers appeared to accept the requirement. For example, some stated that, since facilities are currently required to post signs, § 124.505(b) would not create a major problem; they objected only to the expense of replacing existing notices. Providers and consumers alike suggested that rather than face disputes about what comprises "normal vision," the Department should require signs of some reasonable size to be posted in patient reception areas having unrestricted visibility by patients approaching the service desks or areas in such places. One provider group recommended a brief posted notice with details provided in the individual written notice. In addition to the above, consumers suggested that the Department print and disseminate copies of the notices to be posted, for ease of administration and enforcement, uniformity and standardization of print.

Providers noted several problems with the requirements that posted notices be multilingual whenever a group comprises 5% or more of the community: (1) the 5% requirement is inconsistent with other Department guidelines such as Program Policy Notice 78–32, which suggests a threshold of 10% for multilingual activities; (2) accurate data on the multilingual composition of communities is not available and would therefore require an estimate by facilities; (3) the proposed posting of separate and complete signs in several languages may be impractical in areas with several significant linguistic populations because of the required size of the signs and wall space limitations. (Chicago, with seven or eight ethnic communities, was cited as an example.) To address this third problem, one provider group suggested that facilities be permitted to post a modified multilingual sign that provides the necessary sized heading, a basic statement of the obligation and eligibility requirements, and a reference to complete translations which are available at specified locations. Some providers requested tha the Department provide the multilingual notices in the many languages needed.

C. Department's action and response

The Department is persuaded by and has accepted many of the suggestions above. To eliminate questions about the size and legibility of the signs, and the cost of preparing them, the Department will prepare the signs in English and Spanish, and provide them to facilities at no cost to the facilities. As suggested, the signs will refer to the commmunity service obligation as well. The sign itself (and what therefore is required to be translated in multilingual communities) will be very brief. It will alert persons seeking services in the facility of the existence of the uncompensated services obligation and refer them to appropriate facility personnel and the more detailed individual notice for a fuller explanation of the scope of available benefits. It is noted that the Department's Office for Civil Rights is presently developing, under Title VI of the Civil Rights Act of 1964, bilingual guidelines to be applied in health and human development programs. When those guidelines are issued, any changes in these regulations that are necessary for conformity with them will be made. For the present, as suggested, the definition of "multilingual" has been changed to ten percent, to be consistent with Program Policy Notice 78–32.

Also consistent with that Notice, facilities are required to make reasonable efforts to communicate the contents of the notice to persons who cannot read. The provision for additional notice when the uncompensated services obligation is satisfied has been simplified and made optional. See § 124.505(c).

The above approach means that the posted notices will not contain eligibility information. However, the Department does not believe that the confusion or payment problems forecast will arise. As far as it can tell, such problems have not arisen with the present posted notices, which likewise do not contain such information. Moreover, any confusion that may arise should be dispelled by the individual written notice, which will contain the information.

The Department has dealt with the suggestions regarding requiring "prominent" posting as follows: (1) it intends to provide notices which are sufficiently noticeable to prevent them from being overlooked; and (2) it has required the notices to be posted in appropriate areas, such as the admissions office, business office and emergency room.

Finally, the Department notes that the posted notice requirement is not redundant, as argued by many providers. It backs up the individual notices, which may get lost in the bulk of materials given to many patients at admission. Moreover, it serves an independent notice function permitting patient self-enforcement if the admissions staff does not hand out the individual notice as required, and as a general notice of the program if the faculty suspends the giving of individual notices during part of the fiscal year when uncompensated services are not available. See § 124.505(d)(1).

VIII. Individual notice

A. Background

Aside from the possibility that individual notice would be required as part of an affirmative action plan, the current rules contain no requirement for such notice. The proposed rules required the provision of individual written notice to each person seeking services in the facility of: the availability of uncompensated services, the eligibility criteria, the allocation plan, and the availability of a prompt eligibility determination. The notice was required to be provided prior to service except in emergency cases; in such cases notice could be provided no later than the first bill. See proposed § 124.505(c).

B. Public Comment

Many providers challenged the Department's legal authority to require such notice except in cases of noncompliance. Numerous others stated that the requirement would promote fraudulent applications for uncompensated services, increase delays in treatment, intensify patient stress, duplicate the existing procedures of some facilities, and antagonize patients who "want nothing to do with charity."

The most common objection, however, was cost. One provider group stated that a substantial majority of the 123 million patients who are cared for each year in Title VI facilities are covered by insurance or are otherwise able to pay for their care. They therefore objected to the burden of providing 123 million notices to patients, many of whom clearly would not be eligible for uncompensated care. Widely varying but nonetheless high cost estimates were offered.

In light of these costs, providers requested discretion in handing out notices, or an exception for persons who because of third party coverage are obviously ineligible, or suspension of the requirement when the annual compliance level is met. One accounting firm suggested that instead of a separate notice, a waiver of uncompensated services be added to the admitting form.

Consumers generally approved the individual notice requirement but suggested numerous refinements to it. The following requirements were suggested: oral notice; braille notice; provision of interpreters for the deaf; standards for the use of interpreters for non-English speaking people consistent with the standards set for the use of multilingual notices; multilingual individual notices.

Some consumer (and provider) comments suggested that both the individual and the posted notice include a brief description of the source of the legal obligation to provide uncompensated care, on the ground that benefits may be more acceptable to individuals when they realize that they are part of a facility's obligation and not "welfare" or "charity." Other consumer

comments suggested that patients be required to sign a waiver or other form showing they have been notified of the availability of uncompensated care.

C. Department's Actions and Response

The Department has retained the individual written notice requirement. In its view, it clearly has the legal authority to impose such a requirement, if it believes (as it does) that the requirement is consistent with and necessary for proper and efficient administration of the program. See section 1602(6) above, as well as the decision in *Newson* v. *Professional Adjustment Service, Inc.*, 453 F. Supp. 401 (M.D. Tenn. 1978), holding that individual notice is required.

Under § 124.505(d) the content of the notice is changed only in minor respects from that proposed; the changes reflect the deletion of information from the posted notice.

The Department recognizes that the individual notice requirement will add to facilities' costs of administering their assurances. Nevertheless, it does not believe that it should abandon the requirement, assuming that it could. Since under these rules a facility's limited uncompensated services obligation will be used up by those eligible persons who first request the services, it is important to give all persons an equal chance to request them. If facilities were permitted not to give the individual notice to persons whose income or insurance coverage *appeared* to render them ineligible, those persons would not have an equal chance at the services should it later turn out that they were in fact eligible. Individual notice will also play a significant role in assuring that the uncompensated services obligation is widely known, and will therefore permit self-enforcement by patients who need help in paying their bills.

The Department has tried to minimize the costs of complying with the notice requirements in § 124.505 as much as possible. First, it is eliminating much of the cost of the posted notice requirement by supplying notices. More important, however, as suggested by a few providers, the rules allow facilities to stop giving out the individual notice when uncompensated services are not available in the facility. See § 124.505(d)(1). The requirement that the eligibility and allocation criteria be set out in the individual notice should discourage frivolous requests for uncompensated services and consequent expense.

The Department agrees with the intent, but not the specific details, of many of the consumer suggestions that are designed to communicate the contents of the notice to persons unable to read it. The final rules require facilities to make "reasonable efforts" to convey the contents of the notice to such persons. We intend that facilities will make whatever arrangements are needed in particular cases to assure that such persons are aware of the potential benefits of the program. This appears to be a much more workable alternative than mandatory hiring of interpreters, use of braille, and other costly techniques. The Department has not accepted the various suggestions for written acknowledgement of receipt and waiver of uncompensated services. It believes that such requirements would clearly be burdensome because of the recordkeeping that would be required.

IX. Eligibility Criteria

A. Background

The current rules provide that eligibility for uncompensated services is established according to criteria set by the State agency. 42 CFR 53.111(g). The proposed rules established a two-tier system of national criteria. Under the proposed rules, persons with incomes at or below the CSA Poverty Income Guideline ("Category A") would qualify for services at no charge; persons with incomes above that level up to twice that level ("Category B") would qualify for services at charges reduced in proportion to income. Two methods for calculating income were provided; while the facility could select the method, it had to use the same method for the entire fiscal year. See proposed § 124.506.

B. Public Comment

1. While some providers praised the uniform Federal eligibility standards as simplifying the determination process, most objected to it. It was asserted that the failure to recognize regional variations in income levels was an attempt at inappropriate uniformity that would create inequities. For example, in States where the cost of living and income levels are higher than the national guidelines, some individuals would not be eligible even though they are unable to pay; in lower cost and income States, persons who could pay might be eligible, thereby unduly burdening paying patients. Alleging that the Medicare and Medicaid systems recognize geographical differences, providers proposed that basic eligibility should be governed by State-by-State income guidelines, that Federal criteria provide for State-by-State variations, or that States with higher criteria be permitted to retain them.

2. Providers and governmental groups asked that the eligibility test be modified to permit consideration of resources such as property, securities, availability of insurance, pensions, rental income. Numerous providers pointed out that farmers, who may own substantial real estate, frequently have fluctuating incomes that could qualify them if income were measured only over a three month period. Providers also mentioned that the relationship between the size of the bill and income affected the patient's ability to pay and requested either a sliding scale matched to the bills, or an individualized procedure, with discretion in the facility to determine the reduced charge through a process of consultation between financial personnel and individual patients. Other providers, however, praised the use of a simple test based solely on income, without consideration of resources, as easier to administer and "less degrading" to individual applicants.

3. Providers pointed out problems with both the 3- and 12-month tests (the periods of time over which the applicant's income could be evaluated to determine eligibility) and requested that application of the particular test be left at the option of the hospital in the individual case. Some governmental groups recommended use of only the 12-month test, to avoid aiding the patient whose income is "well above the poverty level" but who experiences a temporary loss of income.

Consumers agreed with providers that the annual choice between the 3- and 12-month options for income determination was a problem. Some consumers suggested that the 12-month standard be eliminated altogether since it could never account for recent reverses in an individual's ability to pay. Others suggested that the most advantageous of the two tests be used in any particular case. Another suggestion was substitution or addition of a test of the prior one month's income multiplied by 12, to include very recently unemployed individuals. By contrast, another group suggested that eligibility be based on current or anticipated income for the subsequent 30 days.

4. Consumers supported the general concept of the proposed national income standards, excluding consideration of resources. As one group explained, present rules leave such matters up to the whim of the State agency and facility, which may make "unreasonable demands." Accordingly, consumer comments were frequently directed toward eliminating elements of facility discretion. For example, many comments suggested that the Department prescribe a schedule for payments to be made by patients in Category B. Urging that the pay schedule be removed from the facility's discretion (least the facility turn it into a full pay program), some groups urged that the schedule be treated like the allocation plan, with publicity, a hearing, and HSA participation. A legal services organization suggested that persons in Category B pay the percentage of the allowable credit for the service by which their income exceeds the CSA guideline. Other comments suggested that the schedule set by the Department for persons in Category B relate the size of the bill and the person's income. Spend-down provisions, under which eligibility can be acquired once income in excess of the financial criteria is expended on medical care, were also suggested, to address the problems of a person with an income of $20,000 but medical bills of $50,000.

C. Department's actions and response

The final rules are the same as the policies proposed in the proposed rule, with two exceptions (explained below): (1) as suggested by some providers, a facility is given complete flexibility with regard to its policy for charging Category B patients, as long as it publishes its policy as part of its allocation plan; and (2) as suggested by some consumers, eligibility is established if the patient's income meets *either* the 3-month or the 12-month test.

The Department's response to the comments is as follows:

1. The Department continues to use the CSA Poverty Income Guidelines rather than the various State or locality-based eligibility criteria suggested by many provider and consumer comments. Use of the Guidelines has obvious administrative advantages for facilities as well as the Department over their

various State or locality-based counterparts. Furthermore, although median income and other income tests do vary from State to State, it does not follow that there are comparable variations in relative poverty levels. That is, someone with income at or below the poverty level in a low income State is likely to be as "poor" in terms of his purchasing power as a person with the same income in a high income State. The Department believes it is fair to assume that persons with incomes at or below the Guidelines (Category A), will be unable to pay for necessary medical care, and so should qualify for services without charge under this program.

The Department notes that the change in policy with respect to Category B patients described above will also enable facilities that do not consider persons with income at that level "poor" for their area to target their uncompensated services accordingly. If a facility can meet its annual compliance level entirely with Category A patients, § 124.506 permits it to do so.

2. The Department does not believe that the grant of discretion to facilities to set their charging policy for Category B patients will lead to the arbitrariness and discrimination that is of so much concern to consumers. Although facilities may control their charge policies for Category B patients, those policies must be published, and must be complied with once established. Thus, facilities will not be able to discriminate between similarly situated Category B patients. Also, since the charge policy must be published as part of the allocation plan, it will be subject to the public comment procedures applicable to that plan, as recommended by some consumers.

3. The Department is retaining an income-only test, rather than one based on both income and resources as advocated by many providers and consumers. The Department recognizes that this approach may lead to some inequities, but is convinced that the other approach will lead to significant problems of interpretation and application for facilities, lead to extensive delays in determinations and create substantial compliance problems. These considerations also led to the rejection of a "spend-down" approach.

X. Allocation Plans

A. Background

Although the State agency may establish allocation requirements for Title VI assisted facilities, the current rules contain no specific requirements as to how they are to allocate their uncompensated services among persons unable to pay. The proposed rules provided two options for how such services are allocated; facilities must either (1) divide their uncompensated services into approximately equal quarterly allocations and provide services to the persons who first request them, or (2) use another allocation plan. The latter approach could only be used if it were published in accordance with § 124.505(a), and provided for some distribution of services throughout the year, the provision of some services to Category A individuals, and provided that all persons coming within the plan would receive uncompensated services until the obligation was met. See proposed § 124.507.

B. Public Comment

1. While providers praised the regulations for permitting facilities to develop their own allocation plans there was some objection to particular requirements.

a. With respect to the quarterly allocation requirement, providers argued that it incorrectly assumes that facilities experience community need greatly in excess of the presumptive compliance level and that all facilities cut off charity care when they meet their compliance level. Moreover, providers and governmental groups pointed out that the need for charity services is not constant but expands and contracts at different times during the year based on numerous factors and illness and in general is impossible to predict. Finally, they asserted that neither the patient nor the physician who selects a facility that has met its quota is likely to accept the suggestion of returning for care at a later time or shopping around for another Title VI assisted facility that has not met its obligation.

Providers and others also protested that the quarterly allocation requirement was inflexible. They objected that the system could exclude credits to a facility's obligation for services provided to eligible patients who were admitted just as the facility was reaching its quarterly obligation level. They also objected that the entire quarterly obligation could be used up by a few patients, and that the quarterly requirement could decrease the amount of uncompensated care available to summer migrant workers. Providers therefore feared that an allocation plan developed in good faith would result in unforseen implementation problems and non-compliance by the facility.

b. Providers also criticized the role of the HSA and the community in the allocation process. It was pointed out that various community interest groups may disagree on an appropriate allocation, and the provision requiries facilities to act as arbiters in situations where local employment conditions and inadequate government program benefits have created extensive demands for charity care. Providers also generally argued that the HSA role in formulating the allocation plan was inappropriate, as they are intended to be planning, not regulatory, bodies, a concern repeatedly expressed in connection with other provisions of the regulation and echoed by some planning agencies.

c. In addition, providers disagreed with the requirement in proposed § 124.507(b) that the facility provide all services of the facility to eligible persons. They objected that facilities are requiried to provide uncompensated services only in the facility or portion thereof which has received assistance.

2. Consumers generally regarded the proposed allocation system as an improvement over the present regulations. However, consumers also protested that the proposed regulations still left too much authority to the facilities. A number suggested that the HSA's comments must be included with the allocation plan when submitted to the Secretary or that HSA and/or Department approval of any allocation plan other than first-come-first-served should be required. Numerous other specific consumer suggestions for divesting facilities of control over the allocation plan were also made, such as that a facility's allocation plan be based on community need and that public hearings be required. Consumers also advocated a far more decisive, regulatory role for HSAs in this, as well as other sections of the regulations.

C. Department's Actions and Response

The Department is persuaded by the numerous provider and governmental comments objecting to the quarterly allocation requirement, and has dropped it. Otherwise, § 124.507 below retains the policies of the proposed rules essentially unchanged, except that provision is added requiring the allocation plan to set out how Category B persons will be charged. This new requirement is consistent with the change in § 124.506 discussed in the preceding section.

The Department has not accepted the numerous consumer suggestions that it (or HSAs) regulate precisely how facilities allocate their uncompensated services. As discussed in connection with the affirmative action plan requirement above, the Department is unable to make complex judgments as to what constitutes "community need," as advocated by many consumers, and it does not believe that it can require HSAs to do it in its place. The Department believes that facilities are able to make sensitive and difficult judgments as to which services are needed locally and hopes they will be responsive to legitimate community need. The publication and HSA notice requirements of § 124.505(a) and (b) should help deter facilities from setting arbitrary policies totally unrelated to community need by exposing them to public comment and pressure.

In addition, the Department has made one change in the final rules that is intended to further clarify the facilities' obligation to consider community need when determining the type of allocation plan they wish to adopt. The final regulations specifically require facilities to take into consideration any comments as to whether proposed allocation plans are reasonably related to community need that are submitted to them by the HSA or others. In this manner, the Department seeks to promote the development of rational, community-wide programs for the allocation of limited uncompensated services in a manner most responsive to the needs of persons unable to pay. For example, one facility in a community may, after consideration of HSA and public comments, decide that its allocation plan should give greatest priority to emergency services. Another facility in the area might decide, in light of the services available in the first facility, to give greatest priority to those in need of inpatient care. Yet a third facility might decide to place highest priority on outpatient clinic services because of the excellence and uniqueness of its clinic. If this were to happen, the results of three allocation

plans would be a coordinated, balanced approach to meeting the needs of persons unable to pay in that community. We emphasize, however, that the final determination as to whether a facility's allocation plan is reasonably related to the need in the community for uncompensated services rests solely with the facility. The Secretary does not, under these regulations, have the authority to dictate the terms of a facility's allocation plan.

With respect to the provider comment that there is no legal basis for the requirement of § 124.507(b) that "all services" of the facility be made available, the Department notes that § 124.507(c) permits the facility to restrict its services to the "portion" of the facility assisted, so long as doing so is consistent with the underlying obligation.

The Department has not changed the role of the HSAs in the enforcement process from that proposed. Aside from questions about its legal authority to require a stronger role, it does not believe that increased requirements in this regard are presently feasible or advisable given the variation among HSAs in their ability to undertake a more regulatory role. In this regard, a few national planning organizations concurred that the balance of involvement by HSAs struck in the proposed (and hence, these) rules was the proper one. The Department has rejected the provider objections to the proposed HSA role of commenting on how uncompensated services are delivered in their area. This function is clearly appropriate given the planning and review functions of those bodies and their general purpose of promoting the proper use and distribution of health services.

XI. Eligibility Determinations

The current rules provide that in order to count services provided to a patient as uncompensated a facility must make a determination of eligibility for uncompensated services prior to their provision. However, there are several circumstances in which the determination may be made after services are rendered: in emergency circumstances, where the person's circumstances have changed, and where the determination is delayed by false or erroneous information provided by the patient. 42 CFR 53.111(f)(1). This section was adopted in response to the decision in *Corum* v. *Beth Israel Medical Center*, 373 F. Supp. 550 (S.D.N.Y. 1974), which declared invalid the prior provision of the regulation permitting facilities to count as uncompensated services services for which they had rendered a bill, on the ground that persons unable to pay should know whether or not they will be receiving uncompensated services before assuming liability for them.

The proposed rules eliminated the preservice determination requirement. Instead, they required that in order to count services provided as "uncompensated", a facility must make a determination promptly on request. To facilitate monitoring and compliance, specific requirements were set out as to what information the determination must contain; facilities were required to provide a copy of it to the patient. Facilities were required to provide written statements of reasons to persons denied uncompensated services. It was also provided that facilities could condition the provision of uncompensated services on verification by individuals of their eligibility for them. See proposed § 124.508.

B. Public Comment

1. For the most part, providers favored the proposal that eligibility be determined "on request" rather than "in advance." Some providers insisted the prior determination requirement was better, arguing that permitting determinations upon request had the net effect of an open-door policy and required the facility to allow benefits at any time requested. It was protested that failing to require the patient to make a "timely" request would be expensive because patients would not request uncompensated services until after collection suits were filed.

Other providers displayed confusion about proposed § 124.508, apparently assuming that it would require eligibility determinations prior to billing. One facility protested that this was impractical since it billed patients four days days after providing the service, while it might take weeks for eligibility for other benefit programs to be determined. Others asserted that only a conditional statement pending verification could be issued prior to rendering services. Clarification that eligibility determinations can be made after billing was requested.

Consumers generally approved the proposed change in the regulations concerning determinations of eligibility. For example, one group stated that they had found the 1975 post-*Corum* rules requiring preservice determinations to be inadequate, forcing patients to argue that they fell into one of the exceptional categories where a postservice determination of eligibility was permitted. Other consumers, however, recommended that the Department either maintain the present requirement of a prior determination of eligibility or require facilities to have the ability to make determinations to meet the *Corum* requirement that the patient be told in advance whether treatment will be uncompensated, and establish a deadline by which the determination must be made.

2. While some providers requested deletion of the phrase "on request," claiming that patients would not ask, others suggested that a written request from the patient be required. Consumers likewise recommended that the phrase "on request" be defined, but asked that it be defined broadly. Pointing out that the term "request" is used in several sections of the regulations, one asked that the phrase be given "some consistent and practical meaning, or eliminated." Another suggestion was that the term "on request" be broadly defined to include any expression or indication by a person seeking care of inability to pay.

