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Federal Register

Friday
October 26, 1979

Highlights

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61848 **Indian School Equalization Program** Interior/BIA adopts a rule governing the allocation of funds for the education of Indian children; effective 12–10–79 (Part V of this issue)

61932 **National Displaced Homemakers Program** Labor/ETA solicits applications for grants under the Comprehensive Employment and Training Act; comments by 12–10–79 (Part XI of this issue)

61619 **Veterans Education** VA proposes to issue regulations on the approval of courses; comments by 11–26–79

61594 **Income Tax** Treasury/IRS adopts regulations relating to the treatment of certain distributions made by cemetery perpetual care funds for the care and maintenance of gravesites; effective 12–31–63

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61598 **Medicaid** HEW/HCFA sets forth amended regulations governing the expenditures for abortions under the program; effective 10–1–79 (2 documents)

61599 **Social Services** HEW/SRS issues amending regulations governing the expenditures for abortions under the program; effective 10–1–79

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Highlights

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Presidential Documents

Title 3—

The President

Executive Order 12168 of October 24, 1979

President's Commission for a National Agenda for the Eighties

By the authority vested in me as President by the Constitution of the United States of America, and by the Statutes of the United States of America, including the Federal Advisory Committee Act, 5 U.S.C. App. I, and 3 U.S.C 301, in order to establish an independent forum to recommend for this Nation an Agenda for the Eighties and to recommend approaches for dealing with the major issues which will confront the American people during that decade, it is ordered:

1–1. *Establishment and Structure*

1–101. There is hereby established the President's Commission for a National Agenda for the Eighties.

1–102. The Commission shall be composed initially of fifty members appointed by the President from among private citizens of the United States. Upon the request of the Commission, the President shall select and appoint no more than fifty additional members.

1–103. The President shall designate the Chairperson of the Commission. The Chairperson, following consultations with Commission members, shall designate no more than fifteen members of the Commission to constitute an Executive Committee.

1–104. The members of the Commission shall not receive compensation for their service on the Commission, but may receive travel expenses, including per diem in lieu of subsistence.

1–2. *Functions and Reports*

1–201. Under the direction of the Executive Committee, the Commission shall identify and examine the most critical public policy challenges of the 1980's. It shall examine issues related to the capacity for effective Federal governance, the role of private institutions in meeting public needs, and underlying social and economic trends, as these issues bear on our public policy challenges in the 1980's. Areas to be reviewed by the Commission shall include:

(a) underlying trends or developments within our society, such as the changing structure of our economy, the persistence of inflationary forces, demands on our natural environment, and demographic shifts within our population that will shape public choices in the 1980's;

(b) opportunities to enhance social justice and economic well-being for all our people in the 1980's;

(c) the role of private institutions, including the non-profit and voluntary sectors, in meeting basic human needs and aspirations in the future;

(d) defining the role of the public sector, and financing its responsibilities in the 1980's;

(e) impediments to building policy consensus, both within government—the Executive branch, Congress, State and local government—and within the Nation as a whole.

Within this framework, the Commission shall identify the specific issues appropriate for examination.

1–202. The Chairperson of the Commission shall organize the Commission to study and make recommendations on major subject matter areas. This shall include the authority to appoint study panels and their chairpersons.

1–203. The Executive Committee shall coordinate the work and act on behalf of the Commission as necessary.

1–204. The Commission shall make every feasible effort to ensure citizen participation in the development of its Agenda and recommendations. The Commission, in preparing its recommendations, shall also consult with the Congress and with State and local officials.

1–205. The Commission shall prepare a final report setting forth its recommendations for addressing its Agenda for the Eighties and shall present the report to the President and to the Congress by December 31, 1980.

1–206. The Commission shall terminate on February 15, 1981.

1–3. *Staff and Support*

1–301. The Chairperson of the Commission shall appoint an Executive Director of the Commission.

1–302. To the extent permitted by law, Executive Agencies shall provide funds, facilities, support, services and assistance for the Commission and its subgroups, and such information and advice as the Commission may request.

1–303. Notwithstanding Executive Order 12024, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to Congress, shall be performed by the Director of the Office of Management and Budget with regard to the Commission and its subgroups. The Director is authorized to further delegate these responsibilities.

Jimmy Carter

THE WHITE HOUSE,
October 24, 1979.

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program; Submission of Claims for Reimbursement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency final rule.

SUMMARY: These final regulations implement, for the National School Lunch Program and School Breakfast Program, the provision of Public Law 96–38, which requires that Claims for Reimbursement for meals served during fiscal year 1979 must be submitted to State agencies prior to January 1, 1980 in order to receive reimbursement. Any Claim for Reimbursement that is being adjusted due to audits or investigations may be paid, provided that the Claim for Reimbursement was originally submitted before January 1, 1980.

EFFECTIVE DATE: October 23, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–8130.

SUPPLEMENTARY INFORMATION: At the Federal level the U.S. Department of Agriculture administers the National School Lunch Program and School Breakfast Program. Within the States the programs are administered by State agencies in accordance with agreements taken with the Department. The State agencies, in turn, take agreements with School Food Authorities, the governing bodies responsible for the administration of one or more schools and which have the legal authority to operate the school food programs. In return for State and Federal cash reimbursements, a School Food Authority must agree to provide meals to eligible children and to comply with certain administrative requirements. One such requirement is the submission of a claim form, to the State agency, containing data in sufficient detail to justify the reimbursement claimed.

Reports and studies by the General Accounting Office (GAO) and the Department's Office of Inspector General (OIG) have raised questions about the effectiveness of present school food program management systems. One specific area of concern is the reimbursement claiming procedure. Some School Food Authorities have not been submitting claims in a timely fashion. This has prevented State agencies and USDA from finalizing their fiscal year accounting records in a timely manner.

Recognizing the problem of late submission of claims and the overall need to maintain tighter control over the programs, Congress has required "* * * that only claims for reimbursement for meals served during fiscal year 1979 submitted to State agencies prior to January 1, 1980, shall be eligible for reimbursement." This requirement was made a part of Public Law 96–38 which was enacted on July 25 of this year. In a House of Representative's conference report (number 96–331), written during the development of Public Law 96–38, the conferees noted that "* * * adjustment to these (reimbursement) claims may arise pursuant to audits or investigations performed subsequent to submittal of claims."

The report went on to say that the conferees did not intend to stop proper payments of Claims for Reimbursement that were being adjusted due to audits or investigations if the claims were originally submitted before January 1, 1980.

The Department's Food and Nutrition Service is issuing these nondiscretionary final amendments to Parts 210 (National School Lunch Program) and 220 (School Breakfast Program) in order to fully comply with the substance and intent of Public Law 96–38. These regulations shall prohibit a State agency from paying any fiscal year 1979 Claims for Reimbursement submitted after January 1, 1980 with the exception of amended claims resulting from audits and/or investigations.

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Accordingly, Part 210, National School Lunch Program, is amended by Amendment 34 as follows:

§ 210.13, paragraph (b) is amended by adding the following:

§ 210.13 Reimbursement procedures.

* * * * *

(b) * * * The State agency, or FNSRO where applicable, shall pay only those Claims for Reimbursement for any period during fiscal year 1979 submitted prior to January 1, 1980, with the exception of claims so filed but subsequently amended as a result of Federal audit and/or investigation.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

Accordingly, Part 220, School Breakfast Program, is amended by Amendment 30 as follows:

§ 220.11, paragraph (a) is amended by adding the following:

§ 220.11 Reimbursement procedures.

(a) * * * The State agency, or FNSRO where applicable, shall pay only those Claims for Reimbursement for any period during fiscal year 1979 submitted prior to January 1, 1980, with the exception of claims so filed but subsequently amended as a result of Federal audit and/or investigation.

* * * * *

(Title I Chapter I, P.L. 96–38, 93 Stat. 98 (42 U.S.C. 1776a)).

Note.—Fiscal year 1979 ended September 30, 1979. Under P.L. 96–38, State agencies must receive all original Claims for Reimbursement before January 1, 1980. This rule must be finalized promptly in order that State agencies may provide for the receipt of all Claims for Reimbursement by local School Food Authorities for Fiscal Year 1979 funds by this new cutoff date to assure payment.

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 been designated as "non-discretionary", and is being published in accordance with

the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Bob Greenstein, Administrator, that the emergency nature of this final rule warrants publication without opportunity for public comment at this time. An impact analysis statement has been prepared and is available from Margaret O'K. Glavin, Director, School Programs Division, FNS, USDA, Washington, D.C. 20250.

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

Dated: October 23, 1979.

Carol Tucker Foreman,

Assistant Secretary, Food and Consumer Services.

[FR Doc. 79-33144 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Part 230

Food Service Equipment Assistance Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Food and Nutrition Service issues interim regulations which implement recently enacted amendments to the National School Lunch Act and the Child Nutrition Act of 1966. The regulations redirect priorities for the use of food service equipment assistance funds to encourage the expansion of the school breakfast program. Comments are invited from State agency and local school personnel and the general public. Commentors should address their remarks to the provisions and other areas of concern contained in these interim regulations. While these regulations must be implemented in the 1979–80 school year, comments will be especially helpful to the Department in assessing the provisions prior to the development of final program regulations.

EFFECTIVE DATE: October 1, 1979. Comments must be postmarked by January 15, 1980.

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

All written submissions received will be made available for public inspection at the School Programs Division, Food and Nutrition Service, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, Food and Nutrition Service, USDA, Washington, D.C. 20250, (202) 447–8130.

SUPPLEMENTARY INFORMATION: The interim rule modifies the Nonfood Assistance Program regulations to effect the legislative intent of Pub. L. 95–166 and Pub. L. 95–627. The Department's proposed rulemaking to initiate the implementation of Pub. L. 95–166 appeared in the **Federal Register** at 43 FR 50185, on Friday, October 27, 1978. This interim rule will effect the legislative intent of Pub. L. 95–166 with full consideration given to public comments received prior to the close of the official comment period. In addition, the legislative intent of Pub. L. 95–627 will be hereby implemented and will supersede in some instances the proposed regulations since the proposed regulations were based upon prior legislation. Robert Greenstein, Administrator, FNS, has determined that the issuance of this regulation in an interim, rather than proposed, form is necessary and in the best interest of the public, the programs, and the persons served by the programs. This is because the Department wishes to provide fiscal year 1980 funds under the conditions cited in this interim rule to States so that they can benefit from them while developing their own comments based upon actual operating experiences. The regulatory section governing the disposition of equipment in private schools is also being amended to reflect the disposition procedures outlines in OMB Circular A–102.

Pub. L. 95–166, enacted November 10, 1977, amended the National School Lunch Act and the Child Nutrition Act of 1966. To initiate the implementation of this legislation the Department published proposed regulations at 43 FR 50185 on October 27, 1978. Nineteen comments were received from State directors, school superintendents, professionals, nutritionists, dietitians, and other concerned citizens prior to the official close of the comment period on December 22, 1978. However, before this comment period closed, Pub. L. 95–627 was enacted on November 10, 1978 to amend the National School Lunch Act and the Child Nutrition Act of 1966. Hence, Pub. L. 95–627 superseded several provisions of Pub. L. 95–166 which had not yet been implemented in final regulations.

Since the involved chronology of legislation and Departmental regulatory activity may cause confusion, the following chart has been drafted as an aid to explain the regulatory changes based upon the legislative intent of Pub. L. 95–166 and 95–627.

The first column of the chart reflects the existing Departmental regulatory requirements. The second column reflects the provisions of Pub. L. 95–166 which were published in the proposed rule on October 27, 1978 and which will be implemented in this interim rule where not superseded by Pub. L. 95–627. The third column reflects the provisions of Pub. L. 95–627 which will be implemented in this interim rule.

Change of Program Title

Section 3 of Pub. L. 95–166 amended the National School Lunch Act and the Child Nutrition Act of 1966 to change the title of the Non-food Assistance Program to Food Service Equipment Assistance Program. Such change in the regulations would make the title more descriptive of the type of service offered to schools by this Program, and comments have expressed the public's support of this change.

Impact of Public Laws 95-166 and 95-627 on Part 230—Nonfood Assistance Program

Part 230—Nonfood Assistance Program Regulations	Proposed amendment implementing Public Law 95-166	Interim rule implementing Public Laws 95-166 and 95-627
PROGRAM TITLE		
Nonfood Assistance Program	Food Service Equipment Assistance Program	No change.
CATEGORY OF FUNDS		
Reserved—33⅓% of total funds appropriated	No change	Reserved—40% of total funds appropriated.
Unreserved—66⅔% of total funds appropriated	No change	Unreserved—60% of total funds appropriated.
APPORTIONMENT OF FUNDS TO STATES		
Reserved—ratio of the number of children in each State enrolled in schools without a food service and in schools	Reserved—ratio of the number of children in each State enrolled in schools without a food service	Reserved—ratio of the number of children in each State enrolled in schools without a food service and in schools moving toward the initiation of

Impact of Public Laws 95-166 and 95-627 on Part 230—Nonfood Assistance Program —Continued

Part 230—Nonfood Assistance Program Regulations	Proposed amendment implementing Public Law 95-166	Interim rule implementing Public Laws 95-166 and 95-627
without the facilities to prepare or receive hot meals to the number of children in all States enrolled in such schools.	and in schools without the facilities to prepare and cook or receive hot meals to the number of children in all States enrolled in such schools.	breakfast,* to the number of children in all States enrolled in such schools.
Unreserved—ratio of the number of Type A lunches served in each State during the latest preceding fiscal year for which data is available to the number of lunches served in all States.	No change	No change.
REAPPORTIONMENT OF RESERVED FUNDS		
Remain reserved with each reapportionment	After the 1st reapportionment any remaining funds will be reapportioned as unreserved funds.	No change.
USE OF RESERVED FUNDS		
To purchase or rent food service equipment for schools without a food service and schools without the facilities to prepare or receive hot meals.	To purchase or rent food service equipment for schools without a food service and schools without the facilities to prepare and cook or receive hot meals.	To purchase or rent food service equipment for schools without a food service and schools planning to initiate a lunch or breakfast program.
USE OF UNRESERVED FUNDS		
To purchase or rent food service equipment for any school eligible for nonfood assistance funds.	To purchase or rent food service equipment for schools in the following order:. 1—Schools without a food service 2—Schools without facilities to prepare and cook or receive hot meals. 3—Schools with inoperable equipment 4—Schools needing equipment to maintain or expand existing lunch or breakfast programs.	To purchase or rent food service equipment for schools in the following order: 1—Schools without a food service. 2—Schools needing equipment to initiate a lunch or breakfast program. 3—Schools without facilities to prepare and cook or receive hot meals. 4—Schools with inoperable equipment. 5—Schools needing equipment to maintain or expand existing lunch or breakfast programs.
USE OF EQUIPMENT PURCHASED WITH NONFOOD ASSISTANCE FUNDS		
Contracting institutions can use equipment purchased with NFA funds, if equipment is installed and operating on the SFA's premise.	School Food Authorities without hot meal service who contract with public or nonprofit private institutions to provide hot meals for the SL or SB Programs may use NFA funds to purchase equipment to be installed in the contracting institutions' kitchens.	No change.
ESPECIALLY NEEDY CRITERIA		
Determined by the State	Determined by the State and included in the State Plan for approval by the Secretary.	No change.
PROPERTY MANAGEMENT		
Regulatory requirements for disposing of equipment in private schools.	Private school property be disposed of according to OMB Circular No. A-102.	No change.

*Moving toward the SBP—Refers to schools for which bona fide written commitments of intent to initiate the School Breakfast Program have been made during the twelve month period (April 1-March 31) immediately preceding the date of the report being filed. Examples of such commitments include signed agreements or applications to participate in the Program and letters of intent to initiate the Program. Schools in this category have determined that it is feasible to initiate the Program and have fulfilled the necessary local prerequisites prior to submitting the bona fide written commitment.

Increase of Funds Allocated as Reserved

Pub. L. 95-627 increased the percentage of funds allocated as reserved funds from 33⅓ percent of the total funds appropriated to 40 percent. These regulations effect this change. By increasing the amount of FSEA funds allocated as reserved funds to 40 percent, more funds will be available to aid needy schools having no food service and those needy schools planning to initiate a lunch or breakfast program.

Use of Reserved Funds

Section 6 of Pub. L. 95-627 amended Section 5 of the Child Nutrition Act of 1966 to encourage schools to initiate a breakfast program and to give strong preference to schools planning to initiate a breakfast or lunch program. Pub. L. 95-166 required that one-third of the funds appropriated for the Food Service Equipment Assistance Program be reserved to assist schools without a food service program and schools without the facilities to prepare and cook hot meals or receive hot meals meeting the requirements of the National School Lunch Program or the School Breakfast Program ("reserved funds"). Fifty-eight percent of the commentors opposed giving preference for reserved funds to schools which chose to establish on-site food service operations. Several of these commentors cited instances where centralized or satellite food service operations were essential to the operation of the lunch and breakfast programs, especially in urban areas or in older schools which previously had no lunch or breakfast programs and in those schools with limited space and equipment. Commentors also stated that preplated meals are more economical than on-site food service operations and provide control over program costs in areas where programs would have to be discontinued due to the lack of funds. In reference to defining schools which receive chilled or frozen preplated meals as "schools without facilities to prepare and cook hot meals or receive hot meals", the comments indicated some dissension. Some commentors favored this provision and stated that on-site meal preparation would promote participation in the school nutrition programs. It was also stated that meals prepared on-site provided greater opportunity for teaching the children nutrition using the cafeteria as a learning laboratory and on-site food service operations could meet the needs of children requiring special diets better than centralized kitchens. However, 37 percent of the commentors believed that all preplated meals should be considered "with food service" regardless of whether the meal was received by the school as chilled, frozen, or hot. They said that the determining factor should have been whether the meal was served to the children hot regardless of the state in which the school received them.

Although Pub. L. 95-166 intended to encourage the on-site preparation of program meals by making reserved funds available to schools unable to prepare and cook or receive hot meals, Pub. L. 95-627 superseded this intent by replacing such schools with schools moving toward the initiation of a breakfast or lunch program. Therefore, public comments on the regulatory

proposal to implement Pub. L. 95–166 had little relevance to this new rule and therefore could not be heavily relied upon in its development.

Pub. L. 95–627 requires that reserved funds be apportioned among the States based on the number of schools without a food service and the number of schools moving toward the initiation of the School Breakfast Program. For uniformity among the States, the Department in these regulations has defined "school moving toward the School Breakfast Program" as a school for which a bona fide written commitment of intent to initiate the School Breakfast Program has been made during the 12-month period (April 1 thru March 31) immediately preceding the date of the report being filed. Examples of bona fide written commitments are signed agreements or applications to participate in the Program and letters of intent to initiate the Program. Schools without a food service continue to be eligible for reserved funds and the definition of this category of school has been revised to insure that food service equipment assistance funds are made available to schools most in need of a lunch program, that is, for schools which do not make available to enrolled children meals approximating the requirements of § 210.10 of the National School Lunch Program regulations.

Finally, Pub. L. 95–166 extends the reserved provision until September 30, 1980.

Use of Unreserved Funds

Unreserved funds may be used in any school eligible for food service equipment assistance funds. Generally, such funds are used to purchase food service equipment needed to maintain or expand existing school food service operations. These regulations would implement the intent of Pub. L. 95–166 to encourage the on-site preparation of hot meals by establishing a priority system for the distribution of unreserved funds. It was not the intention of Pub. L. 95–166 to disallow the use of FSEA funds for schools which would initiate the lunch or breakfast program through the use of frozen or chilled preplated meals. Rather schools which demonstrate that such meal service is essential to the initiation of the lunch or breakfast programs would be eligible to use FSEA funds to operate such a food service. With the legislative intent of Pub. L. 95–627 to encourage schools to establish and operate an ongoing breakfast or lunch program, this law further impacts upon the priority system established by Pub. L. 95–166. The priority system as reflected in this interim rule is as follows: (1) Schools without a food service, (2) schools that do not serve both breakfasts and lunches but that will use food service equipment to initiate the service of breakfasts or lunches, (3) schools without facilities to prepare and cook hot meals or receive hot meals, (4) schools having equipment that is so antiquated or impaired as to endanger the continuation of an adequate food service program or the ability to prepare and cook hot meals and, (5) schools needing equipment to (a) maintain and (b) expand existing lunch or breakfast programs.

These interim regulations maintain the definition of schools without facilities to prepare and cook hot meals or receive hot meals. Schools whose food service equipment is limited to the service of cold meals only and schools that can only heat frozen or chilled individual preportioned meals cannot use the funds received under the priority basis to purchase or rent food service equipment for the continuation or expansion of an ongoing food service operation which lacks facilities to prepare and cook hot meals or receive hot meals. The funds received can only be used to convert to a food service operation that has facilities to prepare and cook hot meals or receive hot meals.

Expanded Use of Food Service Equipment Assistance Funds

As a result of Pub. L. 95–166, this interim rule will also expand the use of food service equipment assistance funds to certain public or private nonprofit institutions which do not themselves participate in the school nutrition programs. Twenty-one percent of the commentors opposed the use of FSEA funds to purchase equipment to be installed in institutions which provide meals to children who attend schools which are unable to operate their own food service. However, this provision is mandated by Pub. L. 95–166. These regulations are designed to minimize the concerns of commentors regarding accountability and care and maintenance of equipment in such institutions.

These regulations provide that in circumstances where schools are unable to establish a food service program of hot meals prepared and cooked by the school and the school lacks facilities to receive hot meals and serve them hot when such meals are available from a kitchen operated by the School Food Authority, the school may contract with such an institution to provide hot meals to children attending such schools. Equipment acquired with food service equipment assistance funds may be used to equip the food service operations of the institution. For example, if a school is without a food service program and eligible for food service equipment assistance funds, but lacks space to install a kitchen, the school may contract with a community center to provide meals to its children. The school may equip the community center's kitchen with equipment purchased with food service equipment assistance funds. However, there are restrictions to this provision, namely: (1) The school must retain legal title to the equipment and (2) if reserved funds are used, the institution would otherwise have been without food service equipment.

Other Changes

Especially Needy

Both Pub. L. 95–166 and Pub. L. 95–627 require other changes in the operation of the Program. These include the Secretary's approval of the State's criteria for determining especially needy schools under the Food Service Equipment Assistance Program.

In order to effect this change, this interim rule will require State agencies and FNSROs, as applicable, to include their criteria for especially needy schools in the State Plan of Child Nutrition Operations. Although this practice has been addressed previously in the State Plan guidance, it has not previously been addressed as a regulatory requirement. Therefore, this regulatory requirement contributes no increased staffing or paperwork burden upon the State agencies. Two commentors stated that the percentage of children eligible for free or reduced price meals established by the State as criteria for especially needy schools needs to be more specific. The existing regulations state that the "majority" of the children enrolled must be eligible for free or reduced price meals. These regulations make it clear that it is the responsibility of the State to determine the level of free or reduced price eligibility that would best meet the needs of the neediest schools as long as at least 50 percent of the children enrolled are eligible for free or reduced price meals. This percentage may not be set so high as to eliminate all or most of a State's schools.

Reapportionments

Under the current legislation, reserved funds are reapportioned as reserved funds as many times per fiscal year as the Secretary determines a reapportionment is necessary. Pursuant to Pub. L. 95–166, this interim rule changes this provision to allow only one reapportionment of reserved funds as

reserved funds per fiscal year. Any funds remaining in that fiscal year would be reapportioned as unreserved funds. Commentors supported this provision stating that it would allow more funds to be available to assist ongoing programs where there has been a deficit for several years.

Property Management

Currently, the property management requirements in the regulations require different procedures for the disposition of personal property in public and private schools. This interim rule requires private school property to be disposed of in the same manner as public school property. This is in accordance with OMB Circular A–102 and Pub. L. 95–166. Commentors concurred with changing the property management requirement for private schools to coincide with those for public schools. A number of substantive comments were received objecting to the increase of the dollar amount of expendable personal property from $500 to $1,000. Since the Department cannot effect any discretionary impact upon this regulatory requirement which is found in OMB Circular A–102, the $1,000 amount has been retained in this interim rule.

PART 230—FOOD SERVICE EQUIPMENT ASSISTANCE PROGRAM

Accordingly, Part 230 is amended as follows:

1. The title "Nonfood Assistance Program" is deleted each time such title appears in this part and the title "Food Service Equipment Assistance Program" is inserted in lieu thereof.

2. The phrase "nonfood assistance" is deleted each time such phrase appears in this part and the phrase "food service equipment assistance" is inserted in lieu thereof.

3. The title "CND" is deleted each time such title appears in this part and the title "SPD" is inserted in lieu thereof.

4. In § 230.2 paragraphs (e) and (v) are deleted and reserved; four (4) new paragraphs (n–1), (n–2), (cc–1), and (cc–2) are added; and paragraphs (h), (i), (dd), (ee), (u) and (x) are revised to read as follows:

§ 230.2 Definitions.

* * * * *

(h) "Equipment" means articles and physical resources, other than land or buildings, used for receiving, storing, preparing, transporting, or serving food.

(i) "Especially needy school" means a school whose School Food Authority does not have access to sufficient resources to meet the matching requirement of this part, and which meets the criteria established in the approved State Plan. Such criteria shall include a State's established percentage of free and reduced price eligibles which is applied on a school level basis to determine a school's eligibility for especially needy assistance. Such percentage shall not be less than 50 percent and shall not be set at a level so high as to preclude eligibility of all or nearly all schools for especially needy assistance.

* * * * *

(n–1) "Frozen or chilled individual preportioned meal" means a preportioned combination of foods meeting the National School Lunch Program or School Breakfast Program requirements that are received chilled or frozen at the school to be served as an individual meal. Such meal may be packaged in one or more containers and may require heating at the school prior to serving.

* * * * *

(u) "OIG" means the Office of the Inspector General of the Department.

* * * * *

(x) "Program" means the Food Service Equipment Assistance Program authorized by section 5 of the Child Nutrition Act of 1966, as amended.

* * * * *

(n–2) "Grossly inadequate equipment" means equipment for storing, preparing, transporting or serving of food inappropriate for, or without the capacity to meet the demands placed on the foodservice facility. It also means foodservice equipment that is in operative condition, but uneconomical to keep operational due to frequent maintenance and repair.

* * * * *

(cc–1) "School moving toward the initiation of the service of breakfast" means a school for which bona fide written commitments of intent to initiate the School Breakfast Program have been made during the 12-month period (April 1 thru March 31) immediately preceding the date of the report being filed. Examples of such commitments include signed agreements or applications to participate in the program and letters of intent to initiate the program. Schools in this category have determined that it is feasible to initiate the program, and have fulfilled the necessary local prerequisites prior to submitting the bona fide written commitment.

(cc–2) "SPD" means School Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

(dd) "School without a food service" means a school that does not make available, to enrolled children, meals approximating the requirements of § 210.10 of the National School Lunch Program regulations.

(ee) "School without facilities to prepare and cook hot meals or receive hot meals" means a school that lacks adequate facilities to prepare, cook and serve hot meals onsite which meet the requirements of the National School Lunch and School Breakfast Programs and also lacks facilities to receive meals hot and serve them hot when such meals are available from a kitchen operated by the School Food Authority.

* * * * *

5. In § 230.4, paragraph (a) is revised; paragraph (b) is deleted; and paragraphs (c), (d) and (e) are revised and redesignated as (b), (c) and (d).

§ 230.4 Apportionment of funds to States.

(a) Of the Federal funds appropriated for food service equipment assistance under the Act, 60 percent shall be apportioned among the States during each fiscal year on the basis of the ratio that the number of lunches, meeting the meal requirements set forth in § 210.10 of this chapter and served in each State in the latest preceding fiscal year for which the Secretary determines data are available at the time such funds are apportioned, bears to the total number of such lunches served in all States in such preceding fiscal year.

(b) For the fiscal year ending September 30, 1980, 40 percent of the funds appropriated for food service equipment assistance under the Act shall be apportioned among the States on the basis of the ratio of the number of children in each State, enrolled in schools without a food service and in schools moving toward the initiation of the School Breakfast Program, to the number of children in all States enrolled in schools without a food service and in schools moving toward the initiation of the School Breakfast Program.

(c) If any State agency, or FNSRO, where applicable, cannot use all the funds apportioned to it under paragraph (a) or (b) of this section, it shall release such funds to the Department for further apportionment among the remaining States, in the manner and for the purpose of the respective initial apportionment: *Provided, however,* That no further apportionment shall be made if the Department determines that the amount of such funds is too small to make a further apportionment. If funds apportioned under paragraph (b) of this section remain unused after one reapportionment of these funds as reserved funds, the Secretary shall immediately apportion such funds among the States as unreserved funds in

accordance with the provisions of paragraph (a) of this section.

(d) A share of the Program funds apportioned to any State in accordance with paragraph (a) or (b) of this section shall be withheld by FNS for schools of that State if the State agency is prohibited by law from administering the Program with respect to such schools. The amount withheld from the funds apportioned under paragraph (a) of this section shall bear the same ratio to such apportioned funds as the number of lunches, meeting the requirements of § 210.10 of Part 210 of this chapter and served in such schools in such State in the latest preceding fiscal year for which the Secretary determines data are available at the time such funds are withheld, bears to the total number of such lunches served in all schools within such State in such preceding fiscal year. The amount withheld under paragraph (b) of this section shall bear the same ratio to such funds as the number of children in such State, enrolled in such schools without a food service and in such schools moving toward the initiation of the School Breakfast Program, bears to the total number of children enrolled in all schools without a food service and in all schools moving toward the initiation of the School Breakfast Program in such State in such fiscal year.

6. In § 230.7 paragraph (a) is revised to read as follows:

§ 230.7 Matching of funds.

(a) During any fiscal year, payments made by FNS to each State agency and payments made by FNSRO to School Food Authorities shall be upon the condition that at least one-fourth of the cost of the equipment financed under this subsection shall be borne by funds from sources within the State: *Provided, however,* That payments used to assist schools that are especially needy, as determined by criteria established by the State agency, or FNSRO where applicable, and approved by the Secretary, shall not be so matched. A School Food Authority's ability to meet the matching requirement of this section may be determined by assessing the funds included in the school food service budget, the funds set aside for equipment replacement, the level of operating balance, the availability of funds from alternate sources and their impact on the School Food Authority's ability to finance the acquisition cost. Payments made by FNS to a State agency may be matched where matching is required, either by the respective recipient School Food Authorities or from other State or local sources, and payments made by FNSRO to a School Food Authority may be matched either by the recipient School Food Authority or from other funds available to such School Food Authorities within the State in which the Program is administered by FNS.

* * * * *

7. In § 230.8, the paragraph is designated as paragraph (a) and the last sentence is deleted and new paragraphs (b), (c), (d), and (e) are added to read as follows:

§ 230.8 Use of funds.

* * * * *

(b) Funds apportioned under paragraph (a) of § 230.4 may be used to reimburse School Food Authorities of any eligible school. However, States shall use their share of unreserved funds as described under paragraph (a) of § 230.4 by giving priority to four (4) types of schools in the following order: (1) Schools without a food service, (2) schools that do not serve both breakfasts and lunches, but that will use food service equipment to initiate the service of breakfasts or lunches, (3) schools without the facilities to prepare and cook hot meals or receive hot meals, and (4) schools having equipment that is so antiquated or impaired as to endanger the continuation of an adequate food service program or the ability to prepare and cook hot meals. After making funds available to such schools, the State shall make the remaining funds available to eligible schools that do not meet the priority criteria for the purpose of purchasing or renting equipment needed to (i) maintain and (ii) expand existing lunch or breakfast programs. In "schools without facilities to prepare and cook hot meals or receive hot meals," unreserved funds received under the priority basis cannot be used to purchase or rent equipment for the continuance or expansion of an ongoing food service operation. Such unreserved funds may be used only to convert to a food service operation that has facilities to prepare and cook hot meals or receive hot meals. This provision does not apply to schools without a food service, although the provisions of paragraph (d) of this section are applicable to schools without a food service.

(c) States shall use their share of reserved funds as apportioned under paragraph (b) of § 230.4 to reimburse School Food Authorities of eligible schools that do not make available to enrolled children lunches approximating the requirements of § 210.10 of Part 210 of this chapter, but that will use food service equipment to initiate the National School Lunch Program, and School Food Authorities of schools that do not serve breakfasts, but that will use food service equipment to initiate the School Breakfast Program.

(d) Food service equipment assistance funds shall be used only for facilities that enable local public or private nonprofit institutions under the conditions prescribed in paragraph (e) of this section or schools to prepare and cook hot meals or receive hot meals at the school or institution unless the School Food Authority can demonstrate to the satisfaction of the State agency or FNSRO where applicable, that an alternate method of meal preparation is necessary for the introduction or continued existence of the school lunch or breakfast programs in the schools or to improve the consumption of food or the participation of eligible children in the programs.

(e) If a School Food Authority authorized to receive funds under this section cannot establish a food service program of hot meals prepared and cooked by the school and the school lacks facilities to receive meals hot and serve them hot when such meals are available from a kitchen operated by the School Food Authority and the School Food Authority enters into an agreement with a public or private nonprofit institution to provide hot lunches or breakfasts meeting program nutritional requirements for children attending the school, the funds provided under this section may be used for food service equipment to be located at such institution, if the school retains legal title to such food service equipment and if, in the case of funds made available under § 230.4(b), the institution would otherwise be without food service equipment.

8. In § 230.9, a new paragraph (d) is added to read as follows:

§ 230.9 Requirements for participation.

* * * * *

(d) The State agency, or FNSRO where applicable, shall provide technical assistance to applicant and participating School Food Authorities to assure that school food services use existing and requested equipment with maximum effectiveness in the Program.

9. In § 230.12, a new paragraph (i) is added to read as follows:

§ 230.12 Special responsibilities.

* * * * *

(i) In accordance with the State Plan of Child Nutrition Operations submitted under § 210.4(a) the State agency, or FNSRO where applicable, shall include criteria for especially needy schools under the Food Service Equipment

Assistance Program. Such criteria shall include as a minimum, the percentage of enrolled children eligible for free and reduced price meals set as a minimum, at not less than 50 percent, but not so high as to preclude eligibility of all or nearly all schools in the State for especially needy Food Service Equipment Assistance Program funds.

10. In § 230.13, paragraph (b) is revised to read as follows:

§ 230.13 Claims against School Food Authorities.

* * * * *

(b) FNS may review any action the State agencies propose to take under this section.

11. In § 230.16 the title of the paragraph (b)(3) is amended to read "Disposition"; paragraph (b)(3)(i) is deleted and reserved; paragraph (b)(4) is deleted; a new sentence is added to paragraph (b)(2); paragraph (b)(5) is redesignated as paragraph (b)(4); and paragraphs (a), (b)(3)(iii) and (c) and the fifth sentence of paragraph (b)(3) are revised to read as follows:

§ 230.16 Property management requirements.

(a) *General purpose and scope.* This section prescribes policies and procedures governing title, use, and disposition of personal property obtained by a State agency or School Food Authority for eligible schools, whose cost was borne in whole or in part with Food Service Equipment Assistance Program funds. State agencies and School Food Authorities may follow their own property management policies and procedures provided they are not inconsistent with the requirements of this section.

* * * * *

(b) * * *

(2) * * * Wherever feasible, a State agency or School Food Authority shall remove property which is not used in the Program at its current location and reinstall it for Program use at another location where a need for such property exists.

(3) * * * In such situations, the State agency or School Food Authority may use the property without reimbursement to the Department or State agency, as applicable, or sell the property and retain the proceeds if the property had an acquisition cost of less than $1,000 per unit * * *.

(iii) When the Department or State agency, as applicable, determines that nonexpendable personal property has an acquisition cost of $1,000 or more, the Department or State agency, as applicable, may reserve the right to require the State agency or School Food Authority to transfer title of the property to the Department or State agency, as applicable, or to a third party subject to the following provisions:

* * * * *

(c) *Expendable personal property.* The State agency or School Food Authority may at its option either retain or sell items of expendable personal property on hand when no longer needed for any federally sponsored activity (including activities sponsored by other Federal agencies). Compensation to the Department or State agency, as applicable, is required if the aggregate fair market value of all expendable personal property on hand acquired under the grant or contract exceed $1,000 when no longer needed for any federally sponsored activity. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original property to the current fair market value of items retained and to the sale proceeds of items sold.

* * * * *

(Catalog of Federal Domestic Assistance No. 10.554, National Archives Reference Services.)

Note.—This interim rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. An Interim Impact Statement has been prepared and is available from the office of the party identified in the "For Further Information Contact" portion of the preamble during regular business hours (8:30 a.m. to 5:00 p.m.).

(Sec. 3, Pub. L. 95–166, 91 Stat. 1332, sec. 4, Pub. L. 95–166, 91 Stat. 1332–1332 (42 U.S.C. 1774) and sec. 6(b), Pub. L. 95–627, 92 Stat. 3620–3621 (42 U.S.C. 1774)).

Dated: October 17, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79–32747 Filed 10–25–79; 8:45 am]

BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

7 CFR Part 301

Witchweed Quarantine; Miscellaneous Amendments to Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the supplemental regulations which designate generally infested regulated areas and suppressive regulated areas subject to the Witchweed Quarantine and regulations by removing, adding, or extending parts of certain counties in North Carolina and South Carolina to the list of suppressive regulated areas. These changes are necessary in order to prevent the spread of witchweed.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, Regulatory Support Staff, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION: Witchweed is a parasitic plant which causes the degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina. Areas within these States have been designated as suppressive areas where a witchweed eradication program is currently being undertaken.

Surveys conducted by the United States Department of Agriculture and State agencies of North Carolina and South Carolina established that witchweed has spread or is likely to spread to certain areas beyond the outer perimeter of the current designated suppressive areas. Therefore, in order to prevent the spread of witchweed and to facilitate its ultimate eradication, it was proposed in a notice published in the **Federal Register** (44 FR 34501) on June 15, 1979, to extend the current designated suppressive areas in the following counties: Brunswick, Columbus, Craven, Duplin, Lenoir, Onslow, Pender, Pitt, Richmond, Scotland, and Wayne in North Carolina; and Florence in South Carolina. It was also proposed to establish suppressive areas in the formerly unregulated county of Beaufort in North Carolina. The surveys also established that witchweed has been eradicated in parts of the following counties: Columbus, Duplin, Harnett, Johnston, Lenoir, Onslow, Pender, Richmond, Scotland, and Wayne in North Carolina. Therefore, it was proposed that the areas eradicated in these counties be deleted from the list of suppressive areas.

Other changes were proposed to reflect changes in property ownership. Certain property descriptions were proposed in order to more accurately describe the regulated areas.

No comments were received in response to the proposed rule. Except for editorial corrections, the proposed amendments are hereby adopted without change. Accordingly, § 301.80–2a of 7 CFR is amended to read as set forth below.

This document imposes restrictions that are necessary in order to prevent the spread of witchweed and should be made effective promptly to accomplish its purpose in the public interest. Accordingly, it is found upon good cause under the administrative procedures provisions of 5 U.S.C. 553, that further notice and other public procedure with respect to this revision is unnecessary, and good cause is found for making it effective less than 30 days after publication in the **Federal Register.**

Further, this final rule has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from the Plant Protection and Quarantine Programs, APHIS, Room 633, Federal Building, Hyattsville, MD 20782, 301–436–8247.

Done at Washington, D.C., this 22nd day of October 1979.

James O. Lee, Jr.,

Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

§ 301.80–2a [Amended]

1. In § 301.80–2a relating to the State of North Carolina under suppressive area, the entire State would be redescribed to read as follows:

§ 301.80–2a Regulated areas; suppressive and generally infested areas.

* * * * *

North Carolina

(1) *Generally infested area.*

Robeson County. The entire county.

(2) *Suppressive area.*

Beaufort County. The Jefferson, Russell M., farm located on the southwest side of State Secondary Road 1609 and 0.6 miles southeast of the junction of said road and State Highway 32.

The Osborne, H. R., farm located on both sides of State Secondary Road 1609 and 0.5 mile southeast of the junction of said road and State Highway 32.

Bladen County. The entire county.

Brunswick County. The Babson, N. L., farm located on the west side of State Secondary Road 1321 and 0.4 mile south of its junction with State Highway 130.

The Bryant, Ottice, farm No. 1 located at the end of a farm road 1.0 mile west of State Secondary Road 1342, 2.5 miles northwest of said State Secondary Road and its junction with State Highway 211.

The Bryant, Ottice, farm No. 2 located on both sides of State Secondary Road 1342, 2.3 miles northwest of said road and its junction with State Highway 211.

The Hewett, Jr. R. B., farm located at the end of a farm road on the northeast side of State Secondary Road 1132, 0.4 mile northeast of said road and its intersection with N.C. Highway 130.

The Meares, Hobson, farm located on both sides of State Secondary Road 1165 and 2.0 miles south of the junction of said road with U.S. Highway 17.

The Register, W. C., farm located on the south side of State Secondary Road 1147 and 0.3 mile east of the junction of said road and State Secondary Road 1143.

The Register, W. T., farm located on the west side of State Secondary Road 1151 and 0.4 mile south of its junction of State Secondary Road 1147.

The Sanders, Albert C., farm located on the east side of State Secondary Road 1143 at the end of a dirt road located 0.5 mile south of the junction of State Secondary Roads 1143 and 1147.

The Smith, B. Coda, farm located on the west side of a dirt road and 0.6 mile north of its junction with State Secondary Road 1322, said junction being 0.1 mile west of the junction of State Secondary Road 1322 and State Secondary Road 1321.

The Todd, Lester, farm located on the east side of State Secondary Road 1143 at the end of a dirt road located 0.5 mile south of the junction of State Secondary Roads 1143 and 1147.

Columbus County. That part of the county lying north and west of a line beginning at a point where State Highway 211 intersects the Bladen-Columbus County line, thence south along said Highway 211 to its intersection with State Secondary Road 1740, thence southwest and south along said State Secondary Road 1740 to its junction with U.S. Highways 74 and 76, thence west along said highways to it intersection with White Marsh Swamp, thence south along said swamp to its junction with Cypress Creek, thence southwest along said creek to its intersection with State Highway 130, thence northwest along said highway to its junction with State Secondary Road 1166, thence southwest along said road to its junction with State Secondary Road 1157, thence southwest along said road to its junction with U.S. Highway 701, thence south and west along said highway to its intersection with State Secondary Road 1314, thence west along said road to its junction with State Secondary Road 1346, thence southwest along said road to its junction with the North Carolina-South Carolina State line.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1847 and 1 mile northeast of the junction of said road 1847 with State Secondary Road 1740.

The Long, J. M., farm located on the southwest side of State Secondary Road 1113 and 0.4 mile northwest of its junction with State Secondary Road 1108.

The McLamb, H. M., farm located on the southwest side of State Secondary Road 1113 and 0.5 mile northwest of its junction with State Secondary Road 1108.

The Owen, J. A., farm located on the southwest side of State Highway 87 and 0.3 mile southeast of the intersection of said Highway 87 with the Bladen-Columbus County line.

The Shaw, Archie, farm located 0.2 mile southeast of State Secondary Road 1864 and 0.5 mile southeast of the junction of said Road 1864 with State Secondary Road 1808.

The Shaw, Charles H., farm located 0.1 mile north of State Secondary Road 1847 and 0.9 mile northeast of the junction of said Road 1847 with State Secondary Road 1740.

The Shipman, C. S., farm located on the east side of State Secondary Road 1909 and 0.6 mile southeast of the junction of said Road 1909 with State Secondary Road 1908.

The Spivey, D. M., farm located in the northeast corner of the intersection of U.S. Highway 701 and Gum Swamp.

The Suggs, Lacy, farm located at the end of a dirt road 0.5 mile southeast of the junction of said road with State Secondary Road 1108, said junction being 0.7 mile northeast of the junction of State Secondary Road 1108 and State Secondary Road 1118.

The Young, Grace, farm located on the west side of N.C. State Secondary Road 1914 and 0.2 mile south of the junction of said road with N.C. State Secondary Road 1904.

Craven County. The Chapman, Idel M., farm located on the west side of State Secondary Road 1459 and 0.1 mile north of junction of State Secondary Road 1463 with said road 1459 and 0.3 mile off west side of State Secondary Road 1459.

The Goodman, W. D., farm located on both sides of State Secondary Road 1263 and 2.6 miles east of its southern junction with State Secondary Road 1262.

The Hawkins, Annie A., farm located on both sides of State Secondary road 1263 and 1 mile east of the junction of said Road 1263 with State Secondary Road 1262.

The Hawkins, Mattie, farm located on the west side of State Secondary Road 1263 and 1.2 miles east and north of its southern junction with State Secondary Road 1262.

The Hodges, Mary K., farm located on both sides of State Secondary Road 1263 and 2.2 miles east of its southern junction with State Secondary Road 1262.

The West, Gladys W., farm located on both sides of State Secondary Road 1263 and 1.4 miles east of its southern junction with State Secondary Road 1262.

The White, Raymond E., farm located on both sides of State Secondary Road 1263 and 0.2 mile east of its northern junction with State Secondary Road 1262.

Cumberland County. All of Cumberland County excluding the Fort Bragg Military Reservation, the area within the corporate limits of the city of Fayetteville, and the unincorporated communities of East Fayetteville and Bonnie Doone.

Duplin County. That area bounded by a line beginning at a point where State Secondary Road 1337 intersects the Duplin-Sampson County line, thence northeast along said road to its junction with State Highway 50, thence northwest along said highway to its junction with State Secondary Road 1355, thence northeast along said road to its junction with State Secondary Road 1332, thence northeast along said road to its junction with State Secondary Road 1304, thence southeast along said road to its intersection with Bear Swamp, thence east along said swamp to its junction with Goshen Swamp, thence southeast along said swamp

to its intersection with State Secondary Road 1004, thence southeast along said road to its intersection with Nahunga Creek, thence southwest along said creek to its intersection with State Secondary Road 1301, thence northwest along said road to its junction with State Secondary Road 1346, thence southwest along said road to its junction with State Secondary road 1385, thence west along said road to its junction with State Highway 50, thence southeast along said highway to its junction with State Secondary Road 1900, thence southeast along said road to its junction with State Secondary Road 1003, thence east along said road to its junction with State Highway 11, thence south along said highway to its junction with State Secondary Road 1922, thence southwest along said road to its junction with State Secondary Road 1909, thence south along said road to its junction with State Secondary Road 1912, thence west along said road to its intersection with the Magnolia city limits, thence south, west, and north along said city limits to its intersection with State Secondary Road 1003, thence southwest along said road to its junction with State Secondary Road 1101, thence southeast along said road to its intersection with State Secondary Road 1102, thence southwest along said road to its junction with State Secondary Road 1126, thence west along said road to its intersection with State Secondary Road 1100, thence southeast along said road to its intersection with State Secondary Road 1102, thence south along said road to its junction with State Secondary Road 1129, thence southwest along said road to its intersection with State Secondary Road 1128, thence northwest along said road to its intersection with Duplin-Sampson County, thence north along said county line to the point of beginning.

The Alphin, Clara, farm located in the north junction of State Secondary Road 1004 and State Secondary Road 1505.

The Beard, Mary Lou, farm located on both sides of State Secondary Road 1961 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Bostic, Jake, farm located on both sides of State Secondary Road 1961 and 0.5 mile west of the intersection of said road and the Northeast Cape Fear River.

The Bradshaw, Gene A., farm located on the south side of State Secondary Road 1321 and 0.8 mile west of the junction of said road with State Secondary Road 1302.

The Bradshaw, Milton J., farm located at the northwest end of State Secondary Road 1980.

The Branch, Hall, farm located on the southeast side of State Highway 11 and 0.6 mile southwest of the junction of said highway and State Secondary Road 1004.

The Britt, Ben, farm located on the north side of State Secondary Road 1306 and 0.1 mile east of its junction with State Secondary Road 1361.

The Britt, Cornia, farm located on both sides of State Secondary Road 1545 and 0.5 mile east of the junction of said road and State Secondary Road 1564.

The Brock, Jack, farm located on both sides of State Secondary Road 1700 and 0.8 mile west of the intersection of said road and the Northeast Cape Fear River.

The Brown, George, farm located on the west side of State Secondary Road 1004 and 0.8 mile north of its junction with State Secondary Road 1504.

The Dail, Albert D., farm located on both sides of State Secondary Road 1524 and 0.1 mile north of the junction of said road and State Secondary Road 1525.

The Davis, Jimmie, farm located on the east side of State Highway 111 and the south side of State Secondary Road 1546.

The Davis, Wenzell, farm located on the south side of State Secondary Road 1560 and 0.3 mile south of the junction of said road and State Secondary Road 1537.

The English, James Earl, farm located on the north side of State Secondary Road 1980 and 0.3 mile southwest of the junction of said road and State Secondary Road 1979.

The Garner, S. C., farm located on the south side of State Secondary Road 1306 and 0.5 mile west of the junction of said road and State Secondary Road 1511.

The Goodson, Emma, farm located on the south side of State Secondary Road 1501 and 0.3 mile west of the junction of said road and State Secondary Road 1505.

The Grady, E. C., farm located on both sides of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and Northeast Cape Fear River.

The Grady, Robert, farm located on the east side of State Secondary Road 1560 and the south side of State Secondary Road 1537.

The Grady, S. Leland, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Green, Willie, farm located on both sides of State Secondary Road 1971, and 0.6 mile southwest of the junction of said road and State Highway 50.

The Harper, Milo, farm located on the northwest side of State Secondary Road 1539 and 0.6 mile northeast of the junction of said road and State Secondary Road 1540.

The Herring Estate, Jeff, farm located on the north side of State Secondary Road 1545 and 0.6 mile east of the junction of said road and State Secondary Road 1564.

The Horne, Harry, farm located on the south side of State Secondary Road 1961 and 0.8 mile west of the intersection of said road and State Secondary Road 1962.

The Howard, Henry, farm located on the north side of State Secondary Road 1700 and 0.8 mile west of the intersection of said road and the Northeast Cape Fear River.

The Hussey Estate, M. W., farm located on the east side of State Secondary Road 1560 and 0.2 mile south of the junction of said road and State Secondary Road 1537.

The Ivey, Jr., C. C., farm located on the east side of State Secondary Road 1361 and 0.3 mile south of its junction with State Secondary Road 1362.

The Ivey, Foy, No. 1, farm located on the north side of State Secondary Road 1306 and 0.3 mile east of its junction with State Secondary Road 1361.

The Ivey, Foy, No. 2 farm located on both sides of State Secondary Road 1004 and 0.1 mile south of its junction with State Secondary Road 1561.

The Jernigan, Cornelia, farm located on the west side of State Secondary Road 1360 and 0.4 mile south of its junction with State Secondary Road 1004.

The Johnson, Eldora, farm located on both sides of State Secondary Road 1123 and 1.2 miles west of the junction of said road and State Secondary Road 1103.

The Jones, Billy, farm located on both sides of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and the Northeast Cape Fear River.

The Jones, H. A., farm located on south side of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and the Northeast Cape Fear River.

The Jones, Nora, farm located on west side of State Secondary Road 1004 and 0.3 mile south of its junction with State Secondary Road 1365.

The Kalmar, J. N., farm located on the south side of State Highway 403 and 0.5 mile west of its junction with State Secondary Road 1304.

The Kennedy, Owen, farm located on the east side of State Secondary Road 1726 and the southeast side of State Secondary Road 1702.

The Kennedy, Sidney J., farm located on the east side of State Secondary Road 1718 and 0.2 mile south of the junction of said road and State Highway 41.

The King, W. R., farm located on the east side of State Secondary Road 1302 and 0.1 mile south of the junction of said road and State Secondary Road 1308.

The Kornegay, Byrus, farm located on the east side of State Highway 403 and 0.1 mile north of its junction with State Secondary Road 1369.

The Kornegay, Ethyl, farm located 0.2 mile east of State Secondary Road 1501 and 0.6 mile south of the intersection of said road and State Secondary Road 1519.

The Kornegay Estate, Issac, located on the southwest side of State Secondary Road 1306 and 0.7 mile northwest of the junction of said road and State Secondary Road 1305.

The Lane, David, farm located 0.1 mile east of State Secondary Road 1369 and 0.1 mile south of its junction with State Highway 403.

The Lewis, Merle S., farm located on the east side of State Secondary Road 1004 and both sides of State Secondary Road 1508.

The Marshburn, Freeman J., farm located on both sides of State Secondary Road 1128 and 0.7 mile southeast of the intersection of said road and State Secondary Road 1129.

The Maxwell, Myra, farm located on the southeast side of State Secondary Road 1306 and the west side of State Secondary Road 1562.

The McCullen, Larry, farm located on the northeast side of State Highway 24 and 0.2 mile northwest of the junction of said highway and State Secondary Road 1904.

The McGowan, Woodell, farm located on the south side of State Secondary Road 1961 and 1.1 mile west of the intersection of said road and State Secondary Road 1962.

The Mercer, Cathleen, farm located on the south side of State Secondary Road 1703 and 1.1 mile east of the intersection of said road and State Secondary Road 1704.

The Mercer, Herbert C., farm located on the south side of State Secondary Road 1703 and 0.7 mile west of the junction of said road and State Secondary Road 1732.

The Norris, Maggie T., farm located on the south side of State Secondary Road 1700 and 1.4 mile east of the intersection of said road and State Secondary Road 1701.

The Outlaw, Bennie F., farm located on both sides of State Secondary Road 1524 and north side of State Secondary Road 1525.

The Outlaw, Emma, farm located on the south side of State Secondary Road 1509 and 0.5 mile southwest of the junction of said road and State Secondary Road 1510.

The Parrott, Jr., Mrs. Frank, farm located on the south side of State Secondary Road 1703 and 0.3 mile east of the intersection of said road and State Secondary Road 1704.

The Pate, Robert Lee, farm located on both sides of State Secondary Road 1357 and 0.9 mile southwest of the junction of said road and State Secondary Road 1306.

The Powell, William F., farm located on both sides of State Secondary Road 1128 and 0.2 mile southeast of the intersection of said road and State Secondary Road 1129.

The Precythe, Harold, farm located on the east side of U.S. Highway 117 and 0.1 mile south of the junction of said highway and State Secondary Road 1354.

The Rivenbark, George W., farm located on the northwest side of State Secondary Road 1131 and 0.4 mile southwest of the junction of said road and State Secondary Road 1128.

The Rouse, Beatrice S., farm located on both sides of State Secondary Road 1980 and at the west end of said road.

The Rouse, Jim, farm located on both sides of State Secondary Road 1537 and 0.3 mile south of the junction of said road and State Secondary Road 1306.

The Rouse, Rouke, farm located on the north side of State Secondary Road 1537 and the west side of State Secondary Road 1538.

The Shepard, J. T., farm located on both sides of State Secondary Road 1732 and 0.2 mile north of the junction of said road and State Secondary Road 1703.

The Smith, R. J., farm located on the north side of State Highway 11 and 1.2 miles east of the junction of said highway and State Highway 111.

The Smith, Sallie P., farm located on the northeast side of State Highway 111 and 0.8 mile southeast of the Duplin-Wayne County line.

The Stokes, Fred, farm located on the south side of State Secondary Road 1980 and 2.4 miles west of the junction of said road and State Secondary Road 1979.

The Stokes, William C., farm located at the southwest end of State Secondary Road 1980.

The Summerlin, D. C., farm located on the north side of State Secondary Road 1513 and 0.4 mile east of the junction of said road and State Secondary Road 1565.

The Summerlin, Lannie, farm located on the both sides of State Secondary Road 1539 and 0.3 mile southwest of its junction with State Secondary Road 1306.

The Summerlin, Oliver, farm located on the south side of State Highway 403 and 0.1 mile east of the corporate limits of the town of Faison.

The Sumner, India, farm located on the southwest side of State Highway 111 and 1.2 miles south of the intersection of said highway and State Secondary Road 1700.

The Sutton, Effie O., farm located on the northeast side of State Secondary Road 1004 and 0.7 mile northwest of its junction with State Secondary Road 1504.

The Turner, Lumas, farm located on the south side of State Secondary Road 1703 and 0.6 mile west of the junction of said road and State Secondary Road 1732.

The Walker, C. P., Estate, farm located on the west side of State Secondary Road 1368 and 1.2 miles north of its junction with State Secondary Road 1364.

The Whaley, Bennie, farm located on the southeast side of State Secondary Road 1961 and 0.3 mile northeast of the junction of said road and State Secondary Road 1800.

The Whitman, Herman E., farm located on the south side of State Secondary Road 1300 and 0.1 mile west of the junction of said road and State Road 1381.

The Whitman, Herman E., farm located on the north side of State Secondary Road 1300 and 0.8 mile of the intersection of said road and State Secondary Road 1301.

The Williams, McArthur, farm located on the south side of State Secondary Road 1961 and 1 mile west of the intersection of said road and State Secondary Road 1962.

The Wilson, Mammie, farm located on the east side of State Highway 111 and 1.0 mile south of the intersection of said highway and State Secondary Road 1700.

Green County. That area bounded by a line beginning at a point where State Highway 102 intersects State Highway 123 and extending south along State Highway 123 to its intersection with Contentnea Creek, thence northwest along said creek to its junction with Panther Swamp. Thence northerly along said Panther Swamp to its intersection with U.S. Highway 13–258, thence easterly along said highway to the point of beginning.

The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with North Carolina Highway 102.

The Dixon, John, farm located on the east side of State Secondary Road 1004 at the junction of State Secondary Road 1405.

The Dixon, Sudie, farm located on the west side of State Secondary Road 1004 and 0.2 mile south of its junction of State Secondary Road 1405.

The Murphrey, Edward, farm located on the east side of State Secondary Road 1004 and 0.3 mile south of its junction with State Highway 102.

The Whitaker, J. H., farm located on the east side of State Secondary Road 1004 and 0.6 mile south of its junction with State Highway 102.