3. A number of providers asked that a definition be provided for "promptly," as used in proposed § 124.508(a)(2). However, some—while requesting the clarification that determinations were permissible after services had been performed and bills rendered—stated that no specified uniform specified time could be set: "what is prompt will depend in each case upon the individual facts of when the patient presents himself, how long he stays, and how difficult the investigation may be." A number of consumers also asked that the term "promptly" be specifically defined and suggested 2, 3, or 5 business days.

4. A number of providers asked for further clarification of the verification provision. Some predicted that the verification provision would be inadequate to prevent abuses resulting from individual notice. Other providers asked for a broad interpretation of the right to verify, such as by providing that an eligibility decision may be reversed if the information provided by the patient is not accurate.

Consumers raised a number of objections to the verification provision. In general, it was urged that the provision would be used to exclude eligible individuals or to discriminate against certain categories of low income persons, such as migrant farmworkers. Some groups voiced the fear that verification requirements would be used to harass and discourage eligible individuals from asking for uncompensated services.

If the provision is retained, consumers urged a number of modifications of it. Specifically, the Department was urged to: make the provision of services on an uncompensated basis conditional upon subsequent verification; require addition to the application form of a statement that knowing and willful provision of false or inaccurate information will subject the applicant to a denial of uncompensated care and to penalties for perjury; specify the evidence of income which the facility is allowed to obtain, clearly excluding confidential information; limit the information to be verified to income of the patient or responsible relatives during the relevant time period; limit verification to a single source; require facilities to adopt written standards and apply them uniformly; require that verification not be limited to particular methods but be permitted by any means that will reasonably establish the existence of the condition; and require that a facility not be allowed to deny an application for free care for lack of verification without advance notice.

5. Consumers suggested that the Department provide standardized forms for facilities' determination of eligibility including an explanation of the individual's right to complain or appeal a denial of uncompensated care. Citing the *Newsom* decision, a legal services group asked that the Department provide for review of an adverse decision within the facility or at the community level.

C. Department's actions and response

The policies of the proposed rule have been retained. The Department notes that in general both provider and consumer comments support the shift from "prior" determinations to determinations "on request." However, it has made the following changes in the proposed rule. First, as requested by many comments, a definition of "request for uncompensated services" has

been added. The definition adopts the suggestions of several consumer comments that any indication of an inability to pay for services be treated as a request. This definition will protect needy applicants without requiring facilities to make determinations of eligibility in cases where it is not needed because full insurance, medicaid, or other source of payment is clearly available to the patient. See § 124.502. Second, as also requested, the term "promptly" has been eliminated and a requirement that the eligibility determination be made within 2 working days of the request for uncompensated services substituted. See § 124.508(b)(1). Third, the provision for verification has been modified to clarify that only facts relevant to eligibility may be verified. Fourth, to lessen the burden of the financial eligibility determination requirement, the requirement applies only when uncompensated services are available in the facility. See § 124.508(a). In all periods of the year, however, denials of uncompensated services must be explained by a statement of reasons. Of course, where the reason is that the allocation has been exhausted for the period, the statement may rely on this ground and a financial eligibility decision is not required.

The Department stress that these rules do not require a determination prior to service. Under § 124.508, the timing of the determination depends solely upon when the request for uncompensated services is made. The determination may be made after service (or even after institution of suit), if that is when the request is made. To clarify this, the words "at any time" are included in the definition of "request for uncompensated services." As for those comments concerned that the "on request" policy may prove more expensive than the "prior determination" requirement, the Department notes that facilities may minimize collection expense by making extra efforts to alert persons to the availability of uncompensated services early in the collection process.

The Department does not agree with the consumer comments that challenged the "on request" policy as inconsistent with *Corum*. Under the individual notice requirement, the applicant is told in advance of service that he can get a determination of whether or not he will get uncompensated services within 2 working days. This will permit persons who are so concerned about the cost of services that they are reluctant to incur them without assurance of payment, the situation which concerned the *Corum* court, to obtain that assurance in a timeframe that is consistent with sound medical care.

The change in the verification provision responds to the concern underlying many of the consumer comments, that verification not be used as a "fishing expedition" or to harass or discourage applicants for uncompensated services. However, the Department continues to believe that provision for verification itself is reasonable, as it will enable facilities to provide their uncompensated services to persons who in fact qualify for them. The Department interprets the requirement that verification be limited to information "necessary" to establish eligibility to mean that any reasonable method of verification should be accepted and that duplicative forms of verification should not be demanded. The simple answer to the provider concern as to whether a determination of eligibility that subsequently fails to "check out" may be reversed is that it may. This is inherent in the provision of § 124.508(d) that verification may be made a "condition" of the provision of uncompensated services.

As suggested by some consumers, the Department intends to develop and make available forms for use or adaptation by facilities in the eligibility determination. However, it will not mandate use of such forms, since facilities may find it convenient to combine the eligibility determinations with other forms.

Although the Department does not oppose having facilities establish procedures for review of denials of uncompensated services, it is not requiring that they do so as a condition of compliance. The governing statute does not require facilities to establish review procedures, and at the present time the Department does not have a sufficient factual basis for concluding that review procedures are necessary for proper administration of the assurances.

XII. Exclusions from uncompensated services

A. Background

The current rules provide that the cost of services provided in the following circumstances cannot be counted as "uncompensated": (1) where the facility has received or is entitled to receive payment for the services under a governmental program or from a third party insurer; and (2) where the facility would be entitled to receive payment under such a program if it participated in it. 42 CFR 53.111(f)(2). The proposed rules added the following circumstances: (1) where the facility was reimbursed by a program under which it had agreed or was required to accept such payment as payment in full for the services; and (2) where the services were disapproved by a PSRO under section 1155(a)(1) of the Social Security Act. See proposed § 124.509.

B. Public comment

1. Providers objected to the exclusion from uncompensated services under proposed § 124.509(b) of any difference between the amount reimbursed under certain third party payment programs and the actual expense of providing the services. It was argued that this exclusion is inappropriate particularly with respect to Medicaid, because in many States Medicaid reimburses at rates substantially below the actual expense of providing the services.

A similar problem was raised in connection with a locally funded medical care program. Under that program, the facility provides for the care of the medically indigent and is reimbursed by the program for approximately one-quarter of the average cost of the services provided. The facility stated that, should the interpretation of this section be that none of that difference could be counted toward meeting the Title VI obligation, it would have to consider seriously not renewing its provider agreement.

2. Providers asked that the regulation require that persons eligible for but not receiving Medicaid benefits be required to apply for such benefits before applying for uncompensated care.

3. Providers urged deletion of proposed § 124.509(c) on the ground that it fails to recognize problems that frequently result from implementing PSRO decisions. For example, when a PSRO determines that a patient should be transferred from acute care to skilled nursing care and there are no skilled nursing beds available in the area the facility frequently has no option but to continue providing care to the patient until a skilled nursing bed is available. Consumers, on the other hand, generally approved of this exclusion.

4. Few consumers commented on proposed § 124.509. In general, they endorsed the underlying policy of making this program one of "last resort". However, it was requested that facilities be responsible for making preliminary determinations of eligibility, rather than simply referring all uncompensated care applicants to the local welfare office whether they are likely to be eligible for Medicaid or not.

5. Consumers also asked that the regulations expressly exclude bad debts or provisions for uncollectible accounts from the computation of uncompensated services, as well as unreimbursed emergency care which the facility had an independent obligation to provide under Federal, State, local or common law.

C. Department's actions and response

Both the provider and consumer comments indicated no substantial disagreement with the policies of the present rules, carried forward in the proposed rules. They are thus retained in § 124.509 unchanged. The additional policies set out in the proposed rules (§ 124.509(b) and (c)) are likewise retained, for the following reasons.

1. The Department continues to believe that it is reasonable to prohibit providers from charging off as uncompensated services the cost of services for which they have been partially reimbursed when they have agreed or are required to accept that payment as payment in full. In those situations no uncompensated services are actually provided *to the applicant*, who is not obligated for any part of the cost of care. Therefore, a contrary policy would, we believe, provide a "windfall" to facilities in such cases, and that windfall would be at the expense of other persons unable to pay.

2. The provision respecting exclusion of services disapproved by a PSRO has been retained, as the Department believes in general that facilities should not provide "unnecessary" services on an uncompensated basis.

3. With respect to the provider and consumer suggestions regarding conditioning uncompensated services on application for Medicaid and other programs, the Department stresses that the effect of the exception to § 124.509(a) is that a facility may condition provision of uncompensated

services on an applicant's applying for benefits under other programs. While this choice is left up to the facility, the Department notes that the decision to impose such a requirement is clearly consistent with its view of uncompensated services as a "last resort payment" program. However, the Department also notes that nothing in § 124.509(a) permits a facility to delay an eligibility determination under § 124.508, once requested. Thus, these requirements together mean that where an eligibility determination is requested and a question as to third party coverage exists, the facility must make a determination within 2 working days, although if eligibility exists it may condition the provision of uncompensated services on the applicant's following through to obtain whatever third party payment he is entitled to. Then, if the third party payment subsequently materializes, the facility must exclude the services provided from its uncompensated services account.

4. No explicit provision for bad debts or uncollectible accounts, as those terms are generally used, has been made in these rules. The effect of permitting a request for uncompensated services to be made "at any time," including after institution of suit for collection by the facility, is to allow certain accounts that could otherwise be considered to be "bad debts" to qualify as uncompensated services. Specifically, the rules permit facilities to claim credit only for services provided to persons determined to be eligible. A facility may not assume that all uncollected accounts are eligible and claim credit for these accounts or that basis. Since these rules do not treat all "bad debts" or "uncollectibles" in the same way, and permit some to be credited as uncompensated services, i.e., those in which eligibility for uncompensated services is established, we think that use of those terms would be confusing and misleading.

5. The Department does not believe that it is appropriate to deny uncompensated services credit for emergency services provided to individuals because of requirements of local law. If some of the individuals would qualify for uncompensated services, they should not be denied that benefit; concommitantly, the facilities should not be denied appropriate credit if they forego their right to bill for such services.

XIII. Reporting and record maintenance requirements

A. Background

The current rules provide that facilities must file an annual statement with the State agency not later than 120 days after the end of their fiscal years. The annual statement must set forth the facility's operating costs, the amount of uncompensated service provided in the prior year, a proposed budget and a justification and affirmative action plan for any past or projected shortfall in the amount of care. 42 CFR 53.111(e). The current rules contain no specific requirements concerning maintenance of records relating to compliance with the assurances.

The proposed rules required facilities to submit an annual report not later than 60 days after their fiscal year, reporting financial data and compliance information similar to that currently required. The Secretary could also request other compliance reports in writing. Facilities were required to report to him the institution of any compliance suit against them within 10 days of suit. See proposed § 124.510 (a), (c). The proposed rules also required facilities to maintain relevant records for a period of five years. See proposed § 124.510(b), § 124.508(a)(2).

B. Public comment

1. Many providers criticized as impractical and unreasonable the requirement that the report be submitted within 60 days after the close of the fiscal year. Providers suggested an extension to 90 or 120 days after the close of the fiscal year, on the ground that the Medicare cost report is completed 90 days after the close of the fiscal year.

2. Several providers and auditors objected that the regulations would require a costly expansion of the scope of audits to review individual determinations for compliance. The references to "other information" and "other documents" which could be required by the Secretary were also opposed by providers as "overbroad" and "overregulation."

3. Providers suggested various ways of minimizing the reporting obligations, mainly by relying on existing mechanisms. For example, a State hospital association suggested that for data and records that are routinely prepared for other purposes, the format and filing dates for information required under the Title VI regulations should be consistent with already required reports. Another comment suggested that reporting take the form of additions to the current Medicare cost report. Providers also recommended that if a facility is in compliance with its Title VI obligation, routine reporting be eliminated or streamlined.

4. Providers also opposed the requirement in proposed § 124.510(b) that various documents be made available to the public for inspection. For example, some providers strongly objected to public inspection of facilities' budget and other financial data, on the grounds that such a disclosure would subtantially impair the competitive position of those facilities. They suggested that publication of only those portions of the budget which are "material" to the program should be required. Finally, some facilities protested only that the phrase "any other documents" was too broad and could compel disclosure of medical and other confidential records.

Providers also objected that the record retention requirement of five years was burdensome, and bore no relation to the needs of the Department or of consumers for monitoring.

5. There was some protest against the requirement of proposed § 124.510(c) that the facility notify the Department of legal actions brought against it as burdensome.

6. Consumer comments generally praised the reporting and disclosure requirements. However, according to a number of comments, in light of the limited resources available to the Department for monitoring and enforcement, it is important to explore the potential for expanded compliance monitoring through expansion of the reporting form itself. Accordingly, additional requirements to be imposed on facilities were suggested. Various comments suggested that the final regulation should explicitly require maintenance of numerous items of data such as specific numbers of patients, specific amounts of care provided and other pertinent details that will allow for detection of patterns of discrimination or non-compliance, copies of all written eligibility determinations, and so on.

7. Many consumers supported the requirements of § 124.510(b) (and the parallel requirement of § 124.604(b)) that financial information related to Hill-Burton compliance be disclosed to the public. In addition, many asked that copies of the annual report and other compliance records be made readily available to the public at the facility and at the local HSA to facilitate independent monitoring by local consumer groups and the press.

C. Department's Actions and Response

1. The Department is persuaded by the many provider comments concerning the timing of the required reports and the need to minimize reporting burdens by coordinating the timing of the reporting under this subpart with other required reporting. Accordingly, it is requiring that the reports be submitted at the same time as the Medicare cost reports. Since much of the data generated for the Medicare cost report will be useful for preparation of the required assurances compliance report, this requirement will enable facilities to coordinate their preparation. See § 124.510(a)(1). More significantly, the Department is also persuaded that annual reporting is unduly burdensome for facilities that are meeting their annual compliance requirement. Thus, § 124.510(a)(1)(i) requires facilities to report only once every three years (on a staggered schedule, to be subsequently prescribed by the Secretary). However, where a facility falls short of its annual compliance level, or the Secretary determines, based on other information available to him, that more frequent reporting is needed, then the facility must report more often than once every three years. See § 124.510(a)(1)(ii). This latter requirement is needed for monitoring: where possible noncompliance exists (as in the case of a deficit), the Department obviously should be alerted to it and obtain the relevant facts as soon as possible, rather than allowing two or three years to go by while relying solely on the complaint mechanism to catch those situations.

2. The report requirement is very general, and does not require numerous specific items of information as advocated by the consumer comments. Nevertheless, the Department believes that this general authority will enable it to require many of the specific items of information suggested while at the same time enabling it to change the requirements based on experience with the reports and changes in its needs. The consumer and provider suggestions for the specific content

of the report are being considered in the development currently underway of the reporting form under section 1602 of the Act.

As for the provider concern that a general approach is "overbroad", § 124.510(a)(2) clearly limits what may be required to information relevant to compliance. As long as providers are told in advance what is required of them, and they will be, the Department does not believe that such a requirement is either unreasonable or in excess of its authority. See the last two sentences of section 1602. Moreover, it notes that any specific reporting forms it issues are subject to 44 U.S.C. 3509, so that the process insures that reporting burden will be taken into account in developing the form.

3. The Department is not persuaded by the provider comments criticizing as burdensome § 124.510(a)(4), regarding notifying the Secretary of institution of suit. An analogous provision arguably implicitly exists under the current rules (42 CFR 53.111(k)(2)). In any event, the Department believes that this requirement is reasonable in view of the Secretary's responsibility for enforcing the assurances.

4. The Department is persuaded by the thrust of many of the consumer comments that what is really needed for adequate monitoring and enforcement is facility *records* that are adequate to establish compliance. However, it also recognizes a concomitant provider interest in knowing what records facilities must maintain and in not maintaining those records for any longer than the minimum time needed. Thus, it has added a new provision to clearly establish that relevant records must be kept and spell out more precisely what the recordkeeping obligations of facilities are. See § 124.510(b). That section also ties the duration of the requirement to the Secretary's investigation under section 1612(c) of the Act. This will give the public an opportunity to bring discrepancies in the records or inadequacies in the investigation to the Department's attention promptly, but will not prolong the recordkeeping requirement indefinitely.

5. The record maintenance requirements retain provision for public access to and inspection of compliance records. The Department considers this provision to be clearly authorized by and consistent with section 1612(c), which gives persons a "private right of action" to enforce compliance. Moreover, the Department believes that assisted facilities should be accountable to the community in their fulfillment of the assurances, and that interested members of the public working closely with facilities can be helpful in assuring compliance without federal intervention. Providing consumer advocates access to records as a routine matter should discourage the filing of suits simply to get access to records through discovery. Of course, facilities may—and indeed are encouraged to—protect confidential records and information. Thus, if what is sought is information regarding the dollar amounts charged off to uncompensated services, patient accounts could be provided with the information which would publicly identify the patients deleted.

XIV. Enforcement

A. Background

The current rules give the State agencies primary enforcement responsibility. Under § 53.111(j), the Title VI State plan is required to include provision for handling complaints about facilities' compliance with their assurances, and appropriate sanctions.

In enacting Title XVI, Congress expressed dissatisfaction with the enforcement of the Title VI assurances by both the State agencies and the Secretary. See S. Rep. No. 93–1285 at 61. In addition to requiring the Secretary to issue regulations concerning compliance and require periodic reporting under section 1602 above, it gave him explicit enforcement responsibilities for both Title VI and Title XVI facilities under section 1612(c):

> The Secretary shall investigate and ascertain, on a periodic basis, with respect to each entity which is receiving financial assistance under this title or which has received financial assistance under title VI or this title, the extent of compliance by such entity with the assurances required to be made at the time such assistance was received. If the Secretary finds that such an entity has failed to comply with any such assurance, the Secretary shall take the action authorized by subsection (b) or take any other action authorized by law (including an action for specific performance brought by the Attorney General upon request of the Secretary) which will effect compliance by the entity with such assurances. An appropriate action to effectuate compliance with any such assurance may be brought by a person other than the Secretary only if a complaint has been filed by such person with the Secretary and the Secretary has dismissed such complaint or the Attorney has not brought a civil action for compliance with such assurance within 6 months after the date on which the complaint was filed with the Secretary.

The proposed rules took these changes in the assurances program into account by providing for Federal, rather than State, administration of enforcement. See discussion at 43 FR 49956. They provided that the Secretary could enter into an agreement with any State agency designated under secion 1521 of the Act by which that agency would assist the Secretary in carrying out part of his monitoring and enforcement functions, but the primary responsibility would be the Secretary's. See proposed § 124.512. With respect to those responsibilities, the proposed rules set out specific requirements for the filing of complaints (see proposed § 124.511(a)(1)) and required facilities records and information to be made available to the Secretary (see proposed § 124.511(a)(2)).

B. Public Comment

1. Providers generally urged that administration of the assurances program be left with the Title VI State agencies. They argued that the proposed shift to Federal administration was unwarranted by the history of the program and would add administrative problems for both the Government and facilities, without benefit to the program. It was urged that State-level administration is far more appropriate, since both community needs and resources are better known at that level. Providers also asserted that the regulations are inconsistent in that they justify Federal administration because of insufficient funding at the State level, but also refer to limited Federal resources. It was also asserted that the Department has no authority to remove administrative functions from the States.

A California consumer group urged that enforcement should remain at the State level in California, on the ground that local agencies are more accessible and responsive. It also pointed out that resources for frequent on-site visits and financial audits are necessary and questioned whether the necessary Federal resources exist. Similarly, a Massachusetts comment pointed out that a few State agencies have recently begun to enforce the assurances actively. For indigent patients in such states, a change to Federal monitoring and enforcement, with attendant long delay and procedural complexities, would represent a serious step backward. Continuation of the State agency role was urged.

Consumers who regarded their State agency's enforcement of Hill-Burton assurances as lax generally supported the proposed transfer of administrative responsibility to the Department. For example, a Georgia legal aid society recommended that before a State agency be allowed to contract with the Department to administer the assurances under § 124.512, satisfactory documentation of adequate past enforcement and monitoring efforts be required. Other groups recommended that the Secretary handle all enforcement functions.

A migrant group expressed fear that a State which poorly administered a program in the past might enter into agreement with the Department to continue to do so, and criticized as unclear the role of the States in the monitoring and administration of the program in the proposed regulation. Other comments argued that the proposed rules seemed to leave room for wide variations in monitoring by States and suggested enhanced uniformity in the administration of the assurances program.

2. Providers expressed numerous objections to the investigation mechanisms described in § 124.511. For example, they alleged that the proposed split of investigative responsibility between HRA and OCR, described in the preamble to the proposed rules, would impose burdens on the Government, on providers, and on beneficiaries of the program. They also opposed any accelerated right-to-sue notice the Department might provide to individuals (also proposed in the preamble to the proposed rules) on the ground that both exhaustion of remedies and avoidance of unnecessary litigation should be encouraged. A few provider and governmental groups argued that the investigative and enforcement mechanisms should operate strictly on a complaint basis.

Consumer groups asked that the frequency of investigation be specified in the regulation. With respect to the complaint mechanism,

consumers criticized it as too demanding. Consumers suggested that the Department provide a standardized complaint form and afford greater opportunity for participation by the complainant in the investigation process. Consumer groups also asked that the regulations specifically permit groups as well as individuals to file complaints. Generally, consumers supported the concept of a right-to-sue notice.

3. The suggestion that the preamble to the proposed rules the Department might add mediation procedures was endorsed by a few providers, on the ground that it would help determine which complaints are legitimate, minimize the cost of nuisance complaints, and lessen the investigative workload of the Department. This comment anticipated that the State could be involved in such a process through the inclusion of local citizens on mediation boards. The American Arbitration Association also supported the mediation principle.