Harnett County. That area bounded by a line beginning at a point on the Harnett-Lee County line due west of the head of Barbecue Swamp and extending east to the head of said swamp, thence south and east along Barbecue Swamp to its intersection on State Secondary Road 1201, thence south and southeast along said road to its junction with State Highway 27, thence southeast along said highway to its junction with State Highway 24, thence southeast along said highway to its junction with State Secondary Road 1111, thence southwest along said road to its intersection with Harnett-Moore County line, thence northwest along the Harnett-Moore County line to its junction with the Moore-Harnett-Lee County line, thence northeast along the Harnett-Lee County line to the point of beginning.

That area bounded by a line beginning at a point where the Harnett-Cumberland County line and McLeod Creek intersect and extending northwest along said creek to its intersection with State Secondary Road 1117, thence northeast, northwest and north along said road to its intersection with Anderson Creek, thence southeast along said creek to its intersection with the State Highway 210, thence northeast along said highway to its junction with State Secondary Road 2030, thence southeast along said road to its junction with State Secondary Road 2031, thence southwest along said road to its intersection with the Harnett-Cumberland County line, thence southwest and west along said county line to the point of beginning.

The Cook, A. L., farm located on the east side of State Secondary Road 1201 and 1.5 miles southeast of the junction of said road with State Secondary Road 1203.

The Gilchrist, Leonard W., farm located on the southeast side of State Secondary Road 1111, 0.4 mile north of the junction of said road with State Secondary Road 1110.

The Johnson, Sr., Jonah C., farm located at the junction of State Secondary Roads 1553 and 1555. The farm lies in the northeast portion of this junction.

The Keath, Vick, farm located on the east side of State Secondary Road 1293 and 0.7 mile southwest of the junction of said road with State Secondary Road 1114.

The McAden, J. L., farm located on southeast side of State Highway 27 and 0.6 mile southwest of the intersection of said highway with State Highway 87.

The Proctor, T. G., farm located on the northeast side of State Highway 27 at that point where said highway forms an overpass over State Highway 87.

The Thomas, Floyd E., farm located on the northeast side of State Secondary Road 1146 and 0.2 mile north of the junction of said road with State Secondary Road 1117.

The Womack, E. H., farm located on east side of State Highway 27, and 1.0 mile north of the junction of said highway with State Highway 24.

Hoke County. The entire county excluding Fort Bragg Military Reservation.

Johnston County. The Baker, Mrs. Lula, farm located on the east side of State Highway 242 and 0.2 mile south of the intersection of said highway and State Secondary Road 1116.

The Blackman, Dewey, farm located on the south side of State Secondary Road 1146, and 0.4 mile east of the junction of said road with State Secondary Road 1145.

The Braswell, J. G., farm located on the east side of State Secondary Road 2519 and 0.4 mile north of the junction of State Secondary Roads 2519 and 2520.

The Davis, I. H., farm located on the southwest side of State Secondary Road 1197 and 0.1 mile southeast of the junction of said road with State Secondary Road 1198.

The Edwards, Archie, farm located on the south side of State Secondary Road 2542 and 0.6 mile south of the junction of said road with State Secondary Road 1007.

The Everett, Betty, farm located on the west side of State Secondary Road 2541 and 0.5 mile south of the junction of said road with State Secondary Road 1007.

The Everett, Betty, farm located on a farm road and 0.6 mile west of its junction with State Secondary Road 2541, said junction being 1.9 miles south of the junction of State Secondary Roads 2541 and 1007.

The Everett, Jaspar, farm located on a farm road and 0.5 mile west of its junction with State Secondary Road 2541, said junction being 1.9 miles south of the junction of State Secondary Roads 2541 and 1007.

The Hudson, Price, Estate farm located on a farm road and 0.4 mile north of its junction with State Secondary Road 1008, said junction being 0.8 mile northeast of the intersection of State Secondary Road 1008 with U.S. Highway 701.

The Johnson, Annie, farm located on the west side of State Secondary Road 1138 and 0.5 mile south of its junction with State Secondary Road 1144.

The Johnson, Corby, farm located on the southwest side of State Highway 50 and 0.4 mile southeast of the intersection of said highway and State Secondary Road 1124.

The Johnson, Floyd, farm located on the west side of State Secondary Road 1124 and 0.2 mile south of the intersection of said road and State Secondary Road 1122.

The Johnson, Wade, farm located on both sides of State Secondary Road 1144 and 0.2 mile west of the junction of said road with State Secondary Road 1138.

The Jones, U. E., farm located on the south side of State Secondary Road 1128 and 0.7 mile east of the junction of said road with State Secondary Road 1124.

The Martin, Emitt, farm located on the east of State Secondary Road 2519 and 0.3 mile north of the junction of State Secondary Roads 2519 and 2520.

The Martin, John L., farm located on the west side of State Secondary Road 1201 and 0.3 mile north of the junction of said road with State Secondary Road 1200.

The McArthur, Margaret, farm located on a farm road and 1.4 miles north of its junction with State Secondary Road 1199 and 0.9 mile west of the junction of said road with State Secondary Road 1008.

The Naylor, Mrs. Luby, farm located on the southwest side of State Highway 50 and 0.3 mile northwest of the intersection of said highway and State Secondary Road 1124.

The Smith, Clifton, farm located on the east side of State Highway 96 at the junction of said highway and State Secondary Road 1120.

The Summerlin, Everett L., farm located on the north side of State Secondary Road 1008, and 0.6 mile west of the junction of said road with State Secondary Road 1199.

The Tart, Allen, farm located on the southwest corner of the junction of State Highway 96 and State Secondary Road 1120.

The Williams, D. C., farm located on the south side of State Secondary Road 1128 and 0.3 mile east of the junction of said road with State Secondary Road 1124.

Jones County. The Franck, Mrs. Wilber, farm located on the south side of State Secondary Road 1116 and 1.9 miles west of junction of said road with State Secondary Road 1115.

The Simpson, Eugene T., farm located on the south side of State Secondary Road 1116 and 2.5 miles west of the junction of said road at State Secondary Road 1115.

Lee County. The McGilvary, Aquilla, farm located north of State Secondary Road 1188 and 0.6 mile east of the junction of said road with State Secondary Road 1001.

Lenoir County. The Barber, Clarence, farm located on the both sides of State Secondary Road 1301 with 0.2 mile northeast of its junction with State Secondary Road 1302.

The Braxton, Clyde, Estate located on the both sides of State Secondary Road 1802 and 0.9 mile northeast of the junction of State Secondary Road 1802 and State Highway 11.

The Brown, Nannie H., farm located in the southwest junction of State Secondary Roads 1152 and 1309.

The Carey, Jack, farm located on both sides of State Secondary Road 1906 and 1.0 mile east of its junction with U.S. Highway 285.

The Carr, Lillian, farm located on the southwest side of State Secondary Road 1524 and 0.1 mile south of its junction with State Secondary Road 1526.

The Carter, Ephrom, farm located on the south side of State Secondary Road 1116 and 1.5 miles east of its junction with State Highway 11.

The Elmore, Lucy H., No. 1, farm located on the south side of State Secondary Road 1324 and 0.2 mile west of its junction with State Secondary Road 1333.

The Foss, Reginal D., farm located on the north side of State Secondary Road 1316 and 0.6 mile northwest of its junction with State Secondary Road 1318.

The Hamilton, C. W., farm located on the southeast side of State Secondary Road 1802 and 1.2 miles northeast of its junction with State Highway 11.

The Herring, Ben D., No. 1, farm located on the both sides of State Secondary Road 1330 and 0.2 mile west of the junction of State Secondary Roads 1330 and 1331.

The Herring, Ben D., No. 2, farm located on the west side of State Secondary Road 1310 and 0.3 mile south of its junction with state Secondary Road 1311.

The Herring, Lewis R., No. 1, farm located on the south side of State Secondary Road 1324 and 0.3 mile west of its junction with State Secondary Road 1333.

The Howard, Clarence, farm located on the south side of State Secondary Road 1105 and 0.1 mile east of its intersection with State Secondary Road 1118.

The Jarman, F. R., farm located on the southeast side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

The Jones, Edward S., farm located on the west side of U.S. Highway 258 and 0.3 mile north of its junction with State Secondary Road 1116.

The Joyner Farms, Inc., farm located on both sides of State Secondary Road 1324 and 0.5 mile east of its junction with State Secondary Road 1335.

The Moody, Alton, farm located on the south side of State Highway 55 and 0.6 mile northeast of its junction with State Secondary Road 1161.

The Moye, Lenton, G., farm located on the west side of State Secondary Road 1335 and 0.3 mile north of its junction with State Secondary Road 1324.

The Parrott Farms, Inc., farm located on the northwest side of State Secondary Road 1157 and 0.7 mile northwest of its intersection with State Highway 55.

The Rouse, Forrest, farm located on the northeast side of State Secondary Road 1143 and 2.9 miles northwest of its intersection with State Secondary Road 1154.

The Rouse, Jim W., farm located on the northeast side of State Secondary Road 1143 and 2.8 miles northwest of its intersection with State Secondary Road 1154.

The Rouse, Leon, farm located on both sides of State Secondary Road 1307 and 0.4 mile southwest of its junction with State Secondary Road 1324.

The Singleton, Ruby S., farm located on east side of State Secondary Road 1802 and 0.6 mile south of its junction with State Secondary Road 1801.

The Sutton, George Hodges, No. 1, farm located in the southwest junction of State Secondary Roads 1324 and 1307.

The Sutton, Iris, farm located on the east side of State Secondary Road 1152 and 0.6 mile south of its junction with State Secondary Road 1324.

The Sutton, John W., farm located in the southeast junction of State Secondary Roads 1330 and 1333.

The Sutton, M. L., farm located on the southeast side of State Secondary Road 1311 and 0.8 mile southwest of its junction with State Secondary Road 1318.

The Sutton, Nathan, farm located on the southeast side of State Secondary Road 1311 and 0.6 mile southwest of its junction with State Secondary Road 1318.

The Sutton, Norman, farm located on the northwest side of State Secondary Road 1308 at the end of Farm road located 0.3 mile southwest of junction of State Secondary Roads 1308 and 1324.

The Sutton, Prentice, farm located on the south side of State Secondary Road 1503 and 0.3 mile southeast of its intersection with State Secondary Road 1327.

The Sutton, Robert H., farm located on the south side of State Secondary Road 1324 and 0.2 mile east of its junction with State Secondary Road 1327.

The Sutton, Woodrow W., farm located on the north side of State Secondary Road 1331 and 0.5 mile west of its junction with State Secondary Road 1333.

The Taylor, Heber, farm located on the north side of State Secondary Road 1161 and 0.3 mile east of its junction with State Highway 55.

The Walters, H. F., farm located on both sides of State Secondary Road 1335 and 0.4 mile north of its junction with State Secondary Road 1324.

The Waters, Thomas, Estate located on both sides of State Secondary Road 1318 and 0.3 mile north of its junction with State Secondary Road 1317.

The Wood, C. W., farm located on the northwest side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

Moore County. The Bryant, R. E., farm located on both sides of State Secondary Road 1815 and 0.5 mile southwest of the

junction of said road with U.S. Highway 15–501.

The Hardy, N. W., farm located on both sides of State Secondary Road 2007 and 0.2 mile southeast of the junction of said road with State Secondary Road 2005.

The Laton, William A., farm located on the east side of State Secondary Road 1004 and 0.3 mile north of the intersection of said road with State secondary Road 1113.

The Marks, E. M., farm located on the south side of State Secondary Road 2019 and 2.5 miles east of the junction of said road and State Secondary Road 2018.

The McLaurin, Hattie J., farm located on the north side of N.C. Highway 211 and 0.5 mile west of the junction of said highway with State Secondary Road 2075.

The McNeill, Lena Bell, farm located on the northwest side of State Secondary Road 2077 and 0.5 mile southwest of the junction of said road with State Highway 211.

The Thomas, Claude and Ted, farm located on the west side of State Secondary Road 1128 and 0.5 mile northwest of the junction of said road with State Secondary Road 1122.

Onslow County. The Cox, Robert B., farm located on the southeast side of State Secondary Road 1224, and 0.7 mile from the junction of said road and State Secondary Road 1222.

The Lewis, L. Bryan, farm located on the southeast side of State Secondary Road 1224, and 0.9 mile from the junction of said road and State Secondary Road 1222.

The Marshburn, James B., farm located on the southeast side of State Secondary Road 1224, and 0.8 mile from the junction of said road and State Secondary Road 1222.

The McAllister, Henry, farm located on both sides of State Secondary Road 1316 and 1 mile southwest of said road and its junction with State Secondary Road 1308.

Pender County. That area bounded by a line beginning at a point where State Secondary Road 1104 intersects the Pender-Bladen County line, and extending northeast along said county line to its junction with Black River, thence southeast along said river to its intersection with State Highway 210, thence southwest along said highway to its junction with State Secondary Road 1103, thence southeast along said road to its junction with State Secondary Road 1104, thence southwest and northwest along said road to the point of beginning.

That area bounded by a line beginning at a point where Moore's Creek intersects State Highway 53, and extending east along said highway to its intersection with State Secondary Road 1121, thence south along said road to its intersection with State Secondary Road 1125, thence west along said road to its intersection with Moores Creek, thence northeast along said creek to the point of beginning.

That area bounded by a line beginning at a point where State Secondary Road 1517, junctions with U.S. Highway 117, and extending northwest along said highway to its intersection with Walker Swamp, thence northeast along said swamp to its junction with Pike Creek, thence southeast along said creek to its junction with the Northeast Cape Fear River, thence south along said river to its intersection with State Highway 210, thence southwest along said highway to its junction with State Secondary Road 1518, thence southeast along said road to its junction with State Secondary Road 1517, thence westerly along said road to the point of beginning.

The Alderman, Bessie, farm located on the north side of State Highway 53 and 0.1 mile west of its intersection with State Secondary Road 1121.

The Anderson, Julian W., farm located on both sides of State Secondary Road 1108 and 0.9 mile northwest of junction of said road and State Secondary Road 1107.

The Armstrong, Willie, farm located 0.5 mile west of State Secondary Road 1408 and 0.3 mile south of the junction of said road with State Highway 210.

The Colvin, Alex, farm located on the northwest side of State Secondary Road 1120 and 1.4 miles southwest of the intersection of said road and U.S. Highway 421.

The Corbett, P. P., Estate, farm located 0.1 mile west of State Secondary Road 1202 and 0.2 mile north of its junction with State Secondary Road 1100.

The Kea, Leo, farm located 0.5 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

The Kea, Nora, farm located 0.1 mile west of the end of State Secondary Road 1108.

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of said road and State Secondary Road 1104.

The McCallister, Mary K., farm located 0.2 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

The McLendon, Evander, farm located 0.4 mile north of State Secondary Road 1411 and 0.3 mile east of its intersection with Pike Creek.

The Murphy, Henry, farm located 0.1 mile west of State Secondary Road 1121 and 0.4 mile north of its intersection with State Highway 53.

The Stringfield Estate, John, located on the southwest side of State Secondary Road 1517 and 1.4 miles east of the junction of said road and U.S. Highway 117.

The Thomas, Kenneth, farm located on the west side of State Secondary Road 1125 and 0.2 mile north of its junction with State Secondary Road 1121.

The Walker, Janie N., farm located on both sides of State Secondary Road 1125 and on the west side of State Secondary Road 1121.

The Williams, John H., and Heirs, farm located on the east side of State Secondary Road 1520 and 2.7 miles north of the junction of said road and State Highway 210.

Pitt County. That area bounded by a line beginning at a point where State Secondary Road 1919 intersects the Pitt-Craven County Line, thence southwest along said county line to its intersection with State Highway 118, thence westward along said highway to its intersection with State Secondary Road 1753, thence northward along said road to its junction with State Secondary Road 1919, thence eastward to the point of beginning.

The Garris, Bruce E., farm located in the south junction of State Highway 118 and State Secondary Road 1916.

The Hodges, M. B., farm located on the east side of State Secondary Road 1907 and 1.1 miles north of State Highway 118.

Richmond County. The Autry, J. H., farm located on the north side of State Secondary Road 1803 and 0.7 mile east of Osborne.

The Beck, Lacy A., farm located on both sides of State Secondary Road 1607 and 0.4 mile southeast of the intersection of said road and State Secondary Road 1608.

The Bethea, Queen, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile southeast of the intersection of said road and State Secondary Road 1825.

The Chappell, Fred, Jr., located on the northwest side of N.C. Highway 177 and 0.5 mile northeast of the junction of said road and State Secondary Road 1607.

The David, Ethel, farm located on both sides of State Secondary Road 1803, on the west side of the intersection of said road with State Secondary Road 1825.

The Davis, Climon, farm located on the northwest side of N.C. Highway 38 and 0.5 mile northeast of the intersection of said road and State Secondary Road 1803.

The Davis, Katherine, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 88.

The Dial, Dormic, farm located on the north side of State Secondary Road 1607 and 0.8 mile west of the intersection of said road and State Secondary Road 1608.

The Dumas, Elnora, farm located on the northeast side of State Secondary Road 1803 and 0.3 mile southeast of the intersection of said road and State Secondary Road 1825.

The Dumas, Reba, farm located on the northeast side of State Secondary Road 1803 and 0.3 mile northwest of said intersection of N.C. Highway 38.

The Elizhbugar, Charity, farm located on the northeast side of State Secondary Road 1003 and 2 miles northwest of its junction with State Secondary Road 1475.

The Godfrey, J. R., farm located on the northwest side of State Secondary Road 1318 and 0.2 mile north of its junction with State Secondary Road 1310.

The Hailey, Annie, farm located on the north side of State Secondary Road 1475 and 1.7 miles west of its junction with U.S. Highway 1.

The Hailey, Maria, farm located on the southwest side of State Secondary Road 1440 and 0.3 mile southeast of its junction with State Secondary Road 1433.

The Hamlet Gin & Supply Co., farm located on both sides of State Secondary Road 1803 and on the east side of the intersection of said road and State Secondary Road 1825.

The Ingram, Rome, farm located on the southwest side of State Secondary Road 1003 and 1.8 miles northwest of its junction with State Secondary Road 1475.

The Little, John, farm located on the southeast side of State Secondary Road 1442 and at the junction of said road with State Secondary Road 1476.

The McLaurin, Meta, farm located on the southwest side of State Secondary Road 1803 and 0.3 mile southeast of the intersection of said road and State Secondary Road 1825.

The McNeill, Dalton, farm located on the southwest side of State Secondary Road 1003

and 1.9 miles northwest of its junction with State Secondary Road 1475.

The Quick, Julius, farm located on the northeast side of State Secondary Road 1992 and 0.6 mile northeast of its junction with State Secondary Road 1994.

The Rush, Eli, farm located on the northwest side of State Secondary Road 1442 and 0.7 mile northeast of its junction with State Secondary Road 1489.

The Rush, James, farm located on the southeast side of State Secondary Road 1442 and 0.7 mile northeast of its junction with State Secondary Road 1489.

The Sorenzen, Gladys, farm located on the southwest side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 38.

The Steen, Willard, farm located on the southwest side of State Secondary Road 1803 and 0.2 mile southeast of the intersection of said road and State Secondary Road 1825.

The Terry, Ruth, farm located on both sides of State Secondary Road 1442 and 0.2 mile northeast of its junction with State Secondary Road 1477.

The Terry, Tom, farm located on both sides of State Secondary Road 1442 and 0.3 mile northeast of its junction with State Secondary Road 1477.

The Terry, W. C., farm located on the west side of State Secondary Road 1424 at its junction with State Secondary Road 1507 at Roberdel, N.C.

The Thomas, Walter, farm located on both sides of U.S. Highway 220 and 0.4 mile northeast of its junction with State Secondary Road 1433.

The Wall, Ben, farm located on the northeast side of State Secondary Road 1440 and 0.4 mile southeast of its junction with State Secondary Road 1433.

The Waters, Will, farm located on both sides of State Secondary Road 1623 and 0.4 mile southwest of its junction with State Secondary Road 1607.

The Watkins, John Q., farm located on the southeast side of State Secondary Road 1476 and 0.3 mile northeast of its junction with State Secondary Road 1442.

The Watkins, Mosby, farm located on both sides of State Secondary Road 1476 and 0.2 mile northeast of its junction with State Secondary Road 1442.

The York, will, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 38.

Sampson County. The entire county.

Scotland County. That area bounded by a line beginning at a point where U.S. Highway 15–401 intersects the North Carolina-South Carolina State line and extending northeast along said highway to its junction with U.S. Highway 15A–401A, thence north along said highway to its junction with U.S. Highway 501, thence north along said highway to its intersection with U.S. Highway 15–401, thence southwest along said highway to its intersection with State Secondary Road 1300, thence northwest along said road to its junction with State Secondary Road 1116, thence northwest along said road to its junction with State Secondary Road 1324, thence north along said road to its junction with State Secondary Road 1345, thence northwest along said road to its intersection with State Secondary Road 1341, thence northeast along said road to its junction with State Secondary Road 1328, thence north along said road to its intersection with the southern boundary of the Sandhills Game Management Area, thence east along said boundary to its intersection with U.S. Highway 15–501, thence north along said highway to its intersection with the Scotland-Hoke County line, thence southeast along said county line to the Scotland-Robeson County line, thence south and southwest along said county line to the North Carolina-South Carolina State line, thence northwest along said State line to the point of beginning, excluding the area within the corporate limits of the city of Laurinburg and the town of East Laurinburg.

The Butler, Luther, farm located on the south side of State Secondary Road 1154 and 0.2 mile east of the junction of said road with State Secondary Road 1155.

The Calhoun, L. E., farm located on the south side of State Highway 79 and 0.3 mile west of its junction with State Secondary Road 1118.

The Gibson, H. P., Estate, farm located on the north side of State Highway 79 and 0.4 mile west of its junction with State Secondary Road 1118.

McCoy, R. F., farm located on the east side of State Secondary Road 1346 and 0.4 mile north of its junction with State Secondary Road 1343.

The Morgan, J. D., farm located on the east side of State Secondary Road 1346 and 0.5 mile north of the junction of said road with State Secondary Road 1343.

The Morgan, J. D., farm located on both sides of State Secondary Road 1345 and 0.1 mile northwest of its junction with State Secondary Road 1342.

The Newton, Peter F., farm located at the intersection of State Secondary Roads 1334, 1336, and 1345.

The Sharpe, Preston, farm located on the south side of U.S. Highway 74, and 0.2 mile west of the junction of said highway with State Secondary Road 1153.

The Steele, J. D., farm located on both sides of State Secondary Road 1351 and 0.9 mile northwest of the junction of said road with State Secondary Road 1346.

Wayne County. That area bounded by a line beginning at a point where the State Highway 111 and State Highway 55 intersect, thence southwest and west along State Highway 55 to its intersection with State Secondary Road 1937, thence northerly on said road to its junction with State Secondary Road 1932, thence north on said road to its intersection with State Secondary Road 1120, thence easterly along said road to its junction with State Secondary Road 1915, thence east along a line projected from a point at the junction of State Secondary Roads 1120 and 1915 to the junction of said line with a point located at the junction of Sleepy Creek and Neuse River, thence east along said river to its intersection with State Highway 111, thence south along said highway to the point of beginning.

The Barwick, George, farm located on the east side of State Secondary Road 1931 and 0.1 mile south of its junction with State Secondary Road 1930.

The Baucom, Howard, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its junction with State Secondary Road 1927.

The Benton, Bernice L., farm located on the south side of State Secondary Road 1730 and 0.3 mile east of its junction with State Highway 111.

The Brock, Odell, farm located on the north side of State Secondary Road 1210 and 0.3 mile east of its junction with State Secondary Road 1209.

The Carraway, Ethel, farm located on the east side of State Secondary Road 1915 and 0.1 mile north of the junction of said road and State Secondary Road 1120.

The Casey, Emma, E., farm located 7 miles east of Goldsboro on the north side of U.S. Highway 70 and 0.4 mile east of the junction of State Sesondary Road 1721 and said highway.

The Coor, O. S., farm located on both sides of State Secondary Road 1730 and 0.6 mile east of its junction with State Highway 111.

The Crawford, William P., farm located on the south side of State Secondary Road 1330 and 0.9 mile west of State Highway 581.

The Daly, N. B., farm located on the north side of State Secondary Road 1730 and 0.8 mile east of the junction of said road with State Highway 111.

The Dawson, L. A., farm located on the west side of State Highway 111 and 0.5 mile south of the junction of said highway and State Secondary Road 1730.

The Edwards, Julia, farm located in the northeast intersection of State Highway 111 and State Secondary Road 1745.

The Flowers, Willie, farm located on the north side of U.S. Highway 13 and 0.4 mile east of its junction with State Secondary Road 1207.

The Grady, Gertrude W., farm located on the south side of State Secondary Road 1741 and 0.7 mile east of its junction with State Secondary Road 1740.

The Grady, Mrs. Sim, farm located in the north junction of State Highway 111 and State Secondary Road 1730.

The Grady, Vernie C., farm located on the west side of State Secondary Road 1931 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Grant, Maggie, Estate located on the west side of N.C. Highway 111 and 1.9 miles south of the junction of State Secondary Road 1730 with said highway.

The Grant, Nannie, farm located on both sides of State Secondary Road 1741 and 0.8 miles east of its junction with State Secondary Road 1740.

The Grantham, Barfield, farm located on the west side of State Secondary Road 1931 and 0.4 mile north of its intersection with State Secondary Road 1120.

The Gray, Albert, farm located on the east side of State Secondary Road 1719 and 0.9 mile south of its intersection with U.S. Highway 70.

The Green, Bessey, farm located at the southern end of the State Secondary Road 1741 and 1.3 miles east of its junction with State Secondary Road 1740.

The Griffin, McKinley, farm located on the north side of State Secondary Road 1737 and 0.2 mile east of its junction with State Secondary Road 1731.

The Griffin, Oliver H., farm located 0.6 mile north of Dudley and 0.2 mile west of U.S. Highway 117.

The Griffin, W. A., farm located on the northeast side of State Secondary Road 1731 and 0.6 mile north of its junction with State secondary Road 1737.

The Gurley, Clara Lee, farm located on the south side of State Secondary Road 1330 and 0.1 mile west of the junction of said road and State Secondary Road 1332.

The Haggin, Joe, No. 1, farm located on the east side of State Secondary Road 1931 and 0.7 mile north of its intersection with State Secondary Road 1120.

The Haggin, Joe, No. 2, farm located on the east side of State Secondary Road 1931 and 1.1 miles northeast of its intersection with State Secondary Road 1120.

The Ham, George E., farm located southeast of Seymour Johnson Air Base on the south side of State Secondary Road 1909 and 0.7 mile west of the junction of said road with State Secondary Road 1910.

The Herring, Charles F., farm located on the south side of State Secondary Road 1741 and 0.3 mile east of its junction with State Secondary Road 1740.

The Herring Harmon, farm located on the south side of State Secondary Road 1734 and 0.4 mile east of its junction with State Secondary Road 1731.

The Herring, Thel, farm located on the west side of State Secondary Road 1711 and 0.4 mile north of its junction with U.S. Highway 70A.

The Hines, J. D., farm located on both sides of State Secondary Road 1236 and 0.8 mile east of the intersection of said road with State Highway 581.

The Hollaman, R. J., farm located on the northwest corner of State Secondary Road 1125 and 0.7 mile north of the junction of said road and State Secondary Road 1122.

The Humphrey, Josephine, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Ivey, W. H., farm located on the south side of State Secondary Road 1734 and 0.3 mile east of its junction with State Secondary Road 1731.

The Johnson, J. R., farm located on the south side of State Secondary Road 1330 and 0.1 mile west of the junction of said road and State Secondary Road 1332.

The Jones, Mary, farm located on both sides of State Secondary Road 1730 and its junction with State Secondary Road 1731.

The Lane, Alfred, farm located on the south side of State Secondary Road 1730 and 0.4 mile east of its junction with State Highway 111.

The Lofton, Burt & Davis, King, farm located on the east side of State Secondary Road 1739 and 0.3 mile south of its junction with State Highway 55.

The McClenny, G. A. farm located on the south side of State Secondary Road 1007 and 0.1 mile west of the junction of said road with State Highway 581.

The McClenny G. A., No. 2, farm located on both sides of State Secondary Road 1332 and 0.1 mile north of junction of said road and State Secondary Road 1330.

The Newsome, Paul, farm located on the east side of State Secondary Road 1719 and 1 mile south of its intersection with U.S. Highway 70.

The Oliver, Estella J., farm located on the west side of U.S. Highway 117 and 0.8 mile north of Brogden School.

The Oliver, H. H., farm located on the south side of State Secondary Road 1219 and 0.4 mile east of its junction with State Secondary Road 1218.

The Parks, Robert, farm located on the southeast side of State Secondary Road 1932 and 0.5 mile northeast of its intersection with State Secondary Road 1120.

The Perkins, Joe D., farm located on the northwest side of State Secondary Road 1711 and 0.2 mile southwest of the intersection of said road with U.S. Highway 70 Bypass.

The Price, James, farm located in the southeastern intersection of State Highway 111 and State Secondary Road 1745.

The Ray, Cora Pate, farm located on both sides of State Secondary Road 1730 and 0.8 mile west of its junction of State Secondary Road 1731

The Raynor, A. B., farm located on the south side of U.S. Highway 13 and 0.1 mile east of its junction with State Secondary Road 1207.

The Raynor, Early, No. 1, farm located on the south side of U.S. Highway 13 and 0.3 mile east of its junction with State Secondary Road 1207.

The Raynor, Early, No. 2, farm located on the north side of State Secondary Road 1101 and 0.7 mile east of its intersection with State Secondary Road 1105.

The Raynor, Elester, farm located on the east side of State Secondary Road 1105 and 0.8 mile south of its intersection with U.S. Highway 13.

The Sasser, Rosa, farm located on both sides of State Highway 111 and 0.1 mile south of its junction with State Secondary Road 1912.

The Smith, Alfred, farm located on the north side of State Secondary Road 1330 and 0.9 mile west of the junction of said road and North Carolina Highway 581.

The Smith, Arnold, farm located on the southeast side of State Secondary Road 1932 and 0.5 mile northeast of its intersection with State Secondary Road 1120.

The Smith, Olivia, farm located on the southeast side of State Secondary Road 1122 and both sides of State Secondary Road 1124.

The Sutton, D. M., farm located on the east side of State Secondary Road 1731 and 0.9 mile north of the Neuse River.

The Sutton, Gordon, farm located on the south side of State Secondary Road 1730 and 1.6 miles east of its junction with State Highway 111.

The Talton, Lillian D., farm located on the south side of State Secondary Road 1730 and 0.6 mile east of its junction with State Highway 111.

The Tart, John, No. 1, farm located on the south side of U.S. Highway 13 and 0.7 mile east of its intersection with State Secondary Road 1105.

The Thornton, S. E., farm located on the southeast junction of State Secondary Roads 1210 and 1209.

The Turnage, W. H., farm located on the northwest side of State Secondary Road 1932 and 0.3 mile northeast of its junction with State Secondary Road 1927.

The Weaver, Luby W., farm located on both sides of State Secondary Road 1106 and 0.2 mile east of its junction with State Secondary Road 1101.

The Williams, Eddie, farm located on the north side of State Highway 581 and the east side of State Secondary Road 1236 at the junction of said roads.

The Wise, Ella, farm located on the south side of State Secondary Road 1208 and 1 mile west of its junction with State Secondary Road 1209.

Wilson County. The Eatmon, Ralph, farm located on both sides of State Secondary Road 1302 and 0.5 mile east of its intersection with State Secondary Road 1301.

2. In § 301.80–2a relating to the State of South Carolina under suppressive area, the description for Florence County is changed to add three properties in alphabetical order to read as follows:

South Carolina

(1) *Generally infested area.* None.

(2) *Suppressive area.*

* * * * *

Florence County.

* * * * *

The Canal Timber Company, farm located at the junction of State Secondary Highway 57 and State Secondary Highway 791. Said farm being on all sides of said junction.

* * * * *

(Sec. 8, 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; (7 U.S.C. 161, 162, 150ee); 37 FR 28464, 28477; 38 FR 19141; 7 CFR 301.80–2.)

[FR Doc. 79–32867 Filed 10–25–79; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Stabilization and Conservation Service

7 CFR Part 713

[Amdt. 1]

Feed Grains, Upland Cotton and Wheat Programs for Crop Years 1978–1981

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This rule incorporates previously announced determinations and updates provisions of the feed grain, upland cotton, and wheat programs for the 1979 crop year.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447–7633.

SUPPLEMENTARY INFORMATION: The regulations at 7 CFR Part 713 are amended to incorporate the following determinations which were initially

published in the **Federal Register** in proposed form to allow for public comment and were then published in the **Federal Register** in final form on November 21, 1978 for feed grains, December 22, 1978 and February 2, 1979 for upland cotton, and August 18, 1978 and April 13, 1979 for wheat:

(a) Required set-aside.
(b) Voluntary diversion.
(c) Wheat grazing and hay.
(d) Established prices.
(e) National program acreage.
(f) Level of voluntary reduction from the 1978 acreage to be guaranteed target price protection on the normal production from the entire 1979 acreage of the crop planted for harvest.

This rule also makes these other changes:

(a) The definitions are rewritten with a new section added to clarify the determination of crop acreages. Provision is added for the State committee to set a date by which small grains must be disposed of to avoid having them included in the crop acreage.

(b) Proven yields, except for upland cotton, shall be based on yields for the 3 years preceding the current year.

(c) The requirement that producers submit a report of production and disposition in certain cases is expanded to cover the supporting evidence that the county committee may require.

(d) The limit on prevented planting acreage for farms with set-aside crops or voluntary diversion is added.

(e) Rules on reconstituting yields are modified to permit use of more than one year's acreage for weighing.

(f) Other changes are made for clarification. In particular, rules on charging interest are consolidated in § 713.15. Accordingly 7 CFR Part 713 is amended as follows:

Final Rule

1. Section 713.3 is amended by revising paragraphs (a)(3), and (b) through (j), and by adding paragraph (k) to read as follows:

§ 713.3 Definitions.

(a) * * *

(3) Immature small grains that are disposed of before midnight of the disposal date which is established by the State committee or before reaching the dough stage when no disposal date is established and excluded by the operator.

(b) "Corn" means field corn or sterile high-sugar corn.

(c) "Crop acreage" means the total of (1) the acreage of the crop planted for harvest as determined by the COC under guidelines provided in § 713.3a and (2) volunteer grain acreage harvested by any means after the dough stage or disposal date as applicable.

(d) "Crop" means the applicable crop of barley, corn, grain sorghum, upland cotton, or wheat when applied to a program crop.

(e) "Current year" means the calendar year in which the crop with respect to which payment may be made under this subpart would normally be harvested.

(f) "Grain sorghum" means grain sorghums of a feed grain or dual purpose variety (including any cross which, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is excluded regardless of use.

(g) "Marketing year" means the 12-month period beginning in the current year and ending the next year as follows:

(1) *Barley and wheat.* June 1—May 31.
(2) *Upland cotton.* August 1—July 31.
(3) *Corn and grain sorghum.* October 1—September 30.

(h) "NCA acreage" means the total of crop acreages of NCA crops designated under Part 792 of this chapter as well as acreage approved for grazing and hay payments in accordance with the provisions of § 713.11.

(i) "Rice Program" means the program authorized under title VII of the Food and Agriculture Act of 1977, Part 730 of this chapter, as amended.

(j) "Small grains" means barley, oats, rye, wheat, and millet (when designated as a small grain crop).

(k) "Upland cotton" means planted cotton and stub cotton other than extra long staple cotton as defined in Part 722 of this chapter.

2. Section 713.3a is added to read as follows:

§ 713.3a Determining Commodity Acreages.

The county committee shall apply the following guidelines in determining crop acreages planted for harvest including any further instructions issued by the Deputy Administrator.

(a) The county committee shall include as crop acreages planted for harvest:

(1) The acreage harvested.

(2) The acreages of small grains which was not disposed of by midnight of the disposal date which is established by the State committee or before reaching the dough stage when no disposal date was established.

(3) The acreage planted to barley and wheat which failed before midnight of the disposal date which is established by the State committee or before reaching the dough stage when no disposal date was established but which did qualify for low yield payment under § 713.16.

(b) The county committee shall exclude:

(1) The acreage which failed and could have been replanted by the ending planting date set for the crop but was not replanted.

(2) The acreage which was disposed of *without feed or other benefit* (lint benefit for cotton) and excluded by the operator:

(i) Before reporting the crop acreage, or

(ii) After measurement to gain program compliance in counties that measure all farms in accordance with the provisions of Part 718 of this Chapter, or

(iii) After reporting the crop acreage to gain program compliance in random selection counties in accordance with the provisions of Part 718 of this Chapter, provided such disposition is not to correct an error discovered as a result of a farm visit.

(3) The acreage of small grains disposed of *with feed benefit* before midnight of the disposal date which is established by the State committee or before reaching the dough stage when no disposal date was established.

(4) The acreage approved as set-aside or voluntary diversion.

(5) The acreage approved for wildlife food plots in accordance with instructions issued by the Deputy Administrator.

(6) The acreage approved for grazing and hay payment in accordance with the provisions of § 713.11.

(c) The county committee shall consider mixtures of grains to be the grain that is predominant in the mixture. However, for small grain mixtures seeded at different times with wheat or barley the first seeded crop, consider the mixture to be the wheat or barley first seeded.

3. Section 713.5 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 713.5 Farm yields.

(a) *Barley, corn, grain sorghum and wheat.* * * *

(2) *Provable Yields.* Notwithstanding the provisions of subparagraph (1) of this paragraph, if reliable records of the actual yield in bushels per acre on the farm for each of the 3 years immediately preceding the current year are available to the county committee, the yield established for the farm shall not be less than the average of such yields. When production evidence is not available with respect to a year, the following shall be substituted in computing the 3-year average:

(i) For 1976, 1977, or 1978 if for any such year there was no acreage of the commodity or the production from the farm cannot otherwise be reconstructed, the established yield for the current year may be substituted for the missing year(s) yield.

(ii) For 1979 and subsequent years, the county committee shall assign a yield for the farm based on the actual yield for similar farms and in accordance with instructions issued by the Deputy Administrator.

(b) *Upland cotton.* The pound per acre farm yield for the current year shall be the average of the actual yields per harvested acre for the farm for the 3 preceding years, adjusted as follows:

(1) When the yield in any year is abnormal because of a natural disaster or other conditions beyond the producer's control, the county committee may assign a higher yield, not to exceed the average of the highest four yields in the 5 preceding years, or

(2) When a zero report of cotton acreage for the farm is filed in accordance with Part 718, the county committee shall assign a yield for the farm based on the actual yields for other similar farms.

Provided, however, that the yield resulting from the above computations shall not be lower than 90 percent of the preceding year's established yield, except that the county committee may permit a reduction to 80 percent to reflect the productivity of current farming practices.

4. Section 713.7 is amended by revising paragraph (b) to read as follows:

§ 713.7 Reconstitution of Farms.

* * * * *

(b) The yield established for a crop for a combined farm shall not, except for rounding, exceed the weighted average of the yields established for the component parts of such farm. The weighted average of the yields established for the farms resulting from a division shall not, except for rounding, exceed the yield established for the parent farm before being divided. In determining the weighted average, the Deputy Administrator shall prescribe yields and acreages to be used.

5. Section 713.8 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 713.8 Requirements for Program participation.

* * * * *

(b) *Farm requirements.* * * *

(2) * * *

(ii) A report of production and disposition when this information is needed for program determinations and in accordance with instructions issued by the Deputy Administrator. When production has been disposed of through commercial channels, the county committee may require the producer to furnish documentary evidence to substantiate the report. Acceptable evidence shall include commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries or copies. The county committee may also verify the evidence submitted with the warehouse, gin, or other entity that received the production. If the evidence is not furnished or it can not be verified, the county committee may disapprove the report.

6. Section 713.9 is revised to read as follows:

§ 713.9 Required set-aside.

The required set-aside of any crop is the following percent of the acreage of the crop, including acreage which is eligible for prevented planting credit and for which a voluntary diversion payment is approved. For 1979 the percentages for each crop are:

(a) *Corn and Grain Sorghum.* 10 percent.

(b) *Upland Cotton.* 0 percent.

(c) *Barley and Wheat.* 20 percent.

7. Section 713.10 is revised to read as follows:

§ 713.10 Voluntary diversion.

(a) In order to be eligible for a voluntary diversion payment, if a voluntary diversion program is announced, the farm operator:

(1) May elect to divert a acreage of cropland to uses specified in Part 792 of this chapter.

(2) Must record an intention to participate on Form 477.

(3) Must actually divert an acreage equal to the required set-aside and voluntary diversion percentages of the acreage of the crop planted for harvest. Voluntary diversion payment may also be earned on acreage receiving prevented planting credit if set-aside requirements are met.

(b) For 1979, a voluntary diversion program is in effect for corn and grain sorghum. The amount of the voluntary diversion is 10 percent. The payment shall be $1.00 times the yield established for the crop as provided in section 713.5 times the voluntary diversion acres.

(8) Section 713.11 is revised to read as follows:

§ 713.11 Wheat Grazing and Hay.

(a) *Requirements.* (1) To be eligible for a wheat grazing and hay payment, the farm operator may elect to graze or cut immature wheat for (i) green chop, (ii) hay, or (iii) silage, if the wheat was planted for harvests as grain. The wheat acreage for grazing and hay must be recorded on Form 477. No set-aside is required for this acreage. The wheat must be cut or being grazed out, and substantially destroyed before midnight of the disposal date which is established by the State committee, or before reaching the dough stage, if no disposal date is established.

(2) The acreage eligible for payment is limited to the larger of 50 acres or 40 percent of the total acreage of barley, corn, grain sorghum, upland cotton, and wheat which is intended for harvest in the year, but not in excess of the NCA.

(b) *Payment for 1979.* Payment shall be equal to the 1979 wheat deficiency rate per bushel times the yield established as provided in § 713.5 times the smaller of the intended acreage recorded on Form 477 or the acreage actually used for grazing or hay.

9. Section 713.15 is amended by revising paragraph (e) to read as follows:

§ 713.15 General Payment Provisions.

* * * * *

(e) *Unearned Payments.* The producer shall refund to Commodity Credit Corporation (CCC) any money that exceeds payments earned under the programs prescribed by this part.

(1) No interest shall be charged for:

(i) An unearned payment received through no fault of the producer.

(ii) A deficiency or disaster overpayment, if the producer earns any deficiency or disaster payment for any crop (including rice under Part 730 of this chapter) for the farm.

(iii) A voluntary diversion overpayment, if the producer earns any voluntary diversion payment for any crop (including rice under Part 730 of this chapter) for the farm.

(iv) A grazing and hay overpayment, if the producer earns any grazing and hay payment for the farm.

(2) If paragraph (e)(2) of this section does not apply, the producer will be charged interest on the amount of the refund from the date of issuance of the payment to the date such payments are refunded. The rate of interest shall be that charged on CCC commodity loans for the applicable crop year.

10. Section 713.16 is amended by changing the period at the end of paragraph (a)(2)(ii) to ", or ", adding paragraph (iii) to paragraph (a)(2) and revising paragraph (b)(3)(i) to read as follows:

§ 713.16 Disaster payments.

* * * * *

(a) * * *

(2) * * *

(iii) On farms on which a set-aside crop is planted or there is a voluntary diversion, the NCA less the total acres of:

(A) NCA crops.

(B) Set-aside (including the set-aside that would have been needed for the approved prevented planted acreage).

(C) Voluntary diversion.

(D) Grazing and hay.

* * * * *

(b) * * *

(3) * * *

(i) The production from acreage not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and added to the actual production for the purpose of determining the eligibility for and the amount of low yield payments.

11. Section 713.17 is revised to read as follows:

§ 713.17 Established (target prices).

(a) *1979.* Established prices are set as follows:

(1) *Barley.* $2.40 per bushel.

(2) *Corn.* $2.20 per bushel.

(3) *Grain Sorghum.* $2.34 per bushel.

(4) *Upland Cotton.* $.577 per pound.

(5) *Wheat.* $3.40 per bushel.

(b) *1980 thru 1981.* To be announced by amendment to this subpart.

12. Section 713.18 is amended by revising paragraphs (a) and (b) to read as follows:

§ 713.18 National Program Acreage.

* * * * *

(a) *1979.* National program acreages are established as follows:

(1) *Barley.* 6,500,000 acres.

(2) *Corn.* 63,700,000 acres.

(3) *Grain Sorghum.* 13,200,000 acres.

(4) *Upland Cotton.* 10,634,181 acres.

(5) *Wheat.* 57,100,000 acres.

(b) *1980 thru 1981.* To be announced by amendment to this subpart.

13. Section 713.19 is amended by revising paragraphs (b)(2)(i) and (b)(2)(ii) to read as follows:

§ 713.19 Deficiency payments.

* * * * *

(b) * * *

(2) * * *

(i) *1979.*

(A) *Barley.* 30 percent.

(B) *Corn and grain sorghum.* 10 percent.

(C) *Upland cotton and wheat.* 15 percent.

(ii) *1980 thru 1981.* To be announced by amendment to this subpart; and (3) the allocation factor shall be adjusted in accordance with instructions issued by the Deputy Administrator to provide equity for a farm for which the reduction in current year's acreage of the crop from the prior year acreage (the acreage for the year before the prior year for farms with odd-even rotation) is insufficient to exempt the farm from the application of the allocation factor.

(Secs. 103(f), 105A, 107A, 91 Stat. 934, 91 Stat. 928, 91 Stat. 921; 7 U.S.C. 1444, 7 U.S.C. 1445c, 7 U.S.C. 1445b)

Note.—This final rule contains program decisions (cited in "Supplementary Information") which have been previously announced. These decisions were designated as "significant" and approved impact statements are available for them from Bruce R. Weber, (ASCS) 202–447–6688. However, this rule also contains administrative changes. Since farmers are now cultivating and harvesting their 1979 crops, they need to know the changes being made in this rule as soon as possible.

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. Further, this final rule has not been designated as "significant", and is being published in accordance with emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Ray Fitzgerald, Administrator, 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.

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

Signed at Washington, D.C. on October 17, 1979.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-33083 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 223]

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 October 28–November 3, 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: October 28, 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.

The committee met on October 23, 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 has improved.

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.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, 202–447–5975.

§ 910.523 Lemon Regulation 223.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period October 28, 1979, through November 3, 1979, is established at 200,000 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: October 25, 1979.

D. S. Kuryloski,

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

[FR Doc. 79-33301 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regulation 217]

Lemons Grown in California and Arizona

Minimum Size Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation requires fresh California-Arizona lemons shipped to market to be at least 1.82 inches in diameter (size 235's in cartons). This requirement is needed to provide orderly marketing in the interest of producers and consumers.

EFFECTIVE DATES: October 28, 1979, through December 8, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, Fruit and Vegetable Division, Agricultural Marketing Service, Washington, D.C. 20250, telephone 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 recommendation and information submitted by the Lemon Administrative Committee, and upon other available information.

This regulation, effective October 28, 1979, would require shipments of lemons to be no smaller than 1.82 inches in diameter. The volume and size composition of the lemon crop in California and Arizona is such that ample supplies of the more desirable sizes are available to satisfy the demand in domestic fresh markets. The committee estimates that approximately 2–3% of the season's crop is smaller than 1.82 inches in diameter. This regulation is designed to permit shipment of ample supplies of lemons of acceptable sizes, maturity, and juice content. Lemons which are smaller than 1.82 inches in diameter normally have negligible demand and sales opportunity, as they have relatively low juice yields. Lemons failing to meet this minimum size requirement could be shipped to fresh export markets, left on the trees to attain further growth, or utilized in processing. This regulation is consistent with the objective of the act of promoting orderly marketing in the interest of producers and consumers.

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

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, 202–447–5975.

§ 910.517 Lemon Regulation 217.

Order. (a) From October 28, 1979, through December 8, 1979, no handler shall handle any lemons grown in District 1, District 2, or District 3 which are of a size smaller than 1.82 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the lemons in any type of container may measure smaller than 1.82 inches in diameter.

(b) As used in this section, "handle", "handler", "District 1", "District 2", and "District 3" each shall have the same meaning as when used in said amended marketing agreement and order.

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

Dated: October 24, 1979.

D. S. Kuryloski,

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

[FR Doc. 79-33303 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

[CCC Grain Price Support Regulations, 1979 Crop Soybean Supplement]

1979 Crop Soybean Loan and Purchase Program

AGENCY: Commodity Credit Corporation, Department of Agriculture.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the: (1) Final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and premiums and discounts under which Commodity Credit Corporation (CCC) will extend price support on 1979-crop soybeans. This rule will enable eligible soybean producers to obtain loans and purchases on their eligible 1979-crop soybeans.

EFFECTIVE DATE: October 26, 1979.

ADDRESS: Price Support and Loan Division, ASCS, U.S. Department of Agriculture, 3741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Merle Strawderman, ASCS, (202) 447–7973.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on August 23, 1978 (43 FR 37458) stating that the Department of Agriculture proposed to make determinations and issue regulations relative to a loan and purchase program for the 1979 crop of feed grains, including soybeans. Such determinations included establishing loan and purchase rates and other related program provisions. Interested persons were given until October 6, 1978, to respond. Sixty recommendations were received concerning the loan and purchase program for soybeans. Four comments suggested that soybeans should be left entirely out of the 1979 loan and purchase programs. Several comments recommended that loan and purchase rates be established, ranging from $4.50 to $7.88 (100% of parity) per bushel. Other comments were addressed to the

1979 Loan and Purchase Programs for several commodities in general. After considering the above comments and the relationship of soybeans to other competing commodities and other applicable factors, it has been determined that the loan and purchase rates for 1979 soybeans on a national average will be $4.50 per bushel.

Producers who wish to secure loans can do so by contacting their local Agricultural Stabilization and Conservation Service office or Agricultural Service Center.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops, and any amendments thereto, and the 1978 and Subsequent Crops Soybean Loan and Purchase Regulations, and any amendments thereto in this Part 1421 are further supplemented for the 1979 crop of soybeans. Accordingly, the regulations in 7 CFR 1421.390 through 1421.393 and the title of the subpart are revised as provided below effective as to the 1979 crop of soybeans. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

Subpart—1979 Crop Soybean Loan and Purchase Program

Sec.

1421.390 Purpose.
1421.391 Availability.
1421.392 Maturity of loans.
1421.393 Warehouse charges.
1421.394 Loans and purchase rates and premiums and discounts.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); Secs. 201, 401, 63 Stat. 1051, as amended (7 U.S.C. 1446, 1421).

Subpart—1979 Crop Soybean Loan and Purchase Program

§ 1421.390 Purpose.

This supplement contains additional program provisions which together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crops Soybean Loan and Purchase Program regulations, and any amendments thereto, apply to loans on and purchase of the 1979 crop of soybeans.

§ 1421.391 Availability.

(a) *Loans.* Producers desiring to participate in the program through loans must request a loan from the county Agricultural Stabilization and Conservation Service (ASCS) office on their 1979 crop of eligible soybeans on or before May 31, 1980.

(b) *Purchases.* A producer desiring to offer eligible 1979-crop soybeans not under loan for purchase must execute and deliver to the county ASCS office on or before May 31, 1980, a purchase agreement (Form CCC–614) indicating the approximate quantity of 1979 crop soybeans they will sell to Commodity Credit Corporation (CCC).

§ 1421.392 Maturity of loans.

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

§ 1421.393 Warehouse charges.

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

§ 1421.394 Loan and purchase rates, premiums and discounts.

County basic loan and purchase rates for soybeans and the schedule of premiums and discounts are contained in this section. Farm-stored loans will be made at the basic rate for the county where the soybeans are stored, adjusted only for weed control discount where applicable. The rate for warehouse-stored loans shall be the basic rate for the county where the soybeans are stored, adjusted by the premiums and discounts prescribed in paragraphs (b) and (c) of this section. Notwithstanding § 1421.22(c), settlement for soybeans delivered from other than approved warehouse storage, shall be based on the basic rate for the county in which the producer's customary delivery point is located, and on the quality and quantity of the soybeans delivered as shown on the warehouse receipts and accompanying documents issued by an approved warehouse to which delivery is made, or if applicable, the quality and quantity delivered as shown on a form prescribed by CCC for this purpose.

(a) *Basic county rates.* Basic county rates for the classes Green or Yellow Soybeans containing 12.8 to 13 percent moisture and grading not lower than U.S. No. 2 on the factors of test weight, splits, and heat damage and U.S. No. 1 on all other factors are as follows:

County	Rate per bushel
ALABAMA	
All Counties	$4.47
ARIZONA	
All Counties	4.36
ARKANSAS	
Arkansas	4.54
Ashley	4.53
Baxter	4.49
Benton	4.43
Boone	4.46
Bradley	4.53
Calhoun	4.51
Carroll	4.45
Chicot	4.53
Clark	4.49
Clay	4.53
Cleburne	4.50
Cleveland	4.53
Columbia	4.49
Conway	4.50
Craighead	4.52
Crawford	4.46
Crittenden	4.54
Cross	4.54
Dallas	4.51
Desha	4.53
Drew	4.53
Faulkner	4.51
Franklin	4.47
Fulton	4.50
Garland	4.49
Grant	4.51
Greene	4.53
Hempstead	4.46
Hot Spring	4.50
Howard	4.45
Independence	4.50
Izard	4.50
Jackson	4.52
Jefferson	4.52
Johnson	4.48
Lafayette	4.46
Lawrence	4.52
Lee	4.54
Lincoln	4.53
Little River	4.46
Logan	4.47
Lonoke	4.53
Madison	4.45
Marion	4.48
Miller	4.46
Mississippi	4.54
Monroe	4.54
Montgomery	4.46
Nevada	4.48
Newton	4.46
Ouachita	4.50
Perry	4.50
Phillips	4.54
Pike	4.46
Poinsett	4.52
Polk	4.48
Pope	4.49
Prairie	4.54
Pulaski	4.51
Randolph	4.52
St. Francis	4.54
Saline	4.50
Scott	4.46
Searcy	4.48
Sebastian	4.46
Sevier	4.45
Sharp	4.52
Stone	4.50
Union	4.51
Van Buren	4.49
Washington	4.44
White	4.51
Woodruff	4.54
Yell	4.48
Wght. State Avg.	4.53
CALIFORNIA	
All Counties	4.36
COLORADO	
All Counties	4.39
DELAWARE	
All Counties	4.47
FLORIDA	
All Counties	4.47

GEORGIA

All Counties	4.47

ILLINOIS

Adams	4.55
Alexander	4.55
Bond	4.57
Boone	4.54
Brown	4.56
Bureau	4.54
Calhoun	4.55
Carroll	4.52
Cass	4.57
Champaign	4.58
Christian	4.58
Clark	4.57
Clay	4.56
Clinton	4.55
Coles	4.57
Cook	4.58
Crawford	4.56
Cumberland	4.57
De Kalb	4.56
De Witt	4.58
Douglas	4.57
Du Page	4.58
Edgar	4.57
Edwards	4.51
Effingham	4.57
Fayette	4.57
Ford	4.58
Franklin	4.51
Fulton	4.56
Gallatin	4.50
Greene	4.56
Grundy	4.58
Hamilton	4.51
Hancock	4.55
Hardin	4.50
Henderson	4.54
Henry	4.54
Iriquois	4.58
Jackson	4.55
Jasper	4.57
Jefferson	4.52
Jersey	4.55
Jo Daviess	4.52
Johnson	4.53
Kane	4.57
Kankakee	4.58
Kendall	4.57
Knox	4.56
Lake	4.57
La Salle	4.56
Lawrence	4.54
Lee	4.54
Livingston	4.58
Logan	4.58
McDonough	4.56
McHenry	4.55
McLean	4.58
Macon	4.58
Macoupin	4.57
Madison	4.56
Marion	4.56
Marshall	4.58
Mason	4.57
Massac	4.49
Menard	4.57
Mercer	4.53
Monroe	4.55
Montgomery	4.57
Morgan	4.57
Moultrie	4.57
Ogle	4.54
Peoria	4.57
Perry	4.54
Piatt	4.58
Pike	4.55
Pope	4.50
Pulaski	4.53
Putnam	4.54
Randolph	4.55
Richland	4.55
Rock Island	4.52
St. Clair	4.55
Saline	4.55
Sangamon	4.58
Schuyler	4.56
Scott	4.57
Shelby	4.57
Stark	4.57
Stephenson	4.52
Tazewell	4.58
Union	4.55
Vermilion	4.58
Wabash	4.51
Warren	4.56

ILLINOIS

Washington	4.55
Wayne	4.52
White	4.50
Whiteside	4.52
Will	4.58
Williamson	4.53
Winnebago	4.53
Woodford	4.58
Wght. State Avg.	4.56

INDIANA

Adams	4.52
Allen	4.52
Bartholomew	4.52
Benton	4.57
Blackford	4.52
Boone	4.53
Brown	4.52
Carroll	4.53
Cass	4.53
Clark	4.52
Clay	4.54
Clinton	4.53
Crawford	4.53
Daviess	4.52
Dearborn	4.52
Decatur	4.52
De Kalb	4.52
Delaware	4.52
Dubois	4.52
Elkhart	4.52
Fayette	4.52
Floyd	4.52
Fountain	4.57
Franklin	4.52
Fulton	4.53
Gibson	4.52
Grant	4.52
Greene	4.53
Hamilton	4.53
Hancock	4.52
Harrison	4.53
Hendricks	4.52
Henry	4.52
Howard	4.53
Huntington	4.52
Jackson	4.52
Jasper	4.56
Jay	4.52
Jefferson	4.52
Jennings	4.52
Johnson	4.52
Knox	4.52
Kosciusko	4.52
Lagrange	4.52
Lake	4.58
La Porte	4.55
Lawrence	4.52
Madison	4.52
Marion	4.53
Marshall	4.53
Martin	4.52
Miami	4.53
Monroe	4.52
Montgomery	4.54
Morgan	4.52
Newton	4.57
Noble	4.52
Ohio	4.52
Orange	4.52
Owen	4.53
Parke	4.55
Perry	4.53
Pike	4.52
Porter	4.57
Posey	4.53
Pulaski	4.55
Putnam	4.54
Randolph	4.52
Ripley	4.52
Rush	4.52
St. Joseph	4.53
Scott	4.52
Shelby	4.52
Spencer	4.53
Starke	4.55
Steuben	4.52
Sullivan	4.54
Switzerland	4.52
Tippecanoe	4.55
Tipton	4.53
Union	4.52
Vanderburgh	4.53
Vermillion	4.57
Vigo	4.56
Wabash	4.52
Warren	4.57

INDIANA

Warrick	4.53
Washington	4.52
Wayne	4.52
Wells	4.52
White	4.55
Whitley	4.52
Wght. State Avg.	4.53

IOWA

Adair	4.46
Adams	4.46
Allamakee	4.47
Appanoose	4.49
Audubon	4.45
Benton	4.50
Black Hawk	4.47
Boone	4.47
Bremer	4.46
Buchanan	4.48
Buena Vista	4.45
Butler	4.46
Calhoun	4.45
Carroll	4.45
Cass	4.46
Cedar	4.51
Cerro Gordo	4.46
Cherokee	4.45
Chickasaw	4.46
Clarke	4.48
Clay	4.45
Clayton	4.48
Clinton	4.52
Crawford	4.45
Dallas	4.47
Davis	4.51
Decatur	4.48
Delaware	4.48
Des Moines	4.54
Dickinson	4.45
Dubuque	4.49
Emmet	4.45
Fayette	4.47
Floyd	4.45
Franklin	4.47
Fremont	4.45
Greene	4.45
Grundy	4.48
Guthrie	4.45
Hamilton	4.47
Hancock	4.46
Hardin	4.48
Harrison	4.44
Henry	4.53
Howard	4.46
Humboldt	4.46
Ida	4.45
Iowa	4.50
Jackson	4.52
Jasper	4.49
Jefferson	4.52
Johnson	4.50
Jones	4.51
Keokuk	4.52
Kossuth	4.46
Lee	4.54
Linn	4.50
Louisa	4.53
Lucas	4.49
Lyon	4.44
Madison	4.47
Mahaska	4.51
Marion	4.49
Marshall	4.49
Mills	4.45
Mitchell	4.45
Monona	4.44
Monroe	4.49
Montgomery	4.45
Muscatine	4.52
O'Brien	4.45
Osceola	4.45
Page	4.45
Palo Alto	4.45
Plymouth	4.44
Pocahontas	4.45
Polk	4.48
Pottawattamie	4.45
Poweshiek	4.50
Ringgold	4.47
Sac	4.45
Scott	4.52
Shelby	4.45
Sioux	4.44
Story	4.48
Tama	4.50
Taylor	4.46
Union	4.47

IOWA

Van Buren	4.53
Wapello	4.51
Warren	4.48
Washington	4.53
Wayne	4.49
Webster	4.47
Winnebago	4.46
Winneshiek	4.47
Woodbury	4.44
Worth	4.46
Wright	4.46
Wght. State Avg	4.47

KANSAS

All Counties	4.43

KENTUCKY

All Counties	4.51

LOUISIANA

All Counties	4.51

MARYLAND

All Counties	4.47

MICHIGAN

Allegan	4.44
Arenac	4.44
Barry	4.44
Bay	4.44
Berrien	4.49
Branch	4.48
Calhoun	4.46
Cass	4.49
Clinton	4.44
Eaton	4.45
Genesee	4.44
Gladwin	4.44
Gratiot	4.44
Hillsdale	4.49
Huron	4.44
Ingham	4.45
Ionia	4.44
Isabella	4.44
Jackson	4.47
Kalamazoo	4.46
Lapeer	4.44
Lenawee	4.49
Livingston	4.45
Macomb	4.45
Midland	4.44
Monroe	4.50
Montcalm	4.44
Oakland	4.45
Saginaw	4.44
Saint Clair	4.44
St. Joseph	4.48
Sanilac	4.44
Shiawassee	4.44
Tuscola	4.44
Van Buren	4.46
Washtenaw	4.47
Wayne	4.47
All Other Counties	4.43
Wght. State Avg.	4.47

MINNESOTA

Aitkin	4.38
Anoka	4.45
Becker	4.39
Beltrami	4.38
Benton	4.42
Big Stone	4.42
Blue Earth	4.47
Brown	4.46
Carlton	4.39
Carver	4.47
Cass	4.38
Chippewa	4.44
Chisago	4.42
Clay	4.39
Clearwater	4.38
Cottonwood	4.43
Crow Wing	4.38
Dakota	4.47
Dodge	4.45
Douglas	4.41
Faribault	4.46
Fillmore	4.45
Freeborn	4.46
Goodhue	4.45
Grant	4.41
Hennepin	4.47
Houston	4.45
Hubbard	4.39
Isanti	4.42
Itasca	4.38
Jackson	4.43
Kanabec	4.40
Kandiyohi	4.43

MINNESOTA

Kittson	4.36
Koochiching	4.38
Lac Qui Parle	4.44
Lake of the Woods	4.37
Le Sueur	4.47
Lincoln	4.41
Lyon	4.42
McLeod	4.46
Mahnomen	4.38
Marshall	4.36
Martin	4.45
Meeker	4.44
Mille Lacs	4.40
Morrison	4.40
Mower	4.45
Murray	4.42
Nicollet	4.47
Nobles	4.43
Norman	4.38
Olmsted	4.45
Otter Tail	4.39
Pennington	4.37
Pine	4.40
Pipestone	4.41
Polk	4.37
Pope	4.42
Ramsey	4.47
Red Lake	4.37
Redwood	4.43
Renville	4.44
Rice	4.46
Rock	4.42
Roseau	4.36
Scott	4.47
Sherburne	4.45
Sibley	4.47
Stearns	4.42
Steele	4.46
Stevens	4.42
Swift	4.42
Todd	4.40
Traverse	4.41
Wabasha	4.45
Wadena	4.39
Waseca	4.46
Washington	4.45
Watonwan	4.46
Wilkin	4.39
Winona	4.45
Wright	4.45
Yellow Medicine	4.45
Wght. State Avg	4.45

MISSISSIPPI

All Counties	4.53

MISSOURI

Adair	4.50
Andrew	4.46
Atchison	4.46
Audrain	4.52
Barry	4.45
Barton	4.45
Bates	4.45
Benton	4.46
Bollinger	4.54
Boone	4.49
Buchanan	4.46
Butler	4.52
Caldwell	4.46
Callaway	4.49
Camden	4.47
Cape Girardeau	4.54
Carroll	4.48
Carter	4.50
Cass	4.45
Cedar	4.44
Chariton	4.49
Christian	4.46
Clark	4.54
Clay	4.46
Clinton	4.46
Cole	4.48
Cooper	4.48
Crawford	4.50
Dade	4.45
Dallas	4.46
Daviess	4.46
De Kalb	4.46
Dent	4.50
Douglas	4.46
Dunklin	4.54
Franklin	4.52
Gasconade	4.50
Gentry	4.46
Greene	4.48
Grundy	4.48

MISSOURI

Harrison	4.46
Henry	4.45
Hickory	4.46
Holt	4.46
Howard	4.48
Howell	4.48
Iron	4.52
Jackson	4.45
Jasper	4.45
Jefferson	4.54
Johnson	4.45
Knox	4.52
Laclede	4.46
Lafayette	4.45
Lawrence	4.45
Lewis	4.54
Lincoln	4.53
Linn	4.49
Livingston	4.48
McDonald	4.45
Macon	4.50
Madison	4.52
Maries	4.48
Marion	4.54
Mercer	4.48
Miller	4.47
Mississippi	4.54
Moniteau	4.48
Monroe	4.52
Montgomery	4.50
Morgan	4.47
New Madrid	4.54
Newton	4.45
Nodaway	4.46
Oregon	4.50
Osage	4.48
Ozark	4.47
Pemiscot	4.54
Perry	4.54
Pettis	4.47
Phelps	4.48
Pike	4.54
Platte	4.46
Polk	4.46
Pulaski	4.47
Putnam	4.49
Ralls	4.54
Randolph	4.50
Ray	4.46
Reynolds	4.50
Ripley	4.50
Saint Charles	4.53
Saint Clair	4.45
Saint Francois	4.52
Sainte Genevieve	4.54
Saint Louis	4.54
Saline	4.47
Schuyler	4.50
Scotland	4.52
Scott	4.54
Shannon	4.50
Shelby	4.52
Stoddard	4.54
Stone	4.46
Sullivan	4.49
Taney	4.46
Texas	4.48
Vernon	4.44
Warren	4.51
Washington	4.52
Wayne	4.52
Webster	4.46
Worth	4.46
Wright	4.46
Wght. State Avg.	4.50

MONTANA

All Counties	4.36

NEBRASKA

All Counties	4.41

NEW JERSEY

All Counties	4.45

NEW MEXICO

All Counties	4.36

NEW YORK

All Counties	4.37

NORTH CAROLINA

All Counties	4.47

NORTH DAKOTA

All Counties	4.36

OHIO

Adams	4.52
Allen	4.53
Ashland	4.52

OHIO	
Ashtabula	4.50
Athens	4.52
Auglaize	4.53
Belmont	4.52
Brown	4.52
Butler	4.52
Carroll	4.50
Champaign	4.52
Clark	4.51
Clermont	4.52
Clinton	4.52
Columbiana	4.50
Coshocton	4.50
Crawford	4.52
Cuyahoga	4.50
Darke	4.51
Defiance	4.52
Delaware	4.51
Erie	4.52
Fairfield	4.52
Fayette	4.52
Franklin	4.51
Fulton	4.54
Gallia	4.52
Geauga	4.50
Greene	4.51
Guernsey	4.52
Hamilton	4.52
Hancock	4.53
Hardin	4.54
Harrison	4.50
Henry	4.54
Highland	4.52
Hocking	4.52
Holmes	4.50
Huron	4.52
Jackson	4.52
Jefferson	4.50
Knox	4.50
Lake	4.50
Lawrence	4.52
Licking	4.50
Logan	4.53
Lorain	4.52
Lucas	4.55
Madison	4.51
Mahoning	4.50
Marion	4.53
Medina	4.52
Meigs	4.52
Mercer	4.52
Miami	4.51
Monroe	4.52
Montgomery	4.51
Morgan	4.52
Morrow	4.52
Muskingum	4.52
Noble	4.52
Ottawa	4.53
Paulding	4.52
Perry	4.52
Pickaway	4.52
Pike	4.52
Portage	4.50
Preble	4.51
Putnam	4.53
Richland	4.52
Ross	4.52
Sandusky	4.53
Scioto	4.52
Seneca	4.53
Shelby	4.52
Stark	4.50
Summit	4.50
Trumbull	4.50
Tuscarawas	4.50
Union	4.51
Van Wert	4.52
Vinton	4.52
Warren	4.52
Washington	4.52
Wayne	4.50
Williams	4.52
Wood	4.54
Wyandot	4.53
Wght. State Avg	4.52
OKLAHOMA	
All Counties	4.39
PENNSYLVANIA	
All Counties	4.43
SOUTH CAROLINA	
All Counties	4.47
SOUTH DAKOTA	
All Counties	4.39
TENNESSEE	
All Counties	4.47
TEXAS	
All Counties	4.39
VERMONT	
All Counties	4.36
VIRGINIA	
All Counties	4.47
WEST VIRGINIA	
All Counties	4.45
WISCONSIN	
All Counties	4.43

(b) *Premiums and discounts.* The basic loan and purchase rates shall be adjusted as applicable by premiums and discounts as follows:

	Cents per bushel
(1) Premiums—Moisture (Percent):	
12.2 or less	+7.0
12.3 through 12.7	+3.5
(2) Discounts:	
(i) Class:	
Black	−25
Brown	−25
Mixed	−25
(ii) Moisture:	
13.1 through 13.5	−3.5
13.6 through 14.0	−7.0
(iii) Test weight per bushel (pounds):	
53.9 to 53.0	−0.5
52.9 to 52.0	−1.0
51.9 to 51.0	−1.5
50.9 to 50.0	−2.0
49.9 to 49.0	−2.5
(iv) Splits:	
20.1 to 25.0	−0.25
25.1 to 30.0	−0.50
30.1 to 35.0	−0.75
35.1 to 40.0	−1.00
(v) Damaged kernels:	
(A) Heat damage (percent):	
0.6 to 1.0	−1.0
1.1 to 1.5	−2.0
1.6 to 2.0	−3.0
2.1 to 2.5	−4.0
2.6 to 3.0	−5.0
(B) Total damage:	
2.1 to 3.0	−1.0
3.1 to 4.0	−2.0
4.1 to 5.0	−3.0
5.1 to 6.0	−5.0
6.1 to 7.0	−7.0
7.1 to 8.0	−9.0
(vi) Black, brown, and/or bicolored soybeans in yellow or green soybeans:	
1.1 to 2.0	−0.5
2.1 to 5.0	−1.5
5.1 to 10.0	−3.5
(vii) Special factors:	
(A) Materially weathered	−5.0
(B) Stained	−2.0
(C) Purple mottled	−2.0
(D) Weed control laws (where required by § 1421.25)	−10

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

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from Bruce Weber, ASCS, (202) 447-7987.

Signed at Washington, D.C., October 17, 1979.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 79-33090 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 1430

1979-1980 Price Support for Milk

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: This rule announces an increase from $10.51 to $11.22 per hundredweight in the support price for manufacturing milk. This price is for milk containing 3.5 percent milkfat and is equivalent to $11.49 for milk containing the U.S. annual average milkfat content of 3.67 percent. The support price is 80 percent of the parity equivalent price for manufacturing milk as of October 1, 1979, the beginning of the new marketing year.

EFFECTIVE DATE: October 1, 1979.

ADDRESSES: Procurement and Sales Division, ASCS, USDA, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Donald E. Friedly, Agricultural Economist, Dairy Branch, Procurement and Sales Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013, (202-447-3571).

SUPPLEMENTARY INFORMATION: Section 201 of the Agricultural Act of 1949, as amended requires that the price of milk be supported at such level from 75 to 90 percent of parity as the Secretary determines necessary to assure an adequate supply of pure and wholesome milk to meet current needs, reflect

changes in the cost of production, and assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs. Section 201 of the 1949 Act, as amended by the Food and Agriculture Act of 1977, also requires, effective through March 31, 1981, that the support price of milk be adjusted semiannually to reflect any estimated change in the parity index during the first six months of the marketing year.

On June 25, 1979, a notice was published in the **Federal Register** (44 FR 36986) inviting comments by August 20, 1979, concerning the 1979–80 price support program for milk. Similar notices were contained in USDA press releases.

Discussion of Comments

The Department received 60 written comments from dairy farmers, dairy cooperatives, and producer associations, general farm organizations, dairy product manufacturers, dealers, and their associations, and other farm-interested persons and organizations. No comments were received from consumers per se or groups representing consumers. Fifty-three comments included recommendations to increase the support price. Of these, one respondent recommended a level of support at 78.5 percent of parity; 21 favored 80 percent of parity; one favored 83 percent of parity; four favored 85 percent of parity; 11 suggested 90 percent of parity; and four favored support at a level of 100 percent of parity. Six respondents recommended an increase without specifying the amount. Two were against a support price increase, and three recommended that support be set at 75 percent of parity. Other respondents recommended the following ranges of parity: One for 75–90 percent, one for 80–85 percent, one for 85–90 percent, and two for 90–100 percent. The recommendations of the 16 dairy cooperatives and their associations who responded are summarized as follows: Twelve recommendations were for increasing the manufacturing margins used in calculating CCC's purchase prices, 10 suggested that CCC increase the markup on the sales prices of dairy products, five suggested that CCC increase the maximum acceptable moisture content of nonfat dry milk (NDM), eight asked that purchase prices to butter-NDM manufacturers and cheese manufacturers be increased by equal amounts per hundredweight of milk, nine requested allocating half of the support price increase for milk to the purchase prices of butter and half to NDM, four asked that CCC eliminate the value for whey in calculating the purchase price for cheese, and two recommended that the 1.5 cent differential for fortified NDM be continued.

Level of Support

After considering the comments received and reviewing the supply-demand situation, it is determined that the support price for manufacturing milk be established at 80 percent of the parity equivalent price for manufacturing milk as reported in the September 28, 1979, issue of USDA's "Agricultural Prices". The decision to set the support at this level results from a review of the dairy situation up to and including September 13, 1979. It is determined that support at 80 percent of parity will assure an adequate supply of pure and wholesome milk and dairy products to meet current needs, reflect changes in the cost of production, and assure an adequate level of farm income to maintain productive capacity sufficent to meet anticipated future needs. The latest available statistics of the Federal Government were used in making determinations under this rule. The price support program for the 1979–80 marketing year was described in USDA press releases issued September 13 and 28.

During the 1978–79 marketing year, milk production was above year-earlier levels except for the first quarter and April. The latest data (October 1978 through August 1979) shows that milk production was 0.4 percent above a year earlier. Market prices for butter and cheese were above CCC's purchase prices except during the spring months. NDM prices followed the same trends except in the West where market prices were at or near CCC purchase prices nearly all of the year. Sales of butter and cheese to CCC stopped in July and sales of NDM slowed substantially in July–September (except in the West) as market prices rose above CCC's purchase prices. CCC price support purchases during marketing year 1978–79 totaled 60 million pounds of butter, 202 million pounds of NDM and 12 million pounds of cheese. CCC sales for unrestricted use at 105 to 110 percent of current purchase prices were made of 13 million pounds of butter and 0.3 million pounds of cheese, thus supplementing commercial supplies. It is expected that commercial supplies of butter and cheese will again exceed consumer demand and sales of these products to CCC under the price support program will be resumed.

In accordance with the Food and Agriculture Act of 1977, the support price will be adjusted April 1, 1980, to reflect any estimated change in the parity index during the first half of the marketing year.

Relative Increases in the CCC Purchase Prices for Butter and NDM

The support increase on October 1, 1979, was divided equally between butter and NDM. Since the two products are made from the same whole milk, manufacturers must receive enough revenue from the sale of both products to pay a given price for milk to producers. In the past several years, the price support increases have been divided equally per hundredweight of milk between butter and NDM, based on the yield of each product from 100 pounds of whole milk.

The action to divide the increase equally between butter and NDM is not expected to encourage abrupt changes in consumption, production and CCC removal patterns for these products which could result in serious disposal and inventory problems for CCC. Since the rate of dispositions of butter and NDM is expected to exceed the quantities purchased in 1979–80, CCC will likely reduce its inventories of dairy products during the coming marketing year.

Allocation of a greater share of the price support increase to the purchase price for NDM would encourage excessive production, reduce consumption, increase CCC removals and swell already burdensome inventory levels. Retail price increases for low fat and skim milk and low fat dairy products would have a substantial impact on consumer expenditures, since growing sales for these products now comprise about 38 percent of fluid milk sales in Federal milk marketing orders (compared to only 17 percent ten years ago).

Allocation of a greater part of the price support increase to the butter purchase price would result in substantial retail price increases for butter and other high butterfat items such as ice cream. CCC outlets for butter are limited. Butter purchased in excess of domestic donation requirements could eventually have to be converted at considerable expense into butteroil before it could be donated abroad under the Pub. L. 480 program.

Manufacturing Margins

The manufacturing margins used in calculating the CCC purchase prices for dairy products were last increased 10 cents per hundredweight on April 1, 1978. The margins used in the calculations are designed to reflect annual average costs for manufacturing cheese and butter/NDM. The level of

the purchase prices should be such that manufacturers as a group will be able to pay producers the announced support price for milk. If average manufacturing costs exceed the manufacturing margins, dairy plants would not realize enough revenue over costs to pay the support price to farmers when market prices of dairy products are at or near CCC's purchase price levels.

The same margins announced on April 1, 1978, were continued for April-September 1979 because any further increase would have tended to be inflationary. Since margins were last increased, costs of fuel and power have increased 30 percent, plant equipment and overhead 14 percent, supplies 13 percent, labor 12 percent, and containers 14 percent, for a weighted composite increase of 16 percent. The substantial rise in fuel costs already recorded in 1979 are expected to continue to increase, but at a slower rate throughout the winter. The increases in costs have been only partially offset by continued improvements in technology and increases in the average size of manufacturing plants. Therefore, an additional 10-cent per hundredweight increase for butter-NDM as well as the 10-cent per hundredweight increase for cheese is needed to provide greater assurance that the U.S. average price received by farmers will equal the announced support price.

Whey Solids Not Fat (S.N.F.) Value

CCC's purchase prices for cheese were increased about one quarter of a cent per pound to offset the reduction of the projected whey s.n.f. value to zero.

In April-September 1979, the CCC purchase price for cheese was 0.2 cents per pound less than it otherwise would have been because it was expected that strong demand and increased market prices for whey s.n.f. products would result in a return over costs equal to about 0.2 cents for each pound of cheese manufactured. However, dried whey prices have remained at or near the cost of processing. The latest available figures (July 31, 1979) indicate that trade stocks of whey products were a third larger than a year ago and two-thirds larger than two years ago. Cheese manufacturers are not expected to realize a return over costs on whey s.n.f. when CCC is purchasing cheese under the dairy price support program because of expected lower market prices for whey products. The increases in the purchase prices of cheese will better assure that cheese manufacturers will be able to pay milk producers the support price when CCC is buying cheese under the support program.

Price Differential Between Fortified and Nonfortified NDM. The CCC purchase price differential for fortified NDM was reduced 0.25 cents to 1.25 cents per pound effective October 1, 1979. Purchases of fortified NDM will be discontinued after December 31, 1979, until further notice.

About 110 million pounds of fortified NDM in 50-pound bags is utilized annually for forign donation. Since April 1, 1977, CCC paid 1.5 cents per pound more for fortified NDM than for the nonfortified product. During the 1978–79 marketing year, about 106 million pounds, or more than half of the NDM sold to CCC, was in fortified form. Even though it is less expensive to buy fortified NDM rather than to fortify CCC-owned NDM (recently 1.5 cents per pound vs. 3.3 cents per pound), it is desirable to fortify some NDM from inventory to maintain the overall quality of the inventory.

With the current inventory of 90 million pounds of fortified NDM, CCC can resume purchases of fortified NDM at a later date and have no difficulty in meeting annual needs of about 110 million pounds. A reduction in purchases over time will facilitate some stock rotation by fortifying existing stocks for use in foreign donation programs, enhancing inventory management and quality control.

Increase the Maximum Acceptable Moisture Content of NDM Purchased by CCC

CCC limits the moisture content of U.S. Extra Grade NDM purchased under the price support program to 3.5 percent, although the U.S. Extra Grade Standard permits 4.0 percent moisture. It is not advisable for CCC to raise its moisture limit because the NDM absorbs moisture in storage and excessive moisture causes a decline in quality. It is impossible to predict how long the NDM purchased by CCC will be stored before it is used. Whereas NDM in normal commercial channels is usually used immediately, CCC's current NDM inventory would take nearly two years to be utilized at present rate of utilization.

Increasing the maximum amount of moisture for NDM purchased by CCC, would increase the risk of CCC losses as suitable dispositions outlets shrink with diminishing quality.

Modify the Calculation of the Parity Price for Purposes of this Price Support Action

There was a recommendation to modify the formula for calculating the support price at 80 percent of parity for purposes of setting the support price on October 1. It was suggested that for this purpose, the parity index published on September 28 be increased by 101 percent, and that this altered parity index be multiplied by the adjusted 1910–14 base price of $1.93 published on January 31 rather than the revised (correct) adjusted base price of $1.91 published on August 28. These changes would have resulted in setting the support price at $11.43 per hundredweight, or 81.5 percent of parity. This recommendation was rejected because it could be inflationary, encourage additional production of milk, discourage the consumption of milk and dairy products, increase CCC removals and add unnecessarily to government costs.

Sales Prices

Products acquired through support purchases will be offered for sale when available for unrestricted use at prices which will be 105 percent of CCC's purchase prices in effect at time of sale (allowing for rounding) but not less than market prices. Any markup of more than 5 percent could allow wholesale and retail markup prices of butter and NDM to increase to a higher, inflationary level before the price stabilizing effect of CCC sales would take effect. Although market prices are projected to remain below 105 percent of current purchase prices in the near future, continuation of the 105 percent sales policy offers the greatest assurance against potential inflationary increases in market prices of all dairy products.

Final Rule

Based on the $11.22 support price for milk containing 3.5 percent milkfat, 7 CFR 1430.282 is revised to read as follows:

§ 1430.282 Price support program for milk.

(a)(1) The general level of prices to producers for milk will be supported from October 1, 1979, through September 30, 1980, at $11.22 per hundredweight for manufacturing milk containing 3.5 percent milkfat, subject to adjustment as provided for by law. This is equivalent to $11.49 per hundredweight for milk with the U.S. annual average milkfat content of 3.67 percent.

(2) Price support for milk will be through purchases by Commodity Credit Corporation of butter, nonfat dry milk, and Cheddar cheese, offered subject to the terms and conditions of purchase announcements issued by the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(3) Commodity Credit Corporation may, by special announcements, offer to purchase other dairy products to support the price of milk.

(4) Purchase announcements setting forth terms and conditions of purchase may be obtained upon request from the United States Department of Agriculture, Agricultural Stabilization and Conservation Service, Procurement and Sales Division, P.O. Box 2415, Washington, D.C. 20013, or the United States Department of Agriculture, Agricultural Stabilization and Conservation Service, Kansas City ASCS Commodity Office, P.O. Box 8377, Shawnee Mission, Kansas 66208.

(b)(1) Commodity Credit Corporation will consider offers of butter, Cheddar cheese, and nonfat dry milk in bulk containers meeting specifications in the announcements at the following prices:

[In dollars per pound]

Commodity and location	Produced	
	before 10-1-79	On or after 10-1-79
Cheddar cheese: Standard moisture 37.8 to 39.0 pct:[1]		
40-pound blocks, U.S. grade A or higher	1.16	1.24
500 pounds in fiber barrels U.S. extra grade:[2]	1.13	1.21
Nonfat dry milk: Spray process, U.S. extra grade:[3]		
Nonfortified	.79	.84
Fortified (vitamins A and D)	.805	[4].8525
Butter: U.S. grade A or higher: New York, N. Y., and Jersey City, Newark, and Secaucus, N.J.	1.24	1.34

[1] The price per pound for cheese which contains less than 37.8 percent moisture shall be as specified in Form ASCS-150. Copies are available in offices listed in (a)(4).

[2] Also includes granular cheese.

[3] If upon inspection bags do not fully comply with specifications, the price paid will be subject to a discount of .50 cent (½ cent) per pound of nonfat dry milk.

[4] Purchases will be discontinued after December 31, 1979, until further notice.

(2) Offers to sell butter at any location for which a price is not specifically provided for in this section will be considered at the price set forth in this section for New York, less 80 percent of the lowest published domestic railroad through freight rate for frozen butter per pound gross weight for a 60,000 pound carlot, in effect at the beginning of each marketing year (October 1), from such other point to New York City. The minimum price at any location shall be the price at New York City minus 2.5 cents per pound for butter produced before October 1, 1979, and minus 3.0 cents per pound for butter produced on or after that date. Bulk butter offered in the area consisting of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, must have been produced in such states. Butter produced elsewhere is ineligible for offering to CCC in such states.

(c)(1) The block cheese shall be U.S. Grade A or higher; the barrel cheese shall be U.S. Extra Grade.

(2) The nonfat dry milk shall be U.S. Extra Grade, except moisture content shall not exceed 3.5 percent.

(3) The butter shall be U.S. Grade A or higher.

(d) The products shall be manufactured in the United States from milk produced in the United States and shall not have been previously owned by CCC.

(e) Purchases will be made in carlot weights specified in the announcements. Grade and weights shall be evidenced by inspection certificates issued by the U.S. Department of Agriculture.

(Secs. 201, 401, Pub. L. 439, 81st Cong. 63 Stat. 1052, 1054, as amended (7 U.S.C. 1446, 1421); secs. 4 and 5, Pub. L. 806, 80th Cong., 62 Stat. 1070, 1072, as amended (15 U.S.C. 714 b and c).)

Note.—This regulation has been determined to be significant under the USDA criteria implementing Executive Order 12044. A Final Impact Statement is available from Donald E. Friedly, Agricultural Economist, Dairy Branch, Procurement and Sales Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013, (202–447–3571).

Signed at Washington, D.C. on: October 17, 1979.

Ray Fitzgerald,

Executive, Vice President Commodity Credit Corporation.

[FR Doc. 79-33082 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 78

Brucellosis Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments add the county of Elmore in Idaho and the counties of Crawford, Dickinson, Geary, Harvey, Lincoln, Osage, Sumner, and Wabaunsee in Kansas to the list of Certified Brucellosis-Free Areas and delete such counties from the list of Modified Certified Brucellosis Areas. It has been determined that these counties qualify to be designated as Certified Brucellosis-Free Areas. The effect of this action will allow for less restrictions on cattle moved interstate from these areas. These amendments also add the counties of Cameron and Evangeline in Louisiana to the list of Noncertified Areas and delete them from the list of Modified Certified Brucellosis Areas because it has been determined that these counties now qualify only as Noncertified Areas. The effect of this action will provide for more restrictions on cattle and bison moved interstate from these areas.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. A. D. Robb, USDA, APHIS, VS, Room 805, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8713.

SUPPLEMENTARY INFORMATION: A complete list of brucellosis areas was published in the **Federal Register** (44 FR 36373–36375) effective June 22, 1979. These amendments add the county of Elmore in Idaho and the counties of Crawford, Dickinson, Geary, Harvey, Lincoln, Osage, Sumner, and Wabaunsee in Kansas, to the list of Certified Brucellosis-Free Areas in § 78.20 and delete such counties from the list of Modified Certified Brucellosis Areas in § 78.21, because it has been determined that they now come within the definition of a Certified Brucellosis-Free Area contained in § 78.1(l) of the regulations. These amendments add the counties of Cameron and Evangeline in Louisiana to the list of Noncertified Areas in § 78.22 and delete these counties from the list of Modified Certified Brucellosis Areas in § 78.21, because it has been determined that they now qualify only as Noncertified Areas as defined in § 78.1(n) of the regulations. This list is updated monthly and reflects actions taken under criteria for designating areas according to brucellosis status.

Accordingly, Part 78, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

§ 78.20 [Amended]

1. In § 78.20, paragraph (b) is amended by adding: *Idaho*: Elmore; *Kansas*: Crawford, Dickinson, Geary, Harvey, Lincoln, Osage, Sumner, Wabaunsee.

§ 78.21 [Amended]

2. In § 78.21, paragraph (b) is amended by deleting: *Idaho*: Elmore; *Kansas:* Crawford, Dickinson, Geary, Harvey, Lincoln, Osage, Sumner, Wabaunsee; *Louisiana*: Cameron, Evangeline.

§ 78.22 [Amended]

3. In § 78.22, paragraph (b) is amended by adding: *Louisiana*: Cameron, Evangeline.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 117, 120, 121, 125, 134b,

134f, 37 FR 28464, 28477; 38 FR 19141, 9 CFR 78.25.)

The amendment designating areas as Certified Brucellosis-Free Areas relieves restrictions presently imposed on cattle moved from the areas in interstate commerce.

The restrictions are no longer deemed necessary to prevent the spread of brucellosis from such areas and, therefore, the amendment should be made effective immediately in order to permit affected persons to move cattle interstate from such areas without unnecessary restrictions.

The amendment designating areas as Noncertified Areas imposes restrictions presently not imposed on cattle and bison moved from that area in interstate commerce. The restrictions are necessary in order to prevent the spread of brucellosis from such area.

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 Paul Becton, Director, National Brucellosis Eradication Program, 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.

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 18th day of October 1979.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79-32820 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Parts 145, 146, 147, 445, 446, and 447

National Poultry Improvement Plan; Transfer and Redesignation of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The responsibility for administering the National Poultry Improvement Plan (NPIP) has recently been assigned to the Animal and Plant Health Inspection Service (APHIS). Therefore, it is necessary to transfer the Poultry Improvement regulations from their present location in 9 CFR, Chapter IV, to 9 CFR, Chapter I, assigned to APHIS, and makes appropriate changes to effect the transfer.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. R. D. Schar, Senior Coordinator, National Poultry Improvement Plan, APHIS, VS, Bldg. 265, BARC-E, Beltsville, Maryland 20705, 301-344-2227.

SUPPLEMENTARY INFORMATION: A national program for the improvement of poultry, poultry products and hatcheries is administered by the Department in cooperation with various State agencies and the poultry industry, under provisions of the National Poultry Improvement Plan (NPIP). Formerly, responsibility for the NPIP was delegated to the Agricultural Research Service (ARS), which subsequently was consolidated into a new Science and Education Administration (SEA). Responsibility for NPIP has recently been delegated to APHIS (44 FR 55549). The NPIP is almost entirely a disease control program and its major objective is to provide a cooperative State-Federal program for the control of egg-transmitted and hatchery-disseminated diseases. The functions of the NPIP are essentially regulatory and are most suitable to a regulatory-oriented agency such as APHIS. The Department believes this new alignment of functions conforms more closely to the missions of the agencies involved and that placing all of the responsibility for cooperative disease control programs in APHIS will enable the Department to serve the public more efficiently. Therefore, the Poultry Improvement regulations in 9 CFR, Chapter IV, are transferred to 9 CFR, Chapter I. This document also changes references in such regulations to the Agricultural Research Service to the Animal and Plant Health Inspection Service, Veterinary Services, and makes other internal cross reference changes to correspond to the changes in numbering of the regulations.

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

Parts 445, 446 and 447 [Redesignated as Parts 145, 146 and 147]

Parts 145, 146 and 147 [Redesignated from Parts 445, 446 and 447]

1. The regulations currently appearing in Chapter IV, Subchapter A, Parts 445, 446, and 447 are transferred to 9 CFR Chapter I, Subchapter F, and redesignated as Parts 145, 146, and 147, respectively.

Parts 145 and 147 [Amended]

2. In redesignated Parts 145 and 147, wherever the words "Agricultural Research Service" appear, it is changed to read "Animal and Plant Health Inspection Service, Veterinary Services."

3. All internal references to sections of Parts 445 and 447 within the regulations are changed to sections of Parts 145 and 147, respectively, as appropriate.

(Sec. 101(b), 58 Stat. 734, (7 U.S.C. 429).)

These amendments relate to internal agency management and, therefore, the notice, public rulemaking procedure and effective date requirements contained in 5 U.S.C. 553 are omitted as unnecessary. Further, since this final rule relates to internal agency management, it is exempt from the provisions of Executive Order 12044, "Improving Government Regulations," and Secretary's Memorandum No. 1955.

Done at Washington, D.C., this 19th day of October 1979.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79-32997 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-34-M

Science and Education Administration

9 CFR Parts 145, 146, 147, 445, 446 and 447

National Poultry Improvement Plan; Transfer of Regulations and Vacation of Chapter

AGENCY: Science and Education Administration, USDA.

ACTION: Final rule.

SUMMARY: The responsibility for administering the National Poultry Improvement Plan (NPIP) has recently been assigned to the Animal and Plant Health Inspection Service (APHIS). Therefore, it is necessary to transfer the Poultry Improvement regulations from their present location in 9 CFR Chapter IV, to 9 CFR Chapter I, assigned to APHIS, and vacate 9 CFR Chapter IV.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. H. Graham Purchase, Acting Chief, Livestock and Veterinary Sciences Staff, MPS, AR, SEA, Building 005, BARC–W, Beltsville, Maryland 20705, 301–344–3924.

SUPPLEMENTARY INFORMATION: The National Poultry Improvement Plan (NPIP) is almost entirely a disease control program and its major objective is to provide a cooperative State-Federal program for the control of egg-transmitted and hatchery disseminated diseases.

Formerly, responsibility for NPIP was delegated to the Agricultural Research Service (ARS) which subsequently was consolidated into a new Science and Education Administration (SEA). Responsibility for NPIP has recently been delegated to APHIS (44 FR 55549). Therefore, the Poultry Improvement regulations in 9 CFR Chapter IV, are transferred to 9 CFR Chapter I, Animal and Plant Health Inspection Service, and 9 CFR Chapter IV is vacated.

1. Accordingly, Title 9, Code of Federal Regulations, Chapter IV, Subchapter A, is amended in the following respects:

Parts 445, 446 and 447 [Redesignated as 145, 146, and 147]

Parts 145, 146 and 147 [Redesignated from 445, 446, and 447]

1. The regulations currently in 9 CFR Chapter IV, Subchapter A, Parts 445, 446, and 447, are transferred to 9 CFR Chapter I, Subchapter F and redesignated as Parts 145, 146, and 147, respectively.

9 CFR Chapter IV [Removed]

2. 9 CFR Chapter IV is hereby vacated.

(Sec. 101(b), 58 Stat. 734, (7 U.S.C. 429).)

These amendments relate to internal agency management and, therefore, the notice, public rulemaking procedure and effective date requirement contained in 5 U.S.C. 553 are omitted as unnecessary. Further, since this final rule relates to internal agency management, it is exempt from the provisions of Executive Order 12044, "Improving Government Regulations," and Secretary's Memorandum No. 1955.

Done at Washington, D.C. this 19th day of October 1979.

T. B. Kinney, Jr.,

Associate Deputy Director for Agricultural Research.

[FR Doc. 79-32998 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-03-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z]

Truth in Lending; Unofficial Staff Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Unofficial staff interpretation.

SUMMARY: In response to a request, the Board is publishing the following unofficial staff interpretation of Regulation Z, (Truth in Lending), Number 1354, regarding a recent action by the Board to rescind an amendment creating an alternative in certain circumstances to the three-day cancellation right otherwise applicable to each individual advance under open-end credit accounts secured by consumers' residences. This interpretation clarifies the effect of the Board's action, which does not become effective until March 31, 1980, upon potential and existing accounts offered under the current rules.

EFFECTIVE DATE: October 15, 1979.

FOR FURTHER INFORMATION CONTACT: Robert C. Plows, Section Chief, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. (202–452–3667).

SUPPLEMENTARY INFORMATION: (1) Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public, subject to certain limitations stated in 12 CFR 261.6.

(2) Authority: 12 CFR 226.1(d)(4)(iii).

No. 1354

§ 226.9(g). Delay in revocation of § 226.9(g)(6) to March 31, 1980 intended to permit creditors to terminate or modify existing plans; not intended to create opportunity for offering new plans or expanding existing ones.

October 15, 1979.

You ask what effect the Board's decision to rescind § 226.9(g)(6) of Regulation Z (44 FR 55553, September 27, 1979) has upon new and existing open-end credit plans secured by a customer's home prior to the effective date of March 31, 1980.

The purpose of the delayed effective date was to permit creditors with plans already in existence to wind them down by March 31, 1980. The staff interprets the Board's decision to mean that no new plans will be offered and existing plans will not be expanded between the effective date of the decision (October 27, 1979) and March 31, 1980.

Sincerely,

Janet Hart,

Director.

Board of Governors of the Federal Reserve System, October 19, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-33066 Filed 10-25-79; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 309

Public Disclosure of Bank Trust Department Annual Report of Assets

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final Amendment to Existing Regulations.

SUMMARY: Part 309 of FDIC's regulations governing the disclosure of information held by the FDIC is being amended so as to allow for the routine public disclosure on a request basis of Trust Department Annual Reports of Assets currently filed with the FDIC by insured nonmember banks.

EFFECTIVE DATE: November 26, 1979.

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Attorney, Legal Division (202–389–4433), or John Harvey, Review Section Chief, Division of Bank Supervision (202–389–4620).

SUPPLEMENTARY INFORMATION: The FDIC currently obtains Trust Department Annual Reports of Assets from insured nonmember banks. The information compiled from these reports is presently used in a publication of statistical data on bank trust activities. The publication contains in some instances the data supplied by identifiable banks. On June 15, 1979, the FDIC published a proposed amendment (44 FR 34510, 44 FR 43287) to its regulations governing disclosure of information (12 CFR Part 309) that would permit routine public disclosure of these reports on request. Public comment was solicited for a period of sixty days.

A total of nine comments was received. Several objected to the proposal because it was perceived as creating a burden on banks and creating an unnecessary additional cost. Neither objection is well founded, however, as the reports are currently required to be filed with the FDIC. No additional work will be required to prepare or submit the reports. The objection was also raised in several comments that public availability of the reports would be an

invasion of the privacy of those persons who utilize the services of bank trust departments. As the reports do not identify any particular trust accounts, it is not likely that any such invasion of privacy will occur. In addition, only a limited amount of information is being made available to the public. The report only contains data on those accounts over which the trust department has sole discretion.

One comment raised the possibility that trust departments would be forced to structure investment decisions in accordance with the public's uninformed perception of their performance. The Board of Governors of the Federal Reserve and the Office of the Comptroller of the Currency have made these reports available to the public in the past and there has been no evidence of disruption of trust department activities in those banks where reports were disclosed. There is little or no reason, therefore, to anticipate such a result.

After having fully considered the public comments, the Board of Directors of the FDIC has decided to proceed with the amendment of Part 309 as set forth below. It is the opinion of the FDIC that no harm will result to insured nonmember banks as the result of public disclosure of these reports. As the information is not viewed as confidential and there is a public demand for it, disclosure is considered appropriate. Disclosure can be said to be especially appropriate in view of the current practice of disclosing to the public bank reports of condition and reports of income. (12 CFR 309.4(b)(1)).

In consideration of the foregoing, the Board of Directors of the FDIC is amending 12 CFR 309.4(b)(1) by adding at the end thereof the following new subdivision (v).

§ 309.4 Information made available for public inspection.

* * * * *

(b) Information made available at the Corporation's discretion.

(1) * * *

(v) Annual Trust Department Report of Assets [4a] for commercial and mutual savings banks.

By order of the Board of Directors of the Federal Deposit Insurance Corporation this 22nd day of October, 1979.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 79-33085 Filed 10-25-79; 8:45 am]

BILLING CODE 6714-01-M

[4a] Trust Department report number 8020/33.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 159

[T.D. 275]

Countervailing Duties—Certain Footwear From India

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination and Suspension of Liquidation.

SUMMARY: This notice is to advise the public that a countervailing duty investigation has resulted in a final determination that the Government of India has given benefits considered to be bounties or grants within the meaning of the countervailing duty law on the manufacture, production or exportation of leather shoes and uppers. It has further been determined that all other non-rubber footwear subject to this investigation has not received benefits from the Government of India considered to be bounties or grants and therefore no countervailing duties will be imposed on those products.

Certain uppers entering the United States receive duty-free treatment under the Generalized System of Preferences. Before countervailing duties will be imposed on those duty-free uppers, the U.S. International Trade Commission will investigate whether a U.S. industry is being or is likely to be injured by reason of imports of Indian shoe uppers benefiting from such bounties or grants.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Leon McNeil, Technical Branch, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (566-5492).

SUPPLEMENTARY INFORMATION: On November 24, 1978, a negative "Preliminary Countervailing Duty Determination" was published in this case in the **Federal Register** (43 FR 55028). That notice stated that it had been preliminarily determined that benefits which constituted bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1301) (hereinafter referred to as "the Act") had not been bestowed by the Government of India (GOI) to manufacturers/exporters of certain footwear.

For purposes of this notice, "certain footwear" includes footwear classifiable in item numbers 700.05 through 700.85, inclusive, of the Tariff Schedules of the United States Annotated (TSUSA) (except items 700.28, 700.51, 700.52, 700.53, 700.54, 700.60 and 700.8510). It also includes other leather articles cut or partly manufactured into forms or shapes suitable for conversion into footwear, previously classified under TSUSA item number 791.25. However, in March 1979, TSUS number 791.25 was abolished and replaced by two new tariff numbers, 791.24 and 791.26. Certain goods entering under item number 791.26 are eligible for duty-free entry under the Generalized Systems of Preferences (GSP) and therefore an injury test woud be required prior to the application of countervailing duties on these duty-free goods.

In the preliminary negative determiniation, the following programs were found not to constitute bounties or grants within the meaning of section 303 of the Act, which findings are hereby made final:

(1) *Import permits.* Indian exporters involved in this investigation are eligible to receive automatically permits to import components and raw materials used to manufacture their products, up to a fixed percentage of the f.o.b. value of their exports. These permits are negotiable and can also be transferred to "supporting" manufacturers. In the preliminary determination it was stated that to the extent the permits were transferred for cash, their receipt might be considered a "bounty or grant". At that time it did not appear that the permits are in fact sold or transferred by Indian footwear manufacturers and information supplied by the GOI since the preliminary determination has corroborated that fact.

(2) *Customs duty drawback and excise tax rebates.* The preliminary determination stated that the drawback and excise-tax rebates provided are limited to the amounts actually paid by the manufacturers of these products, and that no drawback or rebates are allowed on machinery or equipment. Non-excessive Customs duty drawbacks and excise tax rebates upon exports are not considered to be bounties or grants if they are limited to the amounts actually paid on the exported product and raw materials or components incorporated into the exported final product, as in this case.

(3) *Export insurance provided by the Export Credit and Guarantee Corporation (ECGC).* The ECGC underwrites political and commercial risks not insurable by commercial carriers. The corporation is owned by the Indian Government, but charges premiums for its policies. The availability of this insurance is determined not to be a bounty or grant because the ECGC covers its claims

from operating income, and, therefore appears to be actuarily sound.

A number of other programs were preliminarily determined as not applicable to, or not utilized by, Indian footwear manufacturers subject to this investigation, which findings are hereby made final:

(1) *Tax credit certificates.* It was alleged that exporters were entitled to receive certificates equal to 15 percent of the export value of merchandise, which would be used to offset income or business taxes owed. This program was proposed but never adopted by the Indian Government.

(2) *Grants for export promotion.* The Market Development Fund provides grants to exporters to cover a variety of trade promotion activities. The Fund was not utilized by footwear exporters during the period investigated.

(3) *Export financing through The Industrial Development Bank.* Loans under this program are limited to engineering goods and are therefore not applicable to manufacturers or exporters of the goods subject to this investigation.

(4) *Location in the Kandla Free Trade Zone.* Firms located in this area benefit from a number of import duty exemptions, foreign exchange concessions and other financial assistance from the Indian Government. There are no footwear producers or exporters in the Kandla Free Trade Zone.

(5) *Reimbursement of shipping charges.* The Government of India provides for the partial reimbursement of shipping charges on certain products shipped by air. However, since virtually all Indian footwear exports are shipped by sea, footwear exporters do not qualify for this program.

The Notice of the preliminary determination stated that before a final determination would be made in the proceeding, consideration would be given to any relevant data, views, or arguments submitted in writing and received by the Commissioner of Customs. Based upon an analysis of the information submitted subsequent to the preliminary determination, no change in the Treasury Department's position with respect to these programs is warranted.

One additional program was identified in the preliminary determination as not constituting a bounty or grant. Additional information has since been collected from the Government of India with respect to that program. The results of the analysis of that information are described below.

Cash rebates upon export. Exporters of certain identified products are provided a cash rebate calculated as a percentage of the f.o.b. value of the exported product which is intended to offset indirect taxes borne on the manufacture of the exported goods. For products covered by this investigation, the percentages vary from 5 to 15 percent. The preliminary determination was based on data submitted with respect to the indirect tax incidence on products receiving a 5 percent cash rebate. It was determined that indirect taxes assessed on the exported product or on items physically incorporated into the product, actually exceeded the cash rebate. These products accounted for approximately 85 percent of total Indian exports to the United States of the products covered by the investigation.

It was also indicated in that Notice that additional information would be collected with respect to products receiving 12.5 percent (uppers) and 15 percent (leather shoes) cash rebates, even though those products constitute only a small portion of Indian non-rubber footwear exports.

The Government of India supplied a breakdown of all the various indirect taxes which are allegedly borne by Indian leather shoes and uppers, but not rebated on exports. While all the indirect taxes listed are assessed on items physically incorporated into the exported product, and therefore allowable as offsets to the cash rebate, the Government of India was unable to supply documentation that all of the taxes listed were, in fact, incurred in the amounts alleged. To the extent that adequate documentation is not available to Treasury, such offsets to the export payment cannot be granted. Having reviewed the data submitted and identified the value of allowable indirect taxes, it has been determined that with respect to items receiving a 12.5 percent rebate on export (uppers) the cash rebate exceeds the allowable indirect taxes by 0.93 percent. With respect to those products receiving a 15 percent cash rebate (leather shoes), the cash rebate exceeds the allowable indirect taxes by 4.16 percent. Therefore, for the purposes of this final determination, this program operates to bestow countervailable benefits on Indian exports of these two products. However, the GOI has indicated that appropriate documentation will be submitted which will show that there are additional allowable taxes which would effectively eliminate the bounty or grant found on these two products. When submitted, this data will be reviewed.

Two remaining programs were identified in the preliminary determination as having been utilized by manufacturers/exporters of Indian footwear, but the benefits bestowed were preliminarily determined to be *de minimis* in size, and therefore not bounties or grants. The two programs are:

(1) Export financing for up to 90 days by the Government of India at rates less than those which would otherwise be commercially available; and

(2) A deduction from a firm's taxable income up to 133 percent of certain overseas business expenses incurred by the firm.

Additional company specific data was collected subsequent to the preliminary determination in order to calculate more accurately the *ad valorem* benefits received under each program. Based upon this additional information, the *ad valorem* benefit received under the export financing program has been determined to be 0.03 percent, and under the overseas business expense deduction program to be 0.05 percent.

Therefore, on the basis of an investigation conducted pursuant to § 159.47(c) of the Customs Regulations (19 CFR 159.47(c)), it has been determined that benefits are provided by the GOI to manufacturers/exporters of footwear from India, but that, with respect to all products except those receiving 12.5 percent or 15 percent cash rebates on exports, the aggregate amount of the benefits are 0.08 percent, an amount considered *de minimis*. With respect to leather shoes, which receive a 15 percent cash rebate, the aggregate benefits are 4.24 percent *ad valorem*, and with respect to leather uppers, which receive a 12.5 percent cash rebate, the aggregate benefits are 1.01 percent *ad valorem*. The aggregate benefits bestowed on leather shoes and uppers represent the sum of the benefits received under the export cash rebate program, the preferential financing program and the overseas business expense deduction program.

Therefore, with regard to leather shoes and uppers subject to this determination, notice is hereby given that effective on or after October 26, 1979, and until further notice, upon the entry, or withdrawal from warehouse, for consumption of leather shoes and uppers, imported directly or indirectly from India which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent it can be established to the satisfaction of the Commissioner of Customs that imports of leather shoes and uppers from India are benefiting from a bounty or grant smaller than the amount which

otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation of leather shoes and uppers from India.

As stated above, imports of certain leather shoe uppers included in TSUSA item number 791.26 from India are eligible to enter the U.S. duty-free pursuant to the GSP. In accordance with section 303(a)(2) of the Act (19 U.S.C. 1303(a)(2)), countervailing duties may not be imposed upon any article or merchandise which is free of duty in the absence of a determination by the U.S. International Trade Commission that an industry in the United States is being, or is likely to be injured, or is prevented from being established, by reason of the importation of such subsidized article or merchandise into the United States.

Accordingly, the International Trade Commission is being advised of this determination and effective on or after October, 26, 1979, upon the entry, or withdrawal from warehouse, for consumption of those leather uppers which are duty-free pursuant to the GSP, liquidation will be suspended until further order or publication after determination of the Commission, whichever comes first.

§ 159.47 [Amended]

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f) is amended by inserting after the last entry for "India", the words "leather shoes and uppers", in the column headed "Commodity"; the number of this Treasury Decision in the column headed "Treasury Decision"; and the words "Bounty declared-rate" in the column headed "Action".

(R.S. 251, as amended, section 303, as amended, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624)).

This final determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order No. 101-5, May 16, 1979, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and section 154.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a countervailing duty determination by the Commissioner of Customs, are hereby waived.

David R. Brennan,

Acting General Counsel of the Treasury.

October 19, 1979.

[FR Doc. 79-33127 Filed 10-25-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Sponsor Post Office Box Number

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the animal drug regulations to correct the post office box number for Carl S. Akey, Inc., sponsor of a new animal drug application.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: John Borders, Bureau of Veterinary Medicine (HFV-238), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 510 is amended in § 510.600. *Names, addresses, and drug labeler codes of sponsors of approved applications* in paragraph (c)(1) for "Carl S. Akey, Inc." and in paragraph (c)(2) for "017790" by changing the post office box number "259" to read "607."

Effective date: October 26, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: October 18, 1979.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 79-32719 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Haloxon Boluses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) submitted by Burroughs Wellcome Co., providing for revised labeling provisions for haloxon boluses used as an anthelmintic in cattle.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: William D. Price, Bureau of Veterinary Medicine (HVF-123), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709, filed a supplemental NADA (92-483V) providing revised labeling which would eliminate animal weight gaps in the dosage table for haloxon boluses. The regulation is also amended to include the statement "Give one bolus per approximately 500 pounds body weight." This type of statement has always appeared on the product's labeling but was inadvertently omitted from § 520.1120b *Haloxon boluses.*

Under the proposed BVM Supplemental Approval Policy (December 23, 1977, 42 FR 64367), this is a Category II approval. Approval of this supplemental application poses no increased human risk from exposure to residues of the new animal drug, because the actual dose provided for does not differ significantly from that which is provided for by the present label. Accordingly, this approval did not require a reevaluation of the safety and effectiveness data in the parent application.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of safety and effectiveness data and information submitted to support approval of this application is available for public examination at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director, Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.1120b by

revising paragraph (e)(2) to read as follows:

§ 520.1120b Haloxon boluses.

* * * * *

(e) * * *

(2) It is administered by giving one bolus per approximately 500 pounds body weight (35 to 50 milligrams per kilogram of body weight).

* * * * *

Effective date. This regulation is effective October 26, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: October 18, 1979.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 79-32718 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-79-716]

Community Development Block Grants; Grant Closeouts

AGENCY: Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: On June 28, 1977, the Department published at 42 FR 22019 a final rule setting forth the closeout procedures for general purpose discretionary grants made pursuant to Subpart E of this part. HUD has now determined that it is necessary to expand the applicability of these procedures to include all grants made pursuant to Title I of the Housing and Community Development Act of 1974. The amendment also adds a provision regarding termination of grants for cause, and makes certain other changes of a technical or clarifying nature. A paragraph has also been added regarding funds remaining from Small Cities Programs prior to the preparation of the Certificate of Completion.

DATES: Effective: November 15, 1979. Comments due: December 26, 1979.

ADDRESS: Interested persons should file written comments on or before December 26, 1979 with the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 5218, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Bernard Schure, Program Completion Division, HUD/Community Planning and Development, Room 7186, 451 Seventh Street, SW., Washington, D.C. 20410, 202-755-1871.

SUPPPLEMENTARY INFORMATION: This Section is being promulgated as an interim rule, effective November 15, 1979, to enable hold-harmless grantees who are in the final year of their entitlement status to proceed to close out their projects in an orderly fashion. The Department believes the delay in the issuance of this rule for effect would cause hardship on the part of grantees whose programs terminate in the near future and could adversely affect the local and Federal interest in the projects. Accordingly, the Assistant Secretary for Community Planning and Development has determined that it is impracticable to follow a notice of proposed rulemaking procedure and that good cause exists for making this rule effective as soon as possible. However, interested persons are invited to submit written comments. All comments received by December 26, 1979, will be considered in the development of the final rule. Copies of comments received will be available for inspection and copying at the above address.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. A copy of the Finding of Inapplicability is available for inspection in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

The major issues in the proposed rule are covered in the following discussion.

Applicability

This interim rule is applicable to all grantees who have received grant assistance under Title I of the Housing and Community Development Act of 1974 Pub. L. 93-383 (42 U.S.C. 5301 *et seq.*) including Entitlement Grants, Small Cities Grants, Secretary's Fund Grants, Urban Development Action Grants, and Categorical Program Settlement Grants. The previous rule was inapplicable to entitlement cities and urban counties, and did not by its terms cover Urban Development Action Grants and Categorical Program Settlement Grants. In order to effect the increase in scope, the rule has been edited to delete any references to specific grant categories and language has been added relating to Title I grants in general.

Termination for Cause

A new paragraph has been added at (§ 570.512(k) regarding termination of grants for cause, which provides that when the Secretary terminates the recipient's entire grant, or its remaining balance, pursuant to his authority under § 570.910, § 570.911 or § 570.913 of the regulations, the grant may be closed out. In such cases, however, only those provisions of this rule relating to preparation of a Certificate of Completion and final cost, and excess grant funds, shall apply.

Accordingly, 24 CFR 570.512 is amended to read as follows:

§ 570.512 Grant closeouts.

(a) *Applicability.* The policies and procedures contained herein apply to the closeout of any grants made pursuant to this Part.

(b) *Initiation of closeout.* HUD will advise the recipient to initiate closeout procedures when HUD determines, in consultation with the recipient, that there are no impediments to closeout and that the following criteria have been met or will be shortly:

(1) All costs to be paid with grant funds have been incurred, with the exception of (i) closeout costs such as payment for the final audit; and (ii) any unsettled third-party claims against the recipient. Costs are incurred when goods and services are received and/or contract work is performed. With respect to activities (such as rehabilitation of privately owned properties) which are carried out by means of revolving loan accounts, loan guarantee accounts, or similar mechanisms, costs shall be considered as incurred at the time funds for such activities are drawn from the recipient's letter of credit and initially used for the purposes described in the approved Community Development Program. The phrase "initially used for the purposes described in the approved Community Development Program" means the payment of such funds for work actually performed and is not intended to mean the initial deposits of letter-of-credit funds into the revolving loan account, loan guarantee account, or similar mechanism (such as loan or grant escrow account).