In general, however, providers and consumers were opposed for varying reasons to addition of a mediation mechanism. Some providers and consumers opposed mediation because they believed the issues involved were factual ones to be determined based on official standards, not negotiated through bargaining power. Some providers foresaw mediation as a source of more complaints and cost increases. A State board of health suggested that the facility instead provide an ombudsman and an appeal process. Consumers also objected to erecting another administrative hurdle and both providers and consumers suggested instead that the regulation require that all administrative complaints sent to the Secretary be sent to the facility as well, thereby giving the facility the opportunity to cure the alleged violation on its own. Another suggestion was that the regulations should require a local impartial review of denials to resolve individual denial disputes, so that the Department could focus on systemic noncompliance investigations.

Consumers groups argued for enhanced remedies for complaints. Their suggestions included the following: defendants in collection actions should be permitted to raise a facility's alleged violation of its assurance as a defense; the inflation factor should be added to the deficit amount; a penalty equal to 10% of the deficit should be added to the deficit; Federal reimbursement under Medicare and Medicaid attributable to the depreciation allowance on assets financed with Title VI or XVI funds or other forms of Federal financial assistance to facilities found out of compliance by the Department or a court should be terminated.

C. Department's actions and respose

1. The Department has retained the proposed changeover to Federal administration of the program. See § 124.511. It is unpersuaded by the provider comments advocating continuation of the *status quo*, since that *status quo* has resulted in unsatisfactory enforcement in many places. It believes also that it will be able to provide more vigorous enforcement than has generally been the case. Moreover, since it now has by statute an undeniable enforcement role, it believes that the federalization of the enforcement program will minimize possible duplication of effort and inconsistency of administration that might have occurred had the present scheme been continued.

As for those consumer comments urging continuation of the State role based on the performance of a few States that are performing well, the Department notes that those States, or any others, may seek to enter into an agreement with the Secretary under § 124.512 and thereby continue their activities. In addition, a provision has also been added to clarify that these regulations do not supersede independent remedies available to States under State law. See § 124.512(d). Thus, States are free to impose additional requirements and to make available additional legal remedies, so long as the Secretary's right to enforce the requirements of these regulations is not impeded. For example, States may work to obtain and use authority to review allocation plans, and eligibility criteria, to require more reporting, and to impose more rigorous sanctions. Accordingly, the Department believes that it has fully answered the concerns expressed by those comments.

The Department shares the concern expressed by many consumers that States unable to do a good job of monitoring and enforcement should not be given shared responsibilities with the Department under a State agreement. The regulation specifically provides that only States "able" to do the job will be given the opportunity to enter into an agreement with the Secretary. In making this decision the Secretary will certainly take into consideration State performance in administering the current rules as well as any additional information bearing on their ability to assist in administering these rules in the future. Moreover, the final regulation gives the Secretary (and the State) the right to terminate an agreement on 60 days' notice. This will permit the Secretary to terminate an agreement when State performance is inadequate.

2. The complaint procedure has been retained. The most significant change is that a provision for early, nonsubstantive dismissal of complaints has been added, as advocated by many consumer comments. See § 124.511(a)(4). This will mean that complainants whose complaints the Department is not able to dispose of within the six month waiting period before court action may be instituted will not be delayed by six months of inaction. The Department will grant such dismissals either at the request of the complainant or on its own initiative based on enforcement priorities. This will enable the Department to concentrate resources on the most significant and far reaching compliance issues. In order to help facilities avoid unnecessary litigation, however, the Department has also provided that it will promptly notify facilities of any complaints filed against them, and will not dismiss any complaint for a minimum 45 day period. This will enable the facility to begin negotiations with the complainants promptly should they wish to do so.

The Department has retained the requirements for filing of complaints. It does not think they are too burdensome, and believes they are the minimum needed for effective use of staff time. The information required in a complaint has also been simplified. For example, the "location" rather than specific address of the facility is required. In addition, the Department intends to make every effort to obtain the required information from complainants when missing from the complaint. Moreover, the Department is looking into the feasibility of providing standardized complaint forms or formats, suggested by some consumers.

As for the suggestion that the Department's investigative efforts operate on a complaint-owned basis, the Department does not believe that this is unauthorized. The first sentence of section 1612(c) requires the Secretary to undertake periodic investigations. While the Department is not committing itself in these rules to any particular frequency of investigations because it needs flexibility to tailor the frequency to its resources and the need it sees for such investigations based on experience, it does intend to do investigations on a regular basis.

3. The Department has accepted the majority of comments opposing adoption of a mediation process. Such a process may not be suitable for this program, at least until more experience is gained operating under the new rules. Also, the revised complaint and dismissal procedure, with early notice to facilities will enable facilities to settle complaints short of Department or court action.

4. With regard to the question of enforcement and sanctions, the proposed rule has been changed to provide for Secretarial determination of whether a facility was financially unable to meet its annual compliance level to conform to the changes made by the elimination of the procedure for the advance applications for lower levels of compliance. Consistent with the framework explained in connection with § 124.503 above, provision is also added for prompt make-up where a deficit is due to noncompliance. See § 124.511(b)(3)(i). Finally, a provision is added to make clear that a facility that has wrongly denied uncompensated services to a person unable to pay who should have received them under the facility's allocation plan must correct its action to be in compliance with the assurance. See § 124.511(b)(2). These corrective steps must include, where appropriate, termination of collection action (including lawsuits) and repayment of bills wrongfully collected.

The Department believes that the above changes should provide it with the tools necessary for effective enforcement, by providing significant disincentives for noncompliance. It thus believes it has answered the general consumer concerns in this area.

COMMUNITY SERVICE

I. Applicability of the rules

A. Background

The present rules, set out at 42 CFR 53.113, apply only to Title VI facilities. Unlike the uncompensated services obligation, however, which applies only for the 20-year period following completion of construction, the obligation to provide a community service is not time-limited. The proposed rule applied to both Title VI and Title XVI-assisted facilities, and similarly had no time limit. See proposed § 124.601.

B. Public comment

Some providers objected to the unlimited duration of the community service obligations, claiming that it places an unreasonable burden on facilities.

C. Department's actions and response

The Department has left proposed § 124.601 unchanged except for minor editorial changes. As pointed out in the preamble to the proposed rules (43 FR at 49955), a regulatory 20-year limitation on the duration of the community service assurance as it then applied to Title VI facilities was struck down in *Cook* v. *Ochsner Foundation Hospital*, Civil No. 70–1969 (E.D. La. 1975), and *Lugo* v. *Simon*, 426 F. Supp. 28 (N.D. Ohio 1976). Section 1604(b)(1)(J) of the Act specifically provides that the community service assurance applies to Title XVI facilities "at all times after [the] application [for assistance under that title] is approved."

II. Definitions

A. Background

The definitions set out in the proposed rules (§ 124.602) represented no substantive change from those contained in the present regulations (42 CFR 53.1113(b)), except for the necessary expansion of coverage to include facilities assisted under Title XVI (see definition of "Applicant" in proposed § 124.602).

B. Public comment

The public comment focused on the need for a definition of the "service area" of the facility, to clarify the requirement of proposed § 124.603(a) that a facility must make its services available "to all persons residing (and, in the case of applicants under Title XVI of the Act, employed) in the area serviced by the facility. . . ."

Both consumers and providers pointed to the need for such a definition. Some providers suggested that facilities' "service areas" be derived from their long-range planning; others that they reflect certificate of need applications or other planning documents. Consumer groups proposed that a facility's service area be deemed equivalent to or broader than the health service area (designated under Title XV, PHS Act) in which the facility is located, or that HSAs participate in the definition process.

While some suggested the use of medical trade areas as described for purposes of State medical facilities plans developed under Title XVI, the fear was also expressed that other aspects of health planning could be hampered by using the Title XVI plan for that purpose. It was also suggested that service areas could be based on patient origin data submitted by each facility. Finally, it was pointed out that some publicly-owned facilities are established to serve particular areas.

C. Department's actions and response

The Department agrees that a definition of the term "service area" is needed in order to avoid confusion as to the scope of a facility's community service obligation. In searching for a useful defintion, however, the Department found the suggestions offered by the public to be generally unsatisfactory. Reliance upon planning documents developed by facilities themselves for other purposes was considered unwise, since those documents either do not necessarily reflect current situations or do not presently exist for all covered facilities. Adoption of health service areas is simply unworkable as a general matter, since those areas are unrelated to the areas served by individual health facilities. (Many entire States, for example, are health service areas.) Title XVI State medical facilities plans are not yet developed, and will not be in the near future, since no funds have been requested to carry out the Title XVI allotment program this year.

The Department, as suggested in the preamble to the proposed rules, has chosen to base its definition of the term "service area" on the most recent Hill-Burton plan approved by the Secretary for the State in which a particular facility is located. These plans are, in the Department's view, the best articulation currently available of health facility areas of service. It is recognized that Title VI plans will not accurately reflect the current areas of service of all facilities, since in some States the plans have not been updated since the early 1970's. For that reason, each facility is given the opportunity to propose, for the Secretary's approval, a service area that differs from that contained in the most recent Hill-Burton plan where it can demonstrate that the former area no longer applies. In evaluating such requests, the Secretary will apply the criteria that guided the Hill-Burton State agencies in their delineation of service areas for Title VI State plan purposes: Population distribution, natural geographic boundaries, and transportation and trade patterns (see 42 CFR 53.1(d)). For the most part, however, it is expected that those areas will be satisfactory.

III. Provision of services

A. Background

The language of proposed § 124.063, which set out the principal requirements for compliance with the community service obligation under the proposed rules, differed in certain important respects from the analogous provision of the present regulation, 42 CFR 53.113(d), although many of those changes were intended for clarification or to make explicit what was already implicit in the present regulations.

Proposed § 124.603(a) explicitly stated what was implicit in § 53.113(d)(1), namely that a facility may not discriminate in the provision of its services on the ground of race, creed, color, or national origin. This language was added for clarification purposes and, as pointed out in the preamble to the proposed rules, complaints of discrimination that raise questions of compliance with other acts (such as the Civil Rights Act of 1964) will be investigated under those other acts.

The proposed regulation further provided that a facility may not discriminate on "any . . . ground unrelated to an individual's need for the service or the availability of the needed service in the facility," and specifically stated that a facility would be considered to be out of compliance with its community service assurance if it should adopt an admissions policy having the effect of excluding persons on grounds other than need for or availability of the services. However, the proposed rule would have permitted facilities to deny services to persons who are unable to pay and have no source of payment. Concern was expressed in the preamble that admission policies such as preadmission deposit requirements and admission only through physicians with staff privileges have served to limit access to facilities by persons in need of their services, particularly beneficiaries under governmental programs such as Medicaid. Comment was specifically invited on the possible prohibition of preadmission deposits for Title VI and Title XVI facilities.

Proposed § 124.603(b) essentially followed the present § 53.113(d)(2) in requiring that services be provided to beneficiaries of governmental programs, in accordance with the holdings in *Cook* and *Lugo, supra*, that discrimination against such beneficiaries is inherently inconsistent with the community service assurance.

B. Public comment

Not surprisingly, proposed § 124.603 provided the area of greatest controversy in the proposed community service regulations. Providers generally argued that regulation of admissions procedures is inappropriate and improper, and requested that preadmission deposits not be barred. Consumers supported an explicit ban on such deposits.

1. Numerous providers pointed out that only doctors have authority to admit patients to a hospital, and asserted that they (hospitals) have no power to provide services not ordered by a physician or to require staff physicians to participate in governmental programs; that if there is no physician who participates in a governmental program who will order the admission or service, compelling the hospital to provide the service will result in violation of local law or other requirements; that the regulations would have the effect of driving doctors away from Hill-Burton facilities; and that the Secretary has no direct authority to require doctors to treat particular classes of patients.

2. In response to the Secretary's request for comment on whether preadmission deposits should be barred, many hospitals supplied analyses of the effect on their financial situations of such a ban. While some of these hospitals expressed understanding of the Secretary's concern that preadmission deposits limit access to required health

services, all opposed an outright prohibition. Consumers generally supported such a prohibition.

The following is a summary of the comments received from providers and provider organizations:

a. Provider organizations asserted that a prohibition on preadmission deposits would be illegal, inasmuch as Titles VI and XVI both state that the provision of assistance to a facility thereunder does not confer Federal control over the administration or operation of the facility.

b. Many hospitals insisted that preadmission deposits are necessary to their financial stability, and that barring them altogether would impair their cash flow and cause an increase in bad debts, and would result in a reduction in hospital accessibility. For example, one large medical center in the Southwest stated that it receives approximately $550,000 in preadmission deposits per year, a large portion of which is obstetrics. Because a large percentage of these patients make no further payment for services and these accounts are subsequently written off as bad debts, this facility estimates that elimination of the preadmission deposit would reduce collections by an estimated $300,000 per year (the cost of delivery and care for 291 mothers and babies).

c. Some hospitals characterized their preadmission deposit policies as screening processes to identify individuals who are unable to pay. Thus, it was argued that preadmission deposits do not exclude patients from admission. The hospital's financial counseling departments are able to work with patients to assist them in obtaining assistance from families, governmental programs, etc. If none of these are available, services may be provided under the uncompensated services obligation or general charity.

d. Many providers, while recognizing that preadmission deposits might be used to exclude the medically indigent, asserted that their own do not have that effect because of the availability and frequent use of waivers of the preadmission deposit requirements. These providers generally argued that elimination of all such requirements would be unduly harsh, and recommended instead that the regulations require a determination of eligibility for uncompensated services before a preadmission deposit could be requested.

e. Some facilities explained that they use advance deposits for specific elective procedures or for maternity cases, as a method for installment payment that eases the financial burden of hospitalization, particularly important for those without insurance or with limited maternity coverage; and that without this collection tool, bad debts and costs to paying patients would increase.

Many consumers and their organizations requested that an explicit ban on preadmission deposits be placed in the regulations. One suggestion was that such deposits be forbidden in all cases where the prospective patient (1) is eligible for uncompensated services; or (2) is in need of services on an emergency or urgent basis; or (3) desires elective services and is willing to sign a promissory note with a reasonable payment schedule.

3. A number of consumer organizations proposed the deletion from the proposed regulation of the language which permits a facility to deny services to persons unable to pay after the facility's uncompensated services obligation for a given period has been satisfied, on the ground that the community service assurance bars discrimination in admission on the ground of inability to pay.

4. Consumers generally supported the language of proposed § 124.603(a) concerning admission policies which have the *effect* of excluding persons on grounds unrelated to their need for and the availability of the service. One comment suggested substitution of "maintain" for "adopt," to emphasize that current as well as new policies which have the effect will be considered violations of the assurances. Some consumers and providers requested enumeration of specific policies that might come within the provision, and examples of ways to remedy the problems created by such policies.

5. One legal services organization urged inclusion of more specific language to ensure survival of the community service benefit when a federally-funded facility closes or relocates.

6. Several consumer comments urged the inclusion in the regulations of a public notice requirement similar to that required under the uncompensated services provisions.

7. A number of comments from consumers and consumer-oriented groups urged the addition in the regulations of provisions to check "dumping" of financially undesirable patients by nonprofit private facilities.

C. Department's actions and response

Following consideration of the comments summarized above, the Department has altered the regulation in a number of significant respects. See § 124.603.

1. The Department has retained the provision prohibiting the use of admissions practices that have the effect of excluding persons residing in the service area on grounds other than need for or the availability of the services when requested. In this regard, the rule refers to "use" of practices and policies to make clear that it applies to new or existing practices and policies. With an important exception described in paragraph 2 below, facilities may deny services to persons who are unable to pay or who have no source of payment unless they are eligible for uncompensated services under Subpart F.

Facilities assisted with federal funds agreed to make their services available to all persons in the service area, and the Department believes that this agreement is not fulfilled when methods of admission are used to prevent such persons from taking advantage of the available services.

As an aid to facilities and consumers, the regulation now includes three illustrative applications of the rule. These examples are intended to illustrate some of the situations that may arise in which policies or practices of the facility have an exclusionary effect, and to outline the Department's view of some of the alternatives that facilities may adopt to ensure that the services are fully accessible to the community. The examples are not intended to be exhaustive of the rule's application.

Facilities are encouraged to take any or all of the actions suggested in the illustrations, or to develop other alternatives that will similarly counteract the exclusionary effect of current policies or practices. It is emphasized that no specific admissions policies are required. So long as persons in the facility's area are not excluded on the prohibited grounds, the facility is free to use any policies it considers appropriate. Cooperation with medical staff is encouraged so that systems can be devised that provide access to all community residents, and that will work smoothly.

The Department disagrees with those comments that suggested that facilities might lack the authority necessary to implement some of the alternatives set forth in the regulation. It is the Department's view that a hospital has the legal right to condition a physician's membership or renewal of membership on a medical staff on the physician's agreement to take actions reasonably necessary to permit the hospital to fulfill its legal obligation under these regulations. We are aware of no courts that have taken a contrary view, and in fact, the case law relating to termination of physician staff privileges very clearly supports the hospital's right to impose reasonable conditions on staff privileges. While some courts have held that certain conditions imposed on physicians by the governing board of a hospital were unreasonable, we are aware of no instance in which conditions reasonably related to the hospital's ability to carry out obligations prescribed by federal law were held to be unreasonable.

The standards set forth in the accreditation manual for hospitals, published by the Joint Commission on Accreditation of Hospitals and relied upon by the vast majority of hospitals as well as the Department, also lend support to a hospital's authority to impose reasonable requirements on its medical staff. For example, Standard 7 (p. 51 of the 1979 edition) states that "the governing body, through its executive officer shall take all reasonable steps to conform to all applicable laws and regulations." Throughout the chapter on governing bodies, the JCAH manual emphasizes that the governing body has corporate, legal control over all of the hospital's operation and cannot delegate away that responsibility to anyone, including the medical staff. (See, for example, p. 47.) The medical staff is responsible to the governing body and the governing body may, and in some cases must, place requirements on the medical staff to ensure that the hospital is providing quality care of the kind needed by the community.

In addition to placing conditions on physician staff privileges, the Department also expects that some facilities will choose to hire or contract with physicians to assist them in carrying out their obligations under these regulations. We are aware of no state laws that would preclude facilities from

hiring or contracting with physicians to perform medical services on behalf of the hospital. Quite apart from the requirements of these regulations, hospitals are increasingly turning to such arrangements to ensure that appropriate medical care is provided within the hospital. Hospitals routinely contract with emergency room physicians, radiologists and pathologists; many hospitals, including the U.S. Public Health Service hospitals and public hospitals operated by state and local government, have a staff of salaried physicians. Such arrangements may well be useful to a facility in complying with its community service assurance.

Again, the Department emphasizes that the choice of how best to assure that services are available to all residents is up to the facility.

2. As mentioned, facilities may generally deny services to persons without a source of payment. However, the Department does not believe that a facility is fulfilling its community service assurance if it denies services needed on an emergency basis because the person cannot establish an ability to pay. Where a facility has an emergency capability it may not refuse emergency treatment. Persons served may be billed and collection actions instituted, or the facility may, if it wishes, credit some or all of the services provided on an emergency basis towards the uncompensated services obligation, if not already exhausted. The facility would simply include emergency services in its allocation plan to the extent it wishes to get uncompensated services credit.

The requirement that emergency services be made available without regard to ability to pay does not prohibit the transfer or discharge of a patient once the emergency is treated. Transfer or discharge is acceptable so long as there is no substantial risk of deterioration in the patient's medical condition, as determined by the appropriate medical personnel of the facility. This means personnel generally responsible for making such determinations for the facility.

The Department has not interpreted the community service assurance as requiring facilities to provide nonemergency services to persons unable to pay who do not qualify for uncompensated services. While persons unable to pay have a legitimate need for all medically indicated services, requiring service in nonemergency cases could have a serious impact on facilities' financial stability. In these nonemergency cases there is at least an opportunity for alternative arrangements to be made for the needed care.

3. After considering the many comments received on the issue of preadmission deposits, the Department has decided against imposing an outright ban on such deposits at this time. We shall continue to monitor the effect of preadmission deposit requirements on hospital accessibility, however. It is emphasized that where such requirements (or any others) have the effect of excluding persons on grounds other than need for or availability of services, facilities that impose them will be considered out of compliance with their community service obligation. As the illustration in the regulation indicates, a deposit may not be used if it results in services being denied to a person who can ultimately pay (e.g. is employed, or has some other future source of income) but is unable to come up with the ready cash to meet the full deposit requirement before services are provided.

4. We think the issue of whether the community service benefit survives the closing or relocation of an assisted facility is adequately covered by other existing statutory and regulatory provisions. In short, the effect of those provisions is that while the benefit can be transferred to another facility, in many cases, there are some instances in which the benefit will not survive. Under section 609 of the Public Health Service Act, 42 U.S.C. 291i, the United States is entitled to recover from either the transferor or the transferee its proportionate share of the value of a facility with respect to which Title VI grant funds have been paid where the facility, within 20 years after completion of construction, either ceases to be a facility for which a grant could have been made under Title VI or is transferred to any entity which either is not qualified to apply for a Title VI grant or is not approved as a transferee by the State agency. Title XVI contains a similar provision (section 1631, PHS Act; 42 U.S.C. 300s–1). The Secretary, for good cause, may waive recovery. Among the elements to be considered by the Secretary in determining whether recovery may be waived is where a facility "ceases to be" a facility for which a grant could have been made under Title VI (see 42 CFR 53.135) are (a) whether the facility will be devoted to a public or nonprofit purpose which will promote the purpose of the Act, and (b) whether other substantially equivalent facilities will be utilized for the purpose for which the facility was constructed. These criteria are adequate to assure that waivers of recovery will only be granted where the needs of the community will continue to be served. Where such waivers are not granted, the community service obligation of the facility ceases upon recovery by the United States of its proportionate share of the value of the facility.

5. The final regulations have been changed to include a requirement that public notice of the community service obligation must be provided. See § 124.604. The Secretary will supply the notices in English and Spanish. See the discussion of the comparable provision in the uncompensated services regulations, above.

6. The final rules include a definition of "resides" to make clear that migrant workers and others who reside in the service area of Title VI assisted facilities may not be denied services on the ground that they are not permanent residents. Persons who reside in any area permanently or who have no present intention to leave the area are, of course, covered as area residents. In addition, persons residing in the area for purposes of employment, i.e. who are looking for a job, are on a job, or have recently completed a job, are also covered, as are family members living with them.

Appendix II.—DHEW Regulatory Analysis of the Cost Impact of Title XVI Assurances Regulations (April 1979)

Executive Order 12044, on Improving Government Regulations, was issued by President Carter on March 23, 1978. The Order requires, among other things, that regulations be drafted to assure that compliance burdens, including both program and paperwork costs, be held to a reasonable minimum. The Order also requires that regulations with "major economic consequences" receive a "Regulatory Analysis." [1] This document, as required by the Executive Order, represents the HEW Regulatory Analysis which accompanies the Title XVI Assurances Regulation and its preamble.

Highlights [2]

Titles VI and XVI of the PHS Act can be characterized as an expression of two major principles. First, this legislation stresses the premise that health facilities [3] obtaining Federal financial assistance or Federal dollars generally continue to provide charitable services, consistent with the historical practice of providing such services. Second, it reaffirms the Federal commitment to assure provision of health care services in a non-discriminatory fashion. The predominant objectives of the regulation are: to prescribe a standard for a reasonable volume of uncompensated services which ensures that a constant amount of care is provided from year to year independent of changes in the cost of care; and to allow facilities maximum flexibility in the way they choose to distribute these services consistent with the first objective.

The cost analysis for the Title XVI Assurances Regulations focuses on the cost of providing uncompensated care and the cost of administering the regulations in the institutions and Government.

On an overall basis, if all facilities use 10% option with the inflation factor, the uncompensated care liability for all obligated institutions involved goes from $395 million in 1980 to $537 million in 1984 ($467 million in 1982). Actually, some facilities will find the 3% option to be less and thus the actual total liability for all institutions will be less than this.

—Assuming that previous regulations had been rigidly enforced, the above costs would not represent new costs associated with the regulation (except for the inflation factor noted below, and other technical differences).

—A number of distributional and other technical effects also act to reduce the

[1] The threshold level for "major economic consequences" is an annual cost of $100 million.

[2] The terms included in this brief section are clarified and elaborated upon as the reader continues through the text.

[3] Almost 7000 institutions received Hill-Burton grants. 5284 still fall under the 20 year assurances obligation period, their grant amounts totalling $3.275 billion. These include 3572 inpatient (83% of funds awarded), 462 nursing homes, and 1250 outpatient and other health care facilities. In addition, 368 institutions receive Federal assistance (on loans and loan guarantees) in the form of interest subsidies estimated to total eventually to $531 million.

increment in service costs imposed by the regulation.

In terms of uncompensated care, a significant new cost is incurred by the inclusion of an inflation factor with the exercise of the 10% option. The annual increment due to this factor alone, assuming all obligated institutions exercise this option, ranges from $39 million in 1980 to $199 million in 1984.

—This cost is somewhat lower than otherwise due to incorporation of an alternative approach for including interest subsidies in the base which reduces the added costs due to the inflation factor as much as $18 million by 1984.

—The Department will reassess its position on the inflation factor *before* it results in added costs of $100 million annually. This level of additional costs will probably not be reached until some time in 1982.

Administrative costs of the provisions in this regulation may amount to the equivalent of one staff person year annually in each institution, and perhaps as much as an additional 100 or so staff/person years in the Government. At $12,000/staff person year, total costs will approximate $58 million for the institutions and just over $1.5 million for the Government.

—Not all administrative costs to the institutions are new. It is assumed that under the previous regulation, some administrative costs were borne by the institutions. Had the previous regulations been fully enforced, however, then it is reasonable to assume that the administrative cost of these new regulations would only be slightly different than in the past.

—Although the Federal Government may experience an increase of $1 million, the savings to those States which no longer monitor and enforce these regulations (as under the old regulations) offset the additional Federal costs. (Potential savings in State administrative costs are not estimated in this Analysis).

—The final regulation reduced the administrative burden that would have been imposed by the NPRM. Changing the requirement for lower level of compliance applications may have saved as much as $4,000,000. Reducing reporting requirements from once a year to once every three years may annually save the Government and the institutions over $4,000,000.

Background

The Hospital Survey and Construction Act (Hill-Burton) as originally passed in 1946 authorized the Secretary to require facilities which received Federal money through the Act to: (1) make their services available to all persons residing in the facility's area (the community service assurance); and (2) provide a reasonable volume of uncompensated services to persons unable to pay (the uncompensated care assurances).

The community service obligation as it stood in the original Act, specified that Hill-Burton grantees were not to discriminate on grounds of race, creed, or color. During the first 20–25 years, the provisions for regulating the Act were extremely general. Various court cases led to changes in the regulations: deletion from the Act of the "separate but equal" language in 1963; and a 1972 series of changes which specified that State Hill-Burton agencies were to administer the assurance compliance, set eligibility criteria for persons unable to pay, and conduct a monitoring and enforcement program. These 1972 changes also specified new compliance options: three percent of operating costs, 10 percent of Federal assistance, and the "open door" option (in which a facility agreed to admit and provide uncompensated services to persons who could not pay). Various court cases filed after 1972 upheld the 3 and 10 percent options, as well as language in the regulations which limited an aided-facility's compliance to 20 years for grants or to the time the loan remains unpaid for loans and loan guarantees.

The Hill-Burton regulations were again amended on October 6, 1975. This amendment required that facilities make prior determinations of eligibility in providing uncompensated services and post notices of the availability of these services.

In January 1975, Congress passed Pub. L. 93–641 which replaced the Title VI program of assistance with Title XVI. The language in Title XVI made several changes in the assurance program. The most important of these were: (1) facilities would be obligated for an unlimited period after receiving aid under Title XVI, (2) facilities which received aid under Title VI or XVI were required to file periodic reports on their compliance with assurances, (3) rather than a joint State-Federal monitoring and enforcement process, the Secretary was now solely responsible for determining compliance and conducting investigations, and (4) individuals could file complaints with the Secretary charging noncompliance by a facility.

Proposed regulations for these provisions were issued October 25, 1978. Nearly 1,000 comments were received during the public comment period. During that same period, two days of public hearings were held. We stipulated under court supervision we would publish the assurances regulations by the end of March 1979. HEW subsequently requested and received a 30–day extension to this deadline.

Internal HEW analysis of the many comments received has resulted in significant adjustments in the NPRM. These key changes are summarized in the following section. Subsequent portions of this Analysis are concerned with a discussion of alternative adjustments considered by the Department, with respective cost implications, and further detail concerning the cost estimates used in this Analysis.

The Regulation: Changes, Objectives, and Cost Implications

The predominant objectives of the regulation are to prescribe a level of uncompensated services that must be provided, and to allow as much flexibility as possible to each facility in the way it chooses to distribute these services. The regulation, thus, focuses as much as possible on defining the amount of uncompensated services required and *whether* they are actually provided, and as little as possible on *how* they are provided.

The regulation establishes a standard of performance that is measured over the full 20-year period during which Title VI assisted facilities are presently obligated to provide uncompensated services. However, facilities may meet the standard in *less* than the 20 years, or in *more* than the 20 years so long as they follow the minimum required procedures in good faith. The 20-year standard works as follows:

1. An annual compliance standard is established at the lesser of three percent of operating costs or ten percent of Federal construction assistance received. The latter standard is adjusted each year after 1979 to account for inflation in the cost of medical care.

2. If a Title VI facility provides less than the annual standard for *any* reason it must make up the deficit even if that means that the 20-year period will be extended. The deficit may be made up at any time, but the inflation factor will be applied to the deficit when it is made up. Also, if the facility has not complied with the requirements of the regulations, the Secretary can require it to speed up the pace at which it is providing uncompensated services.[4]

3. If a facility provides more than the annual standard, it gets credit for the "excess in compliance," thereby permitting the facility to end its obligation in less than 20 years.

This new approach has permitted the Department to eliminate the burdensome and speculative process under which applications would be filed with HEW for prior approval of a lower compliance level. Under the NPRM the lower level would have been based either on an alleged lack of community need or a facility's financial inability to meet the required level. Under the final regulation, if fewer persons request free services than are needed to meet the annual standard, the facility is required to establish an outreach plan, and then provide uncompensated service for any additional persons who seek services under that plan. If the facility cannot afford to provide the annual level of care in any year, it need not do so. In either event, however, facilities assisted under Title VI must make up the deficit in future years. Facilities assisted under Title XVI are also required to make up deficits which are due to noncompliance but may not have to make up deficits due to financial inability.

Several aspects of the changes in the regulations and its cost impact are worth stressing. First, it is not possible to develop a precise estimate of the additional service costs which the proposed regulation would impose. Such an estimate would depend on previous knowledge of the costs of the current regulation. These costs are simply unknown. Moreover, the Department intends to enforce the regulation vigorously; but there is no current or forseeable basis for

[4] Title XVI assisted facilities will be required to make up deficits only when they violate procedures in the regulations. The difference in treatment is appropriate because, unlike Title VI facilities, Title XVI facilities are forever obligated to provide incompensated services.

estimating the costs resulting from improved enforcement. Finally, a significant proportion, perhaps the majority, of the costs involved under the regulation are not "real" costs, but involve shifts in financing for services which would be provided in any event. (This point is developed later in this paper.)

Second, this regulation changes NPRM requirements on how institutions administer the regulation: it allows a much more flexible procedure for determining an allocation plan; it reduces reporting requirements; it simplifies and clarifies recordkeeping requirements; it eliminates the requirement for individual written notices after an institution meets its annual compliance level for any given year; and it provides greater flexibility in regard to when a determination of eligibility for free care must be rendered.

The net overall effect of the administrative requirements associated with the regulation will result in a need for just over one staff person year per institution (see Table 6 later in this report). It is difficult to know the difference between this requirement and requirements for administrative resources under the previous regulation. However, we can estimate savings among the alternatives considered for this regulation (see Tables 3, 4, 5, and 6 later).

A major saving in administrative cost arises due to the elimination from the NPRM of procedures for requesting lower levels of compliance—resulting in administrative savings of perhaps as much as $4 million annually to the institutions and the Department (see footnote 2 in Table 6). Furthermore, the new deficit and excess provisions also make it easier to reduce the overall reporting requirements associated with the regulation, from an annual to a triennial requirement savings perhaps another $4 million annually.

Third, these regulations represent significant changes over past regulations in the matter of computing the annual compliance level for amount of uncompensated care to be provided by an institution. The final regulation eliminates the so-called open-door policy as the measurable standard for compliance. However, there is nothing to stop institutions from continuing an open-door policy on their own part. The regulation also adds to the base for calculating the 10 percent compliance standard, assistance received under certain supplemental Federal programs. This provision results in additional costs over previous regulations amounting to $14.1 million in 1979 rising to $22.5 million in 1984.

These regulations, like the NPRM, include an inflation factor in order to retain an equivalent amount of uncompensated services provided by facilities from year to year irrespective of increases in hospital costs after 1979. This is not a problem with facilities using the three percent of operating costs option. Their obligation automatically increases in direct proportion with increases in operating costs. As stated above, the inflation factor would add no more than 39 million in 1980, 118 million in 1982, and 199 million in 1984.

In view of these costs, the regulation also indicates that the Department will continually track the impact of the inflationary factor. When additional costs due to this factor approach $100 million (not until sometime in 1982), the Department will reassess its position in this regard and take appropriate action in the light of evidence accumulated to that point.

Analysis of Policy Alternatives: In the course of developing the Title XVI regulations, the Department sought input from providers and consumers of health care services as well as from interested State agencies and local health planning agencies. Through testimony offered at the public hearing held on December 5 and 6, 1978, written comments on the proposed regulations, and advice offered orally during informal consultations with members of various groups, the Department was provided with a wide range of alternatives on almost every issue addressed in the regulations.

The decisions reflected in the final regulations are the results of careful consideration of many substantive and procedural alternatives. They represent the Department's attempt to establish a set of feasible, enforceable regulations which implement the statutory uncompensated care and community service assurances without imposing unfair or unmanageable burdens on institutions, the Government or the public. This section highlights the decisions the Department has made on major policy issues, including a brief description of the alternatives considered for each. A fuller discussion of each regulatory provision, including an analysis of the public comments received and the implications of decisions made, is provided in the Preamble to the final regulations.

1. *Twenty year limitation on Title VI obligations to provide a reasonable volume of free or below cost services to persons unable to pay.* The 20-year limitation on the provision of uncompensated services, as adopted by HEW regulations in 1972, has been retained, but with some qualifications. Under the new regulations, if a facility does not fully satisfy its annual compliance level in a given year, the deficit will be carried over to future years, potentially extending beyond 20 years the time required to fulfill the obligation. On the other hand, the new regulations also provide that if a facility exceeds its annual compliance level in a given year, the facility may receive credit toward the satisfaction of its obligation in future years, thereby possibly shortening the duration of its total obligation to less than 20 years.

A number of other alternatives were considered with respect to the "twenty years" issue. Among other things, the Department considered the following: retaining the 20 year limitation but beginning it in 1972 (the date of the regulation establishing the limitation) rather than in the year the grant or loan was given; retaining the 20 year limitation, but beginning it in 1979 with the issuance of new regulations to ensure that only those years of demonstrated compliance would be credited toward the 20 years; deleting the 20 year limitation altogether since there is no such limitation in the statute; retaining the 20 year limitation without any further qualifications.

The 20 year limitation in conjunction with the compliance levels has been accepted by the courts as a reasonable standard for measuring the volume of services a facility is obligated to provide under the law. The Department is concerned, however, that this volume of services be actually provided and that a facility not escape its obligation through the passage of the 20 years. Thus, the Department has chosen to retain the 20 year limitation but has adopted a deficit make up provision and an excess compliance credit provision to ensure that at least subsequent to the effective date of the new regulations all facilities provide a reasonable volume of care. (See discussion of deficit make up and excess compliance credit below).

The Department seriously considered requiring facilities to demonstrate that they had been in compliance with the 1972 regulations during each year since 1972, and if they could not, to make up the deficit. However, due to lax enforcement in the past, much of the documentation necessary for determining compliance since 1972 is simply not available. The Department has determined, therefore, that the best use of its resources is to focus on/and ensure compliance in the future.

Thus, in the interests of ease of administration and to minimize burdens for the facilities and HEW, the Department chose not to mandate institutions in general to make up previous deficits simply because they are not able to *demonstrate* past compliance. This final regulation does, however, clarify the intention that a facility which received Title VI assistance must make up all future deficits incurred for any reason.

2. *A facility which fails in any year to provide its annual level of uncompensated services will be required to make up the deficit in subsequent years.* As explained in the preceding discussion of the 20 year limitation, the deficit make up provision is critical to ensuring that Title VI facilities are not excused from their obligation to provide a reasonable volume of uncompensated services merely because 20 years have gone by irrespective of whether they have met their annual compliance levels. The excess compliance credit provision complements this deficit make up provision. It ensures that if a facility provides more than its annual requirement, then the facility will get credit for the excess in compliance and potentially allow the facility to end its obligation in less than 20 years. In this later case, the facility's administrative burden would thereby be reduced in proportion to the number of years it could eliminate by virtue of its excess compliance credits. In both the case of deficits and credits, the new regulations apply to those deficits or credits which occur in any year after the effective date of the regulations.

An additional advantage to the deficit make up procedure established in the new regulations is that it eliminates the need for a facility to request a lower annual compliance level in a year in which it is financially unable to provide the requisite amount of

uncompensated services.[5] Instead, the facility will provide whatever it can afford, report to HEW at the end of the year, and tack the deficit on to its obligation in future years. Unless HEW later finds that the facility unjustifiably provided less than its annual compliance level in any given year, the facility would not be out of compliance with the regulations despite the fact that it is providing a lesser amount of uncompensated services than otherwise required. However, the facility's obligation will continue until the deficit has been erased.

The Department adopted this procedure in lieu of the NPRM scheme that required prior applications by facilities requesting permission to provide a lower level of services in any years. The Department estimates that the administrative costs to facilities and to HEW will be eased considerably ($1.6–4 million a year—see footnote 2 in Table 6) by eliminating the applications and prior approval process and relying instead on the facility's judgment of its financial capabilities, subject to later verification by HEW audit.

3. *The annual level of uncompensated services that a facility must provide (not less than the lesser of three percent of operating costs or ten percent of the Federal grant or interest subsidy received) will be adjusted each year after 1979 to account for inflation in the cost of medical care.* This inflation adjustment will ensure that a facility will provide in each year of its obligation a volume of services equivalent to that required in 1979 in direct proportion to the rising cost of care.

The Department considered a number of other alternatives before settling on the inflation adjustment described above. For example, the Department seriously considered calculating the inflation factor back to the year in which the facility received its grant or loan. However, because this method would have imposed upon the facilities a sudden, extreme increase in their uncompensated services obligation—an increase which they were unable to plan for during the years prior to 1979—the Department decided against it. For example, a $500,000 financial assistance base that began in 1970 would approximately double by 1979 if it were to have been inflated from 1970 to 1979. Thus, rather than providing 50,000 in uncompensated care in 1979, the institution would have been required to provide $100,000. In contrast, the inflation adjustment adopted by the Department in the new regulations imposes a gradual increase in the facility's obligation, merely keeping pace with inflation from now on. The gradual adjustment allows the facility to plan and budget for the provision of an increased level of uncompensated care, just as the costs of most other items in an institution's budget are adjusted upward each year to allow for inflation.

Another alternative that the Department considered would have applied the inflation factor only to the deficit incurred by a facility in any given year; that is, the basic dollar amount of services to be provided each year would not increase to adjust for inflation, but if the facility failed to meet its annual compliance level, the deficit would be inflated and added on to the amount of uncompensated services due in the following year (see Table 7 later). The Department decided against this alternative primarily because it would not be sufficient to counteract the erosion due to inflation of the actual volume of services to be provided. Without an overall adjustment of the total assistance base, less and less uncompensated service would be provided each year and soon the "volume" would become "unreasonably" small.[6]

Finally, the Department considered using no inflation factor at all. However, for the reasons already stated, the Department determined that an inflation factor was necessary to appropriately and fairly retain in future years a reasonable volume of uncompensated services equivalent to that initially required in terms of actual services rather than dollar cost. Thus, under these regulations, the inflation factor would be applied equally to deficits, excess credits, and to the base amount of the grant from which the annual compliance level is calculated. As noted earlier, this option adds about $39 million to the cost of the regulation in 1980, rising annually to $199 million in 1984. Nevertheless, in 1981, the Department will begin a reassessment of its decision based on information collected between now and then.

4. *Loan Payout.* On Federal loans and loan guarantees the assistance base for calculating the 10% option is related to the amount of interest subsidy paid by the Federal Government. Prior to this final regulation, the assistance base was taken to be the total amount of the interest subsidy to be paid over the life-time of the loan. Institutions would have been required to provide each year from year one of their loan, an amount of free care related to payments which were not going to be made by the Government until later years of the loan. Thus, for example, an institution with a typical $1,000,000 loan would have been required to provide $42,000 of uncompensated care in the first year of the loan, but would have received only $30,000 in interest subsidies that year. And beyond that the care liability increases with inflation every year and the interest subsidy decreases as the loan principal decreases.

This was judged by many to be inconsistent with the basis for computing the 10% option for grants. In the case of grants, the institution received all of its money at the time of award. But as noted above in the case of loans, it was given only small portions of its money each year, not receiving the last amount until the final year of the loan repayment period. Thereby, the Department felt that this requirement when amplified by the inflation factor under the 10% option was unnecessarily onerous. Instead it simply adjusted this requirement to include in the Federal assistance base only that amount of interest subsidy received by an institution up to and including the current fiscal year. This alternative has been dubbed the "payout" method. Under the 10% option with the inflation provision, the "payout" method turns out to require $40 million less care in 1980, rising gradually to roughly $46 million less care in 1984, as compared to the total subsidy method required previously. The Department, therefore, uses the payout method in the Final regulation to define the Federal assistance base related to interest subsidies.

5. *If a facility does not provide the required level of uncompensated services in any year due to insufficient demand or for any reason other than financial infeasibility, the facility must adopt an affirmative action plan.* Under this provision, the facility will be required to take such steps as the following: widely publicize the availability of free care, adjust eligibility requirements for uncompensated services to enlarge the pool of eligible patients, expand its definition of service area if the current definition limits the area from which persons seeking free care must come, and establish arrangements with other providers in the area to refer persons needing uncompensated services. If after instituting such a plan, a facility still falls short of meeting its annual compliance level of uncompensated care, the remaining deficit will be made up in the following year or years until the full obligation has been satisfied.

The Department adopted this procedure in lieu of the "open door" provision in the current regulations. Under the "open door" provision, no dollar amount of care was established as the compliance standard; a facility needed only to agree to provide uncompensated services to any person unable to pay. The "open door" has been an unsatisfactory standard primarily because compliance cannot readily be monitored, and the Department found substantial evidence of past noncompliance with the "open door" provision. However, the Department recognized that some facilities might be in compliance with all other portions of the regulations but have trouble providing the required dollar amount of uncompensated services due to insufficient demand for such services in their area. Thus, a better alternative to the "open door" was sought.