(2) With respect to any grant for which a grantee performance report is required pursuant to this Part, the last required report has been submitted and, to the extent determined necessary by HUD for purposes of the closeout, has been updated. The failure of a recipient to submit or update a report as required will not preclude HUD from effecting a grant closeout when such action is determined to be in the best Federal interest. The failure or refusal by a recipient to comply with such requirement shall be taken into account in the performance determination by

HUD in reviewing any future grant applications from the recipient. Any excess grant amount which is otherwise authorized to be retained by the recipient pursuant to 570.512(i) shall be refunded to HUD in the event of a recipient's failure to furnish the report or update it as required under this paragraph.

(3) Other responsibilities of the recipient under the grant agreement and any closeout agreement, applicable law and regulations appear to have been carried out satisfactorily, or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance, such as a good faith effort by the recipient to achieve its housing assistance plan goals for the grant period or securing performance by parties to legally-binding commitments entered into in connection with Urban Development Action Grant assistance. A final review of the recipient's compliance with the grant agreement and any closeout agreement applicable law and regulations will be made during the final audit or HUD review in lieu of final audit pursuant to § 570.512(g).

(c) *Program income.* Except as may be otherwise provided under the terms of the grant agreement or any closeout agreement program income received subsequent to grant closeout may be treated by the recipient as follows: Subject to the requirements of paragraphs (d) and (e) of this Section, such income may be treated as miscellaneous revenue, the use of which is not governed by the provisions of this part: *Provided,* that if the recipient has another ongoing grant program under this Part, the program income received subsequent to the grant closeout shall be treated as program income of the active grant program.

(d) *Disposition of tangible personal property.* The recipient shall account for any tangible personal property acquired with grant funds in accordance with Attachment N of OMB Circular A–102 "Property Management Standards."

(e) *Disposition of real property.* Proceeds derived after the closeout from the disposition of real property acquired with grant funds under this part shall be subject to the program income requirements of paragraph (c) of this section: *Provided,* That where such income may be treated as miscellaneous revenue pursuant to paragraph (c), it shall be used by the recipient for community development activities eligible pursuant to Subpart C to further the general purposes and objectives of the Act. The use of income subject to this proviso is not governed by any other requirements of this Part.

(f) *Status of housing assistance plan after closeout.* After closeout of a grant requiring a housing assistance plan, the housing assistance plan will remain in effect until one of the following occurs:

(1) The recipient submits, and HUD approves, a revised housing assistance plan.

(2) Another unit of general local goverment with overlapping jurisdiction over the same territory (e.g., and urban county, a county discretionary applicant, or any other such applicant) submits, and HUD approves, a housing assistance plan covering the territory of the original housing assistance plan.

(3) Three years elapse since the date of approval of the current housing assistance plan.

(g) *Audit.* Upon notification from HUD to initiate closeout procedures, the recipient shall arrange for a final audit to be made of its grant accounts and records in accordance with HUD Handbook IG 6505.2, "Audit Guide and Standards for Community Development Block Grant Recipients," § 570.509 of this Part, and any other audit requirements of HUD hereafter in effect. HUD may determine that, due to the nature of the recipient's program or the relatively small amount of funds which have not been audited, a final audit is not required. In such instances, HUD will notify the recipient that HUD will perform necessary reviews of documentation and activities to determine that claimed costs are valid program expenses and that the recipient has met its other responsibilities under the grant agreement.

(h) *Certificate of completion and final cost.* Upon resolution of any findings of the final audit, or if the final audit is waived, after HUD has performed the review of documentation described in paragraph (g) of this section, the recipient shall prepare a certificate of completion and final cost, in a form prescribed by HUD, and submit it to the appropriate HUD Office.

(i) *Refund of excess grant funds.* Recipient shall refund to HUD any cash advanced in excess of the final grant amount, as shown on the certificate of completion approved by HUD, except funds remaining from Small Cities programs prior to preparation of Certificate of Completion. A Small Cities Program grantee may be allowed to undertake any activity eligible under 24 CFR 570 Subpart C, "Eligible Activities", with funds which remain after completion of the originally approved activities. HUD shall determine that the proposed activity is plainly appropriate to meeting the grantee's needs and objectives. For the purposes of this paragraph, such amounts should not exceed 10 percent of the original grant or $20,000, whichever is greater, but in most cases it should not exceed $50,000. In applying to use these funds, the grantee shall follow the procedures for program amendments set forth in 24 CFR 570.434. The requirement set forth in 24 CFR 570.434(a)(1) for rating the new activity shall not apply.

(j) *Termination of grant for mutual convenience.* Grant assistance provided under this part may be cancelled, in whole or in part, by HUD or the recipient, prior to the completion of the approved community development program, when both parties agree that the continuation of the program is unfeasible or would not produce beneficial results commensurate with the further expenditure of funds. HUD shall determine whether an environmental review of the cancellation is required, and if such review is required, shall perform it pursuant to HUD Handbook 1390.1 and/or specific guidelines issued by the Secretary. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the recipient for the noncancelable obligations properly incurred by the recipient in carrying out the program prior to termination. The closeout policies and procedures contained in this section shall apply in all such cases except where the total grant is cancelled in its entirety, in which event only the provisions of § 570.512 (h) and (i) shall apply.

(k) *Termination for cause.* In cases in which the Secretary terminates the recipient's entire grant, or the remaining balance thereof, pursuant to the authority of 570.910, 570.911 or 570.913 of this Part, only the provisions of 570.512(h) and 570.512(j) of this section shall apply. Further, the Secretary may terminate an Urban Development Action Grant if it is apparent that the grantee cannot meet the requirements of the agreement within the time period. HUD shall determine whether an envionmental assessment or finding of inapplicability is required and if such review is required, HUD shall perform it pursuant to the provisions of HUD Handbook 1390.1.

(Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Issued at Washington, D.C., September 19, 1979.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 79-33002 Filed 10-25-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7650]

Election of application of sections 382 and 383 of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1976

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulation.

SUMMARY: This document provides a final regulation relating to the election to apply sections 382 and 383 of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1976. Changes to the applicable law were made by the Tax Reform Act of 1976 and by the Revenue Act of 1978. This regulation affects all persons who may have relied on the 1976 Act changes to sections 382 and 383 (relating to limitations on carryovers resulting from corporate acquisitions), and who, pursuant to the Revenue Act of 1978, elect to have those changes apply, and provide them with the guidance needed to comply with the law.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mark L. Yecies of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, (202-566-3464, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under sections 382 and 383 of the Internal Revenue Code of 1954. Section 806(e) of the Tax Reform Act of 1976 (90 Stat. 1599) amended section 382 of the Code, relating to limitations on carryovers of net operating losses resulting from corporate acquisitions. Section 806(f)(2) of the Act (90 Stat. 1605) provided a parallel amendment to section 383, relating to limitations on carryovers of unused investment credits, work incentive program credits, foreign taxes, and capital losses, resulting from those same acquisitions. Section 806(g)(2) (90 Stat. 1605) provided, generally, that the amendment to section 382(a) (and section 383 as it relates to section 382(a)) would take effect for taxable years beginning after June 30, 1978. Section 806(g)(3) (90 Stat. 1606) provided that the amendment to section 382(b) (and section 383 as it relates to section 382(b)) would apply to reorganizations occurring pursuant to plans adopted on or after January 1, 1978.

A number of technical problems regarding these 1976 Act amendments to sections 382 and 383 have been brought to the attention of Congress, which will require congressional consideration of additional revision of those provisions. Accordingly, section 368(a) of the Revenue Act of 1978 (92 Stat. 2857) postpones for 2 years the effective dates of the 1976 Act amendments. However, section 368(b) of the 1978 Act (92 Stat. 2857) allows persons who may have relied on the 1976 Act changes to elect to have those changes apply with respect to certain transactions or reorganizations. This regulation provides rules for the making of this election.

Description of Regulation

A new provision, § 1.382-2, is added to the regulations. Section 1.382-2(a) provides, generally, that an election may be made to have sections 382 and 383, as amended by the Tax Reform Act of 1976, apply with respect to certain transactions or reorganizations. Section 1.382-2(b) indicates which taxpayer is required to make this election. Section 1.382-2(c)(1) provides, generally, that the election shall be made by making a statement on the taxpayer's timely filed income tax return for the taxable year in which the transaction(s) or reorganization occurs. Section 1.382-2(c)(1)(i) provides specific requirements as to the manner of making this election. However, § 1.382-2(c)(1)(ii) provides that, if the taxpaper's return was timely filed on or before November 26, 1979, and an election was made with that return, the election will be valid regardless of whether the election was made in the manner described in § 1.382-2(c)(1)(i). Section 1.382-2(d) provides that, if the loss corporation becomes a member of an affiliated group of corporations which files a consolidated return for the taxable year in which the transaction(s) or reorganization occurs, an election made by the common parent under the rules of § 1.382-2(c) will be valid. Finally, § 1.382-2(e) provides, generally, that if an election is made, the 1976 Act amendments to sections 382 and 383 will apply with respect to all acquisitions made by the acquiring person during the period in which the effective dates of those amendments would otherwise be postponed.

Drafting Information

The principal author of this regulation is Mark L. Yecies of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Waiver of Certain Procedural Requirements of Final Treasury Directive

Section 368(b)(2) of the Revenue Act of 1978 (92 Stat. 2857) requires the election described in section 368(b)(1) of the Act and in this regulation to be filed with a taxpayer's timely filed return for the first taxable year in which a covered transaction occurs. Accordingly, there is need for immediate guidance as to the making of this election. For this reason, it has been determined by the undersigned, Jerome Kurtz, Commissioner of Internal Revenue, that it is impractical to follow the procedures of paragraphs 8 through 14 of the final Treasury Directive relating to improving government regulations, appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52120). Therefore, these requirements have not been followed.

Adoption of amendments to the regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. The following new section is added immediately after § 1.382(c)-1:

§ 1.382-2 Election of application of sections 382 and 383, as amended by the Tax Reform Act of 1976.

(a) *In general.* (1) An election may be made under this section to have sections 382(a) and 383 (as it relates to section 382(a)), as amended by the Tax Reform Act of 1976, apply with respect to transactions specified in section 382(a), as so amended, occurring—

(i) During the first taxable year beginning after June 30, 1978, of the loss corporation; and

(ii) Pursuant to a written binding contract or option entered into before September 27, 1978.

(2) An election may be made under this section to have sections 382(b) and 383 (as it relates to section 382(b)), as amended by the Tax Reform Act of 1976, apply with respect to any reorganization

specified in section 382(b), as so amended, occurring—

(i) Pursuant to a plan adopted on or after January 1, 1978, and before the end of the first taxable year beginning after June 30, 1978, of either the acquired or the acquiring corporation, whichever ends later; and

(ii) Pursuant to a written binding contract or option entered into before September 27, 1978.

(b) *Taxpayer making election.* (1) The election described in paragraph (a)(1) of this section shall be made by the loss corporation.

(2) In the case of a reorganization described in section 368(a)(1)(B), the election described in paragraph (a)(2) of this section shall be made by the loss corporation. In the case of all other reorganizations specified in section382(b), as amended, the election shall be made by the acquiring corporation, as defined in § 1.381(a)–1(b)(2).

(3) For rules in the case where the loss corporation becomes a member of an affiliated group of corporations which files a consolidated return, see paragraph (d) of this section.

(c) *Time and manner of making* (1)(i) Except as provided in paragraph (c)(2) of this section, the taxpayer shall make the election described in paragraph (a) of this section by making a written statement on its income tax return for the taxable year in which the transaction(s) or reorganization occurs. For the election to be valid, this return must be filed no later than the time prescribed by law (including extensions) for filing the return (hereafter "timely filed"). If the taxpayer takes a net operating loss deduction on this return, the statement shall be made on the schedule showing the computation of this deduction. Otherwise, the statement shall be made on a separate sheet of paper physically attached to the return. The statement shall briefly describe the transaction(s) or reorganization involved, and indicate that the taxpayer elects to have section 382 (a) or (b) and section 383, as amended by the Tax Reform Act of 1976, apply with respect to such transaction(s) or reorganization.

(ii) If the taxpayer's return for the taxable year in which the transaction(s) or reorganization occurs is timely filed on or before November 26, 1979, and the election described in paragraph (a) of this section is made with that return, the election will be valid regardless of whether the election is made in the manner provided in paragraph (c)(1)(i) of this section.

(2) If the taxpayer's return for the taxable year in which the transaction(s) or reorganization occurs was due before February 6, 1979, and the taxpayer made the election described in paragraph (a) of this section before February 6, 1979, the election is valid regardless of whether the election was made with the taxpayer's timely-filed return for that year.

(d) *Consolidated returns.* If the loss corporation becomes a member of an affiliated group of corporations which files a consolidated return for the taxable year in which the transaction(s) or reorganization occurs, the election described in paragraph (a) of this section may be made by the common parent. If this paragraph (d) applies, the election shall be made as provided in paragraph (c) of this section, treating the common parent as the taxpayer and the consolidated return for the taxable year in which the transaction(s) or reorganization occurs as the relevant income tax return.

(e) *Effect of election.* (1) Generally, a person who acquires more than one loss corporation during the period in which the effective dates of the amendments to sections 382 and 383, made by the Tax Reform Act of 1976, would be postponed by section 368(a) of the Revenue Act of 1978 may not choose to have the 1976 Act amendments apply with respect to some but not all of these acquisitions. Accordingly, if an election is made under paragraph (a) of this section, sections 382 and 383, as amended, shall apply with respect to all such acquisitions made by that person during this period.

(2) For purposes of this paragraph, an acquisition means either of the following:

(i) An increase in ownership of the total fair market value of the outstanding stock of the loss corporation of 50 percentage points or more, during the period described in section 382(a), as amended, attributable to transactions described in that section. For purposes of this subdivision, "stock" means all shares except nonvoting stock which is limited and preferred as to dividends. In addition, as under section 382(a), a person's increase in stock ownership in the loss corporation shall be taken into account under this subdivision only to the extent the increase is reflected in that person's stock ownership on the last day of the corporation's taxable year.

(ii) A reorganization specified in section 382(b), as amended, in which the person, directly or indirectly, is the acquiring corporation.

Par. 2. Section 1.383–1 is amended by adding the following new sentence as the last sentence:

§ 1.383–1 Special limitations on carryovers of unused investment credits, work incentive program credits, foreign taxes, and capital losses.

* * * For the election to apply sections 382 and 383, as amended by the Tax Reform Act of 1976, see § 1.382–2.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: October 10, 1979.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 79-33072 Filed 10-25-79; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[T.D. 7651]

Tax Treatment of Cemetery Perpetual Care Funds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the treatment of certain distributions made by cemetery perpetual care funds for the care and maintenance of gravesites. Changes to the applicable tax law were made by the Act of October 17, 1976. The regulations would provide the public with the guidance needed to comply with that legislation and would affect cemetery perpetual care funds making distributions to taxable cemeteries for the care and maintenance of gravesites.

DATE: The amendments are effective for amounts distributed during taxable years ending after December 31, 1963.

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

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1978, the **Federal Register** published proposed amendments to the Income Tax

Regulations (26 CFR Part 1) under section 642(i) (formerly section 642(j), redesignated by section 113(a)(2)(B) of the Revenue Act of 1978 as section 642(i)) of the Internal Revenue Code of 1954 (432 FR 33936). The amendments were proposed to conform the regulations to Public Law 94-258 (90 Stat. 2483). A public hearing was held on November 29, 1978. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

In General

The final regulations are issued pursuant to section 642(i) of the Code, which provides that a portion of amounts distributed by certain cemetery perpetual care fund trusts for the care and maintenance of gravesites shall be treated as a deductible distribution under sections 651 and 661. Section 642(i) applies to a cemetery perpetual care fund only if the fund is taxable as a trust and was created pursuant to local law by a taxable cemetery corporation. The deduction is limited to an amount equal to $5 multiplied by the aggregate number of gravesites sold by the cemetery before the beginning of the taxable year of the trust.

Changes Made in Response to Comments

Comments were received from the public suggesting that various changes be made to the proposed regulations. The most significant changes made in the final regulation in response to these comments are as follows:

1. Section 1.642(i)-1(a) has been clarified to indicate that the allowance of the deduction for distributions by care funds during taxable years after December 31, 1963 shall not have the effect of extending the statutory period of limitations provided in section 6511 of the Code. Therefore, refunds will not be made for distributions made during taxable years with respect to which the section 6511 period of limitations has expired.

2. A sentence has been added to § 1.642 (i)-1 (a) to provide that a care fund will be treated as having been created by a taxable cemetery corporation if the distributee cemetery is taxable, even though in the year the fund was established the distributee cemetery or a predecessor cemetery corporation which created the fund, was tax-exempt.

3. The rule for determining when a gravesite has been sold has been moved from § 1.642 (i)-2 (c) to § 1.642 (i)-1 (b), the paragraph containing the limitation to which it applies. The rule has been broadened somewhat to allow so-called "welfare burials" to be considered as sold gravesites for purposes of the limitation. Although these gravesites are not actually "sold," a deposit is made for them in a perpetual care fund trust by the cemetery to provide for care and maintenance.

4. Paragraphs (b), (c) (1), and (c) (2) of § 1.642 (i)-1 of the regulations have been clarified to reflect the fact that most care funds do not have an obligation to provide care and maintenacne, but are only obligated to make distributions to the cemetery for the purpose of providing care and maintenance of gravesites.

5. Section 1.642 (i)-1 (b) has been revised to provide that the number of gravesites sold includes gravesites sold by a cemetery before a care fund trust law was in effect, provided that the cemetery cares for and maintains such gravesites. Section 1.642 (i)-1 (c) (1) has been revised to indicate that the obligation for care and maintenance of such gravesites may be established by the cemetery's practice of caring for and maintaining gravesites, such as welfare burial plots or gravesties sold before the enactment of a care fund trust law.

6. The proposed regulations provided in § 1.642 (i)-1 (c) (2) (i) that a fund's deduction in any taxable year would be limited to the amount of expenditures paid or incurred by the distributee cemetery corporation in the taxable year with or within which the fund's taxable year ends. Several comments sought revision of this rule because cemeteries and care funds often have different taxable years and because year-end distributions by a fund may not be spent until the following spring and summer by the distributee cemetery, when most care and maintenance expenditures are generally made. Consequently, the regulations have been revised to provide that a fund may claim a deduction under section 642 (i) for distributions which are expended by the cemetery before the end of the fund's taxable year following the taxable year in which it makes the distributions. In order to avoid the necessity of amending the trust's return to account for cemetery expenditures made within 9½ months after the year of distribution, a 6-month extension of time for filing the trust's return is provided. The regulation provides that delayed expenditures of fund distributions by the cemetery will be considered reasonable grounds for granting the extension under section 6081 (a). If portions of a distribution are not expended until the end of the year following the year of distribution, then the trust's return must be amended to claim the deduction.

7. A large number of comments recommended that the limitation contained in § 1.642 (i)-1 (c) (2) (ii) of the proposed regulations be deleted. This limitation has been deleted, because the additional cost and burden of accounting for care and maintenance costs on a section-by-section basis would far outweigh the possible abuse sought to be curbed by the additional limitation.

8. A new paragraph (d) is added to § 1.642 (i)-1 to provide that a trustee of a care fund will not be held personally liable for penalties resulting from his reliance on statements made and certified by a responsible cemetery officer with respect to the number of interments sold or the amount of expenditures made by the cemetery for the care and maintenance of gravesites.

9. The definition of "care and maintenance" in § 1.642 (i)-2 (d) of the proposed regulations is replaced by a provision which incorporates the definition of care and maintenance provided in the perpetual care fund law of the state in which a cemetery is located. If no suitable state law definition exists, then the definition provided in the regulations will apply. This change is being made to avoid the confusion that would result from the existence of different definitions for state law and federal tax law. In no event, however, is any portion of an officer's salary which is not attributable to services rendered in connection with care and maintenance to be considered as a cost of care and maintenance for purposes of computing the allowable deduction under section 642 (i).

Definition of Cemetery Corporation

Several comments suggested that the definition of the term "cemetery corporation" in § 1.642 (i)-2 (a) be revised to include persons or entities which are not operated in corporate form. This suggestion was not adopted in the final regulations. The language of section 642 (i) limits its application to perpetual care funds created by a "taxable cemetery corporation." The suggested revision would have extended the application of the section 642 (i) deduction to a care fund created by a taxable cemetery even if operated in a form other than one which section 7701 (a) (3) treats as a corporation. Since the term "corporation" is a defined term in section 7701 (a) (3), we do not feel that we have the necessary authority to substantially expand the statutory definition as recommended by the commentators.

The effectiveness of these regulations after issuance will be evaluated on the basis of comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, and the public.

Drafting Information

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. Sections 1.642 (i) and 1.642 (i)–1 are deleted and the following new sections are inserted in lieu thereof:

§ 1.642 (i)–1 Certain distributions by cemetery perpetual care funds.

(a) *In general.* Section 642 (i) provides that amounts distributed during taxable years ending after December 31, 1963, by a cemetery perpetual care fund trust for the care and maintenance of gravesites shall be treated as distributions solely for purposes of sections 651 and 661. The deduction for such a distribution is allowable only if the fund is taxable as a trust. In addition, the fund must have been created pursuant to local law by a taxable cemetery corporation (as defined in § 1.642 (i)–2 (a)) expressly for the care and maintenance of cemetery property. A care fund will be treated as having been created by a taxable cemetery corporation ("cemetery") if the distributee cemetery is taxable, even though the care fund was created by the distributee cemetery in a year that it was tax-exempt or by a predecessor of such distributee cemetery which was tax-exempt in the year the fund was established. The deduction is the amount of the distributions during the fund's taxable year to the cemetery corporation for such care and maintenance that would be otherwise allowable under section 651 or 661, but in no event is to exceed the limitations described in paragraphs (b) and (c) of this section. The provisions of this paragraph shall not have the effect of extending the period of limitations under section 6511.

(b) *Limitation on amount of deduction.* The deduction in any taxable year may not exceed the product of $5 multiplied by the aggregate number of gravesites sold by the cemetery corporation before the beginning of the taxable year of the trust. In general, the aggregate number of gravesites sold shall be the aggregate number of interment rights sold by the cemetery corporation (including gravesites sold by the cemetery before a care fund trust law was enacted). In addition, the number of gravesites sold shall include gravesites used to make welfare burials. Welfare burials and pre-trust fund law gravesites shall be included only to the extent that the cemetery cares for and maintain such gravesites. For purposes of this section, a gravesite is sold as of the date on which the purchaser acquires interment rights enforceable under local law. The aggregate number of gravesites includes only those gravesites with respect to which the fund or taxable cemetery corporation has an obligation for care and maintenance.

(c) *Requirements for deductibility of distributions for care and maintenance.* (1) *Obligation for care and maintenance.* A deduction is allowed only for distributions for the care and maintenance of gravesites with respect to which the fund or taxable cemetery corporation has an obligation for care and maintenance. Such obligation may be established by the trust instrument, by local law, or by the cemetery's practice of caring for and maintaining gravesites, such as welfare burial plots or gravesites sold before the enactment of a care fund trust law.

(2) *Distribution actually used for care and maintenance.* The amount of a deduction otherwise allowable for care fund distributions in any taxable year shall not exceed the portion of such distributions expended by the distributee cemetery corporation for the care and maintenance of gravesites before the end of the fund's taxable year following the taxable year in which it makes the distributions. A 6-month extension of time for filing the trust's retrun may be obtained upon request under section 6081. The failure of a cemetery to expend the care fund's distributions within a reasonable time before the due date for filing the return will be considered reasonable grounds for granting a 6-month extension of time for section 6081. For purposes of this paragraph, any amount expended by the care fund directly for the care and maintenance of gravesites shall be treated as an additional care fund distribution which is expended on the day of distribution by the cemetery corporation. The fund shall be allowed a deduction for such direct expenditure in the fund's taxable year during which the expenditure is made.

(3) *Example.* The application of paragraph (c)(2) of this section is illustrated by the following example:

A, a calendar-year perpetual care fund trust, meeting the requirements of section 642 (i), makes a $10,000 distribution on December 1, 1978 to X, a taxable cemetery corporation operating on a May 31 fiscal year. From this $10,000 distribution, the cemetery makes the following expenditures for the care and maintenance of gravesites: $2,000 on December 20, 1978; $4,000 on June 1, 1979; $2,000 on October 1, 1979; and $1,000 on April 1, 1980. In addition, as authorized by the trust instrument, A itself makes a direct $1,000 payment to a contractor on September 1, 1979 for qualifying care and maintenance work performed. As a result of these transactions, A will be allowed an $8,000 deduction for its 1978 taxable year attributable to the cemetery's expenditures, and a $1,000 deduction for its 1979 taxable year attributable to the fund's direct payment. A will not be allowed a deduction for its 1978 taxable year for the cemetery's expenditure of either the $1,000 expended on April 1, 1980 or the remaining unspent portion of the original $10,000 distribution. The trustee may request a 6-month extension in order to allow the fund until October 15, 1979 to file its return for 1978.

(d) *Certified statement made by cemetery officials to fund trustees.* A trustee of a cemetery perpetual care fund shall not be held personally liable for civil or criminal penalties resulting from false statements on the trust's tax return to the extent that such false statements resulted from the trustee's reliance on a certified statement made by the cemetery specifying the number of interments sold by the cemetery or the amount of the cemetery's expenditures for care and maintenance. The statement must indicate the basis upon which the cemetery determined what portion of its expenditures were made for the care and maintenance of gravesites. The statement must be certified by an officer or employee of the cemetery who has the responsibility to make or account for expenditures for care and maintenance. A copy of this statement shall be retained by the trustee along with the trust's return and shall be made available for inspection upon request by the Secretary. This paragraph does not relieve the care fund trust of its liablility to pay the proper amount of tax due and to maintain adequate records to substantiate each of its deductions, including the deduction provided in section 642(i) and this section.

§ 1.642(i)–2 Definitions.

(a) *Taxable cemetery corporation.* For purposes of section 642(i) and this section, the meaning of the term "taxable cemetery corporation" is limited to a corporation (within the

meaning of section 7701(a)(3)) engaged in the business of owning and operating a cemetery that either (1) is not exempt from Federal tax, or (2) is subject to tax under section 511 with respect to its cemetery activities.

(b) *Pursuant to local law.* A cemetery perpetual care fund is created pursuant to local law if:

(1) The governing law of the relevant jurisdiction (State, district, county, parish, etc.) requires or expressly permits the creation of such a fund, or

(2) The legally enforceable bylaws or contracts of a taxable cemetery corporation require a perpetual care fund.

(c) *Gravesite.* A gravesite is any type of interment right that has been sold by a cemetery, including, but not limited to, a burial lot, mausoleum, lawn crypt, niche, or scattering ground. For purposes of § 1.642 (i)–1, the term "gravesites" includes only those gravesites with respect to which the care fund or cemetery has an obligation for care and maintenance within the meaning of § 1.642 (i)–1(c)(1).

(d) *Care and maintenance.* For purposes of section 642(i) and this section, the term "care and maintenance of gravesite" shall be generally defined in accordance with the definition of such term under the local law pursuant to which the cemetery perpetual care fund is created. If the applicable local law contains no definition, care and maintenance of gravesites may include the upkeep, repair and preservation of those portions of cemetery property in which gravesites (as defined in paragraph (c) of this section) have been sold; including gardening, road maintenance, water line and drain repair and other activities reasonably necessary to the preservation of cemetery property. The costs for care and maintenance include, but are not limited to, expenditures for the maintenance, repair and replacement of machinery, tools, and equipment, compensation of employees performing such work, insurance premiums, reasonable payments for employees' pension and other benefit plans, and the costs of maintaining necessary records of lot ownership, transfers and burials. However, if some of the expenditures of the cemetery corporation, such as officers' salaries, are for both care and maintenance and for other purposes, the expenditures must be properly allocated betweeen care and maintenance of gravesites and the other purposes. Only those expenditures that are properly allocable to those portions of cemetery property in which gravesites have been sold qualify as expenditures for care and maintenance of gravesites.

Par. 2. Paragraph (b)(1) of § 1.6081–1 is revised by adding a new sentence at the end thereof to read as follows:

§ 1.6081–1 Extension of time for filing returns.

* * * * *

(b) Application for extension of time—(1) *In general.* * * * In the case of a cemetery perpetual care fund trust, a distributee cemetery's failure to make timely expenditures of distributions which prevents accurate determination of the allowable deduction under section 642(i) will be considered reasonable grounds for a 6-month extension of time for filing the trust's return. See § 1.642 (i)–1(c)(2).

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: October 10, 1979.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 79-33071 Filed 10-25-79; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 50]

Abortions

AGENCY: Public Health Service, HEW.

ACTION: Final regulation.

SUMMARY: This amends current regulations governing the Department's expenditures for abortions by programs and projects receiving Federal financial assistance administered by the Public Health Service. This amendment is necessary in order to reflect changes made in the legislation authorizing funds for the Department of Health, Education, and Welfare for fiscal year 1980. A continuing resolution (Pub. L. 96–86) was signed on October 12, 1979, authorizing FY 80 Department of HEW expenditures through November 20, 1979. This continuing resolution further limits the situations in which Federal funds may be used for the performance of abortions.

EFFECTIVE DATE: This regulation is effective October 1, 1979, with respect to funds appropriated under Pub. L. 96–86.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Martin, Room 722–H, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201 (202) 245–7581.

SUPPLEMENTARY INFORMATION:

Background

Section 210 of Pub. L. 95–480, the HEW appropriations act for FY 79, prohibited the expenditure of Federal funds appropriated under that Act for abortions except: (1) Where the life of the mother would be endangered if the fetus were carried to term; (2) In those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians; and (3) For such medical procedures necessary for victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Regulations implementing section 210 of Pub. L. 95–480 for Public Health Service assisted programs and projects are set forth at 42 CFR 50.301 through 50.310.

Statutory Change

Section 118 of Pub. L. 96–86, the continuing resolution appropriating FY 80 HEW funding through November 20, 1979, is more restrictive than section 210 of Pub. L. 95–480. Federal funding for abortions is prohibited under section 118 except: (1) Where the life of the mother would be endangered if the fetus were carried to term; and (2) For such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Thus, section 118 removed the exception for severe and long-lasting physical health damage to the mother if the pregnancy were carried to term.

The purpose of this amendment is to conform the Department's regulations to section 118. Accordingly, § 50.305, the provision dealing with the exception for severe and long-lasting health damage and references thereto are hereby deleted. Aside from updating the statutory authority for the regulation, no other change is being made.

If we receive an appropriations act with provisions different from section 118, we will promptly change this regulation.

We are waiving a notice of proposed rulemaking, because the limitations imposed by Pub. L. 96–86 became effective on October 1, 1979. It is therefore necessary to provide immediate direction to programs and projects as to which abortions may be funded with appropriations for FY 80 under that Act.

Dated: October 18, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: October 19, 1979.

Patricia Roberts Harris,

Secretary.

Subpart C of 42 CFR Part 50 is revised as set forth below:

1. The authority statement is amended to read as follows:

Authority: Sec. 118, Pub. L. 96-86, October 12, 1979.

§ 50.305 [Reserved]

2. § 50.305 is vacated and reserved.

§§ 50.303, 50.306, 50.307, and 50.309 [Amended]

3. § 50.303, 50.306, 50.307, and 50.309 are amended by deleting reference to § 50.305.

[FR Doc. 79-33122 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-85-M

Health Care Financing Administration

42 CFR Part 441

Medicaid; Abortions

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

ACTION: Final Regulation.

SUMMARY: This amends current regulations governing the Department's expenditures for abortions under the Medicaid program. This amendment is necessary in order to reflect changes made in the legislation authorizing funds for the Department of Health, Education, and Welfare for fiscal year 1980. A continuing resolution (Pub. L. 96-86) was signed on October 12, 1979, authorizing FY 80 Department of HEW expenditures through November 20, 1979. This continuing resolution further limits the situations in which Federal funds may be used for the performance of abortions.

EFFECTIVE DATE: This regulation is effective October 1, 1979, with respect to funds appropriated under Pub. L. 96-86.

FOR FURTHER INFORMATION CONTACT: Barbara Stultz (202) 245-0345.

SUPPLEMENTARY INFORMATION:

Background

Section 210 of Pub. L. 95-480, the HEW appropriations act for FY 79, prohibited the expenditure of Federal funds appropriated under that Act for abortions except: (1) Where the life of the mother would be endangered if the fetus were carried to term; (2) In those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians; and (3) For such medical procedures necessary for victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Regulations implementing section 210 of Pub. L. 95-480 for the Medicaid program are set forth at 42 CFR 441.200 through 441.208.

Statutory Change: Section 118 of Pub. L. 96-86, the continuing resolution appropriating FY 80 HEW funding through November 20, 1979, is more restrictive than section 210 of Pub. L. 95-480. Federal funding for abortions is prohibited under section 118 except: (1) Where the life of the mother would be endangered if the fetus were carried to term; and (2) For such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Thus, section 118 removed the exception for severe and long-lasting physical health damage to the mother if the pregnancy were carried to term.

The purpose of this amendment is to conform the Department's regulations to section 118. Accordingly, § 441.204, the provision dealing with the severe and long-lasting health damage, and references thereto are hereby deleted. Aside from updating the statutory authority for the regulation, no other change is being made.

If an appropriations act for fiscal year 1980 is enacted with provisions different from section 118, the Department will promptly change this regulation.

We are waiving a notice of proposed rulemaking, because the limitations imposed by Pub. L. 96-86 became effective on October 1, 1979. It is therefore necessary to provide immediate direction to States as to which abortions may be funded with appropriations for FY 80 under that Act. Accordingly, this is a final regulation amendment.

42 CFR Part 441 is revised as set forth below:

1. § 441.200 is amended by changing the statutory basis as follows:

§ 441.200 Basis and purpose.

This subpart implements sec. 118 of Pub. L. 96-86 by prohibiting the use of Federal funds for abortions except under certain circumstances stated in this subpart.

* * * * *

2. § 441.204 is vacated and reserved.

§ 441.204 [Reserved]

§ 441.205 [Amended].

3. § 441.205 is amended by deleting reference to § 441.204.

(Section 1102 of the Social Security Act (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: October 16, 1979.

Leonard D. Schaeffer,

Administrator Health Care Financing Administration.

Approved: October 19, 1979.

Patricia Roberts Harris,

Secretary.

[FR Doc. 79-33121 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-35-M

Office of the Secretary

45 CFR Part 1

Location of HEW Regulations

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: HEW is adding this part to explain (1) where the various HEW regulations are located in the Code of Federal Regulations and (2) how the Office of the Secretary regulations are organized.

FOR FURTHER INFORMATION CONTACT: Susan Steward, Office of the General Counsel, Room 716E, 200 Independence Avenue, SW., Washington, D.C. 20201, (202-245-7545).

SUPPLEMENTAL INFORMATION: We are adding Part 1 because we receive a number of questions about where different regulations for programs administered by HEW are located. We also receive questions about the subject matter of the Office of the Secretary regulations in Part 1-99 of this title. We are adding Part 1 under Operation Common Sense, HEW's five-year plan to simplify and clarify its regulations.

Since Part 1 only contains information about the organization of existing regulations, it is unnecessary to publish proposed rules or to delay the effective date.

Accordingly, Title 45 is amended to add a Part 1 as set forth below.

Dated: October 17, 1979.

Patricia Roberts Harris,

Secretary of Health, Education, and Welfare.

Title 45 is amended to add a Part 1 as set forth below:

PART 1—HEW'S REGULATIONS

Sec.

1.1 Location of HEW's regulations.

1.2 Subject matter of Office of the Secretary regulations in Parts 1-99.

Authority: 5 U.S.C. 301.

§ 1.1 Location of HEW regulations.

Regulations for HEW's programs and activities are located in several different titles of the Code of Federal Regulations:

- Regulations having HEW-wide application or which the Office of the Secretary administers are located in Parts 1–99 of Title 45.
- Health regulations are located at parts 1–399 of Title 42.
- Health care financing regulations are located at parts 400–499 of Title 42. These include regulations for Medicare and Medicaid.
- Human development services regulations are located at Parts 200–299 and 1300–1399 of Title 45. These include regulations for Head Start, social services, social and nutrition services for older persons, rehabilitative services, developmental disabilities services, Native American programs, and various programs relating to families and children.
- Social Security regulations are located at 400–499 of Title 20.
- Food and Drug regulations are located at parts 1–1299 of Title 21.
- Education regulations are located at parts 100–199 and 1300–1599 of Title 45.
- Procurement (contract) regulations are located at Chapter 3 of Title 41.

Each volume of the Code contains an index of its parts.

§ 1.2 Subject matter of Office of the Secretary regulations in Parts 1–99.

This subject matter of the regulations in Parts 1–99 of this title includes:

- *Civil rights/nondiscrimination:* Parts 80, 81, 83, 84, 86, 90
- *Protection of human subjects:* Part 46
- *Day care requirements:* Part 71
- *Information, privacy, advisory committees:* Parts 5, 5a, 5b, 11, 17, 99
- *Personnel:* Parts 50, 57, 73, 73a
- *Grants administration, property, hearing rights:* Parts 10, 12, 15, 16, 74, 75, 95
- *Claims:* Parts 30, 35
- *Inventions and patents:* Parts 6, 7, 8
- *Miscellaneous:* Parts 3, 4, 9, 19, 67

[FR Doc. 79-33125 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-12-M

Office of Human Development Services

45 CFR Parts 220, 222, and 228

Service Programs for Families and Children, Individuals and Families, and Aged, Blind, or Disabled Persons; Federal Financial Participation in State Claims for Abortions

AGENCY: Administration for Public Services (APS), Office of Human Development Services (OHDS), HEW.

ACTION: Final Regulation.

SUMMARY: This rule amends current regulations governing the Department's expenditures for abortions under the social services programs. This amendment is necessary in order to reflect changes made in the legislation authorizing funds for the Department of Health, Education, and Welfare for part of Fiscal Year 1980. A continuing resolution (Pub. L. 96–86) was signed on October 12, 1979, authorizing FY '80 Department of HEW expenditures through November 20, 1979. This continuing resolution, Pub. L. 96–86, further limits the circumstances in which federal funding is available for abortions.

EFFECTIVE DATE: This regulation is effective October 1, 1979, with respect to funds appropriated under Pub. L. 96–86.

FOR FURTHER INFORMATION CONTACT: Johnnie U. Brooks, area code 202, 245–9415.

SUPPLEMENTARY INFORMATION:

Background

Section 210 of Pub. L. 95–480, the HEW Appropriations Act for FY 1979, prohibited the expenditure of Federal funds appropriated under that Act for abortions except: (1) Where the life of the mother would be endangered if the fetus were carried to term; (2) in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians; and (3) for such medical procedures necessary for victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Regulations implementing Section 210 of Pub. L. 95–480 for the Medicaid program are set forth at 42 CFR 441.200 through 441.208. Regulations for the social services programs (Titles I, IV–A, X, XIV, XVI(AABD), and XX) incorporate the Medicaid regulations by cross reference. Regulations for the title XX program are found at 45 CFR 228.92. For the Territories, regulations for the social services program under title IV–A are at 45 CFR 220.21; and regulations for the adult services programs under titles I, X, XIV, and XVI(AABD) are at 45 CFR 222.59.

Statutory Change: Section 118 of Pub. L. 96–86, the continuing resolution appropriating FY 1980 HEW funding through November 20, 1979, is more restrictive than Section 210 of Pub. L. 95–480. Federal funding for abortions is prohibited under Section 118 except: (1) Where the life of the mother would be endangered if the fetus were carried to term; and (2) for such medical procedures necessary for the victims of rape or incest, when such a rape or incest has been reported promptly to a law enforcement agency or public health service. Thus, Section 118 removed the exception for severe and long-lasting physical health damage to the mother if the pregnancy were carried to term.

The purpose of this rule is to conform the Department's regulations to Section 118.

Accordingly, we are hereby deleting, in the regulations for the social services programs, the cross-reference to § 441.204, the provision dealing with the severe and long-lasting physical health damage. That provision has been deleted from 42 CFR 441 by an amendment published today. In addition, we are changing the citations of statutory authority in these regulations to reflect the fact that the regulations implement Section 118 of Pub. L. 96–86.

If an Appropriations Act for fiscal year 1980 is enacted with provisions different from Section 118, the Department will promptly change this regulation.

We are waiving a notice of proposed rulemaking, because the limitations imposed by Pub. L. 96–86 became effective on October 1, 1979. It is therefore necessary to provide immediate direction to States as to which abortions may be funded with appropriations under that Act. Accordingly, this is a final regulation amendment.

PART 220—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN: TITLE IV, PARTS A AND B OF SOCIAL SECURITY ACT

1. Part 220 is amended by revising the authority statement following the table of contents to read as follows:

* * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302); Sec. 118 of Pub. L. 96–86.

2. Part 220, § 220.21 is amended by revising paragraph (b) to read as follows:

§ 220.21 Family planning services.

* * * * *

(b) Federal financial participation in State claims for abortions is governed by 42 CFR 441.200 through 441.203 and 441.205 through 441.208.

* * * * *

PART 222—SERVICE PROGRAMS FOR AGED, BLIND, OR DISABLED PERSONS: TITLES I, X, XIV, and XVI OF THE SOCIAL SECURITY ACT

3. Part 222 is amended by revising the

authority statement following the table of contents to read as follows:

* * * * *

Authority: Sec. 11.02, 102–103, 1002–1003, 1402–1403, 1602–1603 of the Social Security Act, 42 U.S.C. 1302, 302–303, 1202–1203, 1352–1353, 1382–1383 (AABD); Sec. 118 of Pub. L. 96–86.

* * * * *

4. Part 22, § 222.59 is amended by revising subparagraph (b)(1) to read as follows:

§ 222.59 Services to individuals to meet special needs.

* * * * *

(b) Regarding the provision of family planning services:

(1) If a State authorizes abortions, Federal financial participation in State claims is governed by 42 CFR 441.200 through 4412.203 and 441.205 through 441.208

* * * * *

PART 228—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

5. Part 228 is amended by revising the authority statement following the table of contents to read as follows:

* * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302); Sec. 118 of Pub. L. 96–86.

* * * * *

6. Part 228, § 228.92 is amended to read as follows:

§ 228.92 Federal financial participation in State Claims for Abortions.

Federal financial participation in State claims for abortions is governed by 42 CFR 441.200 through 441.203 and 441.205 through 441.208.

(Section 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 13.642, Social Services for Low Income and Public Assistance Recipients.)

Dated: October 18, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

Approved: October 19, 1979.

Patricia Roberts Harris,

Secretary.

[FR Doc. 79-33123 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-92-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 83

[Gen. Docket No. 78-230]

Providing for the Use of Emergency Position Indicating Radiobeacons (Class C) for Vessels Operating in Coastal Waters; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule (Errata).

SUMMARY: The Appendix to the Report and Order in this proceeding referenced an obsolete rule section. We are correcting this error.

EFFECTIVE DATE: November 12, 1979.

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

FOR FURTHER INFORMATION CONTACT: Kemp J. Beaty, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of parts 2 and 83 of the rules to provide for the use of emergency position indicating radiobeacons (Class C) for vessels operating in coastal waters. Erratum. (See also 43 FR 60307, Dec. 27, 1978.)

Released: October 19, 1979.

1. In paragraph (B)(1) of the Appendix to the Report and Order in this proceeding (Released October 5, 1979, FCC 79–575; 44 FR 58712, Oct. 11, 1979), reference is made to an obsolete title and the instruction is incorrect. We are amending this paragraph as follows:

B. Part 83—*Stations on Shipboard in the Maritime Services.*

1. In § 83.24 paragraph (b) is amended and a new paragraph (c) is added to read as follows:

§ 83.24 Eligibility for station license.

* * * * *

(b) Authority to operate an EPIRB station with a Class A or Class B device will be granted for use aboard the frequency type of vessels:

* * * * *

(c) Authority to operate an EPIRB station, equipped with a Class C device, must be applied for as provided in Section 83.36(a). Class C EPIRB's are intended for use on vessels operating within 20 miles of shore.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-33003 Filed 10-25-79; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 44, No. 209
Friday, October 26, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 781

Disclosure of Foreign Investment in Agricultural Land

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: It is proposed to amend Part 781 of the regulations concerning Disclosure of Foreign Investment in Agricultural Land by amending § 781.4 of such regulations and adding a new § 781.5 thereto. The changes to be made will set out the guidelines for determining the amount of the penalty to be imposed for various types of violation of the reporting obligations specified in § 781.3 of such regulations, and the procedures for actually challenging allegations of violation or the amount of the penalty to be imposed. After thorough consideration of the procedures specified in the existing § 781.4, it was decided, both in view of the volume of violations resulting from late filed reports and the cumbersome nature of the process established for determining and disposing of all types of violation, that the procedures proposed herein would provide for the fairest and most expeditious disposition of allegations of violations. Furthermore, since the existing § 781.4 does not explicitly provide those notified of violation an opportunity either to deny the accuracy of the allegations or to question the amount of the penalty to be imposed, the proposed revision is thought to be preferable in that it clearly permits both types of challenges.

DATE: In order to assure consideration, written comments must be received by December 26, 1979.

ADDRESS: Comments should be addressed to: Confidential Assistant to the Administrator, Office of the Administrator, ASCS, U.S. Department of Agriculture, Room 218 Administration Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Walter C. Ferguson, Confidential Assistant to the Administrator, Office of the Administrator, ASCS, U.S. Department of Agriculture, Room 218 Administration Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447-8165.

Proposed Rule

Accordingly, it is proposed to amend Part 781 of 7 CFR by revising § 781.4 and adding a new § 781.5 as follows:

§ 781.4 Assessment of penalties.

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

(1) Failure to submit any report in accordance with § 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) Any foreign person who violates the reporting obligation as described in paragraph (a) of this section shall be subject to the following penalties:

(1) Late filed reports: One-tenth of one percent of the fair market value, as determined by Agricultural Stabilization and Conservation Service, of the interest in the subject agricultural land for each week or portion thereof that such violation continues, but the total penalty imposed shall not exceed 25 percent of the fair market value of the interest in the subject land.

(2) Submission of an incomplete report or a report containing misleading or false information, or failure to submit a report required to be submitted pursuant to § 781.3: Twenty-five percent of the fair market value, as determined by Agricultural Stabilization and Conservation Service, of the interest in the subject agricultural land.

(3) Penalties prescribed above are subject to downward adjustment based on factors including:

(i) Total time the violation existed.

(ii) Method of discovery of the violation.

(iii) Extenuating circumstances concerning the violation.

(iv) Nature of the information misstated or not reported.

(c) The fair market value for the land shall be such value on the date the penalty is assessed. The value reported by the foreign person, as verified and/or adjusted by the county Agricultural Stabilization and Conservation Committee for the county where the land is located, may be considered as indicative of the fair market value.

§ 781.5 Penalty review procedure.

(a) Whenever it appears that a foreign person has violated the reporting obligation as described in paragraph (a) of § 781.4, a written notice of apparent liability will be sent to his/her last known address by the Agricultural Stabilization and Conservation Service. This notice will set forth the facts which indicate apparent liability; will identify the type of violation listed in paragraph (a) of § 781.4 which is involved; will state the amount of the penalty to be imposed; will include a statement of the fair market value of the foreign person's interest in the subject land; and will summarize the courses of action available to the foreign person.

(b) The foreign person involved shall respond to a notice of apparent liability within 60 days after the notice is mailed. If the foreign person fails to respond to the notice of apparent liability, the proposed penalty shall become final. Any of the following actions by the foreign person shall constitute a response meeting the requirements of this paragraph:

(1) Payment of the proposed penalty in the amount specified in the notice of apparent liability and filing of a report in compliance with § 781.3. The amount should be paid by check or money order drawn to the Commodity Credit Corporation and should be mailed to the Treasurer of Commodity Credit Corporation, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(2) Submission of a written statement denying liability for the penalty in whole or in part. Allegations made in any such statement must be supported by detailed factual data. The statement should be mailed to the Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

(3) Submission of a written request for a Hearing with the Administrator or with the Administrator's designee. The

request should be submitted to the Administrator, Agricultural Stabilization and Conservation service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Submission of such a request does not preclude submission of the statement described in paragraph (b)(3) of this section; either or both may be submitted.

(c)(1) If a hearing is requested, it will be held in Washington, D.C. at a place determined by the Administrator of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture or the Administrator's designee. The Administrator or his/her designee will preside at the Hearing. The appellant shall bear all personal costs connected with such a Hearing.

(2) The Hearing will be scheduled for any mutually convenient time within 30 days after the request is filed with the Administrator, or at a time designated by the Administrator or the Administrator's designee.

(3) At the Hearing, the foreign person may appear personally or be represented by a person of his/her choice, and will be afforded an opportunity to state his/her position and question ASCS about the factual basis for the notice of apparent liability and the amount of the penalty to be imposed.

(4) A summary of the Hearing will be prepared by the presiding official and transmitted to the Administrator.

(5) The failure of the foreign person to appear at the time and place appointed for the Hearing shall constitute a waiver of his/her right of such a Hearing.

(d) After the submission of a written statement and/or after the Hearing, as prescribed in paragraph (b) and (c) of this section, the Administrator will make a determination based on all relevant information available.

(e) Notice of the Administrator's determination, stating whether a report must be filed or amended in compliance with § 781.3, the amount of the penalty (if any), and the date by which it must be paid, will thereupon be mailed to the foreign person involved by the Administrator or the Administrator's designee. The foreign person shall file or amend the report as required by the Administrator. The penalty in the amount stated should be paid by check or money order drawn to the Commodity Credit Corporation, and should be mailed to Treasurer of Commodity Credit Corporation, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(f) If the foreign person contests the notice of apparent liability by submitting a written statement as provided in paragraph (b)(2) of this section and/or by requesting a Hearing as provided in paragraph (b)(3) of this section, the foreign person may elect either to pay the proposed penalty or decline to pay the proposed penalty pending resolution of the matter by the Administrator. If the foreign person elects to pay the proposed penalty, no further fines will accrue following the date of the notice of apparent liability pending the decision of the Administrator as described in paragraph (d) of this section. If the Administrator determines that the foreign person is not liable for the proposed penalty or is liable for less than the amount paid, the payment will be wholly or partially refunded. If the foreign person declines to pay the proposed penalty and the Administrator ultimately determines that he/she is liable, the penalty finally imposed shall include fines accrued up until the day of the notice in paragraph (e) of this section.

(g) If a foreign person fails to respond to the notice of apparent liability as required by paragraph (b) of this section, or if he/she fails to pay the penalty imposed by the Administrator under paragraph (d) of this section, the case will, without further notice, be referred by the Department to the Department of Justice for prosecution in the appropriate District Court to recover the amount of the penalty.

(h) Any amounts approved by the U.S. Department of Agriculture for disbursement to a foreign person under the programs administered by the Department may be setoff against penalties assessed hereunder against such person, in accordance with the provisions of 7 CFR Part 13.

(Pub. L. 95-460, 92 Stat. 1265; 7 U.S.C. 3502)

Signed at Washington, D.C. on October 17, 1979.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-33092 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-05-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Procurement Purposes; Proposed Change; Extension of Comment Period

AGENCY: Small Business Administration.

ACTION: Notice of extention of comment period.

SUMMARY: The time for comment on the proposal (44 FR 50046 August 27, 1979) to amend the wording of 13 CFR Part 121.3(8)(c)(2)(i) expired September 11, 1979. This proposal would allow small offers, including nonmanufacturers, to furnish any domestically manufactured product on Federal procurements valued at less than $10,000.

A number of individuals and companies have requested an additional period in which to supply their comments. In order to assure the widest possible participation on this proposal, the time for comment will be extended for 30 days following the publication of this notice.

DATE: Written comments must be submitted by November 26, 1979.

ADDRESS: Chief, Size Standards Division, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: John D. Whitmore, (202) 653-6373.

Dated: October 17, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-33089 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Hazardous Substances and Articles; Proposed Exemption From Labeling Requirements for Certain Writing Instruments and Cartridges

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Commission proposes to exempt certain rigid or semi-rigid writing instruments and cartridges from the labeling requirements of the Federal Hazardous Substances Act insofar as such requirements would apply because the ink is a hazardous substance in that it is "toxic" as defined by the Commission's regulations or because the ink contains 10 percent or more by weight of ethylene glycol or diethylene glycol. The exemption is proposed because the Commission has preliminarily found that the conditions specified in the exemption are such that full compliance with the labeling requirements otherwise applicable under the act is not necessary for the adequate protection of the public health and safety. The exemption was requested by the Gillette Company.

DATES: Interested persons are invited to submit written data, views, or

arguments regarding any aspect of the proposed exemption on or before December 26, 1979.

ADDRESS: Comments should be submitted to the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street, N.W., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dr. Alan Ehrlich, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, phone (301) 492–6557.

SUPPLEMENTARY INFORMATION:

Under section 2(f) of the Federal Hazardous Substances Act ("the act"), 15 U.S.C. 1261(f), the term "hazardous substance" includes any substance or mixture of substances which is "toxic" if such substance or mixture of substances may cause substantial personal injury or substantial illness during, or as a proximate result of, any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children. The term "hazardous substance" also includes any substances which the Consumer Product Safety Commission by regulation finds meets this definition. Section 2(g) of the act defines toxic as including "any substance . . . which has the capacity to produce personal injury or illness to man through ingestion. . . ." Section 2(p) of the act provides that a hazardous substance which is intended, or packaged in a form suitable, for use in the household or by children is misbranded if it does not bear a label conspicuously stating certain specified information and warning statements. The Commission's regulations (16 CFR 1500.3(c)(2)) further define "toxic" as including any substance that produces death within 14 days in half or more of a group of white rats (each weighing between 200 or 300 grams) when a single dose of from 50 milligrams to 5 grams per kilogram of body weight is administered orally. (The dosage required to produce death in one half of the rats in this test is referred to as the LD–50 single oral dose.)

Section 3(b) of the act, 15 U.S.C. 1262(b), authorizes the Commission to issue regulations establishing reasonable variations or additional label requirements if it finds that the requirements of section 2(p)(1) of the act are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance. Pursuant to section 3(b) of the act, the Commission's regulations (16 CFR 1500.14(b)(1, 2)) establish special labeling requirements for substances containing 10 percent or more by weight of diethylene glycol or ethylene glycol.

Section 3(c) of the act provides that if the Commission finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements of the act is impractical or is not necessary for the adequate protection of the public health and safety, it may issue regulations exempting such substance from the requirements to the extent consistent with the adequate protection of the public health and safety.

In a petition received January 3, 1977 (Petition HP 77–4), the Parker Pen Company requested an exemption to the labeling requirements of the act. The product category for which the exemption was requested was rigid or semi-rigid writing instrument cartridges that have a writing point and an ink reservoir containing ink as a free liquid and that comply with the following conditions:

(a) The cartridge is constructed so that the ink will emerge only from the writing tip under any reasonably foreseeable condition of manipulation and use.

(b) When tested by the method described in 16 CFR 1500.3(c)(2)(i), the ink does not have an LD–50 single oral dose of less than 2.5 grams per kilogram of body weight of the test animal.

(c) If the ink contains ethylene glycol or diethylene glycol, the amount of such substance, either singly or in combination, will not exceed one gram per cartridge.

(d) The cartridge will not contain more than three grams of ink.

The petition requested an exemption for these products from the special labeling requirements of 16 CFR 1500.13(b)(1, 2), which would otherwise apply if the ink had 10 percent or more by weight of ethylene glycol or diethylene glycol. The petition explained the functional advantages of using higher percentages of ethylene glycol or diethylene glycol. The petition also requested an exemption to the allowable LD–50 single oral dose limit for the unlabeled product (5.0 grams per kilogram of body weight) so that inks having a LD–50 of 2.5 grams per kilogram of body weight could be used. The petition stated that the lower LD–50 would allow additional freedom in the development of future ink formulations and provided data to support the minor hazard presented by the cartridges for which the exemption is sought, both on the basis of the requested LD–50 limit and on the basis of the use of more than 10% of ethylene glycol and/or diethylene glycol.

The Commission considered the data submitted with the petition and analyzed the degree of risk associated with ink cartridges that meet the conditions specified in the requested exemption.

The data available to the Commission showed that approximately 4200 injuries that were associated with pens and marking pens were treated in hospital emergency rooms in the United States during calendar year 1976. Injuries caused by the ink itself would probably be included in the category of "dermatitis and poisonings," which constituted 4 percent of the reported diagnoses. No deaths in this category had been reported.

After considering the available data, the Commission found that, in view of the difficulty of extracting ink from the writing tip, and in view of the limitation of the amount of ink in each cartridge to 3 grams, the requested LD–50 single oral dose of 2.5 grams per kilogram of body weight of the test animal will provide an adequate degree of protection of the public health and safety. Similarly, the Commission found that the difficulty in extracting the ink from the tip and the limitation that the amount of ethylene glycol and/or diethylene glycol shall not exceed 1 gram per cartridge will provide an adequate degree of protection of the public health and safety where the percentage by weight of either of these substances is ten percent or more. Accordingly, the Commission preliminarily found that full compliance with the labeling requirements otherwise applicable under the Federal Hazardous Substances Act is not necessary for the adequate protection of the public health and safety. As a result of this finding, the Commission proposed an exemption for these ink cartridges, subject to the conditions described above (November 14, 1977; 42 FR 58959).

The Gillette Company submitted a comment on the proposal stating that, although Gillette did not oppose the objective of the proposed exemption nor any of its stated conditions, Gillette believed that the exemption was unnecessarily limited in that (1) it applied only if the ink were contained in the reservoir as a *free liquid* and (2) it applied only to writing instrument cartridges and not to writing instruments in general.