One alternative considered was to require facilities that anticipated such a problem to apply early in the year for permission to provide a lower level of uncompensated services. However, the burdens on both facilities and the Department under this alternative would have been substantial. Instead, the Department chose to establish an affirmative action plan as described above, linked with the deficit make-up requirement. This alternative will eliminate the burden of unnecessary paperwork, ensure that the full obligation of a facility is met, and yet not stigmatize a facility which in good faith attempts to provide the required level of uncompensated services but is met with

[5] However, it should be noted that those Title VI facilities which might have been granted lower levels of compliance previously will now have to carry any deficits forward. Effectively, a greater total amount of uncompensated care will therefore be delivered under this regulation as compared with the proposed rule.

[6] It should be noted that the inflation factor as described applies only to the 10% option. Since operting costs of a facility usually rise each year with inflation, no additional inflation factor will be applied to the level of uncompensated services under the option requiring 3% of operating costs.

insufficient demand for the services. Without this additional minimal administrative requirement, it would not have been feasible to eliminate requests for lower level of compliance, and thus the consequent larger savings there would not have been realized.

6. *In addition to published and posted notice, facilities must provide individual written notice that uncompensated services are available.* In the Department's view, no other alternative for notifying potentially eligible persons of the availability of free care would be as effective as individual written notice. Further, the burden on facilities of providing such notice is anticipated to be very small, and the benefits to the public are anticipated to be substantial. Finally, if a facility meets its compliance level during its fiscal year, it may stop providing individual written notices and making eligibility determinations for the remainder of that fiscal year. Thus, although posted notice and written denial requirements continue to apply, this results in a valuable reduction of an institution's administrative burden as compared to requirements of the NPRM.

7. *Each facility must adopt and publish a plan for allocating its available uncompensated services.* The Department considered a number of alternative allocation requirements, including the following: mandating a first-come, first-serve plan for all services provided at the facility; mandating that a mix of inpatient, outpatient, and emergency room services be provided; and mandating that a certain proportion of services be provided on a part-pay basis and a certain proportion be provided totally free. The Department instead decided that the primary purpose of the allocation plan—to ensure that uncompensated services are distributed fairly and to provide advance notice to the public of what kinds of services are available and how they will be allocated—could be achieved without mandating through regulations the content of the allocation plan. Under the new regulations, *a facility may decide for itself* how to allocate its services, and simply notify the public and the local Health Systems Agency (HSA) of its plan. The regulations permit and encourage community input into the plan through HSA involvement, but HSA involvement and approval of the plan is not mandated. Final discretion in this area is left to the facility.

8. *Determinations of eligibility for uncompensated services must be made on request, but may be made either before or after the provision of services to the person.* Under the current regulations, with a few limited exceptions, determinations of eligibility are required to be made *prior* to the provision of services if the facility is to credit such services to its uncompensated services obligation. This requirement was intended to prevent facilities from writing off "bad debts" as part of their uncompensated services obligation, and to give patients advance notice that they would not have to pay the bill they were about to incur. Many institutions pointed out the complexity and costliness of this provision in their administration of the regulation, and consumer groups pointed out that it would be beneficial if in some cases determinations of eligibility could be requested after services have been provided.

As a result, under the new regulations, the Department has adopted an alternative which will be less burdensome for both facilities and eligible patients. Under this provision, the institution has two working days within which to answer any request, either for elective or emergency admission; and the patient has the right to request and receive a determination of eligibility any time before or after receiving care. If the person is determined to be eligible and to come within the allocation plan, the facility may add the uncompensated cost of that person's services to its total for the year, even if so doing results in an excess compliance credit. Thus, the new provision includes all the safeguards of the "prior determination" rule, but is less burdensome and more beneficial to both the facilities and potentially eligible patients.

9. *Facilities which provide the required annual level of uncompensated services must submit reports to the Department every three years. Facilities which provide less than the annual compliance level must submit a report in each year for which a deficit is determined.* The Department considered a number of reporting alternatives to implement the statutory requirement of "periodic" reporting. Yearly reports for all facilities were considered. Reports every four of five years were also considered. The Department determined that yearly reporting was burdensome and not necessary as a general rule, but that for facilities which were not providing the required level of uncompensated services, yearly reporting was critical to allow for proper compliance monitoring. The resultant savings over NPRM administrative costs to the institution and Government amount to over four million dollars annually (see footnote 4 in Table 4).

10. *Although the assurances program will be federally administered, the Department may enter into agreements with State agencies that are able and willing to do so to assist in administering the program in their States.* A number of States have developed effective programs for monitoring and enforcing compliance with the uncompensated services and community service assurances. Although Title XVI places primary responsibility for the program with the Federal Government, some States may wish to continue to use their own resources to enforce the assurances. In fact, State Health Planning and Development Agencies may use funds received under section 1525 of the Act for expenses of this sort. States can be effective in reducing non-compliance and in mitigating the need to process complaints. If this happens, the costs to the Department will be decreased and Federal resources can be focused more sharply on enforcing the regulations in other States.

Cost Analysis Review and Detail

The cost analysis presented in this report, as indicated earlier, focuses on the total cost of providing uncompensated care and the cost of administering the regulations in the institutions and Government. Under the 10% option and using the NPRM method for including interest subsidies, the uncompensated care liability for the 5392 institutions obligated in 1980 is $435 million, and for the 4164 institutions still obligated in 1984 it is $583 million. If inflation is ignored, these totals would go instead from $396 million in 1980 to $366 million in 1984. Thus, the annual increment due in this case to the inflation factor [7] alone ranges from $39 million in 1980 to $217 million in 1984. Using an alternative approach for including interest subsidies in the base would reduce the inflated totals about $40–45 million per year and the non-inflated totals about $41–28 million per year. For most facilities, the 3% option would require a higher liability than the 10% option. Some will find the 3% option to be lower, however, and thus the actual total liability for all institutions will be less than the figures given for the 10% option.

Administrative costs were much more difficult to estimate. Four subsets of these administrative costs were examined: lower level of compliance, investigation and enforcement, other general activities, and elimination of requests for lower levels of compliance. The general activities were assumed to be relatively invariate in terms of alternative approaches. Thus, we assume each institution would need about 1 staff year (includes professional and support) annually to perform them (see Table 4). In estimating costs of investigation and enforcement, we used three alternative approaches which varied to the extent that reports or complaints were cross-checked or audited. Totals for the Government ranged between 5.7 and 57 staff years annually (see Table 5).

In view of the high estimated cost of administering requests for lower levels of compliance as proposed in the NPRM, a fourth alternative was developed for the final regulation. The alternative approach, while still requiring the same total amount of uncompensated care to be provided by each obligated institution, allows each institution to vary the yearly amounts delivered according to annual demand and financial conditions until its total obligation is exhausted. It also requires affirmative action in some cases. The first three alternatives differ in the extent to which required data was available or had to be collected from

[7] As noted earlier in the text, the Department intends to reassess the cost implications of the inflationary factor before its effect adds $100 million annually (probably not until 1982).

scratch. Total institutional costs were 29 years, 157 years, 288 years, and 79 years, respectively. The Government costs were 65, 131, 196 years, and 74 years, respectively (see Table 3).

Uncompensated Care Liability

The provision for uncompensated care liability (UCL) discontinues the "Open Door Option" and requires either a 10% or 3% option. The 10% option means that an institution's UCL is 10% of the amount of their Federal assistance plus a yearly adjustment for inflation. The 3% option means the UCL is 3% of the difference between annual operating expense and Medicare/Medicaid receipts.

The Federal assistance base consists of Federal grants and interest subsidies. The proposed rule requires grants to be included for 20 years and interest subsidies for the life of the loan. The NPRM set the value of the interest subsidy at the sum of all subsidy payments due over the life of the loan.

Thus, institutions would have been required to provide each year from year 1 of their loan, an amount of free care related to payments not made by the Government until later years of the loan. Thus, we adopted an alternative way to include interest subsidy in the base, namely, the "Payout" method. This method includes in the base only that amount already paid out by the Government.

The current regulatory provision of UCL differs from the last version of the regulation in that it discontinues the open door and requires that the Federal assistance base for the 10% option be increased yearly by the inflation rate. Table 1 shows the uninflated UCL vs. the inflated UCL under the 10% option for two ways in including interest subsidies, total and payout.

It is not possible to estimate the effect of eliminating the open door option. Some suggest there is simply a distributional effect (see the later section on distributional effects). The effect of inflating the base under the 10% option can, however, be estimated. It is shown in Table 2.

Table 1.—*Uncompensated Care Liability*

[In $1,000,000 units]

	Assistance base				10% option				3% option
	Active grants		Interest subsidies		Not inflated		Inflated		
	VI & XVI	Other	Total	Payout	1+2+3	1+2+4	1+2+3	1+2+4	
	1	2	3	4	5	6	7	8	9
Year:									
1980	3,286	141	537	173	396.4	355.7	435.4	395.0	777
1981	3,233	141	537	204	391.1	354.7	474.2	432.7	849
1982	3,155	141	537	232	383.3	350.0	510.3	467.5	900
1983	3,075	141	537	258	375.3	344.8	537.6	504.4	936
1984	2,981	141	537	262	365.9	338.0	582.9	537.0	980

Notes:

1. Column 1 excludes those amounts (see Table A3) for which the 20 year obligation expires in the respective year.
2. These grants include: D.C. Construction Act, Public Works, Appalachian.
3. Column 3 is total of yearly interest subsidy payments due over the life of the loan.
4. Column 4 is cumulative amount paid through the respective year (see Table A4).
5. Columns 7 and 8 are inflated by HEW rates: 1979—9.84%; 1980—10-38%; 1981—9.81%; 1982—9.84%; 1983—8.94%. Column 7 involves a straightforward compounding of Column 5. Column 8 compounds the sum of Column 1+2 and inflates Column 4 according to the respective year of payout.
6. Column 9 comes from Table A2 in the Appendix.

Table 2.—*Effect of Inflating the Base*

	Grants and total interest subsidies [1]	Grants and interest subsidy payout [2]
1980	39.0	39.3
1981	83.1	78.0
1982	127.0	117.5
1983	162.3	159.6
1984	217.0	199.0

[1] Column 7 minus Column 5 from Table 1.
[2] Column 8 minus Column 6 from Table 1.

The estimates in Tables 1 and 2 assume all institutions choose the 10% option or that all choose the 3% option. In fact, institutions will choose whichever provides them a lower UCL. Nevertheless, the total National UCL will not exceed the amounts calculated under the assumption that every institution uses the 10% option. If an institution chooses the 3% option because it is lower, the National total UCL would then be reduced from the 10% option totals in Table 1.

Administrative Costs

This section reports estimates of the administrative costs of the assurance program. Estimated costs are provided for each section of the proposed regulation where explicit activities are identified.[8] In cases where feasible, three optional levels of activities are provided; thus decision-makers may choose among activities on the basis of their estimated costs. For the most part, the tables in which the estimated costs are

[8] In Tables 3, 4, and 5, staff days are divided by 220 to conservatively calculate staff years.

presented are self-explanatory. A few general comments are provided below.

Table 3: We anticipate that applications for a reduced level of compliance would have been submitted by some 60 percent of the obligated institutions. To a certain degree, the burden of administration would have varied with the requirements for justifying and documenting requests imposed by the final regulations. Thus, we have estimated costs for four alternative levels of documentation. These levels are (1) from existing institutional data; (2) from existing institutional data supplemented by demographic and other information available from the census, HSAs, HSP, or SHP, and other general sources; (3) from the above source plus primary data that must be developed by each institution for its specific request; and (4) requires a report if the intention to provide less care is due to financial reasons and an affirmative action plan if for other reasons.

Table 3.—*Lower Level of Compliance*

Level of Documentation	L1[1]	L2[2]	L3[3]	L4[6]
ACTIVITY				
Applications[4]	2,886	2,886	2,886	1,443
Effort/facility	2 days	2 weeks	4 weeks	2 days
Total Effort	26.2 yrs	131 yrs	262 yrs	13.2 yrs
Publication of Notice (or Affirmative Action Plan)[4]				(Assume 20% will reacquire AAP)
Effort/facility	1 day	2 days	2 days	3 weeks
Total Effort	13.1 yrs	26.2 yrs	26.2 yrs	65.6 yrs
Review Application[5] (or AAP's)	1 day	2 days	3 days	2 days/report 3 days/AAP
Incorporate Public Input/Application	4 days	8 days	12 days	8 days/AAP
Total Effort	65.5 yrs	131 yrs	196.5 yrs	74.3 yrs

[1] Requires only a form report requesting data available within institution.
[2] Requires L1 plus generally available data.
[3] Requires primary data to be developed by applicant.
[4] Borne by applicant. From Table A5, average number of obligated facilities between 1979–84 is 4,810. Assume 60% or 2,886 apply under L1, L2, L3, and under L4 that 30% of facilities, or 1,443, annually claim and report to the Secretary that they were financially unable to meet compliance level.
[5] Borne by Government.
[6] This option eliminates the need for institutions to request a lower level of compliance. Instead an institution need only report their intention to provide less care if due to financial inability to meet their established compliance level, or file an affirmative action plan if due to other reasons.

Table 4: No variable elements are considered to be present in the facility cost of administering the elements of the proposed rule included in table 4. Thus, total personnel cost has been estimated. In the estimate, the cost of reporting pursuant to Sections 125.510 and 124.604 have been combined. We have not attempted to estimate the legal costs which will be borne by institutions.

Table 5: The estimated costs to the Government of investigation and enforcement activities are shown in Table 5. The table shows activities required by both Sections 124.511 and 124.605. Three optional levels of enforcement activity are shown: E1) a presumptive level, predicated on the presumption that facilities are in compliance, in which monitoring and enforcement is limited to receiving and processing facilities reports and investigating complaints; E2) an extension of E1 which provides additional confirmation of reports and investigation of discrepancies in reports and of facilities with above average frequencies of complaints; and E) which involves a preventive approach to enforcement through on-site audits of ⅓ of the obligated institutions reporting in a given year.

The estimates for investigation and enforcement assume that the Government will receive 1,200 complaints per year under each subpart, of which 48 per year under each subpart will be found to require further action.

Because of the absence of provisions for funding, it has been concluded that few states will wish to make agreement pursuant to § 124.512 and 124.606.

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Table 4

Notices, Eligibility, Exclusion, and Reporting[1/]

Section		Activity
.505	--	Notice of Availability Promulgation of notice, testimony @ HSA hearings
.508	--	Determination of Eligibility Interview applicants; determine eligibility; verify information
.509	--	Exclusion from Uncompensated Service Processing third party claims, billing and collection
.510 .604	--	Reporting[4/]

Effort/facility	1/2 time staff @ 15,000/year	7,500
	1/2 time sec'y @ 9,000/year	4,500
Cost/facility[2/]		12,000
Cost all facilities[3/]	4810 x $12,000 =	$57,720,000

1/ These costs are assumed to be roughly equivalent to the administrative costs of the most recent Title VI regulations.

2/ The effort estimates are meant to allow for staff time spent by others in the institution who will be occasionally involved in the routine conduct of activity under these sections.

3/ Average of 4810 facilities between 1979-84 (see Table A5).

4/ Assuming an average of 4810 institutions (see Table A5) and 10 staff days per report (including support staff), and assuming it takes two staff weeks to prepare a report, annual reporting would require 218 staff years each for both the Government and institutions. Triennial reporting reduces this from 536 staff years to about 179 years for a savings of over $4 million (357 x $12,000).

Table 5

Investigation and Enforcement

Enforcement Level / Activity	E1	E2	E3
Processing Reports (Sections 124.511 and 124.605 inclusive)	Acknowledge and check reports; automatic data processing	E1 plus cross-checking with HCFA audits and reports	E1 + #2 plus preventive audits of 1/3 reports annually
# of Reports	1604	1604	1604
Effort/report	2/day	1/day	1/3 @ 2 days
Total Effort Report	3.7 yrs.	7.4 yrs.	E1 + E3: 8.6 yrs. E2 + E3: 12.3 yrs.
Processing Complaints Section 124.511	Acknowledge and check complaints	E1 plus remote audit of each facility generating an excessive number of complaints per year (assume 10% of facilities)	E2 plus preventive audits of 1/3 of all institutions annually
# of Complaints/yr.*	1200	1200	1200
Effort/Complaint	6/day	E1 + 10% @ 1/day	E2 + 1/3 @ 3 days
Total Effort-Complaint	1 yr.	1.5 yr.	21.5 yrs.
Processing Complaints for Section 124.605	Same as for 124.511	Same as for 124.511	Same as for 124.511
Total Effort, 124.605	1 yr.	1.5 yrs.	21.5 yrs.

Enforcement	Institutions	Government
Section 124.511		
Fact Finding/Mediation-48 cases/year	3 weeks/case	2 weeks/case
Total Effort	3 years	2 years
Litigation - 12 cases per year to be forwarded to OGC		
Section 124.605 Forwarded to OCR - 48 cases/year		

*Assumes five times recent volume.

Table 6

Summary Table [1/]

	Institution				Government			
	L1	L2	L3	L4 [2/]	L1	L2	L3	L4 [2/]
.504 Compliance Level	39.3	157.2	288.2	78.8	65.5	131	196.5	74.3
.505 Notice .508 Eligibility .509 Exclusion .510 Reporting .604 Reporting	1 staff year/institution Average of 4810							
Investigation and Enforcement	E1	E2	E3		E1	E2	E3	
.511 & .604 Reports					3.7	7.4	9-12	
.511 Complaints					1	1.5	21.5	
.605 Complaints					1	1.5	21.5	
.511 Enforcements	3	3	3	3	2	2	2	
Total Staff Years	4852	4970	5101	4892	74	145	254	E1:82 E2:87 E3:132

1/ Entries are total staff years for all institutions as summarized from Tables 3, 4, and 5.

2/ Savings from adoption of L4 over NPRM options can be calculated by subtracting L4 and L3/L2 columns. L2-L4 = 4970-4892 + 145-87 = 136 years; L3-L4 - 5101-4892 + 254-132 = 331 years. At $12,000/staff year this totals about $1.6 million and $4 million, respectively.

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Alternatives to Administering Lower Levels of Compliance

In view of the high estimated cost of administering Section 124.504 as proposed in the NPRM, alternative approaches were considered. One approach involved eliminating the proposed annual compliance requirement in favor of a system in which obligated facilities carry a balance of uncompensated care outstanding which they eliminate over a period of years as demand and/or financial circumstances permit.

In the proposed system, a facility would begin with a balance of uncompensated care owed the public equal to the sum of its annual uncompensated care liability over the remaining years of its obligations. Each year, the amount of uncompensated care provided would be deducted from the balance. If the amount provided in a year were less (or more) than the 10% option called for, the difference, inflated by the current year's rate of inflation, would be added to (or deducted from) the facilities balance due. The balance due will also be inflated each year by the current rate of inflation before being carried forward to each succeeding year (for an example, see Table 7).

In this way, each facility is obligated to provide an amount equal to its remaining uncompensated care obligation, valuated in 1980 dollars, over a period of years depending on the community's need and the institution's financial condition. The fact that the period of the payout is optional will negate the need for institutions applying for waivers and thus eliminate the large administrative burden depicted in Table 3 and summarized in Table 6 in the first row. Under this option, administrative costs of investigating and mediating complaints may be increased by a modest amount above that estimated in Table 5.

Table 7.—*Calculating Accounts (Alternative to Lower Level of Compliance* [6]

	Inflation rate (percent)	FAB [1]	UCL [2]	UCD [3]	Account [4]	Payoff at beginning of year [5]
Year:						
1980	10	$1,000,000	$100,000	$90,000	$-10,000	$2,000,000
1981	10	1,100,000	110,000	90,000	-20,000-11,000	2,090,000
1982	10	1,210,000	121,000	90,000	-31,000-34,100	2,178,000
1983	10	1,331,000	133,100	193,100	+60,000-71,610	2,262,700
1984	10	1,464,100	146,410	176,410	+30,000-12,771	2,342,560

[1] FAB—Federal Assistance Base increases annually by inflation rate.

[2] UCL—Uncompensated Care Liability computed as 10% of current FAB.

[3] UCD—Uncompensated Care Delivered during current year * * * may be more or less than UCL.

[4] Account—Difference between UCD and UCL plus last year account balance increased by this year's inflation rate. For example, in 1981, UCD fell short of UCL by 20,000; 1980's (last year) account balance was 10,000 which was inflated by 10% to 11,000. In 1982, UCD fell short of UCL by 31,000; 1981's account balance was 31,000 which was inflated by 10% to 34,100.

[5] Payoff—Present value of UCL summed over the remaining life of the loan. Because future UCL is rising by the inflation rate, and because we use the inflation rate to discount future dollars of UCL to the present, the Payoff is equal to the current year's UCL times the remaining years in the life of the obligation. For example, if in 1980, the loan obligation had 20 years to go, the payoff at the beginning of 1980 is 20×100,000, or 2,000,000. Similarly, the payoff in 1982 is 18×121,000, or 2,178,000. Taken another way, the payoff is always equal to the inflated difference between the previous year's payoff, less the previous years' UCL. For example, the 1981 payoff equals 2,000,000 less 100,000, or 190,000, inflated by 10% to 2,090,000. Similarly in 1983, the payoff is 2,178,000 less 121,000 or 2,057,000, times 1.10, or 2,262,700.

[6] Obligation—If an institution delivered an amount of care equal to this year's payoff less last year's account balance, their obligation would be satisfied. Thus, any time this year's payoff less last year's account balance goes to zero or below, their obligation is satisfied.

Distributional Effects

The service costs imposed by the proposed regulation are not necessarily additional "real" costs, as ordinarily defined in economic theory. To a substantial degree (probably well over half),[9] these services will go to persons who would otherwise be served, either on a fee basis or in charity hospitals. As a result, the proposed regulation will affect the *incidence* of health care financing. The following effects are likely to be significant:

Under a rigorous enforcement scheme, hospitals will have incentives to identify as free care patients some persons who otherwise would have been required to pay from own sources. Income redistribution from other sources (see below) to the poor will occur.