Concerning the first of those limitations, Gillette pointed out that many writing instruments contain ink which is contained in the reservoir within an absorbent material and not as a free liquid. They argued that these

absorbent materials retain significant amounts of the ink that is stored in the reservoir and that they therefore allow less ink to be available for accidental ingestion than would be the case if the ink were in the reservoir as a free liquid.They conclude that writing instruments that contain absorbent material in the reservoir are inherently safer than those that do not and that the final exemption should not contain proposed limitation of "containing ink in the reservoir as a free liquid."

Concerning the proposed limitation that the exemption would apply only to writing instrument cartridges, Gillette argued that there is no logical or safety-related distinction between writing instrument cartridges and writing instruments in general.

At the request of the staff, Gillette also submitted prototype writing instruments, quantitative data for the solvents used in the prototype inks, and toxicity data for the inks showing that the inks do no have an LD–50 of less than 2.5 grams per kilogram of body weight.

After carefully considering the comments and other material submitted by Gillette and other available information, the Commission agrees that there is no apparent reason why the conditions in the proposed exemption would not protect the public health and safety as adequately for writing instruments in general as for ink cartridges containing ink in the reservoir as a free liquid. However, before broadening the scope of the exemption as requested by Gillette, the Commission decided to propose these changes for public comment in order to obtain the benefit of any data, views, or arguments that interested persons believe should be considered by the Commission when it makes the final decision on whether or not Gillette's request should be granted. Accordingly, the Commission issued the exemption requested by Parker as originally proposed (43 FR 47174; October 13, 1978) and is now proposing to expand the scope of the exemption as requested by Gillette.

The Commission points out that the labeling requirements from which an exemption is sought for these writing instruments and ink cartridges are intended to protect against the acute toxic effects that can occur soon after the ingestion of a hazardous substance. These labeling requirements are not intended to address the hazard of products that may cause cancer or other injuries a long time after the initial exposure. The tests of rats provided for in § 1500.3(c)(2)(i) would not detect carcinogenic or other long-term effects because the test animals are observed for only 14 days and are given only a single oral dose of the substance.

Because the proposed rule would grant an exemption, the requirement of the Administrative Procedure Act that publication shall be made not less than 30 days before the effective date (5 U.S.C. 553(d)) is not applicable, and the exemption is therefore proposed to be effective immediately upon publication of the final exemption in the **Federal Register.**

Therefore, pursuant to the Federal Hazardous Substances Act (secs. 2(f, p), 3(a–c), 74 Stat. 372, 374, 375, as amended; 15 U.S.C. 1261(f, p), 1262(a–c)), the Commission proposes to amend Title 16, Chapter II, Subchapter C, Part 1500, § 1500.83, of the Code of Federal Regulations by changing paragraph (a)(38) to read as follows (the text of the Introductory portion of § 1500.83(a), although unchanged, is included for context):

Section 1500.83 Exemption for small packages, minor hazards, and special circumstances.

(a) The following exemptions are granted for the labeling of hazardous substances under the provisions of § 1500.82:

* * * * *

(38) Rigid or semi-rigid writing instruments and ink cartridges having a writing point and an ink reservoir are exempt from the labeling requirements of section 2(p)(1) of the act (repeated in § 1500.3(b)(14)(i) of the regulations) and of regulations issued under section 3(b) of the act (§ 1500.14(b)(1, 2)) insofar as such requirements would be necessary because the ink contained therein is a "toxic" substance as defined in § 1500.3(c)(2)(i) and/or because the ink contains 10 percent or more by weight ethylene glycol or diethylene glycol, if all the following conditions are met:

(i) The writing instrument or cartridge is of such construction that the ink will, under any reasonable foreseeable condition of manipulation and use, emerge only from the writing tip.

(ii) When tested by the method described in § 1500.3(c)(2)(i), the ink does not have an LD–50 single oral dose of less than 2.5 grams per kilogram of body weight of the test animal.

(iii) If the ink contains ethylene glycol or diethylene glycol, the amount of such substance either singly or in combination does not exceed 1 gram per writing instrument or cartridge.

(iv) The amount of ink in the writing instrument or cartridge does not exceed 3 grams.

(Secs. 2 (f, p), 3(a–c), 74 Stat. 372, 374, 375, as amended; 15 U.S.C. 1261(f, p), 1262(a–c))

Dated: October 22, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79–32992 Filed 10–25–79; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in the United States: Increase in Maximum Meal Charge for Agricultural Employment

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Employment and Training Administration of the Department of Labor proposes to amend 20 CFR 655.204(b)(4) and 655.211(a) to increase the amounts which an employer under this program may charge workers for meals. Employers covered by this program must provide each worker with 3 meals a day. 20 CFR 655.202(b)(4). The employer currently may not charge the worker more than $3.25 per day for the 3 meals, unless the Regional Administrator for Employment and Training (RA) has approved a higher meal cost. *Id.* The RA now may permit meal charges of up to only $4.00 per day. 20 CFR 655.211(a). Due to increases in food costs, the proposed rulemaking would increase the charge without RA approval to $4.00 per day and the maximum allowable amount with RA approval to $5.00 per day. Certain other minor technical and clarifying changes are proposed to be made as well.

DATES: Interested persons are invited to submit written comments on this proposed regulation on or before January 2, 1980.

ADDRESS: Send written comments to: Mr. David O. Williams, Administrator, U.S. Employment Service, Employment and Training Administration, U.S. Department of Labor, Suite 8000, Patrick Henry Building, 601 "D" Street NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Bodin, Chief, Division of Labor Certifications, Office of Technical Support, U.S. Employment Service, Employment and Training Administration, Suite 8410, Patrick Henry Building, 601 "D" Street NW.,

Washington, D.C. 20213; Telephone: 202–376–6295.

SUPPLEMENTAL INFORMATION:

Labor Certification Process

The Department of Labor (DOL) has issued at 20 CFR Parts 621 and 655 regulations governing the certification of nonimmigrant aliens for temporary employment in the United States. These regulations were issued pursuant to authority granted DOL by § 214.2(h)(3)(i) of the Immigration and Naturalization Service (INS) regulations (8 CFR 214.2(h)(3)(i)). The INS regulation provides that, prior to the issuance of a nonimmigrant visa to certain groups of aliens seeking admission to the United States for temporary employment, the potential employer must first obtain:

Either a certification from the Secretary of Labor or his designated representatives stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working conditions of workers in the United States similarly employed, or a notice that such a certification cannot be made shall be attached to every nonimmigrant visa petition to accord an alien a classification under Section 101(a)(15)(H)(ii) of the [Immigration and Nationality] Act [8 U.S.C. 1101(a)(15)(H)(ii)].

For occupations in agriculture and logging, the regulations issued by DOL under the above authority are located in Subpart C of 20 CFR Part 655.

Provision of Meals

So that the job offer to alien workers will not adversely affect the working conditions of U.S. workers similarly employed, DOL requires the agricultural and logging employer under this program to agree to provide each worker with three meals a day. 20 CFR 655.202(b)(4). The job offer to the aliens and to U.S. workers must state the charge to the workers for such meals; and the charge currently may not be more than $3.25 per day unless the RA has approved a higher cost. *Id.*

Petitions for Higher Meal Charges

Employers may petition to RA to allow a higher daily meal charge, pursuant to 20 CFR § 655.211. The RA currently may permit the employer to charge workers up to $4.00 for providing 3 meals per day, if the employer justifies the charge by submitting the following documentary evidence:

Evidence submitted shall include the cost of goods and services directly related to the preparation and serving of meals, the number of workers fed, the number of meals served and the number of days meals were provided. The cost of the following items may be included: Food; kitchen supplies other than food, such as lunch bags and soap; labor costs which have a direct relation to food service operations, such as wages of cooks and restaurant supervisors; fuel, water, electricity, and other utilities used for the food service operations; other costs directly related to the food service operation. Charges for transportation, depreciation, overhead, and similar charges may not be included. Receipts and other cost records for a representation pay period shall be available for inspection by the Secretary's representatives for a period of one year. [20 CFR § 655.211(b).]

Requests To Raise Maximum Meal Charge

The Florida Fruit and Vegetable Association and the United States Sugar Corporation have written to the Administrator of the United States Employment Service (USES) of DOL, requesting that the maximum daily meals charge be increased to $5.00 per day. They cite the rapid cost increases in meats, fruits, vegetables, and other stables since the $4.00 maximum meals charge was set in 1976. See 20 CFR 602.10a(f) (1977), 41 FR 35169 (August 20, 1976); see also 43 FR 10309 and 10318 (March 10, 1978). The data submitted by these two entities are persuasive. The increased costs have also been persuasive with respect to the amount employers may charge for meals without RA approval. This charge is being proposed to be increased from the current $3.25 per day to $4.00 per day. Other technical and clarifying changes have been made as well.

Retention of Documentation Requirement

The proposed increase in the maximum meals charge the RA could permit does not mean that all or most employers covered by this program could increase their meal charges to $5.00 per day. For any charge over $4.00 per day, the petition and documentation requirements of 20 CFR 655.211(b) would remain in force.

Development of Regulations

These regulations have been developed under the direction and control of Mr. David O. Williams, Administrator, U.S. Employment Service, Employment and Training Administration, U.S. Department of Labor, Washington, D.C.

The effect of the proposed regulation is not so major as to require the preparation of a regulatory analysis. See 44 FR 5576 (January 26, 1979).

Proposed Regulation

Accordingly, it is proposed to amend 20 CFR Part 655 as follows:

1. Section 655.202 is amended by revising paragraph (b)(4) to read as follows:

§ 655.202 Contents of job offers.

* * * * *

(b) * * *

(4) The employer will provide the worker with three meals a day. The job offer shall state the cost to the worker for such meals. The cost shall be no more than $4.00 per day unless the RA has approved a higher cost pursuant to § 655.211 of this Part.

* * * * *

2. Section 655.211 is amended by revising paragraph (a) to read as follows:

§ 655.211 Petitions for higher meal charges.

(a) An RA may permit an employer to charge workers up to $5.00 for providing them with three meals per day, if the employer justified the charge and submits to the RA the documentary evidence required by paragraph (b) of this section. A denial in whole or in part shall be reviewable as provided in § 655.212 of this Part.

* * * * *

Signed at Washington, D.C. this 22 day of October, 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-33128 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 146

[Docket No. 78N-0350]

Grape Juice; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Notice of Termination of Consideration.

SUMMARY: This notice terminates the review by the United States of the Codex Alimentarius Commission (Codex) "Recommended International Standard for Grape Juice." The response to the Food and Drug Administration's (FDA's) request for comments on the provisions of the Codex standard and on the desirability of establishing U.S. standards for grape juice indicates there is neither sufficient interest nor need to warrant proposing U.S. standards for this food. FDA, therefore, has terminated consideration of developing

U.S. standards for grape juice based on the Codex standard.

EFFECTIVE DATE: October 26, 1979.

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, D.C. 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 23, 1979 (44 FR 10729), FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex "Recommended International Standard for Grape Juice" and to comment on the desirability and need for U.S. standards for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission.

Three comments were received, one each from the United States Department of Agriculture (USDA), a canner's association, and a food processor in response to the advance notice of proposed rulemaking. Only the last two were responsive to the questions concerning the need for standards. These two comments stated there is no need for U.S. standards for grape juice. The USDA advanced no position on whether U.S. standards for this food are necessary, but, instead, spoke to other considerations. The food processor stated that there should be no minimum soluble solids content for single strength juice and that the 15-percent minimum in the Codex standard discriminates against the packer or producing area whose product may otherwise be perfectly acceptable but low in solids because of variety or growing conditions. The commenter also questioned the justification for the Codex 16-percent minimum soluble solids content for grape juice from concentrate.

Having considered the comments received, FDA has concluded that there is insufficient support to warrant proposing U.S. standards at this time for grape juice under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing U.S. standards for grape juice based on the Codex standard. This action is without prejudice to further consideration of the development of U.S. standards for grape juice upon appropriate justification.

The Codex Alimentarius Commission will be informed that an imported food that complies with the requirements of the Codex standard for grape juice may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: October 18, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-32836 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 146

[Docket No. 78N-0356]

Concentrated Grape Juice; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Notice of Termination of Consideration.

SUMMARY: This notice terminates the review by the United States of the Codex Alimentarius Commission (Codex) "Recommended International Standard for Concentrated Grape Juice." The response to the Food and Drug Administration's (FDA's) request for comments on the provisions of the Codex standard and on the desirability of establishing U.S. standards for concentrated grape juice indicates there is neither sufficient interest nor need to warrant proposing U.S. standards for this food. FDA, therefore, has terminated consideration of developing U.S. standards for concentrated grape juice base on the Codex standard.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 23, 1979 (44 FR 10730), FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex "Recommended International Standard for Concentrated Grape Juice" and to comment on the desirability and need for U.S. standards for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission.

Three letters were received, one each from the United States Department of Agriculture (USDA), the U.S. Metric Board and a canner's association, in response to the advance notice of proposed rulemaking. Only the last one was responsive to the question concerning the need for standards.

The canner's association stated there is no need for U.S. standards for concentrated grape juice. The USDA and the U.S. Metric Board advanced no position on whether U.S. standards for the food are necessary, but, instead, spoke to other considerations.

Having considered the comments received, FDA has concluded that there is neither sufficient interest nor need to warrant proposing U.S. standards at this time for concentrated grape juice under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing U.S. standards for concentrated grape juice based on the Codex standard. This action is without prejudice to further consideration of the development of U.S. standards for concentrated grape juice upon appropriate justification.

The Codex Alimentarius Commission will be informed that an imported food that complies with the requirements of the Codex standard for concentrated grape juice may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: October 18, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-32839 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 146

[Docket No. 78N-0357]

Sweetened Concentrated Labrusca Type Grape Juice; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Notice of Termination of Consideration.

SUMMARY: This notice terminates the review by the United States of the Codex Alimentarius Commission (Codex) "recommended International Standard for Sweetened Concentrated Labrusca Type Grape Juice." The response to the Food and Drug Administration's (FDA's) request for comments on the provisions of the

Codex standard and on the desirability of establishing U.S. standards for sweetened concentrated labrusca type grape juice indicates there is neither sufficient interest nor need to warrant proposing U.S. standards for this food. FDA, therefore, has terminated consideration of developing U.S. standards for sweetened concentrated labrusca type grape juice based on the Codex standard.

EFFECTIVE DATE: October 26, 1979.

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: In the **Federal Register** of February 23, 1979 (44 FR 10732), FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex "Recommended International Standard for Sweetened Concentrated Labrusca Type Grape Juice" and to comment on the desirability and need for U.S. standards for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission.

Three letters were received, one each from the United States Department of Agriculture (USDA), the U.S. Metric Board, and a canner's association, in response to the advance notice of proposed rulemaking. Only the last one was responsive to the question concerning the need for standards.

The canner's association stated that there is no need for U.S. standards for sweetened concentrated labrusca type grape juice. The USDA and the U.S. Metric Board advanced no position on whether U.S. standards for this food are necessary, but, instead, spoke to other considerations.

Having considered the comments received, FDA has concluded that there is neither sufficient interest nor need to warrant proposing U.S. standards at this time for sweetened concentrated labrusca type grape juice under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 341].

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing U.S. standards for sweetened concentrated labrusca type grape juice based on the Codex standard. This action is without prejudice to further consideration of the development of U.S. standards for sweetened concentrated labrusca type grape juice upon appropriate justification.

The Codex Alimentarius Commission will be informed that an imported food that complies with the requirements of the Codex standard for sweetened concentrated labrusca type grape juice may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: October 18, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-32838 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 168

[Docket No. 78N-0362]

White Sugar; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Notice of Termination of Consideration.

SUMMARY: This notice terminates the review by the United States of the Codex Alimentarius Commission (Codex) "Recommended International Standard for White Sugar." The response to the Food and Drug Administration's (FDA's) request for comments on the provisions of the Codex standard and on the desirability of establishing U.S. standards for white sugar indicates there is neither sufficient interest nor need to warrant proposing U.S. standards for this food. FDA, therefore, has terminated consideration of developing U.S. standards for white sugar based on the Codex standard.

EFFECTIVE DATE: October 26, 1979.

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, D.C. 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 23, 1979 (44 FR 10749), FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex "Recommended International Standard for White Sugar" and to comment on the desirability and need for U.S. standards for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission. At the request of a trade organization, a notice extending the comment period to June 25, 1979 was published in the **Federal Register** of May 18, 1979 (44 FR 29106).

Seven letters were received from three trade associations, two food producers, the U.S. Metric Board, and one from an unidentified respondent in response to the advance notice of rulemaking. One comment did not address the issue raised in the advance notice of proposed rulemaking.

Five comments stated that there was no need for U.S. standards for white sugar. The U.S. Metric Board advanced no position on whether U.S. standards for the food are necessary but, instead, spoke to other considerations. One trade association supported by two comments stated that the consumer can obtain sugar of very high quality without relying on regulatory requirements and a standard would benefit neither the household nor industrial consumer, nor the sugar manufacturer. It pointed out that the terms "white sugar," "plantation white sugar," and "mill white sugar" are not common or usual names for sugar in the United States and that their introduction would cause confusion among consumers.

Having considered all the comments received, FDA has concluded that there is neither sufficient interest nor need to warrant proposing U.S. standards at this time for white sugar under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 341].

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing U.S. standards for white sugar based on the Codex Standard. This action is without prejudice to further consideration of the development of U.S. standards for white sugar upon appropriate justification.

The Codex Alimentarius Commission will be informed that an imported food that complies with the requirements of the Codex standard for white sugar may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: October 18, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-32837 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 330

[Docket No. 79N-0365]

Over-the-Counter (OTC) Category III Policy Intent To Revise Rule

AGENCY: Food and Drug Administration.

ACTION: Notice of intent to revise rule.

SUMMARY: The Food and Drug Administration intends to revise the procedural regulations governing the review and classification of over-the-counter (OTC) drug products to delete the term "Category III" and the provision that authorizes the marketing of a Category III condition in an OTC drug product after a final monograph. This notice is being issued to alert manufacturers of drug products with ingredients and claims recommended as Category III by an OTC Drug Advisory Review Panel or by the agency in a tentative final order that the agency will revise its regulations and procedures to conform to a recent court order.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) intends to publish in the **Federal Register** in the near future proposed revisions to the OTC procedural regulations (21 CFR 330.10) to delete the term "Category III" and the provision that authorizes marketing of a Category III condition in an OTC drug product after a final monograph is established. This notice is being issued to alert manufacturers of drug products containing Category III conditions that FDA will revise its regulations to conform to the holding and order of the United States District Court for the District of Columbia in *Cutler* v. *Kennedy*, C.A. No. 77-0734 (D.D.C., July 16, 1979). This revision will affect the time period during which testing may be completed and new data submitted to FDA to support the inclusion in a final monograph of those conditions not classified in Category I in a proposed monograph or tentative final monograph.

Current Procedure

The OTC drug review was instituted to carry out FDA's statutory mandate to assure that OTC drugs are safe and effective for their intended use and not misbranded. The current approach involves the development of drug "monographs," in the form of regulations, which define conditions under which OTC drugs are generally recognized as safe and effective and not misbranded. Monographs list both acceptable ingredients and proper labeling for each of the different categories of OTC drugs. The procedures by which the monographs are developed involve several administrative steps, as set forth in 21 CFR 330.10. Advisory review panels comprised of scientific experts from outside the agency were appointed by FDA to review published and unpublished data and information, which the agency requested interested persons to submit, that is pertinent to a designated category of OTC drugs. Each panel also includes two nonvoting liaison members, a representative of consumer interests and a representative of industry. Each panel reviews the data submitted to it, and prepares a report containing its conclusions and recommendations to the Commissioner of Food and Drugs with respect to the safety and effectiveness of ingredients and labeling in a designated category of drug products. Each panel report may include a recommended monograph establishing conditions under which the drugs involved are generally recognized as safe and effective and not misbranded (Category I). In addition, each panel report includes a statement of all active ingredients, labeling claims or other statements, or other conditions reviewed and excluded from the monograph on the basis of the panel's determination that they would result in a drug not being generally recognized as safe and effective or would result in misbranding (Category II) and a statement of all such conditions reviewed and excluded from the monograph on the basis of the panel's determination that the available data are insufficient to classify such condition as Category I or Category II and for which further testing is required (Category III). FDA publishes the panel reports in the **Federal Register** and requests interested persons to comment. Additionally, because new data may be submitted in those comments, the OTC drug procedural regulations allow an additional 30 days after the comment period for the filing of reply comments. After considering these comments and reply comments, the agency publishes a tentative final order, proposing a monograph in the form of a regulation, which is subject to public objections and requests for a hearing. If the Commissioner finds reasonable grounds for so doing, an oral hearing before the Commissioner is scheduled. At the conclusion of these procedures, the agency publishes an order promulgating a final monograph. After publication of a final monograph, any product with a Category III condition may remain on the market or may be introduced into the market, provided FDA receives notification that studies will be undertaken to obtain the data necessary to resolve the issues that resulted in such classification. In promulgating the OTC drug procedural regulations, the agency concluded that Category III testing should not be required until after completion of the established OTC drug administrative procedures. Opportunity for public review and comment is provided at each stage of the administrative procedure, and the content of Category III and the testing period provided is thus not fixed until publication of the final monograph. Some manufacturers have, however, voluntarily begun the testing of Category III conditions prior to issuance of a final OTC drug monograph.

Court Opinion

On July 16, 1979, the United States District Court for the District of Columbia entered its opinion in the case of *Cutler* v. *Kennedy*, C.A. No. 77-0734 (D.D.C., July 16, 1979). Plaintiffs had alleged that 21 CFR 330.10 is unlawful to the extent that it authorizes the marketing of Category III drugs after publication of a final monograph. Plaintiffs claimed that, if a drug is determined to be in Category III, it necessarily lacks substantial evidence of safety or effectiveness, is a new drug, and cannot be marketed without an approved NDA. The Court concluded that "* * * the FDA may not lawfully maintain Category III in any form in which drugs with Category III conditions * * * are exempted from enforcement action," (*Cutler, supra*, slip op. at 38). The Court issued an order that declared the OTC drug regulations, 21 CFR 330.10, unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph, and enjoined the FDA from implementing any portion of the regulations that authorizes such marketing. A copy of the memorandum opinion has been placed on display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

The agency notes that an OTC advisory panel's use of the Category III classification to denote a certain quantum of evidence during the pendancy of the rulemking proceeding was not the subject of the court's decision. The challenge and court opinion were directed only toward the regulatory provision permitting marketing of a drug product containing a

Category III condition after publication of a final monograph.

Intent To Propose New Procedures

To carry out the court order, the agency intends to revise 21 CFR 330.10 to delete the provision permitting the marketing of Category III conditions in OTC drug products after a final monograph has been issued. Any data available to resolve the safety or effectiveness issues that resulted in a Category III classification will have to be submitted to FDA during the OTC drug administrative procedure, that is, before the establishment of a final monograph. The OTC drug review process itself provides extensive and adequate time for manufacturers to conduct studies and obtain the data necessary to resolve the issues that resulted in a Category III classification. Manufacturers interested in upgrading Category III conditions may wish to use the findings in a panel's report as a basis on which to plan and initiate the necessary studies. Past experience has shown that FDA has rarely disagreed with a panel's recommendation and upgraded a Category II or III condition without submission of additional data by a manufacturer. In the future, the agency will consider, in publishing a final monograph, only data submitted during the rulemaking period before the closing of the comment period for the tentative final monograph. Data submitted after the closing of the comment period for the tentative final monograph will be considered as a petition to amend the monograph and will be reviewed only after the final monograph is published in the **Federal Register**. The agency will meet with industry representatives at their request to advise them on the adequacy of their proposed protocols. FDA continues to encourages firms to cooperate and work with each other in arranging for the necessary study or studies to avoid unnecessary and repetitive human testing.

Although the court in *Cutler* did not object to use of the term "Cateogory III" during the course of the OTC drug review prior to publication of a final monograph, FDA intends to propose deleting the term wherever it appears in § 330.10. However, the agency believes it imporant that manufacturers know the distinction between the kind of safety or effectiveness issue that resulted in a Category I or II classification and that as to which the panel had insufficient data to make such a classification. In the latter case, the panel and the agency believe that further testing may upgrade the condition in question to Category I. Therefore, the agency intends to propose new language in the OTC regulations that will denote this distinction in the state of the evidence regarding a condition's classification during the rulemaking proceeding. The agency wants to make it clear that it intends to delete the term "Category III" from all future published tentative and final orders.

Under the revised procedure, any drug product that fails to conform to an applicable monograph after its effective date would be liable to regulatory action.

Elsewhere in this **Federal Register**, the agency is publishing notices to reopen the administrative record for three groups of drug products for which tentative final monographs with Category III conditions have been published. This is being done to permit manufacturers to submit new data prior to a final monograph demonstrating the safety and effectiveness of those conditions not classified as Category I.

Dated: October 19, 1979.

Sherwin Gardner,

Acting Commissioner of Food and Drugs.

[FR Doc. 79-33170 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 333

[Docket No. 75N-0183]

Topical Antimicrobial Products for Over-the-Counter Human Use; Reopening of the Administrative Record

AGENCY: Food and Drug Administration.

ACTION: Reopening of Administrative Record.

SUMMARY: The Food and Drug Administration is reopening the administrative record to permit interested persons to submit further data on those conditions classified in Category II or Category III in the published tentative final monograph establishing conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) topical antimicrobial drug products for human use.

DATES: New data by March 26, 1980. Comments by May 27, 1980.

ADDRESS: Written data and comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) published a tentative final order on OTC topical antimicrobial drug products for human use on January 6, 1978 (43 FR 1210). Interested persons could have filed written objections and requested an oral hearing before the Commissioner of Food and Drugs by February 6, 1978. The tentative final order contained a tentative final monograph and a discussion of those conditions classified by the panel in Categories II and III. Under current procedures, a drug product with a Category III condition may remain on the market or may be introduced into the market, after the publication of a final monograph, provided FDA receives notification that studies will be undertaken to obtain the data necessary to resolve the issues that resulted in such classification.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of intent to revise the OTC drug procedural regulations in 21 CFR 330.10 to delete the term "Category III" and the provision that authorizes the marketing of an OTC drug product with a Category III condition after a final monograph is established. This action is being taken pursuant to an order of the United States District Court for the District of Columbia in *Cutler* v. *Kennedy*, C.A. No. 770734 (D.D.C., July 16, 1979). The Court concluded that "* * * the FDA may not lawfully maintain Category III in any form in which drugs with Category III conditions * * * are exempted from enforcement action," (*Cutler, supra*, slip op. at 38). The Court issued an order that declared the OTC drug regulations, 21 CFR 330.10, unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph, and enjoined FDA from implementing any portion of the regulations which authorizes such marketing.

Under current procedures, the administrative record closes at the end of the comment period following publication of the panel's report and proposed monograph. Manufacturers wishing to submit data after that time may do so only if they file a petition to reopen the administrative record in accordance with 21 CFR 330.10(a)(10)(ii). Consistent with the court order and in order to simplify the procedures and permit the results of testing to be submitted to FDA as expeditiously as possible, the agency is reopening the administrative record for this category of products for a 5-month period from October 26, 1979 to March 26, 1980 to permit manufacturers to submit, prior to the establishment of a final monograph,

new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Interested persons may file with the Hearing Clerk comments on the new data on or before May 27, 1980. In establishing a final monograph, the agency will consider only data submitted prior to the closing of the administrative record. Data submitted after the closing of the administrative record will be considered as a petition to amend the monograph and will be reviewed only after the final monograph is published. The agency emphasizes that interested persons have already had an opportunity to submit comments on the panel report and proposed monograph and objections or requests for an oral hearing to the tentative final monograph. Therefore, comments on data and information already contained in the administrative record or requests for an oral hearing will not be accepted.

Interested persons are invited to submit new data in writing (preferably four copies identified with the Hearing Clerk docket number) on or before March 26, 1980 and written comments (preferably four copies identified with the Hearing Clerk docket number) on or before May 27, 1980. Data and comments should be addressed to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. Received data and comments may be seen in the above named office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 19, 1979.

Sherwin Gardner,

Acting Commissioner of Food and Drugs.

[FR Doc. 79–33167 Filed 10–25–79; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 336

[Docket No. 78N–0036]

Antiemetic Drug Products for Over-the-Counter Human Use; Reopening of the Administrative Record

AGENCY: Food and Drug Administration.

ACTION: Reopening of Administrative Record.

SUMMARY: The Food and Drug Administration is reopening the administrative record to permit interested persons to submit further data on those conditions classified in Category II or Category III in the published tentative final monograph establishing conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) antiemetic drug products for human use.

DATES: New data by March 26, 1980. Comments by May 27, 1980.

ADDRESS: Written data and comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD–510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) published a tentative final order on OTC anitemetic drug products for human use on July 13, 1979 (44 FR 41064). Interested persons could have filed written objections and requested an oral hearing before the Commissioner of Food and Drugs by August 13, 1979. The tentative final order contained a tentative final monograph and a discussion of those conditions classified in Categories II and III. Under current procedures, a drug product with a Category III condition may remain on the market or may be introduced into the market, after the publication of a final monograph, provided FDA receives notification that studies will be undertaken to obtain the data necessary to resolve the issues that resulted in such classification.

Elsewhere in this issue of the **Federal Register,** FDA is publishing a notice of intent to revise the OTC drug procedural regulations in 21 CFR 330.10 to delete the term "Category III" and the provision that authorizies marketing of an OTC drug product with a Category III condition after a final monograph is established. This action is being taken pursuant to an order of the United States District Court for the District of Columbia in *Cutler* v. *Kennedy*, C.A. No. 77–0734 (D.D.C., July 16, 1979). The court concluded that "* * * the FDA may not lawfully maintain Category III in any form in which drugs with Category III conditions * * * are exempted from enforcement action," (*Cutler, supra,* slip op. at 38). The court issued an order that declared the OTC drug regulations, 21 CFR 330.10, unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph, and enjoined FDA from implementing any portion of the regulations which authorizes such marketing.

Under current procedures, the administrative record closes at the end of the comment period following publication of the panel's report and proposed monograph. Manufacturers wishing to submit data after that time may do so only if they file a petition to reopen the administrative record in accordance with 21 CFR 330.10(a)(10)(ii). Consistent with the court order and in order to simplify the procedures and permit the results of testing to be submitted to FDA as expeditiously as possible, the agency is reopening the administrative record for this category of products for a 5-month period from October 26, 1979 to March 26, 1980, to permit manufacturers to submit, prior to the establishment of a final monograph, new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Interested persons may file with the Hearing Clerk comments on the new data on or before May 27, 1980. In establishing a final monograph, the agency will consider only data submitted prior to the closing of the administrative record. Data submitted after the closing of the administrative record will be considered as a petition to amend the monograph and will be reviewed only after the final monograph is published. The agency emphasizes that interested persons have already had an opportunity to submit comments on the panel report and proposed monograph and objections or requests for an oral hearing to the tentative final monograph. Therefore, comments on data and information already contained in the administrative record or requests for an oral hearing will not be accepted.

Interested persons are invited to submit new data in writing (preferably four copies identified with the Hearing Clerk docket number) on or before March 26, 1980 and comments in writing (preferably four copies identified with the Hearing Clerk docket number) on or before May 27, 1980. Data and comments should be addressed to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. Received data and comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 19, 1979.

Sherwin Gardner,

Acting Commissioner of Food and Drugs.

[FR Doc. 79–33169 Filed 10–25–79; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Parts 338 and 340

[Docket No. 75N–0244]

Nighttime Sleep-Aid and Stimulant Products for Over-the-Counter Human Use; Reopening of the Administrative Record

AGENCY: Food and Drug Administration.

ACTION: Reopening of Administrative Record.

SUMMARY: The Food and Drug Administration is reopening the administrative record to permit interested persons to submit further data on those conditions classified in Category II or Category III in the published tentative final monograph establishing conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) nighttime sleep-aid and stimulant drug products for human use.

DATES: New data by March 26, 1980. Comments by May 27, 1980.

ADDRESS: Written data and comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD–510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) published a tentative final order on OTC nighttime sleepaid and stimulant drug products for human use in June 13, 1978 (43 FR 25544). Interested persons could have filed written objections and requested an oral hearing before the Commissioner of Food and Drugs by August 14, 1978. The tentative final order contained a tentative final monograph and a discussion of those conditions classified in Categories II and III. Under current procedures, a drug product with a Category III condition may remain on the market or may be introduced into the market, after the publication of a final monograph, provided FDA receives notification that studies will be undertaken to obtain the data necessasry to resolve the issues that resulted in such classification.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of intent to revise the OTC drug procedural regulations in 21 CFR 330.10 to delete the term "Category III" and the provision that authorizes the marketing of an OTC drug product with a Category III condition after a final monograph is established. This action is being taken pursuant to an order of the United States District Court for the District of Columbia in *Cutler* v. *Kennedy*, C.A. No. 77–0734 (D.C.C., July 16, 1979). The Court concluded that "* * * the FDA may not lawfully maintain Category III in any form in which drugs with Category III conditions * * * are exempted from enforcement action," (*Cutler, supra*, slip op. at 38). The Court issued an order that declared the OTC drug regulations, 21 CFR 330.10, unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph, and enjoined FDA from implementing any portion of the regulations which authorizes such marketing.

Under current procedures, the administrative record closes at the end of the comment period following publication of the panel's report and proposed monograph. Manufacturers wishing to submit data after that time may do so only if they file a petition to reopen the administrative record in accordance with 21 CFR 330.10(a)(10)(ii). Consistent with the court order and in order to simplify the procedures and permit the results of testing to be submitted to FDA as expeditiously as possible, the agency is reopening the administrative record for this category of products for a 5-month period from October 26, 1979 to March 26, 1980 to permit manufacturers to submit, prior to the establishment of a final monograph, new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Interested persons may file with the Hearing Clerk comments on the new data on or before May 27, 1980. In establishing a final monograph, the agency will consider only data submitted prior to the closing of the administrative record. Data submitted after the closing of the administrative record will be considered as a petition to amend the monograph and will be reviewed only after the final monograph is published. The agency emphasizes that interested persons have already had an opportunity to submit comments on the panel report and proposed monograph and objections or requests for an oral hearing to the tentative final monograph. Therefore, comments on data and information already contained in the administrative record or requests for an oral hearing will not be accepted.

Interested persons are invited to submit new data in writing (preferably four copies identified with the Hearing Clerk docket number) on or before March 26, 1980 and comments in writing (preferably four copies identified with the Hearing Clerk docket number) on or before May 27, 1980. Data and comments should be addressed to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. Received data and comments may be seen in the above office between 9 a.m. and 4 p.m. Monday through Friday.

Dated: October 19, 1979.

Sherwin Gardner,

Acting Commissioner of Food and Drugs.

[FR Doc. 79-33168 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 16, 17, and 160

[LR-71-78]

Vinson-Trammell Act; Excess Profits on Contracts for Naval Vessels or Military Aircraft

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the profit limitations of the Vinson-Trammell Act (the "Act") on certain contracts and subcontracts for naval vessels and military aircraft. Generally, the limitations on excess profits on contracts for naval vessels and military aircraft imposed by the Vinson-Trammell Act have been suspended while the Renegotiation Act has been in effect. After the expiration of the Renegotiation Act on September 30, 1976, the provisions of the Act became generally effective. This document proposes to revoke the existing regulations under the Act and to adopt new regulations under the Act. These regulations affect contractors and subcontractors of naval vessels and military aircraft for the Department of Defense.

DATES: Written comments and requests for a public hearing must be delivered or mailed by December 26, 1979. The amendments are proposed to be effective for income taxable years ending after September 30, 1976.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–71–78), Washington D.C. 20224.

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

SUPPLEMENTARY INFORMATION:

Background

The Vinson-Trammell Act (10 U.S.C. 2382 and 7300) places limitations on the amount of profit that may be made on contracts or subcontracts for the

construction or manufacture of all or a part of a new complete naval vessel or military aircraft. The profit limitation on contracts relating to naval vessels is 10 percent of the contract price, and on contracts relating to military aircraft, 12 percent. The Act applies generally to contracts or subcontracts in excess of $10,000.

The profit limitations of the Act have been generally suspended since 1951 under the terms of the Renegotiation Act (50 U.S.C. App. 1212 (e)). The profit limitations of the Act do not apply to any contract receipts or accruals which are subject to the Renegotiation Act. When the profit limitations of the Act do not apply to a prime contract subject to the Renegotiation Act, the profit limitations of the Act do not apply to any of the subcontracts under that contract whether or not the subcontracts are subject to the Renegotiation Act. Rev. Rul. 61-122, 1961-2 C.B. 141.

On September 30, 1976, the Renegotiation Act expired. As a result, the profit limitations of the Act have again become applicable.

Regulations Under the Vinson-Trammell Act

The existing regulations under the Act are contained in 26 CFR (1939) Parts 16 and 17. Part 16 relates to contracts for Army and Air Force aircraft. Part 17 relates to contracts for naval vessels and aircraft. For the convenience of the user, the **Federal Register** has published these regulations following 26 CFR 1.1471-1.

In the twenty-five years during which the Act was generally suspended, a number of changes have occurred in the law and in the practices that relate to defense procurement. These changes require reconsideration of the provisions of the existing regulations to determine their current appropriateness.

The Defense Production Act of 1951, as amended (50 U.S.C. App. 2168), established the Cost Accounting Standards Board to promulgate Cost Accounting Standards to be used by all relevant Federal agencies and by defense contractors and subcontractors in reporting allocable costs in connection with the pricing, administration and settlement of all negotiated prime contract and subcontract national defense procurements. Not all defense contracts are subject to Cost Accounting Standards. However, the provisions of the Defense Production Act of 1951 that require the use of Cost Accounting Standards have superseded the provisions of the regulations that require the use of different accounting standards for purposes of the profit limitations of the Act.

To deal with the changes that have made provisions of the existing regulations no longer appropriate, this document proposes to revoke the existing regulations and to adopt new regulations reflecting changes in defense procurement practices.

Use of Defense Acquisition Regulation Costing Rules

As shown by the legislative history and the existing regulations, the purpose of the Act is to limit the price paid by the government under a contract to an amount that accurately reflects the benefit received from the contract. To limit government costs, the Act restricts profits (price less allowable contractor costs) to a fixed percentage of the total contract price.

The proposed regulations would adopt as the costing rules the rules contained in section XV of the Defense Acquisition Regulation ("DAR"). All direct and indirect costs of completing a contract (including a subcontract) are considered in determining the cost of a contract to the extent that those costs are allowable costs under section XV of the DAR and, in the case of indirect costs, are properly allocable to the contract.

The rules contained in section XV of the DAR are the rules that satisfy the intent and the legal requirements of the Act. The DAR rules are essentially the same as the costing rules included in the existing regulations which were promulgated in 1939.

Consultation With Department of Defense

The Vinson-Trammell Act provides that the method of computing excess profits is to be determined by the Secretary of the Treasury in agreement with the Secretary of Defense. Representatives of the Treasury Department have consulted with Department of Defense personnel regarding the provisions of the proposed regulations. As published, these regulations reflect the proposed position of the Treasury Department. However, these proposed regulations have not as yet been approved by the Department of Defense. Agreement of the Department of Defense will be obtained before any amendments to the current regulations are made final.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is H. B. Hartley of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service, the Treasury Department and the Department of Defense participated in developing the regulation, both on matters of substance and style.

Proposed Revocation of Existing Regulations

PART 16—TEMPORARY REGULATIONS UNDER THE REVENUE ACT OF 1962 [Deleted]

PART 17—TEMPORARY INCOME TAX REGULATIONS UNDER 26 U.S.C. 103(c) [Deleted]

26 CFR (1939) Parts 16 and 17 are deleted.

Proposed Amendments to the Regulations

Subchapter D of 26 CFR is retitled, a new Part 160, *Recovery of Excess Profits on Contracts for Naval Vessels and Military Aircraft*, is to be added thereto and the first regulations proposed to be contained in that part are as follows:

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES AND RECOVERY OF EXCESS PROFITS ON CERTAIN CONTRACTS

PART 160—RECOVERY OF EXCESS PROFITS ON CONTRACTS FOR NAVAL VESSELS AND MILITARY AIRCRAFT

Sec.

160.1 Definitions.
160.2 Scope of this part.
160.3 Contracts and subcontracts under which excess profit liability may be incurred.
160.4 Contracts or subcontracts for scientific equipment.
160.5 Completion of contract defined.
160.6 Manner of determining liability with respect to contracts or subcontracts for complete naval vessels or portions thereof.
160.7 Manner of determining liability with respect to contracts or subcontracts for complete military aircraft or portions thereof.
160.8 Total contract price.
160.9 Cost of performing a contract or subcontract.

Sec.

160.10 Credit for net loss in computing excess profit.
160.11 Credits against excess profit liability.
160.12 Failure of contractor to require agreement by subcontractor.
160.13 Evasion of excess profit liability.
160.14 Books of account and records.
160.15 Report to the military department.
160.16 Annual reports for income-taxable years.
160.17 Payment of excess profit liability.
160.18 Liability of surety.
160.19 Determination of liability for excess profit, interest, and penalties; assessment, collection, payment, refunds.

Authority.—The Vinson-Trammell Act, 10 U.S.C. 2382 and 7300; sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

§ 160.1 Definitions.

As used in this part:

(a) The "Act" means the Vinson-Trammell Act (10 U.S.C. 2382 and 7300).

(b) "Complete naval vessel or military aircraft" means a newly constructed naval vessel or military aircraft that has been furnished with all articles that are necessary for the performance of its intended service.

(c) "Contract" means an agreement made by authority of the Secretary of a military department for the construction or manufacture of any new complete naval vessel or military aircraft, or any portion of such a vessel or aircraft, for the use of the Army, Navy or Air Force.

(d) "Contracting party" means a contractor or subcontractor as the case may be.

(e) "Contractor" means a person entering into a direct contract with the Secretary of a military department or the duly authorized representative of a military department.

(f) "Contract price" means the total amount to be received under a contract or subcontract as the case may be. (See § 160.8)

(g) "Income-taxable year" means the contracting party's taxable year under Internal Revenue Code section 441 (b).

(h) "Military aircraft" means a vehicle for use by the Army, Navy or Air Force that is designed primarily for flight in the atmosphere and that has incorporated in its basic design the ability and requirement for human occupancy.

(i) "Military department" means the Department of Defense or such other department or agency within the Department of Defense as may be authorized to make procurements for military purposes.

(j) "Naval vessel" means a vessel for use by the Navy that is designed primarily for transportation on or in water and that is to be commissioned in the United States Navy or is to appear in the Naval Vessels Register.

(k) "Portion of a new complete naval vessel or military aircraft" means any material or article that forms part of a complete naval vessel or military aircraft and that has been furnished under a mutual understanding that it is to form such a part.

(l) "Subcontract" means an agreement entered into by one person with another person for the construction or manufacture of a new complete naval vessel or military aircraft, or portion of such a vessel or aircraft, the prime contract for which is subject to the Act.

(m) "Subcontractor" means any person other than a contractor entering into a subcontract.

§ 160.2 Scope of this part.

The regulations in this part deal with the liability for excess profit on contracts or subcontracts for the construction or manufacture of any complete naval vessel or military aircraft, or any portion of such a vessel or aircraft, completed within income-taxable years ending after September 30, 1976. As to the date of completion of a contract or subcontract, see § 160.5.

§ 160.3 Contracts and subcontracts under which excess profit liability may be incurred.

The Act does not apply to a contract that is subject to the provisions of the Renegotiation Act of 1951, or to any subcontract to such a contract. 50 U.S.C. App. 1212 (e) provides that the Act does not apply to any contract or subcontract if any of the receipts or accruals therefrom are subject to the Renegotiation Act. The Act also does not apply to a contract or a subcontract that is awarded for $10,000 or less. If a contracting party places orders with another party aggregating an amount in excess of $10,000 for articles or materials which constitute a part of the cost of performing the contract or subcontract, the placing of such orders shall constitute a subcontract within the scope of the Act, unless it is clearly shown that each of the orders involving $10,000 or less is a bona fide separate and distinct subcontract and not a subdivision made for the purpose of evading the provisions of the Act. For exemptions relating to contracts for certain scientific equipment, see § 160.4.

§ 160.4 Contracts or subcontracts for scientific equipment.

The Act does not apply to a contract or subcontract if it is designated by the Secretary of a military department as being exempt under the provisions of the Act pertaining to scientific equipment used for communication, target detection, navigation, or fire control.

§ 160.5 Completion of contract defined.

The date of delivery of the naval vessel, military aircraft or portion thereof covered by the contract or subcontract shall be considered the date of completion of the contract or subcontract unless otherwise determined jointly by the Secretary of the military department and the Commissioner of Internal Revenue, or their duly authorized representatives. Except as otherwise provided in the preceding sentence, the correction of defects in delivered articles or the performance of other warranty work in respect to such articles will not operate to extend the date of completion. If a contract or subcontract is at any time cancelled or terminated, it is completed at the time of the cancellation or termination. As to a refund in case of adjustment due to any subsequently incurred additional costs, see § 160.19.

§ 160.6 Manner of determining liability with respect to contracts or subcontracts for complete naval vessels or portions thereof.

(a) *In general.* If a contracting party completes one or more contracts or subcontracts coming within the scope of the Act and entered into for the construction or manufacture of any complete naval vessel or any portion thereof, the amount of excess profit to be paid to the United States with respect to all such contracts and subcontracts completed within the income-taxable year shall be computed in accordance with this section.

(b) *First step.* The first step is to ascertain the sum of the contract prices of all contracts and subcontracts for complete naval vessels or portions thereof completed by the contracting party within the income-taxable year. As to total contract prices, see §§ 160.1 and 160.8.

(c) *Second step.* The second step is to ascertain the cost of performing these contracts and subcontracts (see § 160.9) and to subtract that cost from the amount computed in the first step. The amount remaining after this subtraction is the amount of net profit or net loss upon contracts and subcontracts completed within the income-taxable year.

(d) *Third step.* The third step, in case there is a net profit upon the contracts and subcontracts, is to subtract from the amount of the net profit as computed in the second step the sum of: (1) An amount equal to 10 percent of the sum computed in the first step; and (2) The amount of any net loss which was sustained in the preceding income-taxable year with respect to contracts or subcontracts entered into for the

construction or manufacture of any complete naval vessel or any portion thereof, which is allowable as a credit in determining the excess profit for the income-taxable year with respect to contracts and subcontracts entered into for the construction or manufacture of any complete naval vessel or any portion thereof. (See § 160.10(a).) The amount remaining after this subtraction is the amount of excess profit for the income-taxable year with respect to contracts and subcontracts completed within the income-taxable year for the construction or manufacture of any new complete naval vessel or any portion thereof.

(e) *Fourth step.* The fourth step is to ascertain the amount of credit allowed for Federal income taxes paid or remaining to be paid upon the amount of excess profit computed in the third step (See § 160.11.) and to subtract from the amount of excess profit determined in the third step the amount of credit for Federal income taxes. The amount remaining after this subtraction is the amount of excess profit to be paid to the United States by the contracting party for the income-taxable year with respect to contracts and subcontracts completed within the income-taxable year for the construction or manufacture of any complete naval vessel or any portion thereof.

(f) *Example.* The application of the provisions of this section of the regulations may be illustrated by the following example:

Example. On September 1, 1978 the A Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, entered into a contract with the Secretary of the Navy for the construction of portions of a naval vessel coming within the scope of the Act, the total contract price of which was $200,000. On March 10, 1979 the A Corporation entered into another such contract, the total contract price of which was $40,000. Both contracts were completed within the calendar year 1979, the first at a cost of $155,000 and the second at a cost of $45,000. During the year 1979, the A Corporation also completed at a loss of $10,000 two contracts entered into for the construction or manufacture of naval aircraft coming within the scope of the Act. For the year 1978 the A Corporation sustained a net loss of $2,500 on all contracts and subcontracts for any complete naval vessel or any portion thereof coming within the scope of the Act and completed within the calendar year 1978. For the year 1978, the A Corporation also sustained a net loss of $1,800 on all other contracts and subcontracts coming within the scope of the Act which were completed within the calendar year 1978. For purposes of Federal income tax, the taxable income of the A Corporation for the year 1979 amounted to $96,000, which amount included the net profit of $40,000 upon the contracts entered into on September 1, 1978 and March 10, 1979. For the year 1979, the A Corporation paid Federal income taxes amounting to $25,150. The excess profit liability of the A Corporation for 1979 is payable with respect to the contracts for portions of a naval vessel which were completed in 1979. The loss of $10,000 on the contracts for naval aircraft completed in 1979 and the net loss of $1,800 for 1978 on contracts and subcontracts for naval aircraft do not enter into the computation of such liability. Accordingly the excess profit liability of the A Corporation for 1979 is $8,100, computed as follows:

Total contract prices:		
Contract No. 1	$200,00	
Contract No. 2	40,000	
		$240,000
Less cost of performing contracts:		
Contract No. 1	155,000	
Contract No. 2	45,000	
		200,000
Net profit on contracts		40,000
Less:		
10 percent of total contract prices (10 percent of $240,000)	24,000	
Net loss from 1978	2,500	
		26,500
Excess profit for year 1979		13,500
Less credit for Federal income taxes paid:		
Taxable income	$96,000	
Applicable Income Tax Rate	40%	
Amount of Credit ($13,500 x .40)		5,400
Amount of excess profit payable to the United States		8,100

§ 160.7 Manner of determining liability with respect to contracts or subcontracts for complete military aircraft or portions thereof.

(a) *In general.* If a contracting party completes one or more contracts or subcontracts coming within the scope of the Act and entered into for the construction of manufacture of any complete military aircraft or any portion thereof, the amount of excess profit to be paid to the United States with respect to all such contracts and subcontracts completed within the income-taxable year shall be computed in accordance with this section. In computing the amount of excess profit, all contracts for military aircraft or portions thereof which are within the scope of the Act are considered together.

(b) *First step.* The first step is to ascertain the sum of the contract prices of all contracts and subcontracts for complete military aircraft or any portion thereof completed by the contracting party within the income-taxable year. As to total contract prices, see §§ 160.1 and 160.8.

(c) *Second step.* The second step is to ascertain the cost of performing these contracts and subcontracts (See § 160.9.) and to subtract that cost from the amount computed in the first step. The amount remaining after this subtraction is the amount of net profit or net loss upon the contracts and subcontracts completed within the income-taxable year.

(d) *Third step.* The third step, in case there is a net profit upon the contracts and subcontracts, is to subtract from the amount of the net profit as computed in the second step the sum of: (1) An amount equal to 12 percent of the sum computed in the first step; (2), The amount of any net loss which was sustained in any of the preceding four income-taxable years with respect to contracts or subcontracts entered into for the construction or manufacture of any complete military aircraft or any portion thereof, and which is allowable as a credit in determining the excess profit for the income-taxable year for contracts and subcontracts entered into for the construction or manufacture of complete military aircraft or any portion thereof. (See § 160.10 (b).); and (3), The amount of any deficiency in profit which was sustained in any of the preceding four income-taxable years with respect to contracts or subcontracts for the construction or manufacture of any complete military aircraft or any portion thereof, and which is allowable as a credit in determining the excess profit for the income-taxable year with respect to contracts and subcontracts entered into for the construction or manufacture of complete military aircraft or any portion thereof. (See § 160.10(c).) The amount remaining after this subtraction is the amount of excess profit for the income-taxable year with respect to contracts and subcontracts completed within the income taxable year for the construction or manufacture of complete military aircraft or any portion thereof.

(e) *Fourth step.* The fourth step is to ascertain the amount of credit allowed for Federal income taxes paid or remaining to be paid upon the amount of excess profit computed in the third step (See § 160.11.) and to subtract from the amount of excess profit determined in the third step the amount of credit for Federal income taxes. The amount remaining after this subtraction is the amount of excess profit to be paid to the United States by the contracting party for the income-taxable year with respect to contracts and subcontracts completed within the income-taxable year for the construction or manufacture of complete military aircraft or any portion thereof.

(f) *Example.* The application of the provisions of this section of the regulations may be illustrated by the following example:

Example. On September 1, 1978, the B Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, entered into a contract with the Secretary of the Navy for the construction of naval aircraft coming within

the scope of the Act, the total contract price of which was $200,000. On March 10, 1979, the B Corporation entered into a contract with the Secretary of the Army for the construction of new Army aircraft, the total contract price of which was $40,000. Both contracts were completed within the calendar year 1979, the first at a cost of $155,000 and the second at a cost of $45,000. During the year 1979, the B Corporation also completed at a net loss of $2,000 a contract entered into for the construction of Army aircraft coming within the scope of the Renegotiation Act. During the year 1979, the B Corporation also completed at a loss of $10,000 two contracts entered into for the construction or manufacture of portions of a naval vessel coming within the scope of the Act. For the year 1978, the B Corporation sustained a net loss of $3,800 and a deficiency in profit of $1,000 on all contracts and subcontracts for naval and air force aircraft coming within the scope of the Act and completed within the calendar year 1978. For the purposes of the Federal income tax, the taxable income of the B Corporation for the year 1979, on which the tax was paid, amounted to $96,000, which included the net profit of $40,000 upon the contracts entered into on September 1, 1979, and March 10, 1979. The excess profit liability of the B Corporation for 1979 is payable with respect to the contracts for army and navy aircraft which were completed in 1979. The loss of $10,000 on the contracts for portions of a naval vessel completed in 1979 does not enter into the computation of such liability. Likewise, the net loss of $2,000 on the contract subject to the Renegotiation Act does not enter into the computation. Accordingly, the excess profit liability of the B Corporation for 1979 is $3,840 computed as follows:

Total contract prices:		
Contract No. 1	$200,000	
Contract No. 2	40,000	
		$240,000
Less: Cost of performing contracts:		
Contract No. 1	155,000	
Contract No. 2	45,000	
		200,000
Net profit on contracts		40,000
Less:		
12 percent of total contract prices (12 percent of $240,000)	28,800	
Net loss (in military aircraft contracts) from 1978	3,800	
Deficiency in profit (in naval aircraft contracts) from 1978	1,000	
		33,600
Excess profit for year 1979		6,400
Less: Credit for Federal income taxes:		
Taxable Income	$96,000	
Applicable Income Tax Rate	40%	
Amount of Credit ($6,400 × .40)		2,560
Amount of excess profit payable to the United States		3,840

§ 160.8 Contract price.

The total contract price of a particular contract or subcontract (See § 160.1) may be received in money or its equivalent. If property other than money is received, the fair market value of the property, at the date of receipt, is to be included in determining the amount received. Incentives earned for bettering performance and reductions and liquidated damages incurred for failure to meet the contract guarantees are to be regarded as adjustments of the original contract price. Trade or other discounts granted by a contracting party in respect of a contract or subcontract performed by the party are also to be deducted in determining the true total contract price of a contract or subcontract. However, amounts received for articles not subject to the Act, such as spare or replacement parts, are not part of the contract price. See also § 160.4 relating to an exemption for contracts and subcontracts for scientific equipment.

§ 160.9 Cost of performing a contract or subcontract.

The cost of performing a particular contract or subcontract is the sum of the allowable direct or indirect costs that have been incurred and that are allocable to the contract or subcontract less any allocable credits. For this purpose, the rules and regulations that the military departments apply generally to determine the total cost of a defense contract are to be applied. These rules are set forth in the cost accounting standards promulgated by the Cost Accounting Standards Board and in section XV of the Defense Acquisition regulation. In no case shall any amounts attributable to illegal bribes or kickbacks, or other illegal payments within the meaning of section 162(c) of the Internal Revenue Code of 1954 (26 U.S.C. 162(c)), be allowable costs of performing a contract or subcontract.

§ 16010 Credits for net loss and deficiency in profit in computing excess profit.

(a) *Net loss on contracts and subcontracts for naval vessels or portions thereof.* In the case of contracts or subcontracts for the construction or manufacture of any complete naval vessel or any portion thereof coming within the scope of the Act which are completed within an income-taxable year, the term "net loss" as used in the Act and in this part means the amount by which the total costs of performing all such contracts and subcontracts completed within such income-taxable year exceeds the total contract prices of the contracts and subcontracts. A net loss sustained by a contracting party for an income-taxable year is allowable as a credit in computing the contracting party's excess profit on contracts and subcontracts for the construction or manufacture of any complete naval vessel or any portion thereof which are completed within the next succeeding income-taxable year.

(b) *Net loss on contracts and subcontracts for military aircraft or portions thereof.* In the case of contracts or subcontracts for the construction or manufacture of any complete military aircraft or any portion thereof coming within the scope of the Act, which are completed within an income-taxable year, the term "net loss" as used in the Act and in this part means the amount by which the total costs of performing all such contracts and subcontracts completed within such income-taxable year exceeds the total contract prices of the contracts and subcontracts. A net loss sustained by a contracting party for an income-taxable year is allowable as a credit in computing the contracting party's excess profit on contracts and subcontracts for the construction or manufacture of any complete military aircraft or any portion thereof which are completed within the four next succeeding income-taxable years.

(c) *Deficiency in profit.* The term "deficiency in profit" as used in the Act and in this part relates to contracts and subcontracts coming within the scope of the Act which are for the construction or manufacture of any complete military aircraft or any portion thereof and are completed within an income-taxable year. As so used, the term "deficiency in profit" means the amount by which 12 percent of the total contract prices of all contracts and subcontracts which are completed by a particular contracting party within the income-taxable year exceeds the net profit (not less than zero) upon the contracts and subcontracts. A deficiency in profit sustained by a contracting party with respect to contracts and subcontracts for the construction or manufacture of complete military aircraft or any portion thereof and completed within any income-taxable year is allowable as a credit in computing the contracting party's excess profit on contracts and subcontracts for the construction or manufacture of complete military aircraft or any portion thereof which are completed within the four next succeeding income-taxable years.

(d) *Claim for credit.* Credit for a deficiency in profit or a net loss may be claimed in the contracting party's annual report of profit filed with the Internal Revenue Service (See § 160.16), but it must be supported by separate schedules for each contract or subcontract involved showing total contract prices, costs of performance and pertinent facts relative thereto, together with a summarized computation of the deficiency in profit or net loss. The deficiency in profit or net loss claimed is subject to

verification and adjustment. As to preservation of books and records, see § 160.14.

(e) *Examples.* The provisions of this section of the regulations may be illustrated by the following examples:

Example (i). for the calendar year 1978 the A Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, sustained a net loss of $50,000 upon all contracts and subcontracts coming within the scope of the Act which were entered into for the construction or manufacture of any complete naval vessel or any portion thereof and were completed within the calendar year 1978. For the calendar year 1979 the A Corporation had a net profit of $30,000 upon all such contracts and subcontracts completed within the year 1979. A corporation also had a net profit of $10,000 upon other contracts completed within that year, those contracts being for naval aircraft coming within the scope of the Act. For the calendar year 1980 the corporation had a net profit of $25,000 upon contracts completed within that year and within the scope of the Act. The net loss of $50,000 sustained in 1978 may be taken as a credit against the net profit of $30,000 realized in 1979 upon the contracts for the construction or manufacture of complete naval vessels or portions thereof completed within that year; but the excess of $20,000 ($50,000 minus $30,000) may not be taken as a credit in computing the excess profit realized upon the other contracts completed in 1979 at a net profit of $10,000 or as a credit in computing the excess profit upon the contracts completed with the year 1980 at a net profit of $25,000.

Example (ii). For the calendar year 1978, B Corporation, which keeps it books and makes its Federal income tax returns on a calendar year basis, sustained a net loss of $10,000 on one contract and a deficiency in profit of $35,000 upon all contracts for naval aircraft and portions thereof coming within the scope of the Act and completed within that year. During the year 1978, the B Corporation also completed contracts for Army aircraft coming within the scope of the Act at a net profit which was $15,000 in excess of 12 percent of the total contract prices of these contracts. B Corporation thus had a net deficiency in profit of $30,000 in 1978 on contracts and subcontracts for military aircraft within the scope of the Act. On all contracts and subcontracts for naval aircraft coming within the scope of the Act and completed within the calendar year 1979, the B Corporation realized a net profit which was $25,000 in excess of 12 percent of the total contract prices of such contracts and subcontracts while sustaining a deficiency in profit of $10,000 on like contracts and subcontracts for Army aircraft. B thus had a net excess profit of $15,000 on contracts for military aircraft completed during 1979. B's 1978 net deficiency on military aircraft of $30,000 may be taken as a credit to the extent of the $15,000 execess profit made in 1979. On all contracts and subcontracts for naval aircraft coming within the scope of the Act and completed within the calendar year 1980, the B Corporation realized a net profit which was $20,000 in excess of 12 percent of the total contract prices of such contracts. The $15,000 deficiency amount remaining in 1980 may be taken as a credit in computing the excess profit realized on the contracts and subcontracts for aircraft completed in that year, leaving a net excess profit liability of $5,000 for the year 1980.

§ 160.11 Credits against excess profit liability.

(a) *Credit for Federal income taxes.* For the purpose of computing the amount of excess profit to be paid to the United States, a credit is allowable against the excess profit for the amount of Federal income taxes paid or remaining to be paid on the amount of such excess profit. This credit is allowable for these taxes only to the extent that it is affirmatively shown that they have been finally determined and paid or remain to be paid and that they were imposed upon the excess profit against which the credit is to be made. The amount of the credit under this section with respect to any taxable year, is the difference between the tax actually paid for the year and the tax that would have been paid had the excess profit not been included in income. In making this computation, the taxpayer shall take into account the effect of all credits and deductions allowed in computing income tax liability (i.e., investment tax credits and net operating losses) including the effect of carrybacks and carryovers of credits and deductions. For example, assume a contractor had a taxable income of $85,000, including an excess profit of $15,000, and paid income taxes totaling $20,750 for the year 1979. Had the $15,000 excess profit not been included in income the contractor would have paid tax of $15,250 on $70,000 taxable income. Therefore, the applicable credit under the Act for taxes paid would be $5,500. If a credit under this section has previously been allowed and the amount of Federal income taxes imposed upon the excess profit is redetermined, the credit previously allowed must be accordingly adjusted.

(b) *Contracts under which payments are received during more than one income taxable year.* If any partial payments for performance of a single contract within the scope of the Act are received during more than one income-taxable year, the credit for Federal incomes taxes paid is equal to the sum of the amounts of income tax attributable to the amount of the payment received in each year. The amount of tax paid for each year with respect to any contract within the scope of the Act is determined as provided in paragraph (a) of this section relating to payment received upon completion of a contract.

(c) *Contracts (and subcontracts thereunder) subject to the Renegotiation Act not considered.* In computing the amount of excess profit or net loss, or any deficiency in profit, on all contracts and subcontracts for naval vessels or military aircraft or for any portions thereof within the scope of the Act, contracts subject to the Renegotiation Act, and subcontracts of these contracts, are not considered.

§ 160.12 Failure of contractor to require agreement by subcontractor.

(a) *Requirement.* Every contract or subcontract coming within the scope of the Act is required by the Act to contain, among other things, an agreement by the contracting party to make no subcontract unless the subcontractor agrees: (1) To make a report, as described in the Act, under oath to the Secretary of a military department upon the completion of the subcontract; (2) To pay into the Treasury excess profit, as determined by the Treasury Department, in the manner and amounts specified in the Act; (3) To make no subdivision of the subcontract for the same article or articles for the purpose of evading the provisions of the Act; (4) To make available for inspection and audit at all times and as provided in the Act, the manufacturing plants and books of its plants, affiliates, and subdivisions.

(b) *Liability.* If a contracting party enters into a subcontract with a subcontractor who fails to make such agreement, the contracting party shall, in addition to its liability for excess profit determined on contracts or subcontracts performed by it, be liable for any excess profit determined to be due the United States on the subcontract entered into with that subcontractor. In such an event, however, the excess profit to be paid to the United States in respect of the subcontract entered into with the subcontractor is determined separately from any contracts or subcontracts performed by the contracting party entering into the subcontract with the subcontractor.

§ 160.13 Evasion of excess profit.

The Act provides that the contracting party shall agree to make no subdivisions of any contract or subcontract for the same article or articles for the purpose of evading the provisions of the Act. If any subdivision or subcontract to evade the provisions of the Act is made, it shall constitute a violation of the agreement provided for in the Act. The cost of completing a contract or subcontract by a contracting party which violates such agreement is

determined in a manner necessary to reflect clearly the true excess profit of the contracting party.

§ 160.14 Books of account and records.

(a) *In general.* Each contracting party is required by law to make a report of its true profit and excess profit. All contracting parties must, therefore, maintain complete accounting records to enable them to do so. See § 160.9. The profit or loss upon each contract or subcontract must be separately accounted for and fully explained in the books of account. Any cost accounting methods, however standard they may be and regardless of long continued practice, are controlled by, and must be in accord with, the objectives and purposes of the Act and these regulations. The accounts must clearly disclose the nature and amount of the different items of cost of performing each contract or subcontract.

(b) *Preservation of records.* All records (including computerized records) and other evidences of costs of each plant, branch, or department of a contracting party involved in the performance of a contract or subcontract which are pertinent to any determination or report required to be made under the Act must be retained in the same manner as the documentation supporting the contracting party's Federal income tax returns is retained. These records and other evidences of costs must be available at all times for inspection by the Internal Revenue Service or its designated representatives. All records and other evidences of costs must be retained until the contents thereof are no longer material to the administration of the Act.

§ 160.15 Report to the military department.

(a) *Requirement.* Upon completion of a contract or a subcontract coming within the scope of the Act and this part, the contracting party is required to make a report, under oath, to the Secretary of the military department. As to the date of completion of a contract or subcontract, see § 160.5. The Act requires that this report be in the form prescribed by the Secretary of the military department. The report must state the total contract price, the cost of performing the contract, the net income from such contract, and the per centum such income bears to the contract price. The original of this report is to be submitted to the Washington Headquarters Services, Attention: DUIR/PIED, The Pentagon, Washington, D.C. 20301.

(b) *Copy to be filed with the Internal Revenue Service.* A copy of the report required to be made to the Secretary of the military department must be filed by the contracting party with the Internal Revenue Service as a part of the annual report. See § 160.16.

§ 160.16 Annual reports for income-taxable years.

(a) *General requirements.* Every contracting party completing a contract or subcontract within the contracting party's income-taxable year must file with the Internal Revenue Service office where the party files its income tax return, annual reports of the profit and excess profit on all contracts and subcontracts coming within the scope of the Act. The annual report is to be made on the forms prescribed by the Service. As a part of the annual report a statement, preferably in columnar form, must be completed showing separately for each contract or subcontract completed by the contracting party within the income-taxable year and covered by the report, the total contract price, the cost of performing the contract or subcontract, and the resulting profit or loss on each contract or subcontract. There also must be a summary statement showing in detail the computation of the net profit or net loss upon each group of contracts and subcontracts covered by the report and, in the case of a report of a contractor, a list of all subcontractors within the scope of the Act for each completed contract. A copy of the report made to the Secretary of the military department (See § 160.14.) with respect to each contract or subcontract covered in the annual report, must be filed as a part of this annual report. In case the income-taxable year of the contracting party is a period of less than twelve months (See § 160.1.), the reports required by this section are made for that period and not for a full year.

(b) *Time for filing annual reports.* Annual reports of contracts and subcontracts completed by a contracting party within an income-taxable year shall be filed on or before the 15th day of the ninth month following the close of the contracting party's income-taxable year. It is important that the contracting party render on or before the due date annual reports as nearly complete and final as it is possible for the contracting party to prepare. An extension of time granted the contracting party for filing its Federal income tax return does not serve to extend the time for filing the annual reports required by this section. The Commissioner may extend the time for filing annual reports for such period or periods as he determines necessary. Interest determined at the rate provided for by § 6621 of the Internal Revenue Code accrues during the period of any extension.

§ 160.17 Payment of excess liability.

The amount of the excess profit liability to be paid to the United States must be paid on or before the due date for filing the report with the Internal Revenue Service. See § 160.16. The amount of the excess profit liability to be paid to the United States may be paid in installments to the same extent and subject to the same conditions as under section 6152(a)(1) of the Internal Revenue Code (relating to installment payments by corporations). Solely for purposes of the Act, the installment provision of section 6152(a)(1) applies to all taxpayers.

§ 160.18 Liability of surety.

The surety under contracts subject to the Act is not liable for payment of excess profit due the United States in respect of the contracts.

§ 160.19 Determination of liability for excess profit, interest and penalties; assessment, collection, payment, refunds.

Section 1951(b)(13)(B) of the Tax Reform Act of 1976 (90 Stat. 1840) provides that, if the amount of profit required to be paid into the Treasury under the Act is not voluntarily paid, the Commissioner is to collect the excess profit under the methods employed to collect Federal income taxes. All provisions of law (including penalties) applicable with respect to such taxes and not inconsistent with the Act apply with respect to the assessment, collection, or payment of excess profits to the Treasury and to refunds by the Treasury of overpayments of excess profits into the Treasury. Claims by a contracting party for the refund of an amount of excess profit, interest, penalties, and additions to such excess profit must conform to the general requirements prescribed with respect to claims for refund of overpayments of income taxes and, if filed on account of any additional costs incurred pursuant to guarantee provisions in a contract, must be supplemented by a statement under oath showing the amount and nature of these costs and all facts pertinent thereto. Administrative procedures for the determination, asssessment and collection of excess profit liability under the Act, related provisions of law, and this part, and the examination of reports and claims in

connection therewith will be prescribed from time to time by the Commissioner.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 79-33148 Filed 10-25-79; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefits Programs

29 CFR Part 2550

Rules and Regulations for Fiduciary Responsibility; Proposed Regulations Relating to Definition of Plan Assets and to Establishment of Trust; Extension of Comment Period

AGENCY: Department of Labor.

ACTION: Notice of Extension of Comment Period.

SUMMARY: The Department of Labor (the Department) is extending the comment period on the proposed regulations which would clarify what will be regarded as assets of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (the Act) and provide certain exemptions from the requirement that assets of an employee benefit plan be held in trust. The proposed regulations were set forth in the notice of rulemaking published in the **Federal Register** at 44 FR 50663 (August 28, 1979). This action is being taken at the request of certain members of the public for additional time to prepare comments and in view of the importance of the proposed regulation.

DATE: The comment period is extended through November 29, 1979.

ADDRESS: Submit comments (preferably six copies) to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Plan Asset Regulations.

FOR FURTHER INFORMATION CONTACT: Robert R. Bitticks, Esq., Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 202-523-8620.

SUPPLEMENTARY INFORMATION: On August 28, 1979 the Department issued a notice of proposed rulemaking concerning what constitutes "assets" of an employee benefit plan and proposing certain exemptions from the requirement that plan assets be held in trust. In that notice the Department invited all interested persons to submit written data, views or arguments concerning the proposed regulations.

The Department has received requests from some members of the public for additional time to prepare comments because of the complexity of the issues involved in the proposed regulations, and the Department believes that it is appropriate to grant such additional time. Accordingly, this notice extends the comment period during which comments on the proposed regulation will be received until November 29, 1979.

Notice of Extension of Comment Period

Notice is hereby given that the period of time for the submission of public comments on the proposed regulations relating to what will be regarded as assets of an employee benefit plan under the act and providing certain exemptions from the requirement that assets of an employee benefit plan be held in trust (proposed at 44 FR 5063, August 28, 1979), is hereby extended through November 29, 1979.

All interested persons are invited to submit written data, views or arguments concerning the regulations proposed at 44 FR 50363 (August 28, 1979) on or before November 29, 1979. These data, view or arguments (preferably six copies) should be submitted to the address set forth above.

Signed at Washington, D.C., this 24th day of October 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefits Programs, Labor-Management Services Administration, United States Department of Labor.

[FR Doc. 79-33261 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Grazing Fee System, Eastern Region

AGENCY: USDA, Forest Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the procedure for determining annual grazing fees on Federal land in the Eastern Region administered by the Forest Service, U.S. Department of Agriculture. It would implement the grazing fees for the fee years 1980 through 1989 on the National Forest System in the eastern United States, namely: National Forests—Shawnee, Wayne-Hoosier, Hiawatha, Huron-Manistee, Ottawa, Chippewa, Superior, Mark Twain, White Mountain, Allegheny, Green Mountain, Monongahela, Chequamegon, and Nicolet; and Land Utilization Projects—Hector and Cedar Creek.

DATES: Comments must be received by December 26, 1979.

ADDRESSES: Send comments to: Regional Forester, USDA, Forest Service, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Comments received will be available for public inspection from the Director of Recreation, Range, Wildlife, and Landscape Management of the Regional Office, Forest Service, Room 501, 633 West Wisconsin Avenue, Milwaukee, Wisconsin, 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Storch, USDA, Forest Service, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, phone (414) 291-1371.

SUPPLEMENTARY INFORMATION: The Eastern Region of the Forest Service, with headquarters in Milwaukee, Wisconsin, administers National Forest System lands in 13 states. All National Forest System land in these states will be affected by the grazing fee system.

The Forest Service is required to charge fair market value for grazing livestock on National Forest System lands. Determination of fair market value includes consideration for both value of grazing and the contributions provided by or required of the permittee in the care and use of the land for grazing livestock. The system for determining fair market value is reevaluated periodically.

The proposed system will provide a fair return to the Government and equitable treatment to the user. To reflect local situations, the base grazing fees and subsequent indices to reflect annual changes in the value of grazing and permittee costs incurred while grazing on National Forest System lands will be developed for implementation for the three following sub-regional areas: (1) Corn Belt Subregion Illinois, Indiana, Missouri and Ohio, (2) Lake State Subregion Michigan, Minnesota, and Wisconsin, and (3) Northeastern Subregion Maine, New Hampshire, New York, Pennsylvania, Vermont and West Virginia. In addition, two other base fees will be developed within the sub-regional areas for use on National Forest System lands in (a) New York and West Virginia, and (b) in Missouri as a basis of fee calculation on both established ranges and for new allotments.

Once established, the base fee will be adjusted annually to reflect annual changes in the value of grazing and the costs for grazing on National Forest System land.

In setting the fee structure, two different methods will be used.

The National Forest System land in New York, West Virginia, and Missouri, will have a fee based on the value of an alternative feed source, using the price of hay as the basis of fee calculation on both established ranges and for new allotments. The following steps represent the general procedure that will be taken in the calculation of this base fee: (1) Three year seasonal average prices of hay will be computed, (2) These prices will be adjusted to consider (a) costs for the cutting, raking and baling, (b) normal wastage of a grazed standing crop as compared to the grazing of a harvested crop and (c) the costs directly related to the quartering of livestock on National Forest System lands, such as fencing, handling facilities, watering, salting, etc.

Fees on all National Forests in the Eastern Region, except in the states of New York, Missouri and West Virginia will be determined through competitive bidding. These fees will be calculated using the following general procedures: (1) A minimum fee will be established by using 3-year averages of comparable private land grazing lease rates of values determined by the price of hay (see above hay calculations) whichever is less, (2) a prospectus for each allotment, identifying the minimum fee, number of permitted Animal Unit Months (AUM's) allowable grazing season, requirements and standards for the maintenance of structural range improvements (and if applicable for their construction) will be advertised; (3) sealed bids and applications for grazing permits will be submitted by applicants; (4) the winning qualified bidder will receive the privilege to obtain a permit for all or part of the offered AUM's. (If less than the total number of offered AUM's is selected, the next highest qualified bidder will be given the opportunity to acquire the remaining AUM's, and so forth until all AUM's have been subscribed. In cases of identical bids, the permittee selection process will be negotiated or a drawing will be held to determine the permit holder(s)); (5) prior to December 31, 1989, if the initial term grazing period expires, the allotment will again be put up for bid and the following will apply: (a) the above prospectus and bidding procedures will be repeated, (b) if applicable, the previous permittee will be given an opportunity to become the winning bidder by equaling the highest bid.

As of the date of this notice, using preliminary data, the 1980 fair market value per animal unit month for each sub-region are estimated to be within the values given below. Actual fees for 1979 also are shown:

Fee basis and year	Corn belt subregion	Lake States subregion	Northeastern subregion
Actual Fee 1979	$1.11-$3.50	0	$0.22-$3.50
Fair Market Value 1980	3.79-6.56	3.33-5.33	2.41-4.53

Full implementation of the grazing fee schedule of fair market value will be achieved in 1980, for all areas except where increases in fees would exceed 25 percent of the previous year's fee.

Annual adjustments of the grazing fee will not exceed 25 percent of the previous year's fee.

Administrative and other studies will not be affected as they are authorized by Livestock Use Permits.

Previous notice of review of grazing fees in the Eastern Region was published in the **Federal Register** on Page 31959, July 24, 1978.

Public comments on this proposal for the Eastern Region will be accepted for a period of 60 days. Copies of the proposal will be available to grazing permittees and other individuals and organizations in the Office of the Regional Forester and at the Forest Service field offices throughout the eastern states affected by this proposal whose addresses appear below:

Forest Supervisor, Shawnee National Forest, 317 East Poplar St., Harrisburg, Illinois 62946.
Forest Supervisor, Wayne-Hoosier National Forest, 1615 J Street, Bedford, Indiana 47421.
Forest Supervisor, Hiawatha National Forest, Box 316, Escanaba, Michigan 49829.
Forest Supervisor, Huron-Manistee National Forest, 421 S. Mitchell St., Cadillac, Michigan 49601.
Forest Supervisor, Ottawa National Forest, Ironwood, Michigan 49938.
Forest Supervisor, Chippewa National Forest, Cass Lake, Minnesota 56633.
Forest Supervisor, Superior National Forest, P.O. Box 338, Federal Building, 5th Avenue West and 1st St., Duluth, Minnesota 55801.
Forest Supervisor, Mark Twain National Forest, Rolla, Missouri 65401.
Forest Supervisor, White Mountain National Forest, 719 Main St., P.O. Box 638, Laconia, New Hampshire 03246.
Forest Supervisor, Allegheny National Forest, Spiridon Building, Box 847, Warren, Pennsylvania 16365.
Forest Supervisor, Green Mountain National Forest, Federal Building, 151 West St., Box 519, Rutland, Vermont 05701.
Forest Supervisor, Monongahela National Forest, Sycamore St., Box 1548, Elkins, West Virginia 26241.
Forest Supervisor, Chequamegon National Forest, P.O. Box 280, 157 North 5th Avenue, Park Falls, Wisconsin 54552.
Forest Supervisor, Nicolet National Forest, Federal Building, Rhinelander, Wisconsin 54501.

Steve Yurich,

Regional Forester.

[FR Doc. 79-33095 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-11-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Approval of Courses

AGENCY: Veterans Administration.

ACTION: Proposed Regulation.

SUMMARY: The proposed regulation states the conditions which must exist before the Veterans Administration can approve the enrollment of veterans and eligible persons in a course within 2 years of the day on which the school offering the course has changed ownership or management.

The law provides that, with some exceptions, a course must be offered for 2 years before the Veterans Administration can approve the enrollment of veterans and eligible persons in it, thus allowing them to receive educational assistance. Veterans Administration policy has been that if a school changes ownership or management and remains the same as to faculty, student body and courses offered, those courses would not again be subject to the 2-year operation requirement. It has not been made clear to the public that courses would have to meet the 2-year operation requirement if the new owner does not acquire all, or substantially all, of the school's assets and liabilities. The proposed regulation corrects this.

DATES: Comments must be received on or before November 26, 1979. It is proposed to make this amendment effective the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420.

Comments will be available for inspection at the address shown above during normal business hours until December 6, 1979.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: Section 21.4251(e), Title 38, Code of Federal Regulations is amended to provide additional criteria which must be met before the Veterans Administration can approve enrollments of veterans and eligible persons in a course within 2 years from the date on which the school offering the course changed ownership or management. An explanation of what constitutes a change of ownership or management for the purposes of this regulation has been added to the regulation. This amendment does not change the fact that if a course can meet one of the other criteria for an exemption to the 2-year operation requirement found in one of the other paragraphs of § 21.4251, the exemption may be granted regardless of whether it can meet the criteria found in § 21.4251(e).

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until December 6, 1979. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and room number.

Approved: October 18, 1979.
By direction of the Administrator.

Rufus H. Wilson,
Deputy Administrator.

It is proposed to revise § 21.4251(e) as follows:

§ 21.4251 Period of operation of course.

* * * * *

(e) *Change of ownership or management.* (1) Where a school has been in operation for 2 years or more and changes ownership or management, and remains essentially the same as to faculty, student body, and courses offered, the courses of the school will not again be subject to the 2-year limitation. (38 U.S.C. 1789)

(2) For the purpose of this paragraph a change of ownership of a school occurs when the new owner submits written evidence to the Director of the VA field station of jurisdiction through the State approving agency that the new owner:

(i) Has acquired all, or substantially all, of the school's assets;

(ii) Assumes liability on the date the school is sold for all, or substantially all, the outstanding debts which the school incurred under previous ownership. This shall include overpayments of educational assistance for which the school is liable or may become liable under § 21.4009, and

(iii) Will make all refunds which, on the date the school is sold, may be due to veterans and eligible persons under § 21.4254(c)(13). (38 U.S.C. 1789)

* * * * *

[FR Doc. 79-33126 Filed 10-25-79; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL 1346-6; Docket No. OAQPS 79-14]

National Emission Standards for Hazardous Air Pollutants: Proposed Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer; Informal Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of Informal Public Hearings.

SUMMARY: On October 10, 1979, the Environmental Protection Agency proposed in the **Federal Register** (44 FR 58642) a policy and procedures for addressing airborne carcinogens emitted into the ambient air from stationary sources. In the same **Federal Register** (44 FR 58662), EPA published an advance notice of proposed rulemaking, soliciting comments on draft generic work practice and operational standards which could be applied quickly to reduce emissions of airborne carcinogens from certain source categories. This notice announces the dates and locations of informal hearings to receive public comment on the proposed policy and generic standards.

DATES: Written comments should be postmarked no later than February 7, 1980. Notice of intent to appear at a public hearing should be postmarked no later than November 26, 1979. Hearings will be held in Washington, D.C. on December 10, 1979; in Boston, Massachusetts on December 12, 1979; and in Houston, Texas on December 13, 1979. Written comments responding to, supplementing, or rebutting written or oral comments received at public hearings must be submitted within 60 days of the hearing date.

ADDRESSES: All written comments should be addressed to: Central Docket Section, Room 2903B, Waterside Mall, 401 M Street SW., Washington, D.C. 20460, ATTN: OAQPS 79-14.

Persons wishing to provide oral testimony at the public hearings should contact Mr. Joseph Padgett (MD-12), Director, Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, Telephone 919-541-5204 (FTS 629-5204).

The hearings will be held at the following locations:

Washington Hearing: Environmental Protection Agency, Room 2117, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

Boston Hearing: 3 Center Plaza, Room 1, Boston, Massachusetts 02203.

Houston Hearing: Shamrock Hilton, Crystal Room, 6900 Main at Holcombe, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Padgett, Telephone 919-541-5204 (FTS 629-5204).

SUPPLEMENTARY INFORMATION:

1. Hearing Times

In general, the public hearings will convene at 9:00 a.m. and adjourn at 4:30 p.m. Depending on the number of requests to speak that are received, the Washington, D.C. hearing may be continued on December 11, 1979 beginning at 9:00 a.m. If there is sufficient interest, the Houston, Texas hearing may be continued in an evening session on December 13, 1979 beginning at 7:00 p.m.

2. Conduct of Hearings

The hearings are intended to provide opportunities for interested persons to present their views and submit information for consideration by the Agency in the development of a final policy to identify, assess, and regulate airborne carcinogens. A panel of EPA officials involved in relevant aspects of the policy's development will be present to receive the testimony.

The hearings will be informally structured. Individuals providing oral comments will not be sworn in nor will formal rules of evidence apply. Questions may be posed by panel members to persons providing oral comments. No cross examination by other participants will be allowed. Questions from other participants may be submitted by presenting them in writing to the hearing chairman.

Each organization or individual will be allowed as much time as possible for oral presentation. Allotments will be

based on the volume of requests. As a general rule, participants should try to limit the length of their statements to ten minutes.

3. Preparation of Transcripts

Verbatim transcripts of the oral comments received will be prepared. To insure accurate transcription, participants are asked to provide written copies of prepared statements to the hearing chairman. There are no plans to provide review and correction opportunities.

Information will be provided at the hearings on how copies of the hearing transcripts may be obtained. In addition, the transcripts will be made available for public inspection at EPA Regional Offices and will be incorporated into the public docket for this rulemaking, (OAQPS 79–14), maintained at the above address.

4. Major Issues of Interest to EPA

While EPA welcomes comment on all aspects of the proposed policy, the Agency is particularly interested in public comment on the following issues:

A. The Nature of the Airborne Carcinogen Problem

The contribution of ambient air pollution to the incidence of human cancer is not known with certainty. While a number of air pollutants have been demonstrated to produce cancer in laboratory animals at high doses, the significance of this finding for human populations exposed to much lower ambient concentrations is not well understood. EPA invites comments on whether it is prudent health policy, in view of this uncertainty, to undertake a program of air carcinogen control, as outlined in the proposed policy, which will require the significant commitment of both Agency and industrial resources.

B. The Appropriate Use of Quantitative Risk Assessment

In recent years, considerable effort has been devoted to attempts to estimate the risk to humans of substances found to cause cancer in animals. There is general acknowledgment that such estimates are, at best, an uncertain measure of carcinogenic risk. The proposed policy makes use of quantitative risk assessments in the establishment of priorities for regulatory action and in the determination that the appropriate level of control does not result in an unreasonable residual risk. EPA invites comments on the merits of this approach to the control of airborne carcinogens.

C. The Role of Economics and Other Social Factors in the Regulation of Airborne Carcinogens

The proposed policy requires, as a minimum, the application of "best available technology" (BAT) to control emissions of airborne carcinogens from new and existing sources which present or would present significant cancer risks. Controls more stringent than BAT may be imposed if the risk remaining after the application of BAT is unreasonable. The unreasonable risk determination considers in order of importance: the residual risk, including the projected incidence of cancers as well as the risk to the most exposed individuals; the readily identifiable benefits of the substance or activity; the economic impacts of requiring additional control measures; the distribution of the benefits of the activity versus the risks it presents; and other possible health and environmental effects resulting from the increased use of substitutes. EPA invites comments on this strategy for the determination of the appropriate level of control for airborne carcinogens.

D. Requirements for New Sources of Airborne Carcinogens

The construction of new sources of airborne carcinogens results in increased emissions of these substances which may increase the risk of cancer in humans. In the proposed policy, requirements are outlined which encourage new sources to consider health risks in making siting decisions and determining the extent of emission control. EPA invites comment on the appropriateness of these proposed requirements and on possible alternative means to achieve the same objectives.

E. Procedural Aspects of the Proposed Policy

1. Form of the rule.—The air policy has been proposed as a substantive rule to facilitate judicial review and final resolution of key legal issues. As a substantive rule, the final policy will legally bind the Agency to follow the specific procedures for identifying, assessing, and regulating airborne carcinogens. The alternative form of an interpretive rule would provide guidance in regulatory decision making but would not have the force of law. EPA invites comments on the proper form for the proposed policy.

2. The criteria for listing airborne carcinogens as hazardous air pollutants.—The proposed criteria for listing under Section 112 are limited to consideration of the probability of human carcinogenicity and the extent of ambient exposure. Detailed cost and regulatory options analyses are not required prior to listing. EPA invites comments on the merits of this approach.

3. Regulatory authorities for the control of airborne carcinogens.—Regulations developed in accordance with the proposed policy are authorized by Section 112 (National Emission Standards for Hazardous Air Pollutants) and 111 (Standards of Performance for New Sources) of the Clean Air Act. The use of a particular regulatory authority depends on the strength of evidence of carcinogenicity and the extent of human exposure. EPA invites comments on the rationale provided in the policy for the selection of a regulatory response.

Dated: October 22, 1979.

David G. Hawkins,

Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 79–33063 Filed 10–25–79; 8:45 am]

BILLING CODE 6560–01–M

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40 CFR Part 162

[OPP–250022; FRL 1347–2]

Pesticides; Closed System Packaging; Correction

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

ACTION: Correction.

SUMMARY: This document corrects and Advance Notice of Proposed Rulemaking that appeared on closed system packaging at page 54508 in the **Federal Register** of Thursday, September 20, 1979 (FR Doc. 79–29275). The correction provides an OPP control number for recordkeeping purposes.

ADDRESSES: Interested persons may submit written comments by sending them in triplicate if possible, to the Document Control Officer (TS–793), ATTN: Pesticides, Office of Toxic Substances, Environmental Protection Agency, Room 447, East Tower, 401 M Street, S.W., Washington, D.C. 20460. The comments should bear the identifying notation "OPP 250022". All written comments will be available for public inspection at the above address from 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. William W. Jacobs, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460 (202/755–4851).

SUPPLEMENTARY INFORMATION: In FR Doc. 79–29275 appearing at page 54508

in the Federal Register of Thursday, September 20, 1979, an OPP control number was not established for such recordkeeping purposes as correspondence control, filing, and document tracking. The OPP number "250022" is hereby assigned to the above document, which was an Advance Notice of Proposed Rulemaking concerned with the publication of regulations for the packaging of pesticides used in closed systems.

Accordingly, in FR Doc. 79-29275, the heading in the third column on page 54508 and the third paragraph, first column, on page 54509 are corrected to read as follows:

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

[OPP-250022]

PESTICIDE PROGRAMS

* * * * *

Dated: October 22, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-33065 Filed 10-25-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute of Education

45 CFR Part 1496

Research Grants Program on Knowledge Use and School Improvement; Decision To Develop Regulations

AGENCY: National Institute of Education, Department of Health, Education, and Welfare.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: Regulations are to be drafted that provide for a research grants program on knowledge use and school and improvement. The proposed program will expand previous work in dissemination and education in light of the Institute's recent reorganization. The proposed regulations will: a. define a research program that will: (1) Produce systematic information about school improvement processes and the roles of knowledge and dissemination in them; and (2) lead to improved educational practice through use of the knowledge so gained in enhancing the ability of Federal, State, and local education officials to formulate and implement appropriate new programs in non-disruptive and effective ways; b. specify project and applicant eligiblity, type of awards available, review procedures, and evaluation criteria; and c. govern the selection of applicants for funding.

FOR FURTHER INFORMATION CONTACT: Rolf Lehming, Mail Stop 24, Research and Educational Practice, DIP, NIE, 1200 19th Street, N.W., Washington, D.C. 20208. Telephone: (202) 254-6050.

Dated: August 1, 1979.

(Catalog of Federal Domestic Assistance No. 13.950, Educational Research and Development)

Gladys Keith Hardy,

Deputy Director, National Institute of Education.

[FR Doc. 79-33124 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-39-M

DEPARTMENT OF ENERGY

10 CFR Chapters I, III, and X

Semiannual Agenda of Regulations

AGENCY: Department of Energy.

ACTION: Notice of Regulations Under Development or Review.

SUMMARY: The Department of Energy (DOE) is publishing an agenda of regulations under development or review as of October 1, 1979. Because of delays that have arisen in preparation of the agenda, the original publication date of October 26, 1979 has been changed to October 31, 1979.

FOR FURTHER INFORMATION CONTACT: Sue D. Sheridan, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6754.

Issued in Washington, this 24th day of October, 1979.

Lynn R. Coleman,

General Counsel.

[FR Doc. 79-33490 Filed 10-25-79; 11:58 am]

BILLING CODE 6450-01-M

Notices

Federal Register
Vol. 44, No. 209
Friday, October 26, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

Notice is hereby given in accordance with Section 800.6(d)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that the Advisory Council on Historic Preservation will meet on November 7–8, 1979, 9:30 a.m. at the U.S. Marine Corps Historical Center, Washington Navy Yard, Building 58, 9th and M Streets, SE, Washington, D.C.

The Council was established by the National Historic Preservation Act of 1966 (Pub. L. 89–665, as amended, Pub. L. 94–422) to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Secretaries of the Interior; Housing and Urban Development; Commerce; Treasury; Agriculture; Transportation; State; Defense; Health, Education, and Welfare; and the Smithsonian Institution; the Attorney General; the Administrator of the General Services Administration; the Chairman of the Council on Environmental Quality; the Chairman of the Federal Council on the Arts and Humanities; the Architect of the Capitol; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; and twelve non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Statement by the Chairman.

II. Report of the Office of Cultural Resource Preservation: A. Review and Explanation of the Section 106 Protection Process.

B. Consideration of the Impact of HUD's Urban Development Action Grant Program on Historic Resources: 1. Case Examples, Pittsfield, Charleston, Louisville.

2. Proposed HUD Regulations.

C. Programmatic Agreements.

D. Discussion of Counterpart Regulations and Water Resource Procedures.

E. Discussion of Surface Mining Affecting National Historic and Natural Landmarks.

III. Report of the Executive Director: A. Fiscal Year 1980 Budget and Appropriations.

B. Implementation of Affirmative Action Plan.

IV. Report of the Legislative and Policy Counsel: A. Chairman's Task Force Report on Proposed Legislation Amending the National Historic Preservation Act of 1966.

V. Report of the Office of General Counsel: A. Proposed NEPA Regulations.

B. Review of Current Litigation.

VI. Policy Group Reports.

VII. Other Business: A. International Centre Committee.

B. Report of the National Conference of State Historic Preservation Officers.

Additional information concerning either the meeting agenda or the submission or oral and written statements to the Council is available from the Executive Director, Advisory Council on Historic Preservation, Suite 530, 1522 K Street, NW, Washington, D.C. 20005, 202/254–3974.

Dated: October 23, 1979.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 79–33244 Filed 10–25–79; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Spruce Creek Addition Wilderness Study Area; White River National Forest, Pitkin County, Colo.; Intention To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and Section 2(e) of the Endangered American Wilderness Act of 1978 (Pub. L. 95–237), the Forest Service, Department of Agriculture, will prepare an environmental impact statement for a recommendation to Congress for the Spruce Creek Addition Wilderness Study Area.

The Forest Service began an environmental analysis in the summer of 1978 in response to Pub. L. 95–237. During the documentation in an environmental assessment, it was determined that an environmental impact statement should be prepared.

The Spruce Creek Area was identified as part of a Wilderness Study Area in the 1973 Roadless Area Review and Evaluation (RARE I) program, the draft EIS for the Eagle-Aspen Unit Plan and a Roadless Area in the RARE II program. The statement will build on those previous efforts and make a recommendation to Congress for the Study Area.

A meeting was held in the fall of 1978 to review proposed issues and concerns and possible alternatives. Participants included interested citizens, local government, members of the timber industry and the Forest Interdisciplinary Team. Some members of the group also toured the Study Area. State and Federal agencies did not express an interest during the environmental analysis.

The alternatives to be considered will include: wilderness designation, non-wilderness designation, partial wilderness/partial non-wilderness, and no change from current management.

The environmental impact statement will be prepared in conformance with current regulations. R. Max Peterson, Chief of the Forest Service, is the responsible official. The estimated date for completion of the draft environmental impact statement is October 1979 with a 60-day review period during which a public hearing will be held. The final environmental impact statement is scheduled for filing with the Environmental Protection Agency in January 1980.

The Spruce Creek Area will continue to be maintained in its wilderness character until a decision is made by Congress.

Comments on the notice of intent or the proposal should be sent to Tom Evans, Forest Supervisor, White River National Forest, Box 948, Glenwood Springs, Colorado 81601.

Dated: October 19, 1979.

Philip L. Thornton,

Deputy Chief.

[FR Doc. 79–33033 Filed 10–25–79; 8:45 am]

BILLING CODE 3410–11–M

Advisory Committee on State and Private Forestry; Meeting

The Advisory Committee on State and Private Forestry will meet in

Washington, D.C., on November 26, 27, and 28, 1979. The meeting will convene at 10:00 a.m. on November 26th in Room 218–A of the U. S. Department of Agriculture Administration Building. During the afternoon of the and all 26th day of the 27th, the Advisory Committee will participate in the National Non-Industrial Private Forestry Conference, in the Jefferson Auditorium of the U.S. Department of Agriculture South Building. On November 28th, the Advisory Committee will convene at 9:00 a.m. in Room 5221 of the Department of Agriculture South Building.

This Committee, comprised of 15 members from a broad spectrum of geographic and interest areas, advises the Secretary of Agriculture and various agencies of the Department on the protection, management, and development of the Nation's nonfederal forest land and resources. Dr. M. Rupert Cutler, Assistant Secretary for Natural Resources and Environment, will chair the meeting. He and representatives of the Forest Service and other interested agencies will attend from the Deparment of Agriculture.

Discussion will center on advice and guidance to the Secretary of Agriculture on implementation of the recommendations of the National Private Nonindustrial Forestry Conference.

The meeting will be open to the public. Persons who wish to attend, should notify the Committee's Executive Secretary, Howard W. Burnett, USDA—Forest Service, P.O. Box 2417, Washington, D.C. 20013, telephone (202) 472–5580. Written statements may be filed with the Committee before or after the meeting.

Jerome A. Miles,

Deputy Chief.

October 22, 1979.

[FR Doc. 79–33032 File 10–25–79; 8:45 am]

BILLING CODE 3410–11–M

CIVIL AERONAUTICS BOARD

[Docket No. 36792]

Air North, Inc., Fitness Investigation; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge Richard M. Hartsock. Future communications should be addressed to Judge Hartsock.

Dated at Washington, D.C., October 19, 1979.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 79–33103 Filed 10–25–79; 8:45 am]

BILLING CODE 6320–01–M

[Order 79–10–133; Docket 36941]

Boston Environmental Study; Order Deferring Action

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 22nd day of October, 1979.

We have pending before us requests by carriers for route authority between Boston and other cities. We have listed all such dockets affected in Appendix A. Massport, the owner and operator of Boston's Logan International Airport, has filed formal objections in several pending proceedings on environmental grounds (see *e.g., Boston-Dallas/Fort Worth/Houston Show-Cause Proceeding*, Docket 35492; and *Boston/Philadelphia/Pittsburgh-Tampa Show-Cause Proceeding*, Docket 35658). On August 29, 1979, we sent a letter to Massport indicating that we were considering deferring any additional awards to Boston while the staff prepares an overall environmental assessment of the possible cumulative effect of awards at Logan Airport. We also requested clarification of its views on this matter, and stated that we were specifically deferring action in the *Boston/Philadelphia-Washington-Orlando Show-Cause Proceeding* and in the *United States-Benelux Low-Fare Proceeding* pending its reply.

On September 21, 1979, Massport responded to our letter, stating that it has not asked for a moratorium on new route awards and would oppose such a moratorium; it proposed instead a ranking procedure designed to restrict awards at Boston to the carriers using the least noisy equipment; it does not believe that this approach can be applied effectively to international route awards and strongly opposes any delay in granting international authority at Boston; and pending the outcome of the *Boston-Dallas/Fort Worth/Houston* and *Boston/Philadelphia/Pittsburgh-Tampa* cases, it does not desire to participate in any other pending Boston matter except for the *Boston/Philadelphia/Washington/Orlando* case, which is similar to the *Tampa* case and could be considered with it.

We disagree with Massport and have decided to defer action on the Boston portion of all pending matters in which Boston is a point in issue (see Appendix A) for a temporary period while we assess the likely environmental consequences of these potential route awards. We do not think it makes sense to separate one or two of these Boston cases for separate envirionmental treatment.

It may be possible to rank applications on the basis of their probable environmental impacts, and then to grant or deny them on the basis of their ranking, as Massport has suggested, and Massport may urge that result in any case of its choosing. However, our responsibility under the National Environmental Policy Act of 1969 requires more than the limited, case-specific, analysis recommended by Massport in its pleadings and its letter. We have an additional obligation to consider the cumulative environmental impact of a number of new route awards, especialy where, as here, thousands of citizens are already affected by existing aircraft noise. Therefore we direct our staff to prepare an assessment of the possible environmental effects of granting pending applications for Boston authority and to complete this study within 90 days. During the deferral period, we will consider the merits of individual route applications for authority at Boston only in unusual circumstances; to date, there is nothing unusual in the record of any of the pending cases to persuade us to exempt any application from our deferral.

In order to facilitate responses to this order, we have established Docket 36941. Carriers or civil parties wishing to petition for reconsideration shall do so within 20 days of the service date of this order; answers to petitions are due 10 days after that.[1]

We will also direct representatives of the Board to meet with Massport officials to discuss this matter within two weeks. The discussion will be transcribed and the transcript placed in Docket 36941.

Accordingly,

1. We defer action on the Boston portions of the dockets listed in Appendix A;

2. We direct the staff to prepare an environmental assessment as described above;

3. Petitions for reconsideration of this order shall be filed in Docket 36941, which we have entitled the *Boston Environmental Study*, no later than November 13, 1979; answers shall be filed by November 23, 1979; and

[1] Petitions, answers and all other pleadings in response to this order should be filed with the Board in Docket 36941 and served on the parties listed in ordering paragraph 4 of this order. (Copies of the exchange of letters between Massport and the Board have been placed in this docket).

4. We will serve a copy of this order upon all carriers listed in Appendix A; Massachusetts Port Authority; Mayor of Boston; Airport Manager, Logan International Airport; and Massachusetts Secretary of Transportation.

We will publish this order in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kayor,[2]

Secretary.

[FR Doc. 79-33101 Filed 10-25-79; 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 October 19, 1979 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity for foreign air carrier permits under Subpart Q of 14 CFR Part 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).

Subpart Q Applications

Date filed	Docket No.	Description
Oct. 17, 1979	36916	Redcoat Air Cargo Limited, c/o Leonard N. Bebchick, Martin, Whitfield, Smith & Bebchick, 1701 Pennsylvania Avenue, N.W., Suite 1102, Washington, D.C. 20006. Application of Redcoat Air Cargo Limited pursuant to Subpart Q for a foreign air carrier permit authorizing it to conduct cargo charter flights in foreign air transportation (including the carriage of cargo attendants) in foreign air transportation between any point or points in the United States of America and any point or points outside thereof. Answers due November 14, 1979.
Oct. 17, 1979	36920	Northwest Airlines, Inc., Minneapolis-St. Paul International Airport, St. Paul, Minnesota 55111. Application of Northwest Airlines, Inc. requesting the Board pursuant to Section 401 of the Act for an amendment of its existing certificate of public convenience and necessity for Route 179 so as to authorize it to engage in nonstop air transportation of persons, property, and mail between the United States and Ireland. Answers and conforming applications are due November 14, 1979.
Oct. 17, 1979	36921	Northwest Airlines, Inc., Minneapolis-St. Paul International Airport, St. Paul, Minnesota 55111. Application of Northwest Airlines, Inc. requesting the Board pursuant to Section 401 of the Act for an amendment of its existing certificate of public convenience and necessity for Route 179 so as to authorize it to engage in nonstop air transportation of persons, property, and mail between the existing points between the United States and Hamburg, West Germany. Answers and conforming applications are due November 14, 1979.
Oct. 18, 1979	36928	Ozark Air Lines, Inc., Lambert-St. Louis International Airport, St. Louis, Missouri 63145. Application of Ozark Air Lines, Inc. requests the Board pursuant to Section 401 of the Act for amendment of its certificate of public convenience and necessity for Route 107 so as to remove the one-stop restriction currently in place for the Houston, Texas-Tulsa, Oklahoma market. Answers are due on November 2, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-33100 Filed 10-25-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 36815, etc.]

Southwest Alaska Service Investigation; Postponement of Prehearing Conference

The prehearing conference in the above-captioned proceeding which was set for November 6, 1979, at 9:30 a.m. (local time), in Room 1003-A, North Universal Building, 1875 Connecticut Avenue, NW., Washington, D.C. by notice dated October 15, 1979, is hereby postponed until further notice. Refer to the Federal Register at 44 FR 60347, October 19, 1979.

Dated at Washington, D.C., October 22, 1979.

Alexander N. Argerakis,

Administrative Law Judge.

[FR Doc. 79-33102 Filed 10-25-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Commerce Technical Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976) notice is hereby given that the Commerce Technical Advisory Board will hold a meeting on Thursday, November 15, 1979 from 9:00 A.M. until 5:00 P.M. and on Friday, November 16, 1979 from 9:00 A.M. until 12 o'clock Noon in Room 6802, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Board was established to study and evaluate the technical activities of the Department of Commerce and recommend measures to increase their value to the business community.

Tentative agenda items include: 1. U.S. Semiconductor Industry. 2. Progress Report on Development of Human Resources for Technological Innovation. 3. Progress Report on Development of a Structure for U.S. Science and Technology Information. 4. Resource Conservation Recovery.

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chariman before or after the meeting. A limited number of seats will be available to the public and to the press on a first-come, first-served basis.

Copies of minutes and materials distributed will be made available for reproduction following certification by the Chairman, in accordance with the Federal Advisory Committee Act, in Room 3867, U.S. Department of Commerce, Washington, D.C. 20230.

Further information may be obtained from Mrs. Florence S. Feinberg, Administrator, Room 3867, U.S. Department of Commerce, Washington, D.C. 20230. Telephone (202) 377-5065.

Dated: October 17, 1979.

Jordan J. Baruch,

Assistant Secretary for Science and Technology.

[FR Doc. 79-32980 Filed 10-25-79; 8:45 am]

BILLING CODE 3510-17-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

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 and military resale items to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 28, 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 military resale items listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and military resale items to Procurement List 1979, November 15, 1978 (43 FR 53151):

Class 4240: Harness, Head, 4240-00-690-8765.

Class 7110: Table, Wood, 7110-00-903-3061; 7110-00-902-3052.

Military Resale Item No. and Name: No. 510—All Purpose Cleaner; No. 927—Stick Mop (Wide Mophead).

C. W. Fletcher,

Executive Director.

[FR Doc. 79-33059 Filed 10-25-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1979; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1979 a service to be provided by and commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 26, 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 June 15, 1979, July 27, 1979, August 3, 1979, and August 10, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (44 FR 34626, 44 FR 44206, 44 FR 45659, 44 FR 47134) of proposed additions to Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the service and the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following service and commodities are hereby added to Procurement List 1979:

Class 8445: Belt, Trousers, 8445-01-068-8339; 8445-01-068-8340.

Class 7530: Paper, Writing, 7530-01-047-3738.

Class 6530: Pad, Hospital Stretcher, 6530-00-269-0004.

Class 6530: Pad, Examining Table, 6530-00-960-6616.

SIC 0782: Landscape Maintenance—1. U.S. Courthouse, 620 SW Main, Portland, Oregon. 2. Federal Building, BPA, 1002 NE Holladay, Portland, Oregon. 3. Federal Building, 1220 SW Third, Portland, Oregon. 4. Pioneer Courthouse, 520 SW Morrison, Portland, Oregon. 5. Federal Building, 500 W. 12th, Vancouver, Washington.

C. W. Fletcher,

Executive Director.

[FR Doc. 79-33060 Filed 10-25-79; 8:45 am]

BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Performance Review Board, Senior Executive Service; Appointment of Members

Appointments of Performance Review Board members are required to be published in the **Federal Register** by 5 U.S.C. 4314(c)(4).

The following persons have been appointed to, and will serve as, the Performance Review Board for senior executives in the Consumer Product Safety Commission:

Margaret A. Freeston, Chair; Lowell Dodge; Andrew S. Krulwich; Robert A. Knisely; Robert Q. Jenkins (term expires July, 1982); Joann Langston (term expires July, 1981); and Bert Simson (term expires July, 1980).

Dated: October 19, 1979.

Sadye E. Dunn,

Secretary Consumer Product Safety Commission.

[FR Doc. 79-32978 Filed 10-25-79; 8:45 am]

BILLING CODE 6355-01-M

COUNCIL ON WAGE AND PRICE STABILITY

Pay Advisory Committee; Meetings

Time of Place and Meeting: The Pay Advisory Committee will meet on November 6, 1979, and November 13, 1979, at 10:00 a.m. The meetings will be held in Room 2008 in the New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20506. The meetings may be recessed at 12:00 noon to be reconvened at 2:00 p.m. the same day and/or be recessed at the end of the day to be reconvened the following day. We could not give more advance notice of the meetings because of the need to coordinate the schedules of the members. Additional notice is being given through a Council release to the general public and trade press.

Purpose of the Meeting: The purpose of the meeting will be to finish unfinished business from the October 17 and October 29 meetings (see 44 FR 59583).

Public Participation: The November 6 and 13 meetings of the Pay Advisory Committee will be open to the public. Public attendance may be limited by available space; persons will be seated on a first-come, first-served basis. Persons attending the meeting will not be permitted to speak or participate in the Committee's deliberations. Interested persons will be permitted to file written statements with the Committee by mail or personal delivery to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street, N.W., Washington, D.C. 20506.

Additional Information: For additional information, please telephone the Office of Public Affairs at (202) 456-6756.

Dated: October 23, 1979.

Sally Katzen,

Advisory Committee Management Officer.

[FR Doc. 79-33155 Filed 10-25-79; 8:45 am]

BILLING CODE 3175-01-M

DEPARTMENT OF DEFENSE

Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Navigation Project on Big and Little Sallisaw Creeks, Robert S. Kerr Lake, Sequoyah County, Okla.

AGENCY: US Army Corps of Engineers, DOD, Tulsa District.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The primary purpose of this project is to provide navigation improvements in the Big and Little Sallisaw Creeks arm of Robert S. Kerr Lake (Lockl & Dam No. 15).

2. Reasonable Alternative: The alternatives evaluated included no action and two channel alignments.

3. Scoping Process: Public Involvement. A comprehensive public involvement program was developed as a means of disseminating information and soliciting public views. A variety of techniques including formal public meetings, meetings with local interest, and local news media were employed to involve Federal, State, and local agencies, citizen committees, organizations, and the interested public in the planning studies.

a. Significant Issue Requiring In-Depth Analysis: None.

b. Assignments: US Fish & Wildlife Service is preparing a Fish & Wildlife Coordination Act Report.

c. Environmental Review and Consultation Requirements: The draft environmental impact statement will be circulated for review and all comments will be incorporated into the final environmental impact statement.

4. Scoping meeting will not be held.

5. Estimated date when the DEIS will be available: December 1979.

ADDRESS: Mr. Buell O. Atkins, Chief, Environmental Resources Branch, US Army Corps of Engineers, Tulsa District, PO Box 61, Tulsa, OK 74121, (918) 581–7857, FTS 736–7857.

Dated: October 17, 1979.

Robert G. Bening,

Colonel, CE, District Engineer.

[FR Doc 79-32984 Filed 10-25-79; 8:45 am]

BILLING CODE 3710-39-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Brush Creek, Mo. and Kans., Flood Protection Study

AGENCY: Kansas City District, US Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY: 1. The proposed Federal Action is to reduce the flood damage potential and hazard to life in several reaches of the floodplains in the Brush Creek Basin, Missouri and Kansas.

2. Reasonable alternatives that will be studied include: (a) No action, (b) A bridge and channel modification plan for Brush Creek within Kansas City, Missouri, in Jackson County, (c) An underground tunnel diversion plan consisting of one or more tunnels from Brush Creek to the Kansas River, (d) A combination of b and c, (e) A bridge and tunnel modification plan for lower Town Fork in Kansas City, MO, and (f) An underground tunnel diversion plan of Rock Creek in Johnson County, KS, to the Kansas River.

3a. Scoping has already begun. As part of the scoping process, a public meeting was held on February 15, 1979, in Kansas City, Missouri, to obtain initial input from Federal, State, and local agencies as well as the concerned public on the effects and/or desirability of various structural and non-structural flood protection alternatives for the Brush Creek Basin. The following additional public involvement measures will be utilized as a minimum during the remainder of the study: (1) Distribution of an information fact sheet to the public which describes the six reasonable alternatives, (2) Further coordination and consultation with appropriate Federal, State, and local agencies to obtain input, especially on any potentially significant impacts of the alternatives, (3) Distribution of the Draft Feasibility Report and DEIS to public and agencies for review and comment, and (4) a public meeting is tentatively scheduled for May 1980. The participation of the public and all interested Government agencies is invited during all stages of the project's planning process.

3b. Possible significant issues identified thus far are: (1) The temporary disruption of city traffic and traffic patterns in the vicinity of construction activities, (2) The temporary increase in noise and air pollution levels during construction, (3) Social response to tunneling, and (4) Change in esthetics.

3c. Environmental consultation and review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and all other applicable laws, regulations, and guidelines.

4. A public meeting specifically to determine the scope of the DEIS will not be held. However, all past and future input to the study obtained from the procedures addressed in 3a, above, will be considered.

5. The Kansas City District estimates that the DEIS will be available for public review and comment in April 1980.

ADDRESS: Questions concerning the proposed action and the DEIS should be directed to Mr. James R. Taylor, Chief, Environmental Resources Section, Corps of Engineers, 700 Federal Building, Kansas City, Missouri 64106. Phone: (816) 374–3672.

Dated: October 12, 1979.

Paul D. Barber,

Chief, Engineering Division.

[FR Doc. 79-32961 Filed 10-25-79; 8:45 am]

BILLING CODE 3710-KN-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Local Flood Protection Project, Fry Creek, Bixby, Okla.

AGENCY: US Army Corps of Engineers, DOD, Tulsa District.

ACTION: Notices of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The primary purpose of this project is to provide 100-year flood protection for flood plain residents.

2. Reasonable Alternatives: The alternatives evaluated include, no action, flood plain acquisition, flood proofing, channel improvement, levees, upstream lakes, diversion and combination plans.

3. Scoping Process:

a. Public Involvement: A comprehensive public involvement program was developed as a means of disseminating information and soliciting public views. A variety of techniques including formal public meetings, public workshops, advisory committee, and the local news media were employed to involve Federal, State, and local agencies, citizen committees, organizations, and the interested public in the planning studies.

b. Significant Issues Requiring In-Depth Analysis: None.

c. Assignments: US Fish and Wildlife Service is preparing a Fish and Wildlife Coordination Act Report.

d. Environmental Review and Consultation Requirements: The draft environment impact statement circulated for review and all comments will be incorporated into the final environmental impact statement.

4. Scoping meeting will not be held.

5. Estimated date when the DEIS will be available: November 1979.

ADDRESS: Mr. Buell O. Atkins, Chief, Environmental Resources Branch, US Army Corps of Engineers, Tulsa District, PO Box 61, Tulsa, OK 74121, (918) 581–7857, FTS 736–7857.

Dated: October 17, 1979.

Robert G. Bening,

Colonel, CE, District Engineer.

[FR Doc 79-32983 Filed 10-25-79; 8:45 am]

BILLING CODE 3710-39-M

Defense Mapping Agency

Privacy Act of 1974; Amendments to Systems of Records

AGENCY: Defense Mapping Agency (DMA).

ACTION: Notice of amendments to systems of records.

SUMMARY: The Defense Mapping Agency proposes to amend eight systems of records subject to the Privacy Act of 1974. The amendments consist of reidentifying the eight existing systems with new identifiers. The balance of the systems remain unchanged. The Defense Mapping Agency is publishing these proposed changes as advance notice for any public comment.

DATES: These systems shall be amended as proposed without further notice on November 26, 1979, unless comments are received on or before November 25, 1979, which would result in a contrary determination and require republication for further comment.

ADDRESS: Privacy Act Officer, Defense Mapping Agency, ATTN: Administration Office, Building 56, U.S. Naval Observatory, Washington, DC 20305.

FOR FURTHER INFORMATION CONTACT: M. J. Stafford, telephone 202–254–4401.