Some patients will utilize Hill-Burton facilities (or different Hill-Burton facilities) instead of municipal or county charity hospitals. Non Hill-Burton hospitals may reduce their charity load. Thus, the burden on some hospitals will decrease and on others increase. In the particular case of municipal hospitals, some costs will be shifted from the city taxpayer to private sources and, in some cases, the suburban taxpayer.

Much of the effect on charity hospitals (many of which are among the largest recipients of Hill-Burton funds) will be a wash. These hospitals will recategorize their existing patients, and the local public budget will still pay the costs.

Medicare and Medicaid, which together pay on average about 40% of all hospital charges, do not reimburse for "unrelated" costs such as free care or bad debts. Unless current policy is changed, Medicare and Medicaid will not be an offsetting source of funds.

Most of the redistribution will involve a shift to increased charges to (a) non-poor uninsured private persons (a small population), (b) privately insured persons (e.g., Blue Cross), and (c) philanthropy.

[9] If one assumed that all persons who *require* hospitalization already received it, the effects would be completely redistributional. However, there are persons refused admission on the basis of inability to pay, who fail to request admission because of inability to pay, who are sent home early when a longer stay is medically indicated, etc. While these phenomena are undoubtedly small in the population as a whole, they are likely to be significant in the populations most affected by Hill-Burton—e.g., poor, male headed families (in some states), poor singles, and the uninsured near poor.

Appendix A

Table A1.—*Federal Assistance Plan*

	Obligated Facilities as of 1979	Estimated Federal obligations (millions)
Grand total	5,392	$4,040.1
Grants	5,284	
Title VI		3,275.1
Title XVI		51.0
Loans: Interest subsidies	[1]108	[1]573.0
Federal supplements	(2)	
D.C. Const. Act:		
Grants		31.3
Interest subsidies		(2)
Accel. Pub. Works		15.8
Appalachia:		
Sec. 214		93.9
Sec. 202		(2)
Other regional commissions (coastal plain, etc.)		(2)

[1] Estimated as 43% of loan principal over average maturity of 23.5 years.

[2] 368 facilities now receive interest subsidies, but 260 of these also have grants and are thus included in the total of 5,284 above.

[3] Estimate not yet available.

Table A2.—*National UCL for 3-Percent Option*

[In billions of dollars, except as noted]

	Operating costs all hospitals [1]	Less 40 percent for medicare medicaid reimbursements	Obligated hospitals as percent of all hospitals [2]	Adjusted costs 3 for obligated hospitals	3 percent UCL obligated hospitals	Estimated [4] for all institutions
Year: [1]						
1980	$60.0	$36.0	59.8	$21.5	0.645	0.777
1981	67.2	40.3	58.4	23.5	0.705	0.849
1982	74.2	44.5	56.0	24.9	0.747	0.900
1983	81.5	48.9	53.0	25.9	0.777	0.936
1984	89.5	53.7	40.4	27.1	0.813	0.980

[1] Figures in the table are from previous year except in last column.

[2] HEW estimates but similar to AHA estimates for non-Federal short-term general and other special hospitals.

[3] Entries in this column are the totals from Table A5 divided by 5973, the number of non-Federal short-term general and other specified hospitals, as reported by AHA for 1977.

[4] 83% of all Title VI grants went to these inpatient facilities; thus adjust by dividing previous column by 0.83. The accuracy of this adjustment depends to the extent that operating costs at institutions other than hospitals maintain similar relations as those represented in these columns for hospitals.

Table A3.—*Expiration of 20 Year Period*

	No. of institutions	Title VI grant funds
Year:		
1979	198	39,572,421
1980	215	53,034,788
1981	291	77,832,317
1982	245	80,785,144
1983	279	93,695,120

Table A4.—*Interest Subsidy Payments* [1]

[In millions of dollars]

	Annual	Cumulative
73–78	95.6	95.6
79	34.3	129.9
80	42.9	172.8
81	30.8	203.6
82	28.3	231.9
83	26.1	258.0
84	23.9	261.6

[1] Includes interest subsidies paid during construction periods only for years 1973 through 1980. Remaining paragraphs are estimated from amortization schedules effective after construction. However, after 1980, very few projects are expected to be in construction.

Table A5.—*Annual Number of Obligated Institutions*

	Total	Inpatient	Nursing home
1979	5,392	3,572	462
1980	5,194	3,490	445
1981	4,979	3,342	431
1982	4,688	3,166	418
1983	4,443	3,010	398
1984	4,164	2,823	377
Grand total	28,860		
Average	4,810		

[FR Doc. 79–15522 Filed 5–17–79; 8:45 am]
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federal register

Friday
May 18, 1979

Part IX

Department of Health, Education, and Welfare

Office of Human Development Services and Rehabilitation Services Administration

Vocational Rehabilitation; Availability of Grant Funds for a New Model Spinal Cord Injury System

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

Rehabilitation Services Administration

[Program Announcement No. 13626-791]

Special Projects and Demonstrations in Vocational Rehabilitation

AGENCY: Office of Human Development Services, HEW.

SUBJECT: Announcement of Availability of Grant Funds for a New Model Spinal Cord Injury System.

SUMMARY: The Rehabilitation Services Administration (RSA) announces the availability of grant funds for one new Model Spinal Cord Injury System project authorized by Title III, Section 311(a)(1) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762). Regulations governing Special Projects and Demonstrations in Vocational Rehabilitation were published in the **Federal Register** in Subpart A and Subpart B, Part 1362 of Chapter XIII of Title 45 of the *Code of Federal Regulations* (45 CFR, Part 1362) on November 25, 1975.

DATE: Applications for grants must be received in OHDS by July 20, 1979.

Scope of This Program Announcement

This announcement provides information solely relating to the designation and award of one new Model Spinal Cord Injury System project for Fiscal Year 1979.

Program Purpose

The purpose of the Special Projects and Demonstrations Program specified in section 311 of the Rehabilitation Act of 1973 is to establish programs for providing vocational rehabilitation services which hold promise of expanding or otherwise improving rehabilitation services to handicapped individuals, including individuals with spinal cord injuries.

Program Objectives

The objectives of the program are to:

1. Establish within a catchment area or region of natural patient flow, a multidisciplinary system of providing comprehensive rehabilitation services to meet the wide range needs of persons disabled by spinal cord injury—from point of injury requiring emergency treatment and transportation, through acute care, rehabilitation services, including vocational and educational preparation, community and job placement and long-term community follow-up and health maintenance;

2. Demonstrate and evaluate the benefits for persons who have become spinal cord injured served in, and the degree of cost effectiveness of, such a regional system;

3. Establish within the system a rehabilitation research environment for the achievement of new knowledge leading to the reduction and treatment of complications arising from SCI and the development of new techniques of medical management and rehabilitation;

4. Demonstrate and evaluate the development and application of improved methods and equipment essential to the care, management and rehabilitation of individuals with SCI;

5. Demonstrate methods of community outreach and education for the SCI in areas such as housing, transportation, recreation, employment and other community activities.

Eligible Applicants

Any State vocational rehabilitation agency, and other public or nonprofit agency or organization, including institutions of higher learning, may apply for a grant under this announcement.

Available Funds

Of the $4.5 million appropriated by the Congress for Model Spinal Cord Injury Systems in Fiscal Year 1979, the Rehabilitation Services Administration expects to award an estimated $200,000 for one new grant.

Generally, this project will be supported for a period of three (3) years. The funds currently available will sustain the budget for the first year of the project. Support of any additional time remaining in the project will depend on funds available and the grantee's satisfactory performance in achieving the project objectives for which the grant was awarded.

Grantee Share of the Project

It is expected that grantees will provide at least five (5) percent of the costs of the Model Spinal Cord System project. The grantee share may be cash or in-kind, and be project related and allowable under the Department's regulations under Subpart G and Q in 45 CFR, Part 74, (see 43 FR 34076, August 2, 1978).

The Application Process

Availability of Application Forms

Application kits which contain the prescribed application forms, the project description, and information for the application may be obtained by making a request to:

Division of Grants and Contracts Management, Office of Human Development Services, DHEW, Room 1427, Mary E. Switzer Building, 300 "C" Street, SW., Washington, D.C. 20201. Attention: 13626-791—Telephone 202/245-0051.

Application Submission

Completed applications should be submitted to the address provided above.

The application shall be signed by an individual authorized to act for the applicant agency and to assume the obligations imposed by the terms and conditions of the grant award.

One signed original and three (3) copies of the grant application, including all attachments, are required. The original and two (2) copies, which are for review purposes, are to be submitted to the central receiving office of the Office of Human Development Services. The other copy is to be submitted concurrently to the cognizant State vocational rehabilitation agency. This agency reviews the applications and forwards its comments to the Commissioner.

Circular A-95 Notification Process

In compliance with the Department of Health, Education, and Welfare's implementation of Office of Management and Budget Circular No. A-95 Revised (interim procedures at 41 FR 3160, July 29, 1976), applicants who request grant support must, prior to submission of an application, notify both the State and Areawide A-95 Clearinghouses of the intent to apply for Federal assistance. If the application is for a statewide project which does not affect areawide or local planning and programs, the notification need be sent only to the State Clearinghouse. Some State and Area Clearinghouses provide their own forms on which such information is to be submitted. Applicants should contact the appropriate State Clearinghouse (listed at 42 FR 2210, January 10, 1977) for information on how they can meet the A-95 requirements.

Application Consideration

The Commissioner determines the final action to be taken with respect to each grant application.

All accepted applications are subjected to a competitive review and evaluation conducted by qualified persons outside of Federal employment. The results of the competitive review supplement and assist the Commissioner's consideration of the

competing applications. The Commissioner's consideration also takes into account the comments of the State agencies of vocational rehabilitation, the HEW Regional Offices and the headquarters program office. Comments on the applications may also be requested from appropriate specialists and consultants inside and outside of the Government.

When the Commissioner has reached a decision either to disapprove or not to fund a competing grant application, the unsuccessful applicant is notified of that decision.

Criteria for Review and Evaluation of Grant Applications

Competing grant applications will be reviewed and evaluated by persons outside of the Rehabilitation Research and Demonstrations Office against the following criteria: To be considered for support, grant applications for a Regional System must give clear evidence of reasonable project costs and that the applicant organization has established in all aspects of spinal cord injury services the (1) recognized expertise and competence, (2) available staff, (3) essential medical, rehabilitation and other service facilities as required without project cost for further alteration, expansion or renovation and (4) effective interagency relationships and communications within the patient flow area. These elements, including the proposed methodology, must assure that the following are provided in meeting program objectives:

1. To spinal cord injured persons, regardless of source of economic sponsorship, a comprehensive, multidisciplinary, balanced continuum of services covering all phases of care and rehabilitation form the point of injury or disability through successful long-term community adjustment. The following range of services must be included:

(a) Acute care:

(1) Evacuation and transportation;

(2) Emergency and early acute care (1–10 days post onset);

(b) Rehabilitation services

(1) Physical restoration (10–120 days post onset);

(2) Vocational-educational preparation (should be initiated during care);

(3) Community placement and adjustment;

(c) Long-term, comprehensive follow-up (includes medical, social, psychological, and vocational).

2. The accessibility of care, including the identification of persons with recently incurred spinal cord injury, through a well-developed, emergency evacuation and transportation subsystem. Such a system must include a communications network from transportation units in the field through a coordinating focal point to the designated emergency and acute medical facility or facilities.

(a) Personnel should be trained in proper handling and evacuation of SCI and severely traumatized persons.

(b) Evacuation personnel must be under medical supervision. Facilities for emergency and acute care that possess the necessary environment, equipped and staffed by specialists in all aspects of spinal injury care, for maximal stabilization and maintenance of vital bodily functions. Emphasis must be placed upon all measures which may alleviate or eliminate the impairments imposed by spinal cord injury including the application of immediate treatment techniques for spinal shock and other traumatic mechanisms of the cord.

3. A program of physical restoration and rehabilitation services that assures the opportunity for improving functional capacity and potential in all areas, including activities of daily living, bowel and bladder care and training, fitting of rehabilitation equipment, vocational evaluation and early training services, psychological assessment and support, family and social evaluation, etc. The availability, of multi-specialty medical consultation must be assured, i.e., urology, plastic surgery, orthopaedics, etc.

4. A vocational rehabilitation program through which effective coordination and communication assures maximal use of all necessary agencies, institutions, and private enterprises within the region to meet the individualized vocational or educational needs of SCI persons. This requires established working relationships via written cooperative arrangements with each VR agency in the patient flow area which is expected to have a formalized relationship to the project, with emphasis upon case services. Such cooperative arrangements should specifically describe referral procedures, cost reimbursements, scope of services to be provided, staff sharing programs and other information as might be necessary.

5. A comprehensive, long-term follow-up program emphasizing community placement, health maintenance, and vocational and social adjustment and assuring that each is evaluated and monitored regularly through direct contact by trained follow-up personnel. Such a follow-up system should provide an up-to-date registry including a dynamic, current status evaluation of all SCI persons discharged from the various subsystems.

6. A program of community outreach and community education in connection with the problems of housing, transportation, recreation, employment, and community activities.

7. Coordination of services, and appropriate program and advocacy administered and guided by a physician who has specialized training and experience in rehabilitating the SCI during the early care phase of rehabilitation, and an allied rehabilitation professional as coordinator during the vocational and placement phases.

8. An adequate and substantial volume of patients to support such a demonstration project. For a 30–40 dedicated bed spinal cord injury service, a minimum of 70–100 new cases a year must be available, not including a census of 100–300 previously disabled persons. Prior rates of case identification, admissions, readmissions, and discharges will be used to evaluate this requirement.

9. Opportunities and the environment for clinical research and evaluation of program effectiveness. This requires a sophisticated data collection, retrieval and analysis capability for each subsystem and the total system collectively. Cost effectiveness and systems analysis studies will evaluate the benefits of the various subsystems and the total system in light of regional variations and differences in project structure and design.

10. For the sharing of medical and allied rehabilitation staff by the acute medical care and rehabilitation services components, for rehabilitation plan development, treatment, research collaboration and training.

11. Training opportunities for specialists in the various disciplines involved in the rehabilitation of persons with SCI.

12. Appropriate agency liaison, public and community education programs to decrease the incidence of traumatic spinal cord injury (prevention).

Closing Date for Receipt of Application

The closing date for receipt of applications under this program announcement is July 20, 1979. Applications may be mailed or hand delivered to the receiving office. Hand delivered applications are accepted during the work hours of 9:00 a.m. to 5:30 p.m.

An application will be considered to have arrived by the closing date if:

1. The application was sent by registered or certified mail no later than July 20 as evidenced by the U.S. Postal Service postmark or the original receipt from the U.S. Postal Service;

2. The application is sent by mail and received on or before the closing date in the Department of Health, Education, and Welfare, Office of Human Development Services' mailroom as evidenced by the time date stamp or other documentary evidence of receipt maintained by such mailroom; or

3. The application is hand delivered to the office designated to receive the application in the application instructions. Hand delivered applications will be accepted no later than c.o.b. July 20, in any case.

Late Applications

Late applications will not be accepted and applicants will be notified accordingly.

(Catalog of Federal Domestic Assistance Program Number: 13628, Special Projects and Demonstrations)

Dated: April 13, 1979.

Robert R. Humphreys,

Commissioner of Rehabilitation Services.

Approved: May 11, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

[FR Doc 79-15508 Filed 5-17-79; 8:45 am]

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federal register

Friday
May 18, 1979

Part X

Department of Transportation

Federal Railroad Administration

Requirements for Lifting Lugs

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Chapter II]

[Docket No. RSSI-78-6; Notice No. 4]

Association of American Railroads Requirement for Lifting Lugs; Termination of Safety Inquiry

AGENCY: Federal Railroad Administration, DOT.

ACTION: Termination of special safety inquiry.

SUMMARY: This document terminates the Federal Railroad Administration (FRA) special safety inquiry into an Association of American Railroads (AAR) requirement that all freight cars ordered after July 1, 1978, be equipped with provisions for lifting. The FRA has concluded that the AAR requirement, with certain adjustments related to tank cars used for the transportation of hazardous materials, has not been shown to affect adversely the safety of railroad wreck clearance operations.

DATES: The special safety inquiry is terminated on publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Rolf Mowatt-Larssen, Office of Safety, FRA, 202–426–0924 or Grady C. Cothen, Jr., Office of Chief Counsel, FRA, 202–426–8220.

SUPPLEMENTARY INFORMATION:

Background

In 1977, the AAR adopted a standard entitled "Provision for Lifting Freight Cars;'" which was made applicable to all cars authorized for use in interchange service and ordered after July 1, 1978 (Performance Specification S–234). Issued as a part of AAR Mechanical Division Circular D.V. 1897, this standard states in part:

> The purpose of this provision is to provide a means to vertically lift a loaded upright car. This provision is for new and rebuilt cars to facilitate rerailing operations and to improve the method of handling derailed cars.

Provisions for lifting of the kind described in the circular are generally known as "Lifting lugs" and provide a place of securement for crane hooks used in the course of wreck clearance operations.

On September 15, 1978, the FRA received a "Petition for Emergency Exemption" from the following: General American Transportation Division of GATX Corporation, North American Car Corporation Division of Tiger International, Pullman Leasing Company Division of Pullman, Inc., Shipper Car line Division of ACF Industries, Inc., and Union Tank Car Company Division of Trans Union Corporation. Although referring to alternate authority, the petitioners relied principally on 49 CFR 107.113, which governs the processing of petitions for emergency exemption from the Department of Transportation Hazardous Materials Regulations. Petitioners urged that the action of the AAR Mechanical Division in making the lifting lug standard applicable to tank cars represented an exercise of authority delegated by the Department to the AAR under 49 CFR 179.3 and 179.4. It was and remains the opinion of the FRA that the action of the AAR did not fall within the scope of any delegation from the Department and, thus, that neither FRA nor the Materials Transportation Bureau (MTB) could properly take jurisdiction of the petition under 49 CFR 107.113.

However, the FRA believed that issues raised by the petition concerning the safety of the design specifications set forth by the AAR for lifting lugs were of sufficient gravity to warrant examination prior to the construction of a significant number of cars under the AAR design standard. Therefore, utilizing its authority under the Federal Railroad Safety Act of 1970, the FRA published an order temporarily staying the effectiveness of the AAR lifting lug requirement (43 FR 46106; October 5, 1978). At the same time, FRA commenced a special safety inquiry to examine the safety of lifting lugs with respect to all freight cars, including tank cars (43 FR 46052; October 5, 1978).

Public Hearing

On October 31, 1978, a public hearing was held in Washington, D.C., for the purpose of receiving public comment on the matter of the AAR standard. A total of 16 witnesses testified at the hearing, including representatives of the AAR, two firms specializing in wreck clearance operations, and the tank car companies. Written submissions were received from several additional parties. An FRA Board of Inquiry addressed questions to the witnesses based on the testimony presented and FRA data relating to wreck clearance operations.

At the conclusion of the hearing, it was FRA's general conclusion that no evidence had been presented which would justify the issuance of Federal regulations either requiring or prohibiting the application of lifting lugs to tank cars or other freight cars. The testimony did tend to indicate that, properly utilized, lifting lugs could assist in stabilizing and lifting cars during wreck clearance operations. However, FRA remained concerned that lugs designed to the minimum specifications of the AAR standard might be subject to misuse under certain limited circumstances, posing a safety hazard to railroad employees and the general public.

Safety Considerations

The AAR design standard contemplates that four lifting lugs be placed on each car, "preferably in or near the body bolster at the side sill." The standard further provides:

> The design force at each provision for the upright car must be 40 percent of the gross rail load applied within 15 degrees of the vertical axis of the upright car. Each connection zone must be designed to support the above load without exceeding the yield strength of the material except that local deformation is permitted to achieve hook bearing area.

The principal question raised in relation to this standard was whether it presented an undue invitation to misuse. Since the AAR standard contemplates the use of lifting lugs only when a car is essentially upright and the angle of lift falls within a 15 degree "cone", lugs designed to the minimum specification could not be safely employed in many situations. Therefore, FRA was prompted to ask: would the risk that lugs might be used beyond tolerances incorporated in the AAR design outweigh their usefulness when employed as intended?

The written and oral testimony presented at the hearing, together with FRA's own analysis of recent fatalities related to wreck clearance operations, pointed to several basic conclusions. First, wreck operations are, by their nature, ad hoc undertakings which involve inherent dangers. The application of crane hooks to portions of freight cars not intended for the purpose of lifting is a common, and sometimes necessary, expedient. The sue of a sling arrangement for lifting, while often a preferred strategy, is not always possible. Even when it is possible, employees engaged in placing the sling around the car may be subjected to extreme hazard unless the car is properly stabilized.

The second conclusion that emerged from the testimony was that most standard freight car designs will permit the application of lugs that greatly exceed the AAR standard with respect to directionality of load capacity. It is expected that most lugs applied on the body bolster at the side sill will, in fact, provide a margin of safety should the

lugs be subjected to unintended use beyond 15 degrees from the vertical centerline of the car.

The third conclusion that may be derived from the evidence is that places of securement for crane hooks on freight car bodies can, if properly utilized, prevent undesired movement of hooks and loss of control. In 1978, two fatalities were caused, in separate accidents, when crane hooks became dislodged from portions of freight car bodies. One of those instances, which involved a loaded covered hopper car, recalled a similar accident on the Lehigh Valley Railroad in 1974 which resulted in two fatalities. FRA notes in this regard that, by virtue of their design and high center of gravity, certain covered hopper cars present special problems in wreck clearance operations and should be handled with great care. The application of properly reinforced lugs to those cars could materially facilitate their handling in wreck clearance operations.

The fourth conclusion developed from the hearing was that the history of lugs applied to locomotives and passenger cars, as well as an undertermined number of freight cars, does not reveal any pattern of failure of lugs during wreck clearance operations.

The fifth conclusion derived from the special safety inquiry is that no standard procedures for wreck clearance exist within the railroad industry. FRA is hopeful that the convening of a special safety inquiry into the safety of lifting lugs will, at a minimum, serve to remind the railroads and wreck clearance specialists that lifting lugs should be used within the limitations of the design standard. Further, FRA is hopeful that the inquiry may promote a recognition within the industry of the need to develop comprehensive guidelines for the conduct of wreck clearance operations.

In order to promote the development of techniques and guidelines for the safe conduct of wreck clearance operations, the FRA Office of Research and Development is undertaking a study of wreck clearance procedures. FRA will seek the active participation of the railroad industry and wreck clearance specialists in the conduct of the study. Special attention will be given to the handling of hazardous materials cars following derailments.

The final conclusion derived from the special safety inquiry is that modern railroad tank cars used for the transportation of hazardous materials present special problems with respect to the application of lifting lugs. Stub sill tank cars are, by design quite different from the standard box car. Because tank cars are more difficult to handle during wreck clearance operations, it can be predicted with some certainty that lugs will be used frequently and in a number modes. Unfortunately, tank car bolsters are not as readily adaptable to the application of lugs that provide a margin of safety in excess of the AAR standard. Further, the mishandling of a loaded tank car that may have been damaged in a derailment could result in the release of hazardous materials. Therefore, FRA determined that further action would be appropriate to strengthen the AAR standard as applies to tank cars used for the transportation of hazardous materials.

FRA Recommendation to AAR

By letter of November 3, 1978, the Federal Railroad Administration recommended to the AAR that the design standard for lifting lugs be strengthened with respect to the application of lugs to tank cars used in hazardous materials service. In particular, FRA recommended that the AAR adopt a more rigorous standard for lugs applied to tank cars, including provisions for testing.

It should be noted that these recommendations were issued on the assumption that the AAR has determined to leave in place the requirements of the lifting lug standard with respect to all freight cars. The FRA does not express any view as to whether provisions for lifting should be required or whether the AAR requirement is cost beneficial, since those matters are beyond the scope of this inquiry. Rather, the FRA is concerned that any lifting lugs that are applied to cars be reasonably safe for their intended use.

Subsequent to the letter of November 8, 1978, the AAR referred FRA's recommendations to its several technical committees. An informal conference was held with representatives of the AAR on March 2, 1979. At that time, the FRA clarified its written recommendations by noting that the proposed test requirement relating to tank lugs was intended to apply only to the prototype of each lug design. AAR representatives noted the importance of retaining a standard lug specification to avoid confusion over the circumstances in which lugs may be used for lifting tank cars and other freight cars. At that time, the AAR indicated its willingness to incorporate into its standards for tank cars a requirement that lug designs for tank cars be tested to asssure a reasonable margin of safety that would resist failure should a car be inadvertently lifted at an angle to the vertical exceeding the 15 degree standard.

On April 20, 1979, the AAR issued a test requirement for tank cars (AAR 24–6 Lifting Provision Test), which applies to new tank cars ordered after July 1, 1979:

> This test refers to the lifting provision requirements shown in Performance Specification S–234 of the Manual of Standards and Recommended Practices. Each design of a tank car lifting provision is subject to a test by loading at least one of the lifting provisions as follows:
>
> 1. The vertical component of the load applied to each lifting provision tested must be a minimum of 25% of the gross weight on rail.
>
> 2. The direction of the applied load must be at 45° from the vertical and as near as possible to a vertical plane parallel to the longitudinal center line of the car and extending through center of lifting provision.
>
> 3. After application and release of the required load, visual inspection must reveal no evidence of permanent deformation in the tank car tank, bolster or lifting provision except that local deformation is permitted in the hook bearing area.

Lug designs capable of meeting this test should provide an adequate margin of safety beyond the 15 degree design standard to avoid failure in the case of inadvertent misuse.

It should be emphasized that the design and use specification of the AAR requirement remains unchanged. Lugs are to be used to lift only cars which are in an essentially upright position. On January 5, 1979, the AAR acted to commence distribution of information concerning the proper use of lugs by issuing an instructional bulletin.

In consideration of the AAR's undertakings and the information received throught the special safety inquiry, the FRA has determined that the special safety inquiry on lifting lugs should be concluded and that the initiation of further proceedings related to the subject matter of the inquiry is not necessary. Accordingly, FRA Docket No. RSSI–78–6 is closed. By separate notice published elsewhere in today's Federal Register, FRA has also vacated the stay order which temporarily enjoined the operation of the AAR standard.

Issued in Washington, D.C. on May 15, 1979.

John M. Sullivan,

Administrator.

[FR Doc. 79–15533 Filed 5–17–79; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSSI-78-6; Notice No. 3]

Association of American Railroads; Requirement for Lifting Lugs; Removal of Temporary Stay

AGENCY: Federal Railroad Administration, DOT.

ACTION: Revocation of Temporary Stay Order.

SUMMARY: The Federal Railroad Administration (FRA), after hearing, has determined that a temporary order staying the effectiveness of the Association of American Railroads (AAR) requirement concerning provisions for lifting on newly constructed freight cars should be vacated. This action permits a portion of an AAR circular that specifies requirements for cars used in interchange service to become effective.

DATES: The temporary stay is vacated effective on publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: *Primary program drafter:* Rolf Mowatt-Larssen, Office of Safety, FRA, 202–426–0924; *Primary legal drafter:* Grady C. Cothen, Jr., Office of Chief Counsel, FRA, 202–426–8220.

SUPPLEMENTARY INFORMATION: The FRA describes, in a separate document published in the proposed rules section of today's Federal Register, the findings and conclusions reached in its special safety inquiry concerning the AAR requirement that freight cars ordered after July 1, 1978, be equipped with provisions for lifting ("lifting lugs"). For reasons set forth in that document, the temporary stay order published in the Federal Register of October 5, 1978 (43 FR 46106), is vacated.

Issued in Washington, D.C. on May 15, 1979.

John M. Sullivan,
Administrator.

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Part XI

Department of Health, Education, and Welfare

Health Care Financing Administration and Office of the Secretary

Medicaid Requirements for State Programs of Early and Periodic Screening, Diagnosis, and Treatment of Individuals Under 21

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

42 CFR Part 441

Medicaid Requirements for State Programs of Early and Periodic Screening, Diagnosis, and Treatment of Individuals Under 21

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final regulation.

SUMMARY: This regulation revises and clarifies the Medicaid requirements for State programs of early and periodic screening, diagnosis, and treatment (EPSDT) for children under 21. It also revises the enforcement procedure under which a penalty may be assessed against a State that fails to meet minimum requirements, by reducing the Federal share of payments to the States for Aid to Families with Dependent Children (AFDC) by one percent. Experience with existing regulations indicates a need for greater clarity and for updating certain provisions.

EFFECTIVE DATES: October 1, 1979 for all section except § 441.56(a)(3), the screening requirement for developmental assessments, which is effective on January 1, 1981.

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SUPPLEMENTARY INFORMATION:

Summary of Regulations

These regulations revise both State plan and penalty requirements applicable to the early and periodic screening, diagnosis, and treatment (EPSDT) program.

The new State plan requirements prescribe minimum elements to be included as part of screening examinations, specify that States must develop screening periodicity schedules for individuals up to 21 years of age, and specify that States must provide scheduling and transportation assistance to EPSDT families.

Penalty requirements revise procedures that States must employ to inform, screen and treat persons receiving cash benefits under the Aid to Families with Dependent Children (AFDC) program. Specifically, these regulations prescribe the manner, timing, and content of States' informing obligations. The regulations also specify steps States must take in providing referral assistance to individuals whose treatement needs do not have State plan coverage. Documentation requirements are specified as are the bases for the imposition of the penalty. States' performance will be measured against percentages for timely informing of families and timely service delivery to those persons who have requested EPSDT services.

Background

Since 1967 the Federal government has tried to design, implement and enforce a program that would assure comprehensive, preventive health care for Medicaid children. Major studies conducted during the early and mid-1960's demonstrated that permanent harm was done to the nation's poor children because treatable medical problems were not detected at early stages of the illness. In response to this concern we proposed and Congress passed, in 1967, a new section 1905(a)(4)(B) of the Social Security Act. This requires that States include in their Medicaid plans a program of early and periodic screening, diagnosis, and treatment of individuals under 21 who are eligible for Medicaid. The EPSDT program requires States to ascertain the children's physical or mental conditions, and to provide for health care, treatment, and other corrective health measures.

Congress expressed its concern about the slowness with which we and the States were implementing the EPSDT program by including in the Social Security Amendments of 1972 a penalty provision which would reduce by one percent a State's Title IV AFDC funds in a quarter during which it failed to:

> "(1) inform all families in the State receiving aid to families with dependent children . . . of the availability of child health screening services [under Medicaid]
> * * *
> (2) provide or arrange for the provision of such screening services in all cases where they are requested, or
> (3) arrange for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services."

This new provision, which became section 403(g) of the Act, gave the Federal government an expanded role in ensuring that each State successfully screened and treated those children who requested EPSDT services. In addition, it gave HEW an enforcement tool, the penalty of one percent of AFDC funds, which was easier to apply and less disruptive to the program than compliance action.

Since the passage of the 1972 amendments, we have attempted to issue regulations which penalize non-performing States and which grant complying States flexibility in program implementation. The initial implementing regulations were issued on August 2, 1974, one month after the penalty provisions took effect.

To address the problems which quickly became apparant in the initial regulation, we issued two Notices of Proposed Rule Making (NPRM): the first on August 20, 1975 (40 FR 36378) and the second on September 8, 1977 (42 FR 45276). These two NPRMs, were designed to: (1) Clarify requirements necessary to implement the EPSDT program; (2) revise the basis on which the penalty would be assessed; and (3) increase the effectiveness of the program.

The second NPRM was published rather than final regulations because the commenters responding to the 1975 NPRM offered varied and frequently conflicting points of view on all of its provisions. Based on the comments, we decided that the 1975 NPRM had not achieved its purpose. We then had meetings with 45 States, interest groups, and providers. As a result of these meetings we developed and published the 1977 NPRM. We received approximately 100 comments on it from various sources, including agencies in 26 States, 2 governors, 3 child advocacy groups, 3 legal organizations and 4 health professional organizations.

In addition to these comments, in October 1978 we consulted further with representatives of States, child advocacy groups and Congress. These further consultations focused primarily on how to convert some of the process requirements in the 1977 NPRM into performance standards. The principal areas affected were the sections on the application of the penalty and requirements for support services.

These final regulations were developed based on the cumulative knowledge acquired during the entire comment period.

Since the proposals in the 1977 NPRM superseded those published in 1975, all references in this preamble to "the NPRM" refer to the 1977 one.

There were five areas of major concern raised during this process:

A. Application of the penalty.
B. Informing eligible families.
C. Providing or arranging for EPSDT services.
D. Family's choice of provider.
E. Documentation.

A. *Application of the Penalty*

The NPRM proposed that the penalty would be imposed if EPSDT services were not delivered within 120 days of a request in at least 90 percent of the cases reviewed by HCFA. (The NPRM

also contained numerous exceptions, however.) Many commenters objected to this proposal. They did not believe that the 120-day period, even with the exceptions, was sufficient to complete initial or periodic screening and to initiate all necessary follow-up services. Provider scarcity and failure in States' case management systems were cited as reasons for the inability to meet the requirement. HEW recognizes the need for flexibility.

1. *Basic Provisions.* Commenters pointed out both the importance of the timely delivery of health care and the problems encountered by States in delivering this care. We have tried to achieve a balance among the need for specificity in order to facilitate enforcement, State needs for administrative flexibility, and eligible families' need for comprehensive, preventive health care.

The final regulation provides the following criteria for applying the penalty. For those cases in the sample—

(1) A State must have screened and begun treatment of at least 75% of the recipients who requested services within 120 days of the initial request or within 120 days of the date of a child's rescreening according to the State's periodicity schedule.

(2) A State must have screened and begun treatment of at least 95% of the recipients who requested screening within 180 days of the initial request or within 180 days of the date for a child's rescreening according to the State's periodicity schedule.

If less than 75 percent compliance is achieved within the 120-day requirement, we will assess the penalty. If the State complies with the 75 percent test, the sample will be further analyzed to determine whether service delivery was achieved within 180 days. If compliance is less than 95 percent within 180 days, we will assess the penalty.

2. *Scope of State's Responsibility for Timely Delivery of Services.* The issue of State versus family responsibility for the delivery of health care to a child who requests EPSDT services is complex and subtle. The NPRM addresed the issue by precisely defining what a State must do to discharge its share of the responsibility. After the State performed the required actions, the family became totally responsible. The State was required to make a follow-up within 150 days of the request for services, and to reoffer help with an appointment and transportation, if:

(1) A child, who had requested State assistance in getting services, did not keep the scheduled appointment, or

(2) A child who had not requested assistance in getting services did not schedule an appointment or keep a scheduled appointment.

Many commenters addressed this issue; most agreed that the State and the family each bear a share of responsibility. Many State officials stated that a State should not have to establish extensive case management systems either to ensure that a family kept a State-scheduled appointment or to ensure that a family made its own appointment after declining State-offered assistance. Some commenters stated that HEW was requiring State administrator to become paternalistic or coercive.

Other commenters pointed out that the manner in which States offer assistance influences the number of families who accept needed support services. In addition, the State, by scheduling either a convenient or inconvenient appointment, strongly influences the percentage of families who keep scheduled appointments.

We have resolved the issue of defining the relative responsibilities of the State and the family in the following way. First, the regulation does not make provision of support services (transportation and scheduling assistance) subject to the penalty in those cases where services are provided on a timely basis. Instead, they have been added as State plan requirements. This is not done to downplay their importance. Rather, it is done primarily to avoid the anomaly of taking a penalty, even though each child received EPSDT services, because support services were not offered or provided. Our approach thus serves to focus the penalty provision on outcomes rather than process requirements.

Second, we have established a high performance level of 95 percent for timely service delivery, which conforms to Congressional intent, and which, by being high, places primary responsibility with the State. Then, we deal with these circumstances for which the State is properly held to have fully discharged its obligations and the responsibility is borne by the family:

The State is not penalty liable for those cases for which it can show, with supportive evidence, that:

(1) The family lost eligibility; or

(2) The State was not able to locate the family despite a good faith effort to do so; or

(3) The child's failure to receive necessary services was due to an action or decision by the family, rather than a failure by the State to comply with the requirements of this regulation, including the obligation to provide the support services required by the State plan.

Thus, the State has the responsibility to make it possible for recipients to receive EPSDT services. It is then the family's responsibility to make use of them if they wish. If, for example, the State has evidence that it offered and provided requested transportation and scheduling assistance required under the State plan, and the child did not receive EPSDT services in a timely manner, the State will not be held at fault. Conversely, if the State does not have evidence that it offered and provided requested support services and the child did not receive EPSDT services in a timely manner, the State *will* be held at fault.

In keeping with our emphasis on outcome rather than process, we are not specifying the form of evidence that States must have to meet this requirement. However, since effective case management requires case records that would normally contain this type of information, we do not believe requirement places any undue additional burden on States.

We believe that this approach to penalty monitoring both provides for timely treatment of medical problems and accommodates difficulties that States might encounter in assuring timely service delivery.

B. *Informing Eligible Families*

Approximately 60 comments were received on this issue, principally concerning which families were to be informed and how.

1. *Methods of Informing.* The NPRM proposed to require States to use both face-to-face contact and written materials to inform families that are eligible for AFDC of the nature and benefits of the EPSDT program. Numerous commenters objected to the face-to-face contact provision. We intended this to apply only to families who have become eligible for the first time. In addition, the NPRM permitted a State to inform families at the intake interview, even though their eligibility had not been formally determined.

The fact-to-face requirement represents a compromise between home vists, the most effective means of informing families, and mass mailings, the least effective method. We recognize that home visits would require costly increases in manpower and other expenditures for States. We also realize that a weak informing requirement would reduce the effectiveness of the EPSDT program. Four years of EPSDT program experience show that there

must be face-to-face contact to ensure that clients are properly informed and that the outreach obligations of the program are fulfilled. Thus, we have retained the requirement to use both face-to-face contact and written materials. The face-to-face contact can take place at the intake interview or up to 60 days following AFDC eligibility determination. By allowing these options, we are giving the States the administrative flexibility that we and the commenters agree is needed. However, it is widely acknowledged that using the AFDC intake interview for EPSDT informing is the least effective method because the family's attention is concentrated on the need for cash assistance rather than on the benefits of a preventive health program. Therefore, we hope that States that now do more than the minimum required by the regulation will continue to do so, and that other States will begin to use effective techniques.

We have further clarified the informing requirement by specifying that face-to-face contact must occur both for families that have become eligible for AFDC for the first time and for those families that have regained AFDC eligibility after a period of ineligibility. It is not required when a State makes a periodic redetermination of eligibility for a family that has been continuously eligible. Moreover, in order to deal with the possibility that families may lose and regain eligibility for AFDC numerous times within a 12-month period, the State need not inform a family more than twice in a 12-month period.

2. *Categories of families informed.* Many commenters noted that neither the NPRMs nor the existing regulations mention specifically that children receiving AFDC foster care are eligible for EPSDT. The definition of "dependent child" in section 408(a) of the Social Security Act includes those dependent children of families for whom Federal payments for foster care are made. Therefore, these children are a mandated category of eligibles and were covered by the NPRM. However, for brevity, we have explicitly included AFDC foster care children in the definition of a "family" in the final regulation.

3. *Undecided Families and Families That Decline Services.* For families who were undecided about accepting EPSDT services at the time of initial informing, the NPRM proposed to require that States make one attempt to recontact them within 60 days after being initially informed and to document the outcome of the notification. We intended that this follow-up could be done either by telephone, face-to-face contact, or mail. In addition, the NPRM proposed to require States to inform families annually about the availability of EPSDT services if they had declined or did not use the services.

Some commenters objected to these provisions because they were perceived as coercive or paternalistic, or because they would require additional tracking by States. Other commenters believed that it was vital to recontact families who were undecided about accepting EPSDT services or who declined these services. The commenters stated that families are under stress at the time they apply for cash assistance and this often prevents careful consideration of the advantages of preventive medical care for their children. Also, many commenters believed that families who declined EPSDT services should be given an opportunity to reconsider this opportunity for preventive services.

The final regulation requires that a State recontact once each year all recipients who either decline the service or who were undecided. We believe this is necessary so that the family can reconsider its earlier decision not to use the services or can make a decision if the family was undecided earlier. By permitting States one year for contacting undecided families, the regulation enables States to use regularly scheduled mailings, telephone calls, or the more preferable practice of explaining the value of EPSDT at eligibility redetermination sessions or a home visit. The time required for reinforming families who decline services is the same as that for undecided families; consequently, States may use one system to notify both types of families.

4. *Informing families about periodic assessments.* The NPRM proposed to require States to inform families already in the EPSDT system of their children's eligibility for another screening. This informing procedure had to be in writing and within the frequency required by the State's periodicity schedule. Eighteen comments were received regarding this provision. Few objected to the concept of periodic notification, but did comment that a new system to track the families would have to be developed.

The final regulation does not require States to reinform families of their children's rescreening, because the rescreening itself is a penalty-liable event. This regulation requires that a State rescreen each child according to the periodicity schedule. How the State notifies the family can therefore be left to the discretion of the State.

5. *Informing families who have missed appointments.* Many commenters objected to the NPRM requirement that States recontact families who did not keep screening and treatment appointments which either the family or the State had scheduled. Some commenters pointed out that families should have responsibility for their own actions. Other commenters pointed out that State actions, such as scheduling convenient appointments or providing transportation, greatly influence the percentage of families who keep appointments. The balancing of family versus State responsibility was discussed earlier.

The final regulation does not require that States recontact families. It does, however, require the State to have a State plan provision dealing with support services. At this time, States have considerable discretion in how to provide these support services and, in particular, whether to recontact a family after a missed appointment. If subsequent studies show that more specificity is warranted, we will initiate further rulemaking.

C. *Providing or Arranging for EPSDT Services*

1. *Timely delivery of services.* The NPRM proposed to require that all requested screening and necessary treatment services be initiated within 120 days of the request for screening. Initiation of treatment was defined as the first encounter between the child and the health provider at which time treatment is begun for those conditions found as a result of screening. This meant, for example, if a child had three medical and two dental problems, that an initial visit to a doctor and one to a dentist had to occur within the 120-day limit. The requirement was intended to assure that eligible individuals receive EPSDT services and necessary treatment within a reasonable period, while allowing States time to devise flexible schedules for screening and treatment. Commenters believed either that the time period was too long or not long enough. Some wanted a continuation of the current regulation time limit of 60 days. Some agreed with the greater flexibility afforded by a single period, but others disagreed. Still others thought that the State should be responsible only for arranging an appointment for treatment within 120 days.

We think that a period longer than 120 days, or a requirement merely to arrange an appointment, would not reasonably

assure (1) that medical intervention would be beneficial for the treatment of conditions found during screening, or (2) that arrangements for delivery of complete screening services could be made in such a way that the family would maintain its continuing interest and motivation to keep appointments. We also know from experience that any period longer than 4 months between a request for services and the initiation of treatment increases the possibility that the family loses eligibility for Medicaid. A period shorter than 120 days would not allow sufficient time for States to deliver the full screening package and initiate all necessary follow-up treatment services for all eligible families that request services.