SUPPLEMENTARY INFORMATION: The Defense Mapping Agency's systems of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93–579 have been published in the **Federal Register** as follows:

FR Doc. 77–28255 (42 FR 50670) September 28, 1977

FR Doc. 78–25819 (43 FR 42375) September 20, 1978

FR Doc. 78–34821 (43 FR 58405) December 14, 1978

FR Doc. 79–1617 (44 FR 4883) January 23, 1979

The proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of a new or altered system report and of the Office of Management and Budget (OMB) Circular A–108, Transmittal Memoranda No. 1 and No. 3 dated September 30, 1975 and May 17, 1976, respectively, which provide supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of personal records as required by the Privacy Act. This OMB guidance was set forth in the **Federal Register** (40 FR 45877) on October 3, 1975.

October 23, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

Amendments

Old Identification and New Identification

1. B0302–21–2 HQHTA (44 FR 4899) January 23, 1979—B0201–05 HQHTA
2. B0605–01 HQHTASI (44 FR 4914) January 23, 1979—B0605–01 HQHTASID
3. B0605–03 HQHTASI (44 FR 4916) January 23, 1979—B0605–03 HQHTASID
4. B0610–03 HQHTASI (44 FR 4922) January 23, 1979—B0610–03 HQHTASID
5. B0610–03–2 HQHTASI (44 FR 4922) January 23, 1979—B0610–03–2 HQHTASID
6. B0613–05 HQHTASI (44 FR 4924) January 23, 1979—B0613–05 HQHTASID
7. B0615–11 HQHTASI (44 FR 4926) January 23, 1979—B0615–11 HQHTASID
8. B01205–23 HQHTASI (44 FR 4928) January 23, 1979—B01205–23 HQHTASID

[FR Doc. 79-33159 Filed 10-25-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Office of Energy Research

High Energy Physics Advisory Panel; Subpanel on Accelerator R. & D.; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, (Pub. L. 92–463, 86 Stat. 770), notice is given of the following advisory committee meeting:

Name: Subpanel on Accelerator R&D of the High Energy Physics Advisory Panel.

Date and Time: Friday and Saturday, November 16–17, 1979, from 9:00 a.m. to 5:30 p.m., with the possibility of an evening session from 7:30 p.m. to 9:30 p.m. on the 16th.

Place: The Snake Pit, Central Laboratory Building, Fermi National Accelerator Laboratory, Batavia, Illinois.

Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, Room 8G031, 1000 Independence Avenue SW., Washington, D.C. 202–252–5187.

Purpose of Committee: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

The status of accelerator R&D at Fermilab, including discussions of superconducting magnet R&D and phase-space cooling of particle beams;

The status of accelerator R&D at Argonne National Laboratory;

A review of accelerator R&D work in Europe; and

A discussion of collective effect acceleration and pulsed power devices.

Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Oral statements pertaining to agenda items may be made by contacting the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, Room GA–152, Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on October 22, 1979.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 79-33098 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ES80–5]

Central Telephone & Utilities Corp.; Application

October 19, 1979.

Take notice that on October 5, 1979, Central Telephone & Utilities Corporation (Applicant) filed an application pursuant to Section 204 of the Federal Power Act seeking authority to extend to not later than December 31, 1982, the final maturity date of short-term unsecured promissory notes to be authorized to be issued not later than December 31, 1981, in an aggregate principal amount at any one time outstanding of $85,000,000.

Applicant is incorporated under the laws of the State of Kansas, with its principal business office in Chicago, Illinois. It is engaged in electric utility operations in the southeastern part of Colorado and the central and western portions of Kansas.

The proceeds from the issuance of short-term notes are to provide temporary funds for the construction, completion, extension or improvement of facilities of Applicant and for advances to and investment in subsidiaries of Applicant to be used for the construction and improvement of

facilities of such subsidiaries pending permanent financing. The estimated construction programs for the above purposes for 1980, 1981 and 1982 and $229,093,000, $243,520,000, and $228,853,000, respectively.

Any person desiring to be heard or to make any protest with reference to said application should, on or before November 2, 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33004 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES80-4]

Detroit Edison Co.; Application

October 19, 1979.

Take notice, that on October 5, 1979, The Detroit Edison Company (Applicant), a corporation organized under the laws of the States of Michigan and New York, with principal business offices in Detroit, Michigan, filed an application pursuant to Section 204 of the Federal Power Act, seeking authorization to issue from time to time, in aggregate principal amount not to exceed $400 million at any one time outstanding, short-term debt securities and promissory notes bearing final maturities not to exceed two years.

The proceeds of the securities will be used to finance Applicant's costs incurred, or to be incurred, directly or indirectly, in connection with Applicant's capital expenditure program in anticipation of long-term financing and for general corporate purposes.

Any person desiring to be heard or to make any protest with reference to said application should, on or before November 2, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426 petitions or protests 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33005 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP74-192]

Florida Gas Transmission Co.; Intent To Prepare a Supplemental Environmental Impact Statement and Request for Comment on Its Scope

October 23, 1979.

The Federal Energy Regulatory Commission (FERC) has ordered the Commission staff to supplement the final environmental impact statement issued in April 1976 in Docket No. CP74-192 which analyzed the impacts of a proposal by the Florida Gas Transmission Company (FGT) to construct new natural gas pipeline facilities and to convert an existing natural gas pipeline to a petroleum products pipeline. One effect of the conversion would have been to reduce natural gas carrying capacity of FGT's remaining pipeline from 725,000 Mcf per day to 625,000 Mcf per day. The Commission has ordered the environmental staff to analyze a new alternative, that of requiring FGT to construct such additional facilities as necessary to allow the continued daily delivery to Florida customers of 725,000 Mcf of natural gas.

This notice requests Government agencies, the public, or other interested parties to comment on the scope of the environmental issues raised by the new alternative. Recommendations that specific issues be addressed in the supplemental EIS should be supported by detailed rationale or other showing of the need to consider specific issues. Comments are requested by November 26, 1979. In addition, a public hearing before the presiding Administrative Law Judge will be held at the FERC on December 10, 1979, to discuss, among other issues, those relating to the scope of the supplemental EIS. Comments may be submitted in addition to or in lieu of appearance at this hearing. In any event, all comments will be considered by the FERC staff in determining the scope of the supplemental EIS.

Procedural Background

This proceeding involves an application filed on January 24, 1974, by FGT to abandon 889 miles of 24-inch diameter pipeline facilities to be sold to its affiliate, Transgulf Pipeline Comany. The transferred pipeline would transport light petroleum products (LPP) from gulf coast areas to Florida. The present FGT system extends from Starr County, Texas, to Dade County, Florida, and consists of 12- to 24-inch diameter mainline pipeline (known as "the 24-inch line") which is about 90 percent looped, principally with a 30-inch diameter pipeline from Zachary, Louisiana, to Port Everglades, Florida (known as "the 30-inch line"). FGT intends to complete the looping between Zachary and Port Everglades and separate the 24-inch line from the 30-inch line, resulting in two independent pipelines extending from Zachary to Port Everglades. FGT is requesting authorization to abandon the 24-inch line and convert it to petroleum products transportation. The 30-inch pipeline would then become the only FGT pipeline transporting natural gas along the gulf coast to Florida. The present pipeline system is operating at an average day capacity of about 725,000 Mcf. The proposed 30-inch line would have an average day capacity of 625,000 Mcf. With additional compression or with additional looping, the capacity of the 30-inch line would be increased to 725,000 Mcf per day.

After extensive hearings involving many parties, the Presiding Administrative Law Judge issued an initial decision on January 18, 1977. The initial decision granted FGT's abandonment application" * * * by reason both of the depletion of FGT's available supply of natural gas and the showing of public interest benefits serving the present and future public convenience and necessity." The Commission considered the initial decision and exceptions to it in public session on May 16, 1979. Although the Commission was inclined to the view that the Presiding Administrative Law Judge reached the proper conclusion based on the record before him, the Commission was concerned that developments after the close of the record might have rendered that record inadequate as a basis for such a conclusion in mid-1979. It therefore decided to order a limited further hearing to explore whether the record as it stood provided an adequate basis for a Commission decision or whether remand would be required.

The limited hearing ordered by the Commission was held on August 20, 1979. During this hearing, a new alternative to the project was presented: namely, notwithstanding the conversion of the 24-inch pipeline to the transportation of petroleum products, Florida Gas Transmission should modify the remaining 30-inch pipeline to maintain a daily capacity of 725,000 Mcf, rather than 625,000 Mcf as proposed. On the basis of the comments received at the hearing, the Commission issued an order on October 3, 1979, finding that a supplemental EIS was necessary to evaluate this alternative. The Commission directed that the staff supplement its 1976 EIS to examine the economic, engineering, and environmental particulars of a 30-inch system with 725,000 Mcfd capacity. The staff was also directed to calculate the potential energy savings of converting the 24-inch pipeline to transport liquid petroleum products, rather than using the present methods of water transport, in light of the additional energy that a 30-inch gas system at a 725,000 Mcf capacity would require. Finally, the Commission directed the staff to supplement other outdated portions of the original EIS.

Issues Addressed in the April 1976 FEIS

In 1975–1976, The Commission staff analyzed the environmental impact of the FGT proposal to construct 51.2 miles of 26- and 30-inch pipeline loop at nine locations along its mainline natural gas pipeline system in Louisiana, Mississippi, Alabama, and Florida; to relocate and install additional compression facilities at three locations in Florida; to construct 11.3 miles of additional lateral pipeline near Orlando, Florida; to construct a 3,000-gallon propane storage facility in Osceola County, Florida; and to construct other related miscellaneous facilities. The FEIS also examined the additional construction that would be caused by converting the 24-inch natural gas pipeline to a liquid petroleum products pipeline: the construction of 6 pipeline river crossings, 15 pumping stations, 1 breakout/commercial terminal, 3 commercial terminals, 84 miles of lateral pipeline and other related facilities.

The April 1976 FEIS concluded that implementation of the proposed project would not cause any significant long-term degradation of the human environment. The staff also concluded that the proposed project "would provide a means of transporting petroleum products to the State of Florida which could result in a reduced consumption of energy vis-a-vis water transportation and which would not increase the potential environmental hazards associated with the transport of these products by present methods."

Copies of the staff's April 1976 FEIS are available in limited quantities upon request.

The Supplemental EIS Scope

The staff proposes at this time to use the supplemental EIS to focus on the issues raised in the Commission order of October 3, 1979. This would include an assessment of the environmental impacts of any construction required to maintain a daily throughput capacity of 725,000 Mcf. This will require design and operating data to be supplied by FGT. In addition, the staff will calculate the amount of energy that will be required to operate the new alternative with the LPP pipeline, and compare this calculation to the energy required to operate both the proposed system and the existing system (including the energy costs of barge and tanker transport). The purpose here is to evaluate the relative energy efficiencies of the various alternatives. The impact to natural gas service of maintaining the 625,000 Mcf capacity in light of the current higher level gas supplies will also be studied.

Finally, the staff will assess the data in the April 1976 FEIS and determine which areas require updating. Our initial assessment suggests the possible need to supplement the following areas: air quality impact, noise impact, endangered species, land use impact, and socioeconomic impact. However, a final decision will not be made until a more thorough review of these sections is completed. The staff does not presently intend to update any other portions of the April 1976 FEIS.

Submission of Comments

In preparing comments pursuant to this notice, commentors should keep in mind the purpose of the Council on Environmental Quality's regulations for determining the scope of issues in environmental impact statements: to identify significant issues for analysis and to eliminate from detailed study less significant issues. (See 40 CFR Part 1501.7.)

Comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. Comments should be received no later than November 26, 1979. Additional information may be obtained by contacting Mr. Richard Hoffmann, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, at the same address, telephone 202–357–8053.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33006 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP72-140]

Great Lakes Gas Transmission Co.; Proposed Changes in PGA Gas Tariff Under Purchased Gas Adjustment Clause Provisions

October 19, 1979.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on October 12, 1979, tendered for filing Thirty-Third Revised Sheet No. 57, to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective November 3, 1979.

Great Lakes states that its sole supplier of natural gas, TransCanada Pipelines Limited ("TransCanada"), will increase the rates for gas purchased by Great Lakes effective November 3, 1979. The increase is the result of the announcement by the Canadian Government that the border price of natural gas exported shall be at the rate of $3.45 per MMBtu in United States currency effective November 3, 1979. Great Lakes is seeking waiver of the Commission's Regulations in order to make the increase effective November 3, 1979.

Great Lakes also states that copies of this filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8, 1.10). All such petitions or protests should be filed on or before November 5, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 79-33007 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES80-6]

Idaho Power Co.; Application

October 19, 1979.

Take notice that on October 5, 1979, Idaho Power Company (Applicant), a corporation organized under the laws of the States of Maine, and qualified to transact business in the States of Idaho, Oregon, Nevada and Wyoming, with its principal business office at Boise, Idaho, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an Order authorizing the assumption of liability as guarantor on an aggregate principal amount not to exceed $44,750,000 of Interim Notes of American Falls Reservoir District, a political subdivision of the State of Idaho, such Interim Notes having maturities not to exceed 36 months.

The Interim Notes will be used by the District to finance certain costs to be incurred in connection with the reconstruction of the American Falls Dam and American Falls Storage Reservoir on the Snake River near American Falls, Idaho.

Any person desiring to be heard or to make any protest with reference to said application should, on or before November 5, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33008 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES79-72]

Interstate Power Co.; Application

October 19, 1979.

Take notice that on September 24, 1979, Interstate Power Company (Applicant) filed its Sixth Supplemental Application with this Commission seeking an order pursuant to Section 204 of the Federal Power Act for additional authorization authorizing an extension of authorization previously granted by the Commission in this Docket to authorize issuance of short-term promissory notes to lending banks and/or commercial paper, not to exceed an aggregate of $40 million outstanding at any one time, said short-term promissory notes to be issued on or before December 31, 1980 and to mature not later than December 31, 1981, with not to exceed twelve-month maturities, and said commerical paper to be issued with not to exceed nine-month maturities and to mature on or before December 31, 1981. Applicant is incorporated under the laws of the State of Delaware, with its principal business office in Dubuque, Iowa and is engaged principally in the electric utility business in northern and northeastern Iowa, in southern Minnesota and a few small communities in Illinois.

Applicant states that the requested additional authorization will provide additional funds for its 1979–1980 construction expenditures estimated to be $60,478,000 and will enable it to maintain cash working funds at normal levels.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 2, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The Application, as supplemented, is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 79-33009 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES80-3]

Iowa Electric Light & Power Co.; Application

October 19, 1979.

Take notice that on October 3, 1979, Iowa Electric Light and Power Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act with the Federal Energy Regulatory Commission seeking authority to issue and sell at competitive bidding $30,000,000 principal amount of First Mortgage Bonds.

Applicant is incorporated under the laws of the state of Iowa and is authorized to do business in the States of Iowa, Minnesota, Colorado and Nebraska with its principal business office at Cedar Rapids, Iowa. Applicant is engaged primarily in the generation, transmission and sale at retail of electric energy in 55 counties in the State of Iowa.

Any person desiring to be heard or to make protest with reference to this application should on or before November 2, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 79-33010 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. ER80-12, ER80-13]

Kansas City Power & Light Co.; Tariff Change

October 19, 1979.

The filing company submits the following:

Take notice that on October 9, 1979, Kansas City Power & Light Company (KCPL) tendered for filing a Service Schedule E-MPA-1 for System Participation Power Service between KCPL and the Cities of Baldwin City, Kansas and Carrollton, Missouri. KCPL requests an effective date 60 days from the date of filing.

Since there have been no transactions under this schedule in the twelve months prceding the effective date, no estimates of future transactions are available at this time. KCPL further states that no modification of facilities is required for implementation of this Service Schedule.

KCPL states that the proposed rates are KCPL's rates and charges for similar service under schedules previously filed by KCPL with the Federal Energy Regulatory Commission.

Copies of this filing have been served upon the Cities of Baldwin City, Kansas and Carrollton, Missiour, the Kansas Corporation Commission, and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 or 1.10). All such petitions or protests should be filed on or before November 7, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are in file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33011 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES80-7]

Louisville Gas & Electric Co.; Application

October 19, 1979.

Take notice that on October 9, 1979, Louisville Gas and Electric Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act seeking an order authorizing the issuance of unsecured Promissory Notes to commercial banks, to trust companies, and to commercial paper dealers in amounts not exceeding in the aggregate $100,000,000 outstanding at any one time, to be issued on or before December 31, 1981 and to mature on or before December 31, 1982.

The proceeds from the issuance of the Notes will be added to the general funds of the Applicant which general funds will be used, among other things, to finance in part the Applicant's 1980–1981 construction program. Applicant estimates that construction expenditures for the years ending December 31, 1980 and 1981 will total about $149,600,000 and $165,700,000, respectively.

Any person desiring to be heard or to make any protest with reference to said application should, on or before November 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 79—33012 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP71-16]

Midwestern Gas Transmission Co.; Filing To Track Canadian Supplier Rate Increase

October 19, 1979.

Take notice that on October 15, 1979, Midwestern Gas Transmission Company (Midwestern) tendered for filing Tenth Revised Sheet No. 5A to its FERC Gas Tariff, Third Revised Volume No. 1, to be effective November 3, 1979. Midwestern states that the purpose of the revised tariff sheet is to reflect in its Northern System rates an increase in the rates charged to Midwestern by its Canadian pipeline supplier.

Midwestern states that Tenth Revised Sheet No. 5A reflects a Current Purchased Gas Cost Rate Adjustment pursuant to Section 2 of Article XVIII which is based on an increase, effective November 3, 1979, to $3.22 (U.S.) per Gigajoule in the price which Midwestern is required by action of the Canadian Government to pay for gas to its Northern System supplier, TransCanada Pipelines, Ltd.

Midwestern requests waiver of Section 1.3 of Article XVIII of the General Terms and conditions in its FERC Gas Tariff and various Commission Regulations, to make such filing effective as proposed.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 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 November 5, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33013 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-32]

Montana Power Co.; Agreement for Sale of Firm Energy

October 19, 1979.

The filing Company submits the following:

Take notice that The Montana Power Company ("Montana") on October 11, 1979, tendered for filing in accordance with Section 35 of the Commission's regulations, a Letter Agreement dated September 14, 1976, as amended by Letter Agreement dated June 3, 1977 between Montana and Southern California Edison Company providing for the sale of non-firm energy.

Montana indicates that the proposed Letter Agreement, as amended, would increase revenues from jurisdictional sales by $1,923,768 based upon energy delivered commencing September 14, 1976. Montana states that the rate for non-firm energy under this Letter Agreement, as amended, was negotiated.

An effective date of September 14, 1976 is proposed and waiver of the Commission's requirements is therefore requested. No special cost of service studies were prepared in connection with the derivation of the rate contained herein.

A copy of this filing has been sent to the Southern California Edison Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 November 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33014 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-31]

Montana Power Co.; Agreement for Sale of Firm Energy

October 19, 1979.

The filing Company submits the following:

Take notice that The Montana Power Company ("Montana") on October 11, 1979 tendered for filing in accordance with Section 35 of the Commission's regulations, a Letter Agreement with San Diego Gas and Electric Company. Montana states that this Letter Agreement provides for the sale of firm energy and capacity between Montana and San Diego.

Montana indicates that the proposed Letter Agreement would increase revenues from jurisdictional sales by an estimated $907,814.52 dollars based upon energy and capacity delivered from December 1, 1977 through March 1, 1978. Montana states that the rate for firm energy under this Letter Agreement was negotiated.

An effective date of December 1, 1977 is proposed and waiver of the Commission's requirements is therefore requested. No special cost of service studies were prepared in connection with the derivation of the rate contained herein.

A copy of this filing has been sent to the San Diego Gas and Electric Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 November 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33015 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-28]

Montana Power Co; Agreement for Sale of Firm Energy

October 19, 1979.

The filing Company submits the following:

Take notice that The Montana Power Company ("Montana") on October 11, 1979 tendered for filing in accordance with Section 35 of the Commission's regulations, a Letter Agreement with Pacific Gas and Electric Company. Montana states that the Letter Agreements provides for the sale of firm capacity and energy between Montana and Pacific Gas and Electric Company.

Montana indicates that the proposed Letter Agreement would increase revenues from jurisdictional sales by an estimated $3,105,000 based on energy and capacity delivered from June 6, 1979 through August 31, 1979. Montana states that the rate for firm energy under this Letter Agreement was negotiated.

An effective date of June 6, 1979 is proposed and waiver of the Commission's requirements is therefore requested. No special cost of service studies were prepared in connection with the derivation of the rate contained herein.

A copy of this filing has been mailed to Pacific Gas and Electric Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with 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 November 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 79—33016 Filed 10-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-27]

Montana Power Co.; Agreement for Sale of Firm Energy

October 19, 1979.

The filing company submits the following:

Take notice that The Montana Power Company ("Montana") on October 11, 1979 tendered for filing in accordance with Section 35 of the Commission's Regulations, a Letter Agreement, as amended, with Pacific Gas & Electric Company. Montana states that this Letter Agreement, as amended, provides for the sale of firm energy between Montana and Pacific Gas & Electric.

Montana indicates that the proposed Letter Agreement as amended, would increase revenues from jurisdictional sales by an estimated $2,138,132.50 based upon energy delivered from May 3, 1979 through September 30, 1979. Montana states that the rate for firm energy under this Letter Agreement, as amended, was negotiated.

An effective date of May 3, 1979 is proposed and waiver of the Commission's requirements is therefore requested. No cost of service studies were prepared in connection with the derivation of the rate contained herein.

A copy of this filing has been sent to the Pacific Gas & Electric Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street 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 November 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33017 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-29]

Montana Power Co.; Agreement for Sale of Firm Energy

October 19, 1979.

The filing Company submits the following:

Take notice that The Montana Power Company ("Montana") on October 11, 1979 tendered for filing in accordance with Section 35 of the Commission's regulations, a Letter Agreement with Public Service Company of New Mexico. Montana states that this Letter Agreement provides for the sale of firm energy between Montana and Public Service Company of New Mexico.

Montana indicates that the proposed Letter Agreement would increase revenues from jurisdictional sales by an estimated $600,000.00 based on energy delivered from May 1, 1979 through September 30, 1979. Montana states that

the rate for firm energy under this Letter Agreement was negotiated.

An effective date of May 1, 1979 is proposed and waiver of the Commission's requirements is therefore requested. No special cost of service studies were prepared in connection with the derivation of the rate contained herein.

A copy of this filing has been mailed to the Public Service Company of New Mexico.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 November 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33018 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-30]

Montana Power Co.; Agreement for Sale of Firm Capacity and Energy

October 19, 1979.

The filing Company submits the following:

Take notice that The Montana Power Company ("Montana") on October 11, 1979 tendered for filing in accordance with Section 35 of the Commission's regulations, a Letter Agreement with Tri-State Generation and Transmission Association, Inc. ("Tri-State"). Montana states that this Letter Agreement provides for the sale of firm capacity and energy between Montana and Tri-State.

Montana indicates that the proposed Letter Agreement would increase revenues from jurisdictional sales by an estimated $540,000 based upen energy and capacity delivered from July 1, 1979 through August 31, 1979. Montana states that the rate for firm energy under this Letter Agreement was negotiated.

An effective date of July 1, 1979 is proposed and waiver of the Commission's requirements is therefore requested. No special cost of service studies were prepared in connection with the derivation of the rate contained herein.

A copy of this statement has been sent to the Tri-State Generation and Transmission Association, Inc.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 November 9, 1979.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 79-33019 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-26]

Montana Power Co.; Agreement for Sale of Firm Energy

October 19, 1979.

The filing Company submits the following:

Take notice that The Montana Power Company ("Montana") on October 11, 1979 tendered for filing in accordance with Section 35 of the Commission's regulations, a Letter Agreement with Public Service Company of Colorado. Montana states that this Letter Agreement provides for the sale of firm energy between Montana and Public Service Company of Colorado.

Montana indicates that the proposed Letter Agreement would increase revenues from jurisdictional sales by an estimated $1,200,000 dollars based upon energy delivered from March 29, 1979 through September 30, 1979. Montana states that the rate for firm energy under this Letter Agreement was negotiated.

An effective date of March 29, 1979 is proposed and waiver of the Commission's requirements is therefore requested. No cost of service studies were prepared in connection with the derivation of the rate contained herein.

A copy of this filing has been sent to the Public Service Company of Colorado.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 November 9, 1979.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 79—33020 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC80-25]

National Fuel Gas Supply Corp.; Tariff Filing Pursuant to Order No. 29

October 19, 1979.

Take notice that on October 1, 1979, National Fuel Gas Supply Corporation (National Fuel) tendered for filing pursuant to Order No. 29 and Section 281.204 of the Commission's Regulations, in Docket TC80-25, the following sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 30
First Revised Sheet No. 31
First Revised Sheet No. 32
First Revised Sheet No. 33-A
Original Sheet No. 32-A

The sheets are proposed to be effective November 1, 1979.

National Fuel states that the filing is being made in accordance with the FERC's permanent curtailment rule adopted by Order No. 29 issued May 2, 1979 establishing a system of priorities for high-priority and essential agricultural use requirements pursuant to the provisions of Section 401 of the Natural Gas Policy Act of 1978. National Fuel's tariff sheets would arrange the Priority of Service Categories as follows:

(0) Affected Customer's use for fuel and loss and unaccounted for.
(1) Residential, small commercial (less than 50 Mcf on a peak day), schools, hospitals, police protection, fire protection, sanitation facility, or correctional facility.
(2) Essential agricultural requirements.
(3) Large commercial requirements (50 Mcf or more on a peak day), firm industrial requirements for plant protection, feedstock and process needs, pipeline customer storage injection requirements, and firm industrial sales up to 300 Mcf per day.
(4) All industrial requirements not specified in (2), (3), (5), (6), (7), (8), (9), or (10).

(5) Firm industrial requirements for boiler fuel use at less than 3,000 Mcf per day, but more than 1,500 Mcf per day, where alternate fuel capabilities can meet such requirements.
(6) Firm industrial requirements for large volume (3,000 Mcf or more per day) boiler fuel use where alternate fuel capabilities can meet such requirements.
(7) Interruptible requirements of more than 300 Mcf per day but less than 1,500 Mcf per day, where alternate fuel capabilities can meet such requirements.
(8) Interruptible requirements of intermediate volumes (from 1,500 Mcf per day through 3,000 Mcf per day), where alternate fuel capabilities can meet such requirements.
(9) Interruptible requirements of more than 3,000 Mcf per day, but less than 10,000 Mcf per day, where alternate fuel capabilities can meet such requirements.
(10) Interruptible requirements of more than 10,000 Mcf per day, where alternate fuel capabilities can meet such requirements.

The tendered tariff sheets also define: (1) Residential, (2) Hospital, (3) Schools, (4) Essential Agricultural, (5) Commercial, (6) Industrial, (7) Firm Service, (8) Interruptible Service, (9) Plant Protection Gas, (10) Feedstock Gas, (11) Process Gas, (12) Boiler Fuel and (13) Alternate Fuel Capabilities. Finally, First Revised Sheet No. 33–A cancels, effective November 1, 1979, National Fuel's High Priority and Essential Agricultural Use Special Adjustment Procedure.

On October 15, 1979, National Fuel tendered for filing the following additional tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Original Sheet No. 32B
Original Sheet No. 32C
Original Sheet No. 32D
Original Sheet No. 32E
Original Sheet No. 32F
Original Sheet No. 32G

The above sheets constitute National Fuels Index of Entitlements and are proposed to be effective November 1, 1979.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protest should be filed on or before October 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33021 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA79-31]

Northern Natural Gas Co.; Application for Adjustment

October 19, 1979.

Take notice that on September 28, 1979, Northern Natural Gas Company (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. SA79–31 an application pursuant to § 1.41 of the Commission's Rules of Practice and Procedure (18 CFR 1.41) for an order exempting Northern from the requirements of § 281.204 of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA) insofar as they may apply to the jurisdictional sales of Northern's Peoples Natural Gas Division (Peoples) in the Texas panhandle area and for interim relief pending final determination of said application, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it makes jurisdictional sales to two customers in the Texas panhandle area through Peoples and that said sales are made in accordance with a tariff on file with the Commission which is a part of Northern's Original Volume No. 4. The two jurisdictional sales which are the subject of the instant application are made to Southern Union Gas Company at various locations in Union County, New Mexico, and to Felt Water Development Company in Cimarron County, Oklahoma.

Northern states that Part 281 of the Regulations under the NGPA and Section 401 of the NGPA seek to insure that natural gas required for essential agricultural uses will not be curtailed unless curtailment is required to protect the needs of certain high priority users. The regulations require interstate pipelines and their customers to gather and report, on a specific timetable, the information necessary for the pipeline to compile an index of requirements for its customers' Priority 1 and Priority 2 entitlements. Further, the interstate pipelines must file such index of requirements by October 1, 1979, along with the changed tariff sheets necessary to implement the regulations and a report of the pipelines' Data Verification Committees. The tariff changes are to be effective November 1, 1979.

It is indicated that Northern, operating as Peoples, currently has no curtailment plan on file with the Commission for the two jurisdictional sales on its Texas panhandle system, and that during the approximately nine years that Peoples has operated the Texas panhandle system, its supplies of gas for its jurisdictional sales have never been curtailed by the supplier, and Peoples does not anticipate any curtailments of gas to these customers in the foreseeable future. Northern asserts that the intent of Section 401 of the NGPA, and the regulations implementing that section, would be fully accomplished in this instance through the mechanism established by § 281.206 and 281.207 of the Regulations under the NGPA. Northern further assets that the requirements imposed by §§ 281.201 to 281.215 of the Regulations under the NGPA would place a substantial administrative burden on Northern and are unnecessary. Accordingly, Northern requests an exemption from these requirements and for an interim waiver from compliance pending a final determination of the instant application.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24 issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before November 13, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33022 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-25]

Sierra Pacific Power Co.; Filing of Amendment to Service Schedule

October 19, 1979.

The filing Company submits the following:

Take notice that Sierra Pacific Power Company (Sierra Pacific), on October 11, 1979, tendered for filing an Amendment No. 1 to Service Schedule B–1 of the Interconnection Agreement dated May 19, 1971 between Utah Power & Light Company (Utah) and Sierra Pacific.

The Amendment executed September 28, 1979 between the parties amends the existing paragraph 4 of Service Schedule B–1 of the referenced Interconnection Agreement by replacing paragraph 4 in its entirety. The Amendment establishes the basis for settlement between the parties by which either party as the

supplying party is able to deliver and charge for economy interchange energy. The effective date of the Amendment will be September 28, 1979, and the other provisions of Service Schedule B-1 remain in effect.

Because of emergency and power supply situations that have already occurred Sierra Pacific has requested, pursuant to Section 35.11 of the Commission's regulations under the Federal Power Act that the prior notice requirement be waived, and that Amendment No. 1 be made retroactively effective to September 28, 1979.

Sierra Pacific states that copies of the filing have been sent to Utah Power & Light Company, the Public Service Commission of Utah and the Nevada Public Service Commission.

Any person wishing to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 November 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the Amendment No. 1 are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33023 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP79-11]

Texas Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

October 19, 1979.

Take notice that Texas Gas Pipe Line Corporation (TGPLC), on October 16, 1979, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 4a. The proposed changes would adjust the rates TGPLC charges its resale customers, Texas Eastern Transmission Corporation and Transcontinental Gas Pipeline Corporation, in accordance with Stipulation and Agreement filed in the above proceeding on June 14, 1979, and as that Agreement was approved in the Commission's Order Granting Application for Rehearing and Reconsideration and Modifying Prior Order issued October 4, 1979 in the same proceeding. In accordance with the Agreement and Commission Order, the tariff changes would be effective October 4, 1979. TGPLC says that this tariff sheet filing is in compliance with ordering paragraph (D) of the above-described Commission Order.

TGPLC States that copies of its filing were served upon the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 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 November 5, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33024 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP78-88]

Transwestern Pipeline Co., Opportunity for Comment

Issued: October 19, 1979.

On September 26, 1979, the presiding judge certified to the Commission a proposed settlement agreement in the above-captioned proceeding together with the entire record relating thereto.

Comments on the settlement were received by the judge from a number of parties including the Commission staff. Most parties support the settlement. However, the staff opposes the settlement. Largely as a result of the staff's objections, Transwestern has agreed to modify certain terms and provisions of the settlement. These modifications are set forth in Transwestern's reply comments submitted September 11, 1979, and in a statement submitted by Transwestern at the hearing held on September 21, 1979. The latter statement is attached to the judge's certification.

No comments have been received from the parties concerning whether or to what extent the modifications proposed by Transwestern have met the objections previously raised. In considering and ruling on the proposed settlement, the Commission would find it helpful to be advised by the parties, particularly the staff, of any remaining objections they may have to the settlement as modified. Accordingly, any objecting party may submit comments on the revised settlement on or before October 29, 1979. Answering comments by parties supporting the settlement may be filed on or before November 9, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33025 Filed 10-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. ER76-303 and ER76-399]

Wisconsin Electric Power Co.; Compliance Filing

October 19, 1979.

The filing Company submits the following: Take notice that on September 14, 1979, Wisconsin Electric Power Company ("Wisconsin Electric") filed a compliance report of refunds made on August 30, 1979 to the Cities of New London and Shawano, Wisconsin. According to Wisconsin Electric, the refunds, amounting to $92,153.60 for New London and $106,324.98 for Shawano, represent amounts collected over the locked-in effective period of the rates at issue in this proceeding (March 1, 1976 through January 31, 1979) under the settlement rates approved by the Commission in excess of the retail rate for Wisconsin Electric's large industrial retail customers. Wisconsin Electric states that it made the refunds in compliance with Commission orders in this proceeding as affirmed by the United States Court of Appeals for the District of Columbia Circuit in *Wisconsin Electric Power Co.* v. *FERC*, Docket Nos. 77-1777, 77-1825, 77-1921 and 77-2045, June 29, 1979. Wisconsin Electric states that this decision establishes the large industrial rate as the upper limit of the wholesale rate under Wisconsin Electric's contracts with New London and Shawano.

Wisconsin Electric states that the refunds were calculated on a calendar year basis and that, since the large industrial rate was higher than the wholesale rate on that basis in 1977, 1978 and January 1979, the refunds relate entirely to 1976. According to Wisconsin Electric, the refunds cannot be properly calculated on a monthly basis because the large industrial rate is a seasonal rate. According to Wisconsin Electric, the refund calculation is based on the large industrial rate in effect at the time of Wisconsin Electric's original filing in this proceeding, November 28, 1975, for the purpose of comparing the

wholesale and large industrial rates for the period March 1, 1976 through August 18, 1976 and on a higher large industrial rate for the period August 19, 1976 through January 31, 1979. Wisconsin Electric tendered for filing with its letter of September 14, 1979 the large industrial rate schedules used in calculating the refunds and asks that they be made effective on March 1, 1976 and August 19, 1976. Wisconsin Electric requests waiver of the 60-day notice requirement in order to permit the rate schedules to become effective retroactively.

Wisconsin Electric states that in accordance with the Commission's order of February 26, 1977 in this proceeding it has served its filing on New London, Shawano and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before November 9, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8 or 1.10).

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken. The documents filed by Wisconsin Electric Power Company are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 79-33026 Filed 10-25-79, 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1346-3]

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 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of October 9 to October 12, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from October 19, 1979 and will end on December 3, 1979. The 30-day review period for final EIS's as calculated from October 19, 1979 will end on November 19, 1979.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following sources:

For hard copy reproduction: Environmental Law Institute, 1346 Connecticut Avenue, NW., Washington, D.C. 20036.

For hard copy reproduction or microfiche: Information Resources Press, 2100 M Street NW., Suite 316, Washington, D.C. 20037

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) 245-3006.

SUMMARY OF NOTICE:

On July 30, 1979, the CEQ Regulations became effective. Pursuant to Section 1506.10(a), the 30 day review period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of October 9 to October 12, 1979, the 30 day review period will be calculated from October 19, 1979. The review period will end on November 19, 1979.

Appendix I sets forth a list of EIS's filed with EPA during the week of October 9 to October 12, 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 lsit 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: October 23, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review.

Appendix I.—EIS's Filed With EPA During the Week of October 9 to 12, 1979

U.S. Army Corps of Engineers

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.

Draft

Mingo Creek Flood Protection, Tulsa: Tulsa County, Okla., October 10: Proposed is a local flood protection plan for Mingo Creek in Tulsa County, Oklahoma. In addition to no build, three other alternatives are considered. The selected plan would consist of 24 floodwater detention sites and about 7 miles of improved channel on the main stem and tributaries. Approximately 11.5 million cubic yards of material would be excavated for the detention sites and improved channels. Approximately 2.3 million cubic yards of material would be disposed of at the detention sites. (Tusla district.) (EIS Order No. 91052.)

Final

Sparrows Point plant slag filling, permit; Baltimore County, Md., October 11: Proposed is the issuance of a permit for the filling of a 45 acre site in Baltimore County, Maryland. The site is located in Baltimore Harbor on the southern side of Sparrows Point to west of the Ore Dock Basin and would be used to process steel making slag. The process includes a screening operation to size basic oxygen furnace and open hearth tap slag for recharging in the blast furnaces and basic oxygen furnaces as well as a metallic reclamation and sizing operation. The south end of the site will be occupied by a settling basin. (Baltimore district.) Comments made by: EPA, DOI, DOC, HEW, USDA, State and local agencies, groups. (EIS Order No. 91056.)

Department of Energy

Contact: Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of

Energy, Mail Station 4G-064, Forrestal Bldg., Washington, DC 20585, (202) 252-4600.

Bonneville Power Administration

Final

BPA's 1979 wholesale rate increase; October 11: Proposed is an increase of approximately 90% in BPA's wholesale power rates in the states of California, Idaho, Montana, Nevada, Oregon, Utah, Washington & Wyoming. This action will involve a restructuring of existing rate schedules. Alternatives considered rates such as: 1) average cost, 2) long-run incremental cost, 3) share-the-savings rates of energy sales to California, 4) time-differentiated average cost, 5) conservation, 6) industrial rates with availability credits and inclusion of a variable charge in capacity rates. (DOE/EIS-0031-F.) Comments made by: DOI, EPA, State and local agencies, groups, individuals and businesses. (EIS Order No. 91055.)

Department of Housing and Urban Development

Contact: Mr. Richard H. Brown, Director, Office of Environmental Quality Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755-6306.

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 executives. Copies are not available from HUD.

Draft

South CBG improvement program, (UDAG); Hamilton County, Tenn. September 14: proposed is the awarding of the UDA grant for the improvement of the South Chattanooga CBD in the city of Chattanooga, Hamilton County, Tennessee. The project will encompass a 20.2 acre site and will include an industrial trade center; street, sewer, and utility improvements; a 2,000 space parking garage, a pedway system, central mall, open space, and landscaping; a TVA computer center and office complex; a major hotel facility; and an office tower and parking garage. (EIS Order No. 91047.) (See appendix VI.)

Draft

Downtown Stockton Redevelopment (UDAG); San Joaquin County, Calif., October 9: Proposed is the issuance of UDAG funding for the redevelopment of an underused industrial area adjacent to the Stockton Deepwater Shipping Channel in the city of Stockton, San Joaquin County, California. The redevelopment will consist of a planned community, mixed-use development including 715 residential units, 258,000 square feet office space, 84,000 square feet commercial space, a 270-berth marina with public docking facilities, recreation facilities and a clubhouse. (EIS Order No. 91046.)

Draft

Watson Island Theme Park (UDAG); Dade County, Fla., October 11: Proposed is the awarding of a UDA grant for use in development of Watson Island in Dade County, Florida. The Island would be developed as a theme park including recreational and amusement facilities. The alternatives consider: 1) No action, 2) Alternative locations for the park, and 3) Other uses for Watson Island. (EIS Order No. 91057.)

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

Final

Emery Units 3 and 4, Construction and Operation; Emery County, Utah, October 11: Proposed is the construction and operation of two additional 430 megawatt coal-fired steam-electric generating units in Emery County, Utah. One 345kv transmission line, 118 miles long, which parallels the existing line for Emery Unit 1, would deliver power to a substation near Camp Williams, Utah. Coal would be mined underground from the proposed cottonwood portal of the existing Wilberg Mine and the Deseret-Beehive Mines, then conveyed and trucked to the plant. Water would be provided from Cottonwood and Ferron Creek drainages. (FES-79-51.) Comments made by: USDA, DOE, HEW, DOI, DOT, EPA, FERC, state agencies, groups. (EIS Order No. 91058.)

Interstate Commerce Commission

Contact: Mr. Carl Bausch, Chief, Section of Energy and Environment, Interstate Commerce Commission, Room 3371, 12th & Constitution Ave., N.W., Washington, D.C. 20423, (202) 275-7658.

Draft

Western coal railroad rate structure; several countries, October 12: Proposed are three approaches for guidelines concerning the appropriate levels of minimum and/or maximum rates for large volume movements of bituminous and lignite coal from origins in coal producing districts 16 through 22, with exception of points in California. The other States involved are North and South Dakota, Montana, Wyoming, Colorado, Utah, New Mexico and Arizona. A wide range of freight rates, from one-half to twice the rates assumed to exist under the no action alternative are examined. (EIS Order No. 91060.)

Department of Transportation

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.

Federal Highway Administration

Draft

CA-49 and CA-108, Sonora Bypass; Tuolumne County, Calif., October 10: Proposed is the construction of a highway facility on CA-49 from Golf Links Road 0.5 miles east and on CA-108 from 0.5 miles east of Golf Links Road to 0.3 miles east of Fir Drive, near the city of Sonora, Toulumne County, California. The facility will be approximately 3.0 miles in length and will be on new alignment and will provide a bypass around the city of Sonora. In addition to no build, five additional build alternatives are considered, along with a right-of-way acquisition. (FHWA-CA-EIS-79-04-D.) (EIS Order No. 91049.)

CT-11, Salem, Montville and Waterford; New London County, Conn., October 10: Proposed is the development of an improved transportation facility within the CT-11 corridor in the towns of Salem, Mountville and Waterford, New London County, Connecticut. Six alternatives including no action, reconstruction alternates, relocation alternates, and a mass transit alternate are discussed. The alternatives include upgrading portions of I-85 and various extensions of CT-11. (FHWA-CONN-EIS-79-02-D.) (EIS Order No. 91053.)

Nassau Expressway, New York City; Queens and Nassau Counties, October 10: Proposed is the construction of a four to six lane highway, to be known as the Nassau expressway, linking the southern parkway at cross bay boulevard in Queens County, New York to the Atlantic Beach Bridge in Nassau County. The facility will be approximately ten miles in length. In addition to no build an expressway alternative and a boulevard alternative are considered. (FHWA-NY-EIS-79-02D.) (EIS Order No. 91050.)

Draft

U.S. 69, Atoka to Kiowa; Atoka and Pittsburg Counties, Okla., October 12: Proposed is the improvement of U.S. 69 beginning at U.S. 75 at Atoka in Atoka County, Oklahoma to OK-63 at Kiowa in Pittsburg County. The facility will consist of four twelve foot wide traffic lanes separated by a median with full control of access. Separations or interchanges will be provided for local traffic circulation and access to the improved U.S. 69. The alternative considered is no action. (FHWA-OK-EIS-79-02D.) (EIS Order No. 91061.)

Final

CO-133, Hotchkiss to Paonia Dam; Delta and Gunnison Counties, Colo., October 10: The proposed project provides for the construction and/or improvement of approximately 26 miles of two-lane highway built to rural secondary standards. The project will improve CO-133 beginning about half a mile west of Hotchkiss and ending at the intersection of CO-133 and Kebler Pass Road about 26 miles to the east of Hotchkiss near Paonia Dam. (FHWA-COLO-EIS-77-02-F.) Comments made by: DOI, DOC, EPA, HUD, DOT, USDA, State, and local agencies, groups, individuals and businesses. (EIS Order No. 91048.)

Fletcher Avenue, FL-597 to FL-685; Hillsborough County, Fla., October 10: Proposed is the construction of 2.8 miles of four-lane divided municipal roadway to be known as Fletcher Avenue, between FL-597, Dale Mabry Highway, and FL-685, Florida Avenue, in Hillsborough County, Florida. The project length includes about 1.5 miles of existing alignment where the four-lane roadway will be constructed. Approximately 1.3 miles will be constructed on new

alignment. (FHWA-FLA-EIS-78-4-F.) Comments made by: USDA, DOT, HEW, DOI, EPA, State and local agencies. (EIS Order No. 91051.)

Bobby Jones Expressway, U.S.-1 to U.S.-25; Aiken County, S.C., October 10: Proposed is the construction of the Bobby Jones Expressway in Aiken County, South Carolina. The facility will begin at the U.S. 25/1-20 interchange, extend through North Augusta, and terminate at U.S. 1 near its crossing of the Savannah River. A four-lane divided freeway with full control of access is planned. The altenatives consider: (1) No action, (2) three new locations for the facility, and (3) a reduced level of construction. (FHWASC-EIS-75-03-F.) Comments made by: EPA DOI, USDA, State agencies. (EIS Order No. 91054.)

Urban Mass Transportation Administration

Draft

SE Michigan Public Transportation Analysis; Wayne, Oakland, and Macomb County, October 12: Proposed are various public transportation alternatives for the Counties of Wayne, Oakland and Macomb in Southeastern Michigan. The improvements considered are: (1) Modernization and expansion of bus services; (2) expanded commuter rail service from Detroit to Ann Arbor, Pontiac and Mt. Clemens; (3) a people mover in downtown Detroit; and (4) in five of the alternatives, a new light rail transit service in Woodward Avenue. (EIS Order No. 91059.)

Broadway Plaza, New York City, N.Y., October 9: Proposed is the construction of a Pedestrain/transit mall in Times Square in New York City, New York. Broadway would be closed to vehicular traffic between 45th and 48th streets, and the portion of the street now used for autos would be replaced with new paving, pedestrian amenitis, lay-bys for buses and taxis, a center for transit information, and a continuous bicycle lane. The no action alternative is considered. (EIS Order No. 91045.)

EIS's Filed During the Week of Oct. 9 to Oct. 12, 1979

[Statement title index—by State and county]

State	County	Status	Statement title	Accession No.	Date filed	Orig. agency No.
		Final	BPA's 1979 Wholesale Rate Increase	91055	10-11-79	DOE.
California	San Joaquin	Draft	Downtown Stockton Redevelopment (UDAG)	91046	10-09-79	HUD.
	Tuolumne	Draft	CA-49 and CA-108, Sonora Bypass	91049	10-10-79	DOT.
Colorado	Delta	Final	CO-133, Hotchkiss to Paonia Dam	91048	10-10-79	DOT.
	Gunnison	Final	CO-133, Hotchkiss to Paonia Dam	91048	10-10-79	DOT.
Connecticut	New London	Draft	CT-11, Salem, Montville and Waterford	91053	10-10-79	DOT.
Florida	Dade	Draft	Watson Island Theme Park (UDAG)	91057	10-11-79	HUD.
	Hillsborough	Final	Fletcher Avenue, FL-597 to FL-685	91051	10-10-79	DOT.
Maryland	Baltimore	Final	Sparrows Point Plant Slag Filling, Permit	91056	10-11-79	COE.
Michigan	Macomb	Draft	SE Michigan Public Transportation Analysis	91059	10-12-79	DOT.
	Oakland	Draft	SE Michigan Public Transportation Analysis	91059	10-12-79	DOT.
	Wayne	Draft	SE Michigan Public Transportation Analysis	91059	10-12-79	DOT.
New York		Draft	Broadway Plaza, New York City	91045	10-09-79	DOT.
	Nassau	Draft	Nassau Expressway, New York City	91050	10-10-79	DOT.
	Queens	Draft	Nassau Expressway, New York City	91050	10-10-79	DOT.
Oklahoma	Atoka	Draft	U.S. 69, Atoka to Kiowa	91061	10-12-79	DOT.
	Pittsburg	Draft	U.S. 69, Atoka to Kiowa	91061	10-12-79	DOT.
	Tulsa	Draft	Mingo Creek Flood Protection Tulsa	91052	10-10-79	COE.
Several	Several	Draft	Westen Coal Railroad Rate Structure	91060	10-12-79	ICC.
South Carolina	Aiken	Final	Bobby Jones Expressway, U.S.-1 to U.S.-25	91054	10-10-79	DOT.
Tennessee	Hamilton	Draft	South Chattanooga CBD Improvement (UDAG)	91047	09-14-79	HUD.
Utah	Emery	Final	Emery Units 3 and 4, Construction and Operation	91058	10-11-79	DOI.

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
U.S. Corps of Engineers					
Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.	Mingo Creek Local Flood Protection, Tulsa, Tulsa County, Oklahoma.	Draft 91052	Oct. 25, 1979 (see appendix I).	Extension	Dec. 10, 1979.
Department of Transportation					
Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.	CT-11, Salem, Montville and Waterford, Connecticut.	Draft 91053	Oct. 25, 1979 (see appendix I).	Extension	Dec. 10, 1979.

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/No.	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 HOUSING AND URBAN DEVELOPMENT				
Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755-6306.	South Chattanooga CBD Improvement (UDAG).	Draft 91047	Oct. 25, 1979 (see appendix I).	Should have appeared in the Sept. 21, 1979, FEDERAL REGISTER. The comment period began on Sept. 21, 1979, and ended on Nov. 5, 1979.

[FR Doc. 79-32888 Filed 10-25-79; 8:45 am]
BILLING CODE 6560-01-M

[OPP 30000/14C, FRL 1347-3]

Intent To Cancel Registrations and Deny Applications for Registration of Pesticide Products Containing Pronamide Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act

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

ACTION: Notice of Intent to Cancel Registrations and Deny Applications for Registration of Pesticide Products Containing Pronamide; Analysis of Comments (Position Document 4) Concerning Pronamide.

SUMMARY: On May 20, 1977, the Environmental Protection Agency published in the **Federal Register** (42 FR 25906) a notice of rebuttable presumption against registration and continued registration (RPAR) of pesticide products containing pronamide. Registrants and other interested persons were provided the opportunity to submit data and information to rebut the presumption. After reviewing all available information, the EPA determined that the cancer risk presumption announced in the pronamide RPAR had not been rebutted, and that the uses of pronamide posed risks of cancer to certain exposed groups. The Agency also reviewed information relating to benefits of these uses and, after considering risks in relation to benefits, determined that these risks may be reduced by modifying the terms and conditions of registration for some uses. These preliminary decisions were announced in the Notice of Determination and Availability of Position Document on Pronamide published on January 15, 1979 (44 FR 3083) (The "Preliminary Notice"). Thereafter, a comment period was provided.

This Notice initiates actions to cancel the pronamide registrations or deny applications unless the terms and conditions of registration are modified as follows: (1) The cancellation and denial of registrations of hand spray application of pronamide for all uses except ornamentals and nursery stock; (2) the classification of pronamide wettable powders for restricted use and the requirement for applicator certification; (3) the amendment of the labeling for pronamide (wettable powder) to require the use of protective clothing during the mixing and application of pronamide; (4) the requirement for the packaging of pronamide wettable powder in water soluble bags; (5) precautionary labeling on pronamide wettable powder formulations; and (6) amendment of the granular formulation labels for turf use.

In addition to these modifications in the terms and conditions of registration, the Agency will start the tolerance revision process to amend the lettuce tolerance from 2 ppm to 1 ppm and will require the submission of residue data to determine if the 1 ppm tolerance can be supported with less restrictive measures than a THI of 60 days and a limitation to pre-emergent use.

FOR FURTHER INFORMATION CONTACT: Richard Troast, Project Manager, Special Pesticide Review Division, Office of Pesticide Programs (TS-791), Room 711E, Crystal Mall #2, EPA (703-557-7420).

SUPPLEMENTARY INFORMATION: Position Document 4 (PD 4), which accompanies this Notice, discusses in detail the comments which were received concerning Position Document 2/3 (PD 2/3) and the Preliminary Notice which accompanied PD 2/3. The comments of the FIFRA Scientific Advisory Panel and the Secretary of Agriculture are included in their entirety as Appendices to PD 4.

I. Introduction

On January 6, 1979 (43 FR 3083, January 15, 1979) the Environmental

Protection Agency issued a Notice of Determination (the "Preliminary Notice") pursuant to 40 CFR 162.11(a)(5), terminating the pronamide RPAR. The Preliminary Notice was accompanied by a Position Document (PD) 2/3 which set forth in detail the Agency's analysis of rebuttal comments to the RPAR. In this PD 2/3 the Agency determined that the risks of using pronamide are greater than the social, economic, and environmental benefits of these uses, unless risk reductions are accomplished by modifications in the terms or conditions of registration. The Agency further determined that these modifications in the terms and conditions of registration accomplish significant risk reductions, and that these can be achieved without significant impacts on the benefits of the uses. The Agency also recommended that certain studies be performed.

This Notice and accompanying PD 4 set forth in detail the Agency's analysis of the comments submitted by the Secretary of Agriculture, the FIFRA Scientific Advisory Panel (SAP), and other interested parties regarding the reasons and factual bases for the regulatory actions announced in the Preliminary Notice of Determination. The regulatory actions announced in this Notice have been modified, as appropriate, in light of the comments and other information received on PD 2/3 and the preliminary Notice from all sources.

This notice is organized into four Sections. This introduction is Section I. Section II, titled "Legal Background," is a general discussion of the regulatory framework within which these actions are taken. Section III sets forth the regulatory actions the Agency is implementing concerning pronamide; Section III and the Position Document set forth the bases for the actions. Section IV, Titled "Procedural Matters," provides a brief discussion of the procedures which will be followed in implementing the regulatory actions which the Agency is announcing in this notice.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), a manufacturer must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires (among other things) that the pesticide perform its intended function without causing "unreasonable adverse effects" on the environment (Section 3(c)(5)). "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide" (Section 2(bb)). In effect, the registration standard requires a finding that the benefits from each use of the pesticide exceed the risks from that use, when the pesticide is used in accordance with commonly recognized practice. The burden of proving that a pesticide satisfies the registration standard is on the proponents of registration (e.g., registrants or users) and continues as long as the registration remains in effect. Under Section 6 of FIFRA, the Administrator is required to cancel the registration of a pesticide or modify the terms and conditions of registration whenever he determines that the pesticide no longer satisfies the statutory standard for registration.[1]

The Agency created the RPAR process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide a public, informal procedure for the gathering and evaluation of information about the risks and benefits of these uses.

The RPAR process is set forth at 40 CFR 162.11. This section provides that a rebuttable presumption shall arise if a pesticide meets or exceeds any of the risk criteria set out in the regulations. After an RPAR is issued, registrants and other interested persons are invited to review the data upon which the presumption is based and to submit data and information to rebut the presumption. Respondents may rebut the presumption of risk by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant exposure to man of the animal or plant of concern with regard to the adverse effect in question.[2]

Further, in addition to submitting evidence to rebut the risk presumption, the respondents may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide subject to the presumption outweigh the risk of use.

The regulations require the Agency to conclude an RPAR by issuing a notice of determination. In that notice, the Agency states and explains its position on the question of whether the risk presumption has been rebutted. If the Agency determines that the presumption is not rebutted, it then considers information relating to the social, economic, and environmental costs and benefits which registrants and other interested persons submitted to the Agency, and any other benefits information known to the Agency. If the Agency determines that the risks of a pesticide use appear to outweigh its benefits, the RPAR process finally concludes with a Notice of Intent to Cancel or Deny Registration, pursuant to FIFRA Section 6(b)(1) or Section 3(c)(6).

When the uses of a pesticide appear to pose risks which are greater than benefits, the Agency considers modifications to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of the use. The risk reduction measures, short of cancellation, which are available to the Agency, include requiring changes in the directions for use on the pesticide's labeling, and classifying the pesticide for "restricted use," pursuant to FIFRA, Section 3(d).

The statute requires the Agency to submit notices issued pursuant to Section 6 to the Secretary of Agriculture for comment and to provide the Secretary of Agriculture with an analysis of the impact of the proposed action on the agricultural economy (Section 6(b)). The Agency is required to submit these documents to the Secretary at least 60 days before making the notice effective by sending it to registrants or making it public. If the

[1] The statutory standard for registration also requires that the pesticide satisfy the labeling requirements of FIFRA. These requirements are set out in the statutory definition of "misbranded" (FIFRA Section 2(q)). Among other things, this section provides that a pesticide is misbranded if the "labeling * * * does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any * * * (restrictions) imposed under Section 3(d) * * * are adequate to protect health and the environment.

The Agency can require changes in the directions for use of a pesticide in most circumstances either by finding that the pesticide is misbranded if the labeling is not changed, or by finding that the pesticide would cause unreasonable adverse effects on the environment unless labeling changes are made which accomplish risk reductions.

[2] 40 CFR 162.11(a)(4) provides that registrants and applicants may rebut a presumption against registration by sustaining the burden of proving: "(i) In the case of a pesticide which meets or exceeds the criteria for risk set forth in paragraphs (a)(3) (i) or (iii) that when considered with the formulation, packaging, method of use, and proposed restrictions and directions for use and widespread and commonly recognized practices of use, the anticipated exposure to an applicator or user and to local, regional or national populations of nontarget organisms is not likely to result in any significant acute adverse effects; or (ii) In the case of a pesticide which meets or exceeds the criteria for risk set forth in paragraph (a)(3)(ii) that when considered with proposed restrictions on use and widespread and commonly recognized practices of use, the pesticide will not concentrate, persist, or accrue to levels in man or the environment likely to result in any significant chronic adverse effects * * *; or (iii) that the determination by the Agency that the pesticide meets or exceeds any of the criteria for risk was in error."

Secretary of Agriculture comments in writing within 30 days of receiving the notice, the Agency is required to publish the Secretary's comments and the Administrator's response together with the Notice. The statute also requires the Administrator to submit Section 6 notices to a Scientific Advisory Panel (SAP) for comment on the impact of the proposed action on health and the environment, at the same time and under the same procedures as those described for review by the Secretary of Agriculture (FIFRA Section 25(d)).