Some States thought that the NPRM would have required a substantial change in their mode of delivering health services. The final regulation requires screening and initiation of treatment within 180 days after the request for at least 95% of those who request services. In our view, based on our understanding of State programs, this will not require any major administrative modification in State procedures. In addition, some States alleged there is a scarcity of providers, especially in specialty services, and that this might preclude their meeting the requirements of this regulation. We believe that there are adequate resources available to meet the needs of the EPSDT program, if they are properly coordinated.

To accommodate varying State capabilities in assuring the timely delivery of services, the final regulation provides some flexibility by altering the percentages of cases subject to the time requirements. This system is fully discussed above under "Application of the Penalty." Also, the regulation specifies, as did the 1975 and 1977 NPRMs, that States will be required to provide both scheduling and transportation assistance to those persons requesting such help. These support services are applicable to both screening and treatment, as requested by the family.

2. *Referral for services not covered under the State plan.* Because States have the option of limiting the scope of their Medicaid program, it is possible that conditions will be discovered through screening for which there is no coverage for treatment under the State plan. However, Congress was clear in its direction that all persons having positive screening findings be treated and that a State be responsible for referring eligible children to other sources for treatment services that are outside the scope of the plan. (See Senate Report No. 92–1230, p. 298.) Therefore, the NPRM proposed to require States to provide referral assistance for treatment services not covered under the State's Medicaid plan.

Several commenters noted that the scope of the referral requirement was unclear. We have addressed these concerns by specifying that States must give families the names, addresses and telephone numbers of providers who have expressed a willingness to furnish services at little or no expense to the family.

3. *The use of "comprehensive care" providers.* The NPRM proposed to require States to verify that certain families were receiving services from "comprehensive care providers". A comprehensive care provider was defined as one who provides the full range of screening, diagnostic, and treatment services as well as medical case management. The intent of the provision was to encourage families to develop permanent provider relationships.

More than 50 comments were received concerning this issue. A majority of them objected to the special treatment accorded comprehensive care providers. The 1977 NPRM contained several exceptions from generally applicable requirements, because many commenters on the 1975 NPRM indicated a need to ensure that comprehensive care providers (such as Title V grantees) continue to give the preventive care they normally give and yet not have to meet some of the "process" requirements of the EPSDT regulations. We thought that this special treatment would stimulate more provider participation and lessen chances of duplication of services available through existing comprehensive care providers. However, strong objections were raised concerning this provision, focusing primarily on the fact that comprehensive care providers would have less accountability and that this provision would create a sizable monitoring burden on the States.

We agree that the proposed exceptions for special types of service delivery should be dropped. We do not believe that this should be interpreted, however, to mean that we wish to discourage the use of these comprehensive care providers.

Rather, we encourage States to make arrangements with comprehensive care providers for the delivery of EPSDT services and to make these providers accountable for compliance with Federal program requirements. In this manner, recipients may develop the kind of regular and direct relationships with the health care system that is generally not in evidence today. While current authority requires that States be held directly accountable to the Department for compliance with all EPSDT requirements, States are free within this framework to design and implement EPSDT delivery systems that meet their own particular needs.

4. *Screening services.* The NPRM outlined the minimum screening services which States must provide. Most commenters strongly supported the components of screening as proposed, but felt that States would need additional time and technical assistance to develop procedures for providing developmental assessments.

Basically, the regulation adopts the "screening package" as proposed in the NPRM. However, since States need time to formulate procedures for developmental assessments, this requirement will not be effective until January 1, 1981. We will issue guidelines covering the nature and scope of the assessments prior to the effective date.

In addition, in response to further review of our experience in the program and comments from recipient groups, we will require that States refer all medically screened children directly to a dentist for treatment. Despite considerable evidence which shows that 95% of screened children over 3 years of age require dental treatment, under current State practices only 25% receive it. Lack of proper dental care leads to the development of more serious and costly problems in adolescence and adulthood. Since almost all children over 3 need dental treatment, no purpose is served by continuing to require a separate dental screen. Therefore, we are eliminating the separate dental screening requirement and mandating the more efficient direct referral to a dentist.

D. *Family's Choice of Provider*

The NPRM provided that families could choose to continue to receive EPSDT services from their own health care provider. In such cases, however, States would have been required, within 120 days of a request for EPSDT, to verify which components of the screening package had been provided, along with the necessary follow-up treatment. In screening or treatment was imcomplete, States would have been required to provide those services in the screening package that these providers could not or would not complete. Many commenters objected to this provision

for two reasons: (1) Verifying services from private providers is difficult, if not impossible; and (2) the monitoring procedures needed to ensure case management for these families would be cumbersome and too costly.

We believe that States should provide a mechanism for allowing those families who are already receiving health care from their own providers to continue to do so. In no instance should the State interfere with the client's right to choose his own provider. Families should not feel that they are choosing between their own providers and EPSDT but, rather, that they can freely choose both.

In response to the many comments regarding this issue, the final regulation provides for a continuation of the family's relationship with its regular provider. It also includes a provision to assure that recipients receive the full range of EPSDT services by requiring States to offer families any EPSDT services which are not available from a provider and providing those services, if the family requests it.

E. *Documentation*

The NPRM specified the documentation States must make available to HCFA as evidence that the penalty requirements have been met. Comments about these requirements ranged from claims that no documentation is needed to suggestions that we add major additional categories of documentation. In many instances, however, commenters were unclear as to where records are to be kept and how much and what kind of evidence would be needed to document that the requirements have been met. The most frequent comment regarding the documentation requirements concerned the provisions for comprehensive care providers, which have now been eliminated.

The final regulation requires that States make written documentation available for review. Since the publication of the two proposed rules, States have generally made significant strides in maintaining much of the documentation that the final regulation now requires. For this reason, we expect that much, if not all, of the documentation needed by Federal monitors will be available at the State or local agency office. We recognize, however, that certain documentation may be located at the provider's office. Federal monitors will attempt to obtain these data; if they cannot, they will turn to the State to furnish the missing data. Documentation may be in the form of reports, claim forms, case records, or any other written material reflecting compliance with specific program requirements.

Recodification

Existing penalty regulations appear in 45 CFR 205.146(c). Since all other Medicaid regulations now appear in 42 CFR Chapter IV, Subchapter C, the penalty regulations are therefore revised and the Medicaid portion transferred to 42 CFR Part 441. Although the penalty is taken on AFDC funds, State Medicaid agencies are responsible for administering the EPSDT program. Therefore, we believe that regulations affecting this program more logically belong with all other Medicaid regulations. Amendments to 45 CFR 205.146(c) that reflect this redesignation are published today at page ——. In place of the detailed penalty regulations, § 205.146(c) now states that a one percent penalty on AFDC funds will be imposed if conditions in 42 CFR Part 441 are not met.

42 CFR Part 441 is amended as set forth below:

1. The table of contents for Subpart B is revised to read as follows:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

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Subpart B—Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of Individuals Under Age 21

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Authority: Sec. 403(g), 1102 and 1905(a)(4) the Social Security Act (42 U.S.C. 603(g), 1302 and 1396(a)(4)).

Subpart B—Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of Individuals Under Age 21

2. Subpart B is revised to read as follows:

§ 441.50 Basis and purpose.

This subpart implements—

(a) Section 1905(a)(4)(B) of the Social Security Act, by prescribing State plan requirements for providing early and periodic screening and diagnosis of eligible Medicaid recipients under age 21 to ascertain physical and mental defects, and providing treatment to correct or ameliorate defects and chronic conditions found; and

(b) Section 403(g) of the Act, by specifying the conditions under which HEW will impose a penalty on States by reducing Federal financial participation under title IV–A of the Act (Aid to Families with Dependent Children), for failure to provide EPSDT services to eligible AFDC recipients under age 21. (See 45 CFR 205.146(c) for penalty reduction in AFDC.)

§ 441.51 Definitions.

For purposes of this subpart—

"Family" means an assistance unit receiving cash assistance under title IV–A of the Act and includes children for whom Federal payments for AFDC foster care are made.

"Initiation of treatment" means the first encounter for treatment of the medical and the dental problems disclosed during screening.

State Plan Requirements

§ 441.55 Basic requirement.

A State plan must provide that the Medicaid agency meets the requirements of §§ 441.56–441.62, with respect to EPSDT services, as defined in § 440.40(b) of this subchapter.

§ 441.56 Required services.

(a) *Screening.* The agency must provide for at least the following screening services:

(1) Health and developmental history.

(2) Unclothed physical examination.

(3) Effective January 1, 1981, developmental assessment.

(4) Immunizations which are appropriate for age and health history.

(5) Assessment of nutritional status.

(6) Vision testing.

(7) Hearing testing.

(8) Laboratory procedures appropriate for age and population groups.

(9) For children 3 years of age and over, dental services furnished by direct referral to a dentist for diagnosis and treatment.

(b) *Treatment.* In addition to any treatment services included in the plan, the agency must provide the following services, even if they are not included in the plan—

(1) Treatment for defects in vision and hearing, including eyeglasses and hearing aids; and

(2) Dental care needed for relief of pain and infections, restoration of teeth and maintenance of dental health.

§ 441.57 Discretionary services.

Under the EPSDT program, the agency may provide for any other medical or remedial care specified in Part 440 of this subchapter, even if the agency does not otherwise provide for these services to other recipients or provides for them in a lesser amount, duration, or scope.

§ 441.58 Periodicity schedule.

The agency must implement a periodicity schedule that—

(a) Is developed after consultation with representatives of recognized medical and dental professional groups;

(b) Specifies screening services applicable at each stage of the recipient's life, up to age 21, including a neonatal examination; and

(c) Identifies the time period, based on the recipient's age in years and months, that defines when screening services will be delivered.

§ 441.59 Administration.

The agency must—

(a) Identify available screening and diagnostic facilities; and

(b) Ensure that the services offered by these facilities are available for recipients under age 21.

§ 441.60 Identifying, informing, and referring eligible recipients to title V services.

The agency must—

(a) Identify those recipients eligible for EPSDT services who can obtain needed medical or remedial services through a grantee under title V of the Act (Maternal and Child Health and Crippled Children's Services); and

(b) Ensure that recipients eligible for title V services are informed of available services, and referred if they desire to title V grantees that offer services appropriate to the recipients' needs.

§ 441.61 Maximum utilization of existing services.

The agency must make maximum use of existing screening, diagnostic, and treatment services provided by public and voluntary agencies such as well-baby clinics, neighborhood health centers, rural health centers, rural health clinics, and similar agencies.

§ 441.62 Transportation and scheduling assistance.

The agency must offer to the family or recipient, and provide if requested—

(a) Assistance with transportation as required under § 431.53 of this chapter; and

(b) Assistance with scheduling appointments for services.

Penalty for Failure To Provide EPSDT Services

§ 441.70 Imposition of penalty.

For each quarter that a State fails to comply with the requirements to provide EPSDT services to AFDC recipients, as specified in §§ 441.71–441.90, HEW will reduce by one percent Federal financial participation in State payments for AFDC.

§ 441.71 Application of the penalty.

(a) HEW will impose penalties under this subpart if a State fails to maintain accurately the documentation required in § 441.90 or if a State fails to meet the following measures of compliance with the requirements of this subpart:

(1) In at least 95 percent of the sample cases reviewed by HCFA, the State has met all informing requirements as specified in § 441.75.

(2) For families or recipients that request EPSDT services, in at least 75 percent of the sample cases reviewed by HCFA, either—

(i) Screening must have been completed and treatment initiated, as specified in §§ 441.80 and 441.85, within 120 days after the initial request for screening or the date rescreening was due under the State's periodicity schedule; or

(ii) The State can show, with supportive evidence, that within the 120-day time periods, either—

(A) The family or recipient lost eligibility;

(B) The State was not able to locate the family or recipient despite a good faith effort to do so; or

(C) The recipient's failure to receive necessary services was due to an action or decision by the family or recipient, rather than a failure by the State to meet requirements of this subpart, including the requirement to offer and provide the support services specified in § 441.62.

(3) For families or recipients that request EPSDT services, in at least 95 percent of the sample cases reviewed by HCFA, either—

(i) Screening must have been completed and treatment initiated, as specified in §§ 441.80 and 441.85, within 180 days after the initial request for screening or the date rescreening was due under the State's periodicity schedules; or

(ii) The State can show, with supportive evidence, that, within the 180-day time periods, either—

(A) The family or recipient lost eligibility;

(B) The State was not able to locate the family or recipient despite a good faith effort to do so; or

(C) The recipient's failure to receive necessary services was due to an action or decision by the family or recipient, rather than a failure by the State to meet requirements of this subpart, including the requirement to offer and provide the support services specified in § 441.62.

(b) To determine if a penalty will be imposed, HCFA will use the following—

(1) Documentation compiled by the agency as specified in § 441.90;

(2) Sampling techniques; and

(3) Other procedures as HCFA finds necessary.

(c) Whenever a penalty is imposed under this section, the agency is entitled, upon request, to a reconsideration of the penalty in accordance with section 1116(d) of the Act and 45 CFR Part 16.

§ 441.75 Informing a family of the availability of EPSDT services.

(a) No later than 60 days following the date of a family's initial AFDC eligibility determination or of determination after a period of ineligibility, the agency must inform each family of the availability of EPSDT services. This must be done in writing and using face-to-face contact by a person who can explain EPSDT services and benefits. The agency need not inform any family more than twice in a 12-month period.

(b) If no member of an eligible family participates in the EPSDT program, the agency must inform the family in writing at least once each year beginning with [effective date of regulation].

(c) The agency must use each of the following to inform an eligible family:

(1) Clear, nontechnical materials for those families that are to be informed in writing.

(2) Procedures suitable for informing persons who are illiterate, blind, deaf, or cannot understand the English language.

(d) When informing a family about the EPSDT program the agency must give the following information—

(1) The benefits of preventive health services;

(2) How EPSDT services can be obtained;

(3) How specific information can be obtained on the location of the nearest providers participating in EPSDT;

(4) The screening services that the agency offers under its plan;

(5) A summary of the State's periodicity schedule;

(6) That recipients can receive both initial and periodic screening according to the State's periodicity schedule;

(7) That treatment services covered under the plan will be provided for problems disclosed during screening;

(8) That assistance in referral will be given for services not covered under the plan;

(9) That the agency will provide assistance with transportation, to the extent covered under the plan, if the family or recipient requests it;

(10) That the agency will assist in scheduling appointments if the family or recipient requests this assistance;

(11) That as long as the family or recipient remains eligible for AFDC, it may request EPSDT services at any time in the future if it chooses to postpone its decision at the time it is initially informed;

(12) (i) That the family or recipient may choose to receive EPSDT services from a provider of its choice; and

(ii) That if the provider does not offer the full range of EPSDT services as specified in the plan, the family or recipient can receive the services not offered, if the family or recipient requests them from the agency; and

(13) That the EPSDT services covered under the plan are available at no cost.

§ 441.80 Providing for EPSDT services.

(a) The agency must provide for at least those screening and treatment services as specified in § 441.56(a) and (b).

(b) The agency must provide screening services according to a periodicity schedule, as specified in § 441.58.

(c) If a family or recipient chooses to receive EPSDT services from a provider that does not furnish the full range of EPSDT services, the agency must, if requested, provide for all EPSDT services that are not offered by that provider. The agency must provide for such services in the manner specified in this section. In this case, the time frames specified in § 441.71(a)(2) and (3) begin on the date that the family or recipient requests the services from the State that are not offered by the provider.

§ 441.85 Referral for services not in the State plan.

The agency must provide referral assistance for treatment not covered by the plan, but found to be needed as a result of conditions disclosed during screening and diagnosis. This referral assistance must include giving the family or recipient the names, addresses, and telephone numbers of providers who have expressed a willingness to furnish uncovered services at little or no expense to the family.

§ 441.90 Documentation.

The agency must have available, or make available upon request, the following written documentation at the State or local level for review:

(a) Administrative information:

(1) The agency's periodicity schedule.

(2) Written materials used to inform families.

(3) Procedures used to inform those who are illiterate, blind, deaf or cannot understand the English language.

(b) Records or information on services and recipients:

(1) Monthly lists or a sample of those lists as specified by HEW containing, for that month, names and case numbers of:

(i) newly approved AFDC cases;

(ii) AFDC cases where no member of an eligible family participates in the EPSDT program;

(iii) AFDC recipients requesting screening, and the dates of those requests; and

(iv) AFDC recipients due for rescreening under the State's periodicity schedule.

(2) For the cases comprising the sample drawn in paragraph (b) (1) of this section—

(i) Names of AFDC families informed of the availability of EPSDT services, either within 60 days of eligibility determination or on an annual basis, as specified in § 441.75(a) or (b), and the date they were informed;

(ii) Names of AFDC families or recipients who decline initial or periodic EPSDT services, and the date of that declination;

(iii) Names of AFDC families or recipients who choose to receive services from a provider who does not provide the full range of EPSDT services, the date on which they request services that are not covered by that provider, and the dates that these requested services are provided; and

(iv) Names of AFDC families or recipients who were offered and declined support services as specified in § 441.62, and the dates of offer and declination.

(v) Names of AFDC families or recipients who requested support services as specified in § 441.62, and the dates on which the agency provided this assistance.

(3) For each recipient screened by a provider who provides the full range of EPSDT medical services or dental services, or both—

(i) The name and case number of the recipient;

(ii) The dates of each screening;

(iii) The screening services provided and each screening finding, including findings on conditions needing follow-up treatment;

(iv) The dates on which follow-up treatment was initiated for those conditions requiring treatment; and

(v) The names of each recipient who required treatment for conditions not covered by the plan and the efforts to refer them to providers willing to treat them at little or no expense to the family.Q04

(Secs. 403(g), 1102 and 1905(a)(4) of the Social Security Act (42 U.S.C. 603(g), 1302, and 1396d(a)(4))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: April 4, 1979.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

Approved: May 14, 1979.

Joseph A. Califano, Jr.,

Secretary.

[FR Doc. 79-15529 Filed 5-17-79; 8:45 am]

BILLING CODE 4110-35-M

Office of the Secretary

45 CFR Part 205

Reduction in Federal AFDC Funds for Failure To Provide Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services

AGENCY: Office of the Secretary, HEW.

ACTION: Final regulation.

SUMMARY: This amendment deletes requirements from title 45 specifying the conditions under which Federal AFDC funds will be reduced if a State fails to provide early and periodic screening, diagnosis, and treatment (EPSDT) under Medicaid for AFDC children. These requirements are revised and transferred to 42 CFR Chapter IV, Subchaper C, which contains other Medicaid rules. This rule is a conforming amendment to regulations in title 42.

EFFECTIVE DATE: October 1, 1979.

FOR FURTHER INFORMATION: Mary Tierney (202) 245-7443.

SUPPLEMENTARY INFORMATION: Requirements are now set forth in 45 CFR 205.146(c) that specify the conditions under which a one percent penalty must be levied against the

Federal share of AFDC funds for failure to provide EPSDT services. Published elsewhere in today's **Federal Register** is a regulation that revises and transfers them to 42 CFR Part 441, Subpart B of the Medicaid regulations. Since State Medicaid agencies are responsible for carrying out EPSDT program activities necessary to preclude imposition of the penalty, it is appropriate to publish the penalty regulations with other Medicaid requirements.

This is merely a technical amendment to conform with the Medicaid regulations which were previously published as a proposal with opportunity for public comment. I, therefore, find that there is good cause to waive notice of proposed rulemaking.

45 CFR 205.146 is amended by revising paragraph (c) to read as follows:

§ 205.146 Specific limitations on Federal financial participation under Title IV–A.

* * * * *

(c) *Penalty for failure to provide early and periodic screening, diagnosis and treatment of children under Title XIX of the Act.* Pursuant to section 403(g) of the Act, notwithstanding any other provision of this chapter, total payments to a State under Title IV–A of the Act shall be reduced by 1 percentage point (calculated without regard to any other reduction under this section), on a quarterly basis if the State fails to comply with the requirements set forth in 42 CFR 441.70 through 441.90.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.808 Public Assistance—Maintenance Assistance (State Aid))

Dated: May 14, 1979.

Joseph A. Califano, Jr.,

Secretary.

[FR Doc. 79–15637 Filed 5–17–79; 8:45 am]

BILLING CODE 4110–12–M

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Vol. 44, No. 98

Friday, May 18, 1979

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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 January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going into Effect Today

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

23067 4–18–79 / Nursing Homes and intermediate care facilities mortgage insurance

Rules Going Into Effect Saturday; May 19, 1979

POSTAL SERVICE

23219 4–19–79 / Ineligibility of mail order catalogs for space available airlift to overseas military post offices

23220 4–19–79 / Revocation of special bulk Third Class rate authorizations for non-use

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing May 14, 1979

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WASHINGTON, D.C.

WHEN: June 1, 15; July 6, at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202–523–5235.

NEW YORK, NEW YORK

WHEN: May 29 and 30 at 9:30 a.m. (identical sessions).

WHERE: Federal Building, Conference Room 3A, 26 Federal Plaza, New York City.

RESERVATIONS: Call Ms. Dorothy Gemallo, 212–264–3514.

BOSTON, MASSACHUSETTS

WHEN: June 13 and 14 at 9:30 a.m. (identical sessions).

WHERE: John F. McCormack Federal Building, Conference Room 208, Boston.

RESERVATIONS: Call James Mullen, 617–223–2868.

LOS ANGELES, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).

WHERE: Federal Building, Army Corps of Engineers Conference Room 7412, 300 N. Los Angeles Street

RESERVATIONS: Federal Information Center, 213–688–3800.

SAN FRANCISCO, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).

WHERE: Federal Building, Room 2007, 450 Golden Gate Avenue

RESERVATIONS: Call Mike Modena or Judy Barbee, Federal Executive Board, 415–556–0250.