Although not required to do so under the statute, the Agency decided that it is consistent with the general theme of the RPAR process and the Agency's overall policy of open decisionmaking to afford an opportunity to registrants and other interested persons to comment on the bases for the proposed action during the time that the proposed action is under review by the Secretary of Agriculture and the Scientific Advisory Panel (SAP). Accordingly, the Preliminary Notice and PD 2/3 were published in the **Federal Register** and made available to registrants and other interested persons at the time the decision documents were transmitted for formal external review. Registrants and other interested persons were allowed the same period of time to comment, 30 days, that the statute provides for receipt of comments from the Secretary of Agriculture and the SAP.

III. Determinations and Announcement of Regulatory Actions

As detailed in the Preliminary Notice and PD 2/3, the Agency considered information on the risks associated with the use of pronamide, including information submitted by registrants and other interested persons in rebuttal to the pronamide RPAR. The Agency also considered information on social, economic and environmental benefits of the uses of pronamide subject to the RPAR, including benefits information submitted by registrants and other interested persons in conjunction with their rebuttal submissions and information submitted by the United States Department of Agriculture. The Agency's assessment of the risks and benefits of the uses of pronamide subject to this RPAR, its conclusions and determinations on whether any uses of pronamide pose unreasonable adverse effects on the environment, and its determinations on whether modifications in terms or conditions of registration reduce risks sufficiently to eliminate any unreasonable adverse effects, were set forth in detail in PD 2/3. The PD 2/3 was adopted by the Agency as its statement of reasons for the determinations and actions previously announced in the Notice of Determination and as its analysis of the impacts of the proposed regulatory actions on the agricultural economy.

This Notice constitutes the Agency's Final Notice of Determination Concluding the Pronamide RPAR. It reflects any modifications in the Agency's initial determinations on the risks and benefits of pronamide pesticide uses which the Agency has concluded are appropriate, after review of the comments and information received concerning PD 3 and the Preliminary Notice from the Secretary of Agriculture, the SAP, and other sources. This Notice also reflects the modifications in the requlatory actions announced in the Preliminary Notice which the Agency has concluded are appropriate, in light of the comments and other information received on PD 3 and the Preliminary Notice from all sources. PD 4, which accompanies this Notice, discusses in detail the information that was received,[3] and the Agency's reasons for changing or not changing its initial determinations and the regulatory actions announced in the Preliminary Notice. Finally, this Notice announces the regulatory actions which the Agency is implementing concerning pronamide. The Agency hereby incorporates PD 3 and PD 4 as its statement of reasons for these actions.

A. Determinations on Risks

The pronamide RPAR was based on laboratory studies showing that pronamide induced oncogenic effects in experimental mammalian species. The Agency has determined that the presumption that pronamide poses an oncogenic risk was not rebutted. The Agency has further determined that human exposure may result from the uses of pronamide, and that pronamide use therefore poses a cancer risk to man of sufficient magnitude to require the Agency to determine whether the uses of pronamide offer offsetting social, economic, or environmental benefits. The Agency identified the key populations at risk with respect to pronamide use: The U.S. population at large, and pesticide applicators.

B. Determinations on Benefits

The uses of pronamide which are subject to this notice are grouped into three categories: lettuce use, alfalfa use, and other uses.[4]

1. Lettuce Use. Pronamide is used on lettuce to control a variety of weeds and grasses. Most of the pronamide used for lettuce (70%) is used in Arizona and California. Significant adverse economic impacts would result if pronamide were unavailable for this use and alternate methods of weed control were employed. Pronamide offers a wider spectrum of activity than its alternates; thus, if pronamide were unavailable, more pesticides would be applied to control weeds. Pronamide also offers a wider versatility of application methodology than the alternatives, and timing is not as critical to assure maximum effectiveness. Finally, pronamide is more biologically active than the alternatives and thus the use of this pesticide reduces the frequency of field reentry to mechancially control weeds which develop after herbicide application.

2. Alfalfa and Other Forage Legumes. In alfalfa, pronamide offers growers control of one noxious weed, quackgrass, for which there are no alternatives presently registered. Non-chemical control methods are also generally ineffective, as well as costly to the grower.

Pronamide also offers some increase in utility over alternatives to alfalfa growers similar to that achieved in lettuce use, since its use does not require critical timing to insure maximum effectiveness for control of weeds.

3. Other Uses. The ability and utility of pronamide to control weeds (berries, ornamental turf, and nursery stock) for these "other uses" is similar to that of lettuce and alfalfa. There are few, if any, alternatives which can be used to adequately control weeds more efficiently and economically than pronamide.

C. Determinations on Unreasonable Adverse Effects

For the reasons set forth in detail in the PD 2/3, as discussed and modified in PD 4, the Agency has made the following unreasonable adverse effect determinations with respect to the uses of pronamide subject to this RPAR:

1. *Determinations on All Wettable Powder Formulations.* The Agency has determined that the risks resulting from the use of the wettable powder formulations are greater than the social, economic, and environmental benefits of these uses, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as

[3] The comments from the SAP and the Secretary of Agriculture are attached as appendices to PD 4. All other comments are available in the pronamide public file for inspection and review.

[4] The category of "other uses" consists of these agricultural crops: Blueberries, boysenberries, raspberries and other cane fruit, sugar beet grown for seed, ornamental nursery stock, Christmas tree plantings and ornamental turf.

described below, the Agency has further determined that these modifications in the terms and conditions of registration accomplish significant risk reductions, and that these risk reductions can be achieved without significant impact on the benefits of the uses. Accordingly, the Agency has determined that unless changes are made in terms and conditions of registration, the uses of pronamide as a wettable powder will generally cause unreasonable adverse effects on the environment when used in accordance with widespread and commonly recognized practice, and that the labeling of pronamide pesticide products will not comply with the provisions of FIFRA.

2. *Determinations on Granular Formulations for Turf Weed Control.* The Agency has determined that the use of pronamide as a granular product poses risks which are greater than the social, economic and environmental benefits of these uses unless risk reductions are accomplished by modifications in the terms and conditions of registration, as described below. The Agency has further determined that these modifications in the terms and conditions of registration accomplish significant risk reductions, and that these risk reductions can be achieved without significant impact on the benefits of these uses.

Accordingly, the Agency has determined that unless these changes in the terms and conditions of registration are accomplished, the uses of pronamide as a granular formulation will generally cause unreasonable adverse effects on the environment when used in accordance with widespread and commonly recognized practice, and that the labeling of pronamide pesticide products will not comply with the provisions of FIFRA.

D. Other Determinations

Under Section 3(c)(2)(B) of FIFRA the Agency has authority to determine that registrants must conduct certain additional studies as a condition of continued registrations. In the event a registrant fails to take appropriate steps to secure the data required by the Agency, the Administrator may take appropriate action to suspend the registrant's registrations for which additional data are required. Since requirements that registrants conduct certain studies are imposed pursuant to Section 3(c)(2)(B) and not as terms or conditions of registration pursuant to Section 6(b), the Agency's requirement of certain tests is not challengeable in a Section 6(b) hearing. The Agency has determined that pronamide registrants holding lettuce use registrations must submit the results of the lettuce residue studies detailed in Section III. E. of this Notice to the Agency by September 1, 1980.

E. Announcement of Regulatory Actions

Based upon the determinations summarized above and developed in detail in the PD 2/3 as modified by PD 4, the Agency is initiating the following regulatory actions, and this document shall constitute its notice of intent regarding these actions.

1. Cancellation and denial of registrations of hand spray application of pronamide for all uses except ornamentals and nursery stock.

2. Cancellation and denial of registrations of all pronamide products registered for use on lettuce, alfalfa and forage legumes and other uses unless the registrants or applicants for registration modify the terms and conditions of registration as follows:[5]

A. Classification of pronamide wettable powder products for Restricted Use Only. For use only by or under the direct supervision of Certified Applicators and only for those uses covered by the Certified Applicators certification.

B. Modification of the labeling of pronamide wettable powder products to include the following:

(1) *Restricted-use pesticide.* For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification.

(2) *General precautions.* (a) Take special care to avoid contact with eyes, skin or clothing.

(b) Wash clothing and gloves after use.

(3) *Protective clothing.* The following items of clothing are required when mixing or applying pronamide:

(a) Long-sleeved shirts and long pants, preferably one piece (overalls).

(b) Hat with brim.

(c) Heavy-duty fabric or rubber work gloves.

(d) Hand-spray applications of pronamide will require the use of heavy-duty leather or rubber boots.

(4) *Water-soluble packaging.* For all wettable-powder products introduced in commerce after , the statement:

Dilution Instructions

The enclosed pouches of this product are water soluble. Do not allow pouches to become wet prior to adding to the spray tank. Do not handle the pouches with wet hands or gloves. Alwasy reseal overwrap bag to protect remaining unused pouches. Do not remove water soluble pouches from overwrap except to add directly to the spray tank.

Add the required number of unopened pouches as determined by the dosage recommendations into the spray tank with agitation. Depending on the water temperature and the degree of agitation, the pouches should dissolve completely within approximately five minutes from the time they are added to the water.

C. Modification of the granular formulation pronamide labels to include the following for turf use.

"This product should be watered in within 24 hours."

In addition to these actions, the Agency will start the tolerance revision process to amend the lettuce tolerance from 2 ppm to 1 ppm and pursuant to Section 3(c)(2)(B) will require residue data to determine if the 1 ppm tolerance can be supported with less restrictive measures than a THI of 60 days and a limitation to pre-emergent use. This data will include residue studies on "head" and "leaf" lettuce after both pre-emergent and post-emergent treatments and on "transplant" lettuce after post-emergent treatment with a time-to-harvest interval of at least 35 days for all the studies. These samples must be from lettuce grown during the spring/summer in California and New Jersey and during the fall/winter in California. The Agency is requiring the submission of the studies by September 1, 1980.

IV. Procedural Matters

This notice initiates actions to cancel the registration of pronamide unless registrants modify the terms and conditions of registration as required by this notice. This notice also notifies applicants for new registrations that unless the applicant complies with the conditions required by this notice and

[5] FIFRA Section 6(b)(1) provides that the Administrator may initiate proceedings to cancel a registration or change its use classification, where the Administrator finds that the pesticide does not satisfy the statutory standard for registration. However, the registered pronamide products subject to this action have not yet been initially classified. Accordingly, any classification action with respect to these products is an initial classification and not a change in classification. Initial classification generally does not give rise to a right to review the classification decision in an adjudicatory hearing. (See Preamble to *Optional Procedures for Classification of Pesticide Uses by Regulation*, 43 FR 5782, 5734 (Feb. 9, 1978)). However, in view of the fact that the Agency is proposing other changes to the terms or conditions of the registration (e.g. labeling changes) for registered pronamide products, which are reviewable in adjudicatory hearings, the Agency has determined that it is appropriate to exercise its discretion to fashion procedures in excess of minimum statutory requirements, and to permit the question of whether pronamide uses should be initially classified for restricted use and its use limited to certified applicators to be reviewed in any such adjudicatory hearing as well.

notifies the Agency of such action within 30 days from receipt by the registrant or publication, the Agency will refuse to approve the application.

Under Sections 6(b) and 3(d) of FIFRA, applicants, registrants, and other interested or affected persons may request a hearing on the cancellation and denial actions that this notice initiates. This section of the Notice explains how affected persons may request a hearing, and the consequences of requesting or failing to request a hearing in accordance with the procedures specified in this notice.

A. Procedure for Requesting a Hearing

1. *When a Hearing Must Be Requested for Cancellation Actions.* Registrants affected by the actions initiating conditional cancellation of the registered uses of pronamide may request a hearing on specific registered uses within 30 days of receipt of this notice, or on or before November 26, 1979, whichever occurs later. Any person adversely affected by the cancellation actions initiated by this notice may request a hearing on specific registered uses affected by this notice on or before November 26, 1979.

2. *When a Hearing Must Be Requested for Actions to Deny Applications.* Applicants for new registration of the uses affected by this notice may request a hearing on specific uses within 30 days of receipt of this notice, or on or before November 26, 1979, whichever occurs later. Other interested persons may request a hearing with the concurrence of the applicant during the time period available to the applicant.

3. *How to Request a Hearing.* All hearing requests must be filed in accordance with the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). Among other things, these procedures require all hearing requests to be accompanied by objections that are specific for each use for which a hearing is requested and to describe the specific product(s) to which the hearing request refers. All requests must be received by the Hearing Clerk within the applicable 30 day time period (40 CFR 164.5(a)). *Failure to comply with these procedures will automatically result in denial of the request for a hearing.*

Request for hearings must be submitted to: Hearing Clerk (A–110), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

B. Consequences of Filing or Failing To File a Hearing Request

1. *Consequences of Filing a Timely and Effective Hearing Request.* If a hearing is requested in a timely and effective manner before the end of the 30-day notice period, the hearing will be governed by the Agency's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164). In the event of a hearing, the conditional cancellation and denial actions will not become effective with respect to pesticide products and uses subject to the hearing, except pursuant to orders of the Administrator at the conclusion of the hearing.

2. *Consequences of Failure To File in a Timely and Effective Manner.* A registrant or applicant for registration who does not file a timely and effective hearing request shall be deemed to have acquiesced in the changes to the terms or conditions of registration required by this Notice. Such registrants and applicants for registration will receive detailed instructions from the Agency at a later date about how to bring their registrations into compliance with this Notice.

Dated: October 19, 1979.

Steven D. Jellinek,

Assistant Administrator for Toxic Substances.

Pronamide Position Document 4

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Appendix B: Letter from Bob Bergland, Secretary of Agriculture, to Douglas Costle, Administrator, U.S. Environmental Protection Agency.

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I. Introduction

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 et seq.), the Environmental Protection Agency (EPA or "the Agency") regulates all pesticide products. FIFRA, Section 6(b), authorizes the Administrator of EPA to issue a notice of intent (1) to cancel the registration or (2) to change the classification of a pesticide product if in his judgment either the pesticide or its labeling "does not comply with the provisions of (FIFRA) or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment * * *." FIFRA, Section 3(c)(6), authorizes the Administrator to deny any application for pesticide registration which does not meet the statutory standards for registration.

To implement its authorized functions, the Agency has designed the Rebuttable Presumption Against Registration (RPAR) process (described in 40 CFR 162.11), which involves gathering data on the risks and benefits associated with the use of suspect pesticides. By allowing all interested parties to participate by submitting information, the process enables EPA to make balanced decisions concerning problem pesticides.

On May 20, 1977, the Agency issued an RPAR Notice (42 FR 25906) for all pesticide products containing pronamide on the basis that pronamide had been

shown to be oncogenic in male mice. A detailed Position Document 1 accompanied this notice.

On January 15, 1979, the Agency issued Position Document 2/3 for pronamide and published a Notice of Determination and announced the availability of the Postition Document in the **Federal Register** (43 FR 3083). In Position Document 2/3, the Agency analyzed the rebuttals it received in response to the original RPAR notice, presented its analysis of both risks and benefits associated with the uses of pronamide, and proposed a decision to conclude the RPAR process.

In Position Document 2/3, the Agency recommended Option 4 and concluded that the benefits of pronamide's use outweighed the risks if the following modifications to the terms and conditions of registration were adopted:

1. Pronamide would be classified as a restricted use pesticide, and applicator certification would be required.

2. The use of protective clothing during the mixing and the application of pronamide would be required.

3. Pronamide (wettable powder) must be formulated in water-soluble bags.

4. Hand spray use would be cancelled.

5. The tolerance on lettuce must be revised from 2 ppm to 1 ppm to lower the dietary expsoure, with label restrictions limiting the use to pre-emergent use only with a 60-day time-to-harvest interval (THI).

6. A monitoring report on residues in milk from pronamide use on alfalfa would be required at 5-year intervals coincident with reregistration.

40 CFR 162.11 requires that the Agency submit notices issued pursuant to FIFRA, Section 6, to the Secretary of U.S. Department of Agriculture (USDA) for comment on the impact of the proposed action on the agricultural economy (Section 6(b)) and to the FIFRA Scientific Advisory Panel (SAP) for comment on the impact of the proposed action on health and the environment (Section 25(d)). The Agency is required to submit these documents to the Agriculture Secretary and the SAP at least 60 days before sending them to registrants or making them public. The Secretary and the SAP are invited to comment in writing within 30 days of receiving the notice. The Agency is required to publish their written comments if submitted within 30 days of the receipt of the Notice and the EPA Administrator's response to these comments.

Although not required to do so under the statute, the Agency has decided that it is consistent with the purposes of the RPAR process and the Agency's overall policy of open decision-making to also afford registrants and other interested persons an opportunity to comment on the bases for the proposed action while it is under review by the Secretary of Agriculture and the SAP. The Position Document was therefore made available to all interested parties for comment.

The Agency received comments from six parties in response to the notice of January 15, 1979. Their comments are addressed and analyzed in Section II of this document. Section III summarizes the Agency's decision concerning pesticide products containing pronamide. SAP's response is reproduced in its entirety as Appendix A of this Position Document. USDA's response is reproduced in its entirety as Appendix B. All comments are available for review in the public file.

II. Analysis of Comments

In response to the publication of the Notice of Determination and Position Document 2/3, EPA received comments from six parties: Pesticide manufacturers Rohm and Haas Co. (2[30000/14B]) and PPG Industires (4[30000/14B]); an individual who signed her letter "Karen" (1[30000/14B]); Gordon Harvey, University of Wisconsin (3[30000/14B]); the Secretary of Agriculture (5[30000/14B]); and the SAP, which reviewed the entire decision.

A. Comments Relating to Risk

1. *Background.* The Agency conducts a qualitative and a quantitative risk assessment based on its evaluation of the hazard of the pesticide in conjunction with a best estimate of the potential for human and environmental exposure to the chemical. The magnitute of the carcinogenic hazard of any pesticide (i.e., the number and types of tumors it causes) is determined from chronic feeding studies. The most sensitive valid feeding study available serves as the basis for estimating the degree of hazard. For pronamide, an 18-month mouse oncogenicity study which demonstrated a positive response in male mice, was used as the basis for risk extrapolation. This study provided the only evidence that pronamide is likely to be a human carcinogen.

The potential for human and environmental exposure to pronamide was derived from available data and assumptions about workplace practices, current agricultural practices, dietary habits, and body weight. The exposure figures obtained represented the Agency's best estimate of the exposure potential of pronamide. Although there are uncertainties in these estimates, this approach allows a measurement of risk to the population at large and subgroups with specific exposure potentials, as well as a measurement of risk comparative to that posed by other carcinogens.

2. *Extrapolating Risk to Human Populations.* Rohm and Haas Co. (2[30000/14B]) claimed that EPA's assessment of risk is unfairly based on a progression of worst-case and most conservative assumptions. The Agency rejects this contention. In its Interim Procedures and Guidelines for Health Risk and Economic Impact Assessments of Suspected Carcinogens (Cancer Guidelines) (41 FR 21402, et seq., May 25, 1976), the Agency adopted a framework for decision-making which is fundamentally conservative in approach due to the irreversibility of the effect and which demands that caution be exercised wherever risk to public health is concerned.

3. *Calculating Dietary Exposure.* Rohm and Haas objected to the Agency's use of the tolerance levels (i.e., maximum permissible residues) in calculating dietary exposure, instead of the amounts of actual residues measured in controlled experiments or monitoring studies.

EPA finds the Rohm and Haas' objection unmeritorious. In estimating risk from dietary exposure, the Agency must use the best available measurements or estimates of exposure. Wherever valid and sufficient residue data are available they of course represent the best index of exposure. In the absence of such residue data, however, the tolerances established for variou foodstuffs represent the best and most conservative estimates of the levels of pesticide residues to which the populace may be exposed. Likewise, use of the limit of analytical sensitivity (detection limits) represents a conservative and reasonable approach to dietary residue estimates where the available data indicate no likelihood that actual residues exceed the detection level. The Agency has followed the approach of using the best available measurements to determine dietary exposure levels and has used tolerance levels only when data were not available to allow a determination of actual residues.

In determining exposure to pronamide from dietary sources, the Agency reviewed residue data for established tolerances on lettuce, on meat, milk, and eggs, and on berries. In the case of lettuce, available data on residues from field monitoring studies (0.1 ppm) and from a study of radioactively labeled pronamide (0.8 ppm) demonstrated that actual residues were likely to be below the tolerance level (2.0 ppm). The Agency believes that the value of 0.8

ppm obtained in the study of radioactively labeled pronamide best represents a conservative estimate of dietary exposure from lettuce. In the case of meat, milk, and eggs, the Agency used the limit of analytical sensitivity (0.01 ppm) as a measure of exposure because the data indicate little likelihood that residues will exceed the value. In the case of berries, the Agency used the tolerance level (0.05 ppm) for exposure estimates because there were insufficient data on which to predict a level of residues below the tolerance level, and available data indicated that residues may exceed the limit of analytical sensitivity.

Rohm and Haas also objected to EPA's use of the residue value of 0.8 ppm obtained from controlled field studies in calculating the dietary risk from lettuce. The registrant claimed that only part of this residue was the parent compound (pronamide) because degradation and metabolism had reduced the actual amount of parent compound. The Agency rejects this argument and holds that the calculation based on the value of 0.8 ppm does indicate a reasonable upper bound of expected residues. Rohm and Haas was probably correct in claiming that not all of the 0.8 ppm is parent compound. However, the company did not report, nor is the Agency aware of, data that demonstrate that pronamide is the only oncogenic agent among its degradation products and metabolites. Therefore, using the total residue value 0.8 ppm represents a conservative but reasonable approach to calculating oncogenic risk.

4. *Estimating Applicator Exposure.* Rohm and Haas objected to the Agency's use of extrapolated data, rather than data from actual measurements, to estimate the risk to applicators.

EPA rejects Rohm and Haas' argument because the extrapolated data represent the most reliable data available to the Agency. In developing its exposure assessment, the Agency analyzed three sets of data to determine the quantity of pronamide dust and spray to which applicators may be exposed. Two of these analyses relied on extrapolations of the data presented in studies which used other pesticides with formulations similar to that of pronamide (Jegier, 1964; and Wolfe, 1974). The third analysis used data from a pronamide study. The results of all three analyses were included in PD 2/3. However, limitations in the study performed with pronamide [1] precluded the use of data from this study as a reliable estimate of exposure, and the Agency was therefore forced to rely on extrapolated data. The middle range of exposure values extrapolated from Jegier's data was used rather than the extremely conservative values obtained from extrapolation of Wolfe's data.

To again attempt to show that the Agency overstated applicator exposure, Rohm and Haas submitted, on April 24, 1979 (Krzeminski, 1979), an additional study designed to determine the exposure of applicators with and without protective clothing. The study consisted of two tests in which applicators wore protective clothing of the type specified in PD 2/3 and two tests in which applicators wore no protective clothing. (The same two application were involved in each test.) The Agency can not accept this study since it had a very limited data base (Day, 1979). The study also demonstrated a high degree of variability which further lessens its reliability for determining an average exposure to pronamide. Therefore, EPA again rejects Rohm and Haas' contention that the Agency has overstated applicator exposure.

Rohm and Haas also objected to the Agency's assumption that two people are involved in mixing and applying pronamide on alfalfa farms. The Agency rejects this contention. The assumption is based upon published data indicating that in fact there are, on an average, two workers on alfalfa farms. In keeping with the other conservative assumptions, it is reasonable to assume that both workers would be involved in the mixing and spraying of pronamide. Moreover, Rohm and Haas did not offer any data to support their contention that only one worker is used in mixing and spraying.

5. *Risks of alternate Pesticides.* PPG Industries claimed that propham is not teratogenic, as reported in PD 2/3. EPA has again reviewed the data on which the original conclusion concerning teratogenicity in PD 2/3 was based, including an EPA study conducted by Dr. K. Diane Courtney at the Health Effects Research Laboratory, Research Triangle Park, North Carolina. On the basis of this review, the Agency agrees that at this time, data on which to judge the teratogenicity of propham are insufficient.

PPG Industries also claimed that chloropropham is not as strongly oncognetic as indicated in PD 2/3. The Agency rejects this argument. As stated in the Cancer Guidelines, a positive initiation-promotion skin test constitutes evidence of oncogenicity—unless a valid animal feeding bioassay is submitted which is negative. The only available study on chloropropham is an initiation-promotion skin test performed on mice, the results of which are positive. EPA is unaware of any animal feeding bioassays for chloropropham. Morever, in PD 2/3 the Agency merely reported the positive result of the available initiation-promotion skin test. No judgment was made concerning the potency of the potential oncogenicity of chloropropham.

B. Comments Relating to Benefits

1. *Background.* In assessing the benefits of the continued use of pronamide, the Agency evaluated the economic, social, and environmental effects which would result should any or all uses of the pesticide be cancelled. The benefits of continued use were weighed against the attendant risks. The benefits analysis included a quantitative assessment of the impact of all possible EPA regulatory actions on crop production, prices of agricultural commodities, retail food prices—and the agricultural economy in general. The data which provided the basis for the benefits analysis were derived from information supplied by Rohm and Haas, the U.S. Department of Agriculture, and other interested parties.

2. *Incomplete Assessment of Benefits.* Rohm and Haas submitted in rebuttal to PD 1 a set of economic values which differed from those the Agency ultimately used for pronamide in PD 2/3. The most noticeable difference between the two assessments was in the area of minor uses (e.g., nursery stock and Christmas tree plantings), and the commenter's main concern was that EPA failed to address adequately these minor uses.

The economic analysis presented in PD 2/3 was based in part on data supplied by the USDA under a joint program to permit active USDA participation in benefits analyses. The analysis of minor use benefits was, however, qualitative rather than quantitative, simply because quantitative data were insufficient. Rohm and Haas did submit some quantitative data; however, because EPA in its analysis was unable to substantiate the data, the Agency chose to address the minor uses qualitatively. Aside from the problem of substantiation, moreover, the quantitative data supplied would in all likelihood not have changed the regulatory decision.

3. *Benefits of Alternative Pesticides.* PPG Industries objected to the Agency's "intimations that detract from the usefulness of (the) alternatives"

[1] This study was performed with only one applicator and was not replicated.

propham (IPC®) and chloropropham (Chloro IPC®).

PPG contended (1) that application methods for pronamide are not unique, since wet weather affects the use of all pesticides; (2) that mechanical and hand cultivations in lettuce are required when pronamide is used; (3) that pronamide, like propham, must be activated by water; and (4) that the list of alternate pesticides used in clover was incomplete.

The Agency rejects PPG's arguments (1) through (3) above for the following reasons. It is true that very wet fields cannot be worked, regardless of the pesticide used; however, pronamide does offer an advantage in that it can be sprayed onto the wet soil sooner than its alternates. Propham and chloropropham require cultivation into the soil, a practice which cannot be carried out on wet soils.

It was not the intent of the Agency to indicate that mechanical or hand cultivations will be eliminated by the use of pronamide. However, the Agency does believes that fewer mechanical and hand cultivations are required with use of pronamide and that this reduction in mechanical and hand cultivations increases the benefits to the growers.

It is true that water is necessary to activate both pronamide and propham. However, propham is volatile and can lose effectiveness through volatilization unless it is incorporated or watered-in; pronamide can remain in dry soil without loss of effectiveness. This property of pronamide is critically important in alfalfa fields in the Northwest, which are dependent entirely upon rainfall.

The Agency accepts PPG's argument (4) above and grants that the availability of chloropropham for weed control in all clovers was overlooked in PD 2/3. However, this does not alter any of the Agency's conclusions concerning comparative benefits since chloropropham has drawbacks similar to propham.

C. Comments Relating to Regulatory Options

1. *Classification for Restricted Use and Requirement for Certified Applicators.* Rohm and Haas argued that since the Agency's primary objective was to keep pronamide out of the hands of unskilled homeowners, other measures short of classification for restricted use can be used to achieve that goal. Specifically, Rohm and Haas proposed label directions such as "Not for Home Use" or "For Commercial Crop Production Only" and contended that these directions would successfully keep the product from getting into the hands of the unskilled and untrained. EPA rejects this argument on the grounds that relabeling is insufficient insurance against mishandling or pronamide by lay users.

Rohm and Haas, Secretary of Agriculture Bergland, and Dr. Gordon Harvey commented that overuse of the restricted use classification would reduce its significance.

The Agency rejects this comment and holds that the potential impact of a pesticide, not the number of times any particular regulatory classification has been used, must determine regulatory decisions. The primary reason for assigning a restricted use classification to pronamide is the oncogenic hazard posed to applicators due to the dustiness of the wettable powder formulation.

Dr. Harvey also argued that pronamide did not meet the criteria for restricted use, claiming pronamide presents a low hazard to wildlife and has a low potential for bioaccumulation.

The Agency rejects this argument. Whether or not Dr. Harvey's claim is correct, hazard to wildlife and potential for bioaccumulation are only two criteria for restricting the use of a pesticide. FIFRA, Section 3(d)(1)(c), also lists applicator hazard as a criterion for restricted use, and it is on the basis of applicator hazard that the Agency has proposed to restrict the use of pronamide.

Rohm and Haas has argued that granular formulations should be exempt from restricted use classification because these formulations do not pose the same dermal and inhalation hazard as wettable powders.

After reviewing the available data on particle size in the granular formulation, the Agency agrees that granular products in fact do not represent as great a hazard to the applicator as wettable powders. Accordingly, granular formulations of 1% or less are excluded from a restricted use classification at this time. However, to minimize exposure, the directions for use of granular formulations on turf will be modified to indicate that the pronamide should be watered-in within 24 hours after application.

2. *Required Use of Protective Clothing During the Mixing and Application of Pronamide Wettable Powder.* Generally, all comments received on the Agency's requirement regarding use of protective clothing were favorable. However, the following comments were made regarding specific aspects of the requirement.

Rohm and Haas argued that only mixers and hand-spray applicators should be required to wear protective clothing since professional applicators routinely wear the protective clothing specified in PD 2/3.

The Agency rejects the argument on the grounds that exposure will not be reduced by limiting the requirement for protective clothing to professional applicators. The Agency agrees that professional applicators are more likely to wear at least some protective clothing than are nonprofessional custom applicators who are involved in hand spraying; nonetheless, a uniform requirement for protective clothing will insure protection for all applicators, professional and nonprofessional alike.

Secretary of Agriculture Bergland suggested modifying the requirement for fabric gloves to include neoprene gloves. The Agency will accept this modification since neoprene will provide as effective a barrier to dermal exposure as would cloth.

Secretary of Agriculture Bergland and Dr. Gordon Harvey suggested that the requirement for "one-piece protective clothing" be modified to include protective clothing such as coveralls and overalls with long-sleeved shirts because one-piece clothing is not available in all areas of the country.

The Agency has reviewed available information and has concluded that clothing other than one-piece clothing can offer adequate protection to the applicator. The Agency also realizes that, in the absence of one-piece clothing, individuals will wear available work clothes. Consequently, by broadening the definition to include coveralls and overalls with long-sleeved shirts, the Agency is providing additional impetus to the applicator to protect himself.

3. *Required Formulation of Pronamide (Wettable Powder) in Water-Soluble Bags.* Rohm and Haas, Secretary of Agriculture Bergland, the Scientific Advisory Panel, and Dr. Gordon Harvey objected to the Agency's requirement that wettable powder formulations must be packaged in water-soluble bags, on the basis that (1) the Agency's estimates of applicator exposure are unrealistically high, and (2) exposure data are too incomplete to demonstrate any significant risk.

The first argument has been addressed in Section II above. The Agency has concluded that the new data submitted by Rohm and Haas are fragmentary and inconclusive, and that such data fail to justify any downward adjustment of exposure projections. The second argument, that available exposure data are incomplete, is factually correct. The Agency points out, however, that the affirmative burden of proof lies with the registrant, not with

EPA. Because the exact amount of exposure involved is uncertain, the Agency based its regulatory decision concerning water-soluble packaging upon reasonably conservative exposure estimates.

In Position Document 2/3, the Agency's reasons for requiring water-soluble bags for wettable powder formulations are set forth in detail. In summary, this new packaging technology is highly effective in that it virtually eliminates applicator contact with wettable powder formulations during mixing operations, thereby eliminating the primary source of applicator exposure.[2] The costs of water-soluble packaging are small, approximately 50 cents per acre and application costs as stated in PD 2/3 are approximately $70 acre, which the Agency estimates will result in less than a 1% increase in application costs. In addition, since the publication of Position Document 2/3, Rohm and Haas has in fact applied for conditional registration of a wettable powder pronamide product which will be packaged in water-soluble packaging.

For these reasons, the Agency has decided to retain the requirement for water-soluble packaging for wettable powder formulations and hereby specifies a two-year implementation period. In the Agency's judgment, two years should be a more than adequate amount of time for an orderly and efficient transition. If however, during the implementation period for water-soluble packaging, Rohm and Haas develops another technology which will essentially eliminate applicator exposure at comparable costs, it should be brought to the Agency's attention, the Agency would then consider modifying or eliminating the requirement for water-soluble packaging.[3]

4. *Cancellation of Hand-Spraying Uses.* Secretary of Agriculture Bergland, Rohm and Haas, and the SAP objected to the cancellation of all hand-spray uses as proposed in PD 2/3. The grounds for objection were (1) that hand-spray application is important in the minor uses such as uses on ornamentals and nursery stock and (2) that protective clothing can be employed to reduce exposure to acceptable levels.

The Agency acknowledges that hand-spray uses of pronamide may be crucial for ornamental and nursery stock uses and that protective clothing can provide hand-spray users some protection from exposure to pronamide. However, the remaining hand-spray uses present a different setting of higher risks with no offsetting benefits. The data indicate that for these uses mechanical application methods are predominant. In view of the above, the Agency will rescind its decision to cancel hand-spray uses for ornamentals and nursery stock.

5. *Revision of Tolerance on Lettuce to 1 ppm, Extension of the Time-to-Harvest (THI) to 60 Days, and Limitation of Applications to Preemergent Use.* All commenters agreed with the provisions to reduce the tolerance on lettuce to 1 ppm.

However, Rohm and Haas and Secretary of Agriculture Bergland objected to the label restrictions designed to insure that the 1 ppm tolerance would not be exceeded. Rohm and Haas contends that label restrictions are unnecessary and that their company's evaluation of the data indicates that current label directions are sufficient to insure the proposed tolerance of 1 ppm is not exceeded. The Secretary of Agriculture agreed with Rohm and Haas.

EPA disagrees with the Rohm and Haas' opinion that the current label directions, which require a 35-day time-to-harvest interval, are sufficient to insure that a tolerance of 1 ppm will not be exceeded. Before proposing the label restrictions described in PD 2/3, EPA reviewed Rohm and Haas' data and concluded that the data presently available do not support a 1 ppm tolerance on lettuce without a 60-day time-to-harvest interval and a limitation to pre-emergent use.

The Agency acknowledges there are indications in the original data base that a 1 ppm tolerance might be supported by a label less restrictive than that proposed in PD 2/3. While some of the residues reported exceeded the proposed 1 ppm tolerance, virtually none of these were significantly higher.

The Agency will require the registrant to provide residue data on "head" and "leaf" lettuce, following both pre-emergent and post-emergent applications of pronamide, and residue data on "transplant" lettuce following post-emergent treatment. All studies must use a minimum THI of 35 days. The studies must be conducted on samples of lettuce grown during the spring/summer in California. The Agency will require these data to be submitted no later than September 1, 1980.

The Agency has decided not to require modification of the THI and not to limit applications to pre-emergent use until these data have been submitted to the Agency. The Agency will use these data to set a 1 ppm tolerance with the least restrictive measures which will still protect the public health. In order to facilitate an expeditious regulatory response once the data are submitted, the Agency will immediately start the tolerance revision process. However, no tolerance revision will be finalized until the residue data have been submitted and evaluated.

6. *Required 5-Year Monitoring of Pronamide Residues in Cow's Milk.* Rohm and Haas and the SAP note that present data support the 0.02 ppm tolerance for milk. Rohm and Haas has also stated that they would carry out additional studies to broaden the data base, if needed.

In PD 2/3 the Agency reviewed the current potential for residues in milk and the risks posed from those residues. On the basis of the SAP comments that these studies were unnecessary, the Agency has re-analyzed the data on an absolute worst-case basis. Using a percentage of crop treatment of 10%, the lifetime risk of developing a tumor from pronamide residues in milk is 9.70×10^{-8} (Rossi, 1979). The current lifetime risk at 0.5% of crop treatment is 8.90×10^{-9}. Given this low level of hazard, even if pronamide's use on alfalfa were to increases 20 times, risk would remain negligible. The risk remains negligible even when the remainder of the lifetime dietary risk is factored into the lifetime dietary risk from milk. The Agency therefore rescinds the requirement for monitoring.

III. Conclusions

After reviewing comments from the Secretary of Agriculture, the Scientific Advisory Panel, and others who commented on EPA's findings and recommendations concerning pronamide as set forth in PD 2/3, the Agency has decided to implement Option 4 as put forward in PD 2/3 and restated in Section 1 of this document with the following modifications:

1. Pronamide as a 1% granular formulation with fertilizer will not be classified for restricted use, but labeling for these products must stipulate that watering-in within 24 hours will be required for uses on turf.

2. Protective clothing will still be required during the mixing and application of pronamide as a wettable powder. Use of rubber or fabric gloves will be required. Boots will be required

[2] The projected application exposure without water-soluble packaging would result in an increased lifetime risk of cancer in the range of 10^{-4} for applicators wearing protective clothing.

[3] Rohm and Haas objected to the requirement that it implement an exposure reduction approach selected by the Agency, and argued that the registrant should be permitted to determine the mechanism for exposure reduction. This objection overlooks the fact that the Agency cannot impose exposure reduction requirements in a vacuum. Under the statute, the Agency is required to assess the risk and benefit consequences of specific options, and select an option which achieves a balance between risks and benefits.

for hand-spray applicators of pronamide.

3. The manufacturer will be allowed two years to implement water-soluble packaging for wettable powder formulations. Specific labeling modifications must be adopted.

4. The cancellation of hand spraying in all uses will be modified to allow hand-spray applications of pronamide only on ornamentals and nursery stock.

5. The Agency will start the tolerance revision process to lower the tolerance from 2 ppm to 1 ppm. Residue studies will be required to provide data to establish the least restrictive labeling modifications to insure that all pronamide residues on lettuce will fall within the 1 ppm tolerance. The tolerance revision will not be finalized until the new residue data are received and evaluated by the Agency.

6. The requirement for monitoring of milk at 5-year intervals will be rescinded.

With the above modifications, Option 4 of PD 2/3 is amended as follows:

1. Cancellation and denial of registrations of hand-spray application of pronamide for all uses except ornamentals and nursery stock.

2. Cancellation and denial of registrations of all pronamide products registered for use on lettuce, alfalfa, and forage legume and other uses unless the registrant or applicant for registration agrees to modify the terms and conditions of registration as follows:

A. Classification of pronamide wettable powder for Restricted Use Only, for use only by or under the direct supervision of Certified Applicators and only for those uses covered by the Certified Applicators certification.

B. Modification on the labeling of pronamide wettable power products to include the following:

(1) *Restricted Use Pesticide.* For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the Certified Applicataors certification.

(2) *General Precautions.* a. Take special care to avoid contact with eyes, skin, or clothing.

b. Wash clothing and gloves after use.

(3) *Protective Clothing.* The following items of clothing are required when mixing or applying pronamide:

a. Long-sleeved shirts and long pants, preferably one piece (overalls).

b. hat with brim.

c. Heavy-duty fabric or rubber work gloves.

d. Hand-spray applications of pronamide will require the use of heavy-duty leather or rubber boots.

(4) *Water-Soluble Packaging.* For all wettable-powder products introduced in commerce after November 26, 1981, the statement:

Dilution Instructions

The enclosed pouches of this products are water soluble. Do not allow pouches to become wet prior to adding to the spray tank. Do not handle the pouches with wet hands or gloves. Always reseal overwrap bag to protect remaining unused pouches. Do not remove water soluble pouches from overwrap except to add directly to the spray tank. Add the required number of unopened pouches as determined by the dosage recommendations into the spray tank with agitation. Depending on the water temperature and the degree of agitation, the pouches should dissolve completely within approximately five minutes from the time they are added to the water.

C. Modification of the granular formulation pronamide labels to include the following for turf use.

"This product should be watered in within 24 hours."

In additional to these provisions, the Agency will start the tolerance revision process to amend the lettuce tolerance from 2 ppm to 1 ppm and will require residue data [4] to determine if the 1 ppm tolerance can be supported with less restrictive measures than a THI of 60 days and a limitation to pre-emergent use. These data will include residue studies on "head" and "leaf" lettuce after both pre-emergent and post-emergent treatments and on "transplant" lettuce after post-emergent treatment with a time-to-harvest interval of at least 35 days for all the studies. These samples must be from lettuce grown during the spring/summer in California and New Jersey and during the fall/winter in California.

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OPP 4 [30,000/14B]. Bergland, Robert. Secretary of Agriculture. February 14, 1979.

OPP 5 [30,000/14B]. Flanagan, John F. PPG Industries. March 12, 1979.

Appendix A.—Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel

Review of Notice of Determination Concluding the Rebuttable Presumption Against Registration (RPAR) of Pesticide Products Containing Pronamide

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel has completed review of plans by the Environmental Protection Agency (EPA) for initiation of regulatory action on pronamide pesticide products under the provisions of Section 6(b) of FIFRA as amended. The review was completed after open meetings were held in Arlington, Virginia, during the periods January 25–26, 1979, and February 14, 1979.

Maximum public participation was encouraged during formal review of the RPAR on pronamide by the Scientific Advisory Panel. Federal Register notices announcing Panel meetings for review of pronamide were published on October 30, 1978; January 5, 1979; January 18, 1979; and February 7, 1979. The meeting announced in the **Federal Register** notice dated October 30, 1978, for November 15 and 16, 1978, was cancelled and rescheduled for January. The Panel was unable to complete review of the regulatory package on pronamide during the meeting held on January 25–26, 1979. Consequently, final action on pronamide was deferred until February 14, 1979. In addition, telephone calls and special mailings were sent to the general public who had previously expressed an interest in activities of the Panel. Written statements relative to regulatory action on pronamide were received over a period of several weeks from the Rohm and Haas Company; the Carcinogen Assessment Group of EPA; and EPA technical staff. In addition, oral comments were received from Rohm and Haas technical staff; EPA technical staff; representatives of the University of California Extension Service; and USDA staff.

In consideration of all matters brought out during Panel meetings, matters detailed in written and oral statements, and careful study of all documents submitted by the

[4] The Agency's requirement for additional studies under Section 3(c)(2)(B) is not challengeable in any Hearing held concerning the cancellation of pronamide registrations or denial of pronamide applications for registration.

Agency, the Panel submits the following report on pronamide:

The fact that pronamide is oncogenic only in the liver of male mice suggests pronamide is at best a weak carcinogen in man.

1. However, because of the potential oncogenicity of pronamide in man, the Panel concurs with the EPA position that pronamide should be classified as a restricted use pesticide.

2. The Panel believes that the hand spray use of pronamide for nursery and ornamental purposes is an important "Minor use" and should be allowed to continue with the specification that protective clothing be used by hand spray operators.

3. The Scientific Advisory Panel endorses the statement proposed by EPA to be placed on the labels of pronamide wettable powders, with special emphasis on the use of protective clothing as outlined in the regulatory decision:

a. Take special care to avoid getting pronamide in eyes, on skin, or on clothing.

b. The following items of clothing to be required when applying pronamide.

(1) Long-sleeved, one-piece protective outergarment.

(2) Hat with brim.

(3) Heavy-duty fabric workgloves.

(4) Replace any contaminated clothing.

c. This product is in a water-soluble bag.

Do not break open bag prior to use.

Do not use in quantities smaller than one full bag.

If bag is leaking, use extreme care in handling.

Do not get in eyes, on skin, or on clothing.

However, the Scientific Advisory Panel believes that the requirement for formulation of pronamide in water-soluble bags is unnecessarily restrictive. In our opinion, water-soluble bags or other changes in formulation should be required only if, as determined in field trials, the exposure of applicators to pronamide when wearing proposed protective clothing exceeds that considered by EPA to be acceptable.

4. The Scientific Advisory Panel agrees that the pronamide tolerance on lettuce should be reduced to 1 ppm.

5. Concerning the time-to-harvest interval (THI), the Panel is of the opinion that the subject of the THI should be reexamined by EPA in consultation with the manufacturer. As a result of these consultations, the requirement for the 60-day THI should be reassessed. If the data *ensures* that pronamide levels will not exceed the tolerance, a shorter THI is encouraged. This will allow more flexibility to growers in the use of this product.

6. The Panel advises that EPA, in consultation with the manufacturer, reexamine the proposed requirement for market basket surveys of pronamide levels in milk at five-year intervals. Experiments performed in cattle by the manufacturer in using alfalfa contaminated with pronamide at the current tolerance level suggest the proposed monitoring need not be done.

7. The Panel believes that postemergence use of pronamide on transplant lettuce should be allowed if the residues at harvest do not exceed the 1 ppm tolerance.

For the Chairman:

Certified as an accurate report of findings:
Dated: February 14, 1979.

H. Wade Fowler, Jr., Ph. D.,

Executive Secretary, FIFRA Scientific Advisory Panel.

Appendix B

Hon. Douglas M. Costle,
Administrator, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Dear Mr. Costle: This is the United States Department of Agriculture's response to the U.S. Environmental Protection Agency's (EPA) Notice of Determination pursuant to 40 CFR 162.11(a)(5), concluding the Rebuttable Presumption Against Registration (RPAR) of Pesticide Products Containing Pronamide, and EPA's proposed intent to cancel and/or modify the terms and conditions of registration, pursuant to Section 6(b)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

The Department of Agriculture and State Cooperators, under the National Agricultural Pesticide Impact Assessment Program (NAPIAP), recognize the need to interact with EPA in developing biological, economic, and exposure information according to the current Memorandum of Understanding between the Department and the Agency. We are also pleased to have the opportunity to review and comment on the Notice of Determination and the accompanying position document. We are dedicated to the mutual resolution of issues including health risks to applicators, farm workers, and consumers as well as possible adverse impacts on wildlife, nontarget organisms, and/or the environment.

We concur with EPA's selection of regulatory options that are consistent with the biological and economic assessments. We, therefore, commend the decision that the registered uses of pronamide are important and meet the requirements for continued registration. The Department agrees that the reduction in the lettuce tolerance from 2 ppm to 1 ppm will continue to provide effective consumer protection.

The issues of concern to the Department and cooperating States and our recommendations relative to the regulatory actions proposed in the Notice of Determination are as follows:

1. *"Restricted Use" Classification:* The Department does not concur with the proposal to classify pronamide as a "Restricted Use" pesticide. The information presented to users from the certification program for general and restricted use is that classification for "Restricted Use" implies a definite concern over and above the normal precautions exercised in the handling, mixing, and application of pesticides. These precautions have been emphasized by registrants in labeling and in the educational programs of Cooperative Extension for many years. As far as is known, there is no appreciable hazard from the registered uses of pronamide to wildlife or the environment. It has low acute oral toxicity, is not water soluble, has relatively short soil residual activity and other hazards are relatively low. "Restricted Use" classification would not reduce the rate of treatment, the amount of residue in the crop or the exposure to workers. The lowest effective rate is already being used and therefore residues in the crop would not be affected.

We support the concept of "Restricted Use" and have devoted considerable time and funding to the development of State programs for certification. However, we believe that this classification should be limited to those pesticides that, when used as directed, pose a substantial risk to the user and/or the environment. We do not believe that pronamide falls into this category and feel strongly that a classification of "Restricted Use" may further dilute the sense of caution that should accompany "Restricted Use" pesticides.

Further the Department disagrees with classifying pronamide as a "Restricted Use" pesticide because it will unnecessarily hamper the development of a herbicide that is still expanding in potential. This classification will discourage many current and potential users, particularly small farmers, from using or adopting a practice that could be of great benefit.

2. *Prohibiting Hand Spraying:* The Department does not concur with the proposed label statement prohibiting hand spraying. Prohibiting this application method reduces the flexibility of pronamide use and eliminates its potential benefits in "minor use" areas of nursery and ornamental weed control. Hand spraying involves only a small volume of spray material. It is used infrequently and on limited acreages. In our judgment, the use of normal protective clothing during mixing/loading and application will afford an acceptable level of exposure protection to the applicator an acceptable level of exposure protection to the applicator.

3. *Protective Clothing:* We do not concur with some of the "protective clothing" statements under the General Precautions section. For example, fabric work gloves may absorb some pronamide and would require frequent washing or replacement. We believe the following precautional statements would provide more adequate protection.

A. Take special care to avoid getting Pronamide in eyes, on skin, or on clothing.

B. In case of contact with skin, wash as soon as possible with soap and plenty of water. If clothing is contaminated, remove clothing and wash affected parts of the body with soap and water.

C. Wear clean clothes each day and launder separately before reusing. At the end of the day, bathe entire body with soap and water.

D. Required protective clothing for mixing/loading, or mixing/loading and application with hand sprayers:

1. Long sleeved shirts and long pants, preferably one piece (coveralls).

2. Rubber (or neoprene) gloves.

3. Boots—for hand applicators.

4. Closely woven hat with brim.

4. *Wettable Powder Formulation in Water Soluble Bags:* It would be expected that the use of water soluble bags will reduce exposure of those mixing the chemical. There is some question, however, whether the hazard potential requires this measure and whether the technology is sufficiently

advanced and the inherent concerns sufficiently understood to justify this regulatory option. The questions which should be addressed include:

(1) What are the added costs; (2) do the water soluble bags dissolve instantly or will there be a problem with sprayer operation; and (3) what losses may be incurred or human/environmental hazards created if the water soluble bags are inadvertently exposed to high humidity, dew, rain or damp storage. These considerations should be fully explored with the registrant or the registrant given the option of solving the concern of exposure by other formulation of packaging methods. Additionally, the one-pound bag size limitation will create disposal problems for small growers, as well as economic loss because more spray will be mixed than is utilized for limited size acreages, which will impact the small growers and the hand spray applications of pronamide.

5. *Minimum 60-day preharvest interval for lettuce:* In light of data showing residue levels in lettuce below the 1 ppm level when applied at intervals down to 35 days preharvest, the 60-day preharvest interval is unduly restrictive. Such a regulatory action will deprive many lettuce producers of utilizing an effective management tool in their production programs and will significantly increase costs of production because of increased hand-labor requirements. It will also severely impact the growers of early varieties and those who have switched to transplant programs because of the availability of pronamide for effective weed control. We believe that pre- and post-emergence treatments are necessary for effective utilization of pronamide by lettuce producers and should be continued with the reduced tolerance level applying to all situations.

We are confident EPA will give favorable consideration to these suggestions and recommendations in developing the final pronamide regulatory decisions. The opportunity to have cooperated on this important agricultural matter is very much appreciated by us as well as the whole agricultural community. Please let us know if additional information would be helpful.

Sincerely,

Bob Bergland,

Secretary.

[FR Doc. 79-33087 Filed 10-25-79; 8:45 am]

BILLING CODE 6560-01-M

[OPP-50437A; FRL 1347-1]

Amendment to Experimental Use Permit Issued to Rohm & Haas Co.

On Tuesday, July 31, 1979 (44 FR 44930), information appeared pertaining to the issuance of an experimental use permit, No. 707-EUP-91, to Rohm and Haas Company. At the request of the company, that permit has been amended. Due to the fact that temporary tolerances for residues of the herbicide oxyfluorfen in or on cottonseed and cottonseed oil have been established, the crop destruct provision of the permit is no longer necessary. The experimental use permit period was also extended, and the permit is now effective from July 11, 1979 to October 1, 1981. (PM-25, Robert Taylor, Room: E-359, Telephone: 202/755-7013)

(Sec. 5, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; (7 U.S.C. 136)))

Dated: October 22, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-33088 Filed 10-25-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1346-8]

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 October 15 to October 19, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from October 26, 1979 and will end on December 10, 1979. The 30-day review period for final EIS's as calculated from October 26, 1979 will end on November 26, 1979.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the follcwing sources:

FOR HARD COPY REPRODUCTION: Environmental Law Institute, 1346 Connecticut Avenue, NW, Washington, D.C. 20036.

FOR HARD COPY REPRODUCTION OR MICROFICHE: Information Resources Press, 2100 M Street, NW, Suite 316, Washington, D.C. 20037.

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) 245-3006.

SUMMARY OF NOTICE: On July 30, 1979, the CEQ Regulations became effective. Pursuant to § 1506.10(a), the 30 day review period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of October 15 to October 19, 1979, the 30 day review period will be caculated from October 26, 1979. The review period will end on November 26, 1979.

Appendix I sets forth a list of EIS's filed with EPA during the week of October 15 to October 19, 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 Country(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 VI 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: October 23, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review.

Appendix I

EIS's Filed With EPA During the Week of October 15 to 19, 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

Final

White/Panther Planning Unit, Gifford Pinchot National Forest, Skamania, Yakima, and Klickitat Counties, Wash., Oct. 15: Proposed is land management plan for the White/Panther Planning Unit of the Gifford Pinchot National Forest in Skamania, Yakima and Klickitat Counties, Washington. The plan encompasses 8,210 acres of private land and 263,870 acres of national forest lands. The alternatives consider: (1) Emphasis on Nonintensive management, (2) a mixture of management with a 35,680 acre special interest area, (3) a mixture of management emphasizing dispersed recreation, (4) commodity-oriented/nonspecific management, (5) no action, and (6) a mixture of management of all the resources. (EIS Order No. 91064.)

Final

Rogue-Illinois Unit Plan, Siskiyou National Forest, revised, Josephine, Curry Counties, Oreg., Oct. 15: Proposed is a land use plan for the management of the 446,120 acre Rogue-Illinois Planning Unit on the Siskiyou National Forest. The preferred alternative recommends a balanced mix of land allocations designed to sustain a high level of timber harvest; to protect the qualities of the Rogue and Illinois Rivers; to provide recreational opportunities; and to protect and manage the soil, water, fish, wildlife, timber, visual, and other resources. This revised statement replaces a draft EIS filed by the USDA on 12/01/76, No. 61737. (USDA-FS-R6-RDES-(ADM.)-77-2) Comments made by: DOI, USDA, EPA, DOT, FERC, DOC, DOE, groups, individuals and businesses (EIS Order No. 91070.)

U.S. Army Corps of Engineers

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN/CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.

Draft

Colorado River Bank Stabilization, Blythe, permit, Riverside County, Calif., Oct. 19: Proposed is the issuance of a permit for bank stabilization along a portion of the Colorado River near Blythe, Riverside County, California. The project would involve the placement of Riprap along approximately 4,050 feet of the river bank. This stabilization would allow an adjacent water-oriented residential development of over 500 units with attendant utilities and facilities. The alternatives consider no action. (Los Angeles district) (EIS Order No. 91083.)

Final

Richard B. Russell Dam and Lake, pumped storage, several counties, Ga. and S.C., Oct. 15: The proposed action concerns the installation of pump storage units at the Richard B. Russell Dam and Lake located in the counties of Elbert and Hart, Georgia and Abbeville and Anderson Counties, South Carolina. The units consist of four 75,000 KW reversible motor generator units driven by four reversible pump-turbines. The reversible pump-turbines will be in the dam located on the Savannah River. The turbines for the pump units will be a vertical shaft, single unit reversible pump type. (Savannah District.) Comments made by: HUD, USDA, HEW, DOE, EPA, FERC, DOI, COE (EIS Order No. 91071.)

CIVIL AERONAUTICS BOARD

Contact: Mr. Steve Rothenburg, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5205.

Draft

Multiple Permissive Entry Policy, programmatic, Oct. 16: This statement addresses the overall impacts of the deregulation of aviation routes and rates. Proposed is the granting of multiple permissive authority to all fit, willing and able applicants for passenger air service for particular city-fair markets. The alternatives consider the status quo; a general policy of multiple, permissive entry to all fit, willing and able applicants; licensing by traffic predictions in particular markets; and other criteria. (EIS Order No. 91073.)

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 Army, Room 1E676, Pentagon, Washington, D.C. 20310, (202) 694-4269.

Army

Draft

Fort Sam Houston Overall Mission, San Antonio, Bexar County, Oct. 19: Proposed is the continuation of the operation and administration of Fort Sam Houston located in San Antonio, Bexar County, Texas. This action also includes the operation of Camp Bullis, a Subpost, which encompasses 27,880.42 acres approximately and is used for field training exercises and weapons training. Fort Sam Houston encompasses 3,265 acres and is used as an administration and medical center. (EIS Order No. 91086.)

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

San Diego Naval Regional Medical Center, San Diego County, Oct. 18: Proposed is the replacement of approximately 69 substandard buildings with a modern naval regional medical center (NRMC) located in San Diego County, California. The NRMC will include: A 560-bed acute area and 250-bed light care hospital, outpatient and emergency medical care facilities, the Naval School of Health Sciences, and parking facilities. The existing major surgical facility will be retained, upgraded, and converted to other uses. Renovation will be planned such that the structure can be reconverted to a medical facility under emergency conditions. Five alternatives, including nine alternate sites, are considered. Comments made by: CEQ, DOI, EPA, AHP, State and local agencies, groups, individuals and businesses (EIS Order No. 91081.)

ENVIRONMENTAL PROTECTION AGENCY

Region X

Contact: Mr. Roger Mochnick, Region X, Acting Chief, Environmental Evaluation Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1285.

Draft

Bend City Sewage Effluent Disposal, Deschutes County, Oreg., October 18: Proposed is the disposal of sewage effluents from the city of Bend's wastewater treatment plant, Deschutes County, Oregon. Six alternatives are considered which include: 1) Subsurface disposal via drill holes or infiltration ponds, 2) discharge to the Deschutes River below the Bend Diversion Dam, 3) discharge to evaporation ponds, 4) land application by spray irrigation of a harvestable grass crop, 5) discharge to the North Unit Main Canal, and 6) no action. (EIS order No. 91076.)

Region I

Contact: Mr. Wallace Stickney, Region I, Environmental Protection Agency, John F. Kennedy Federal Building, Room 2203, Boston, Massachusetts 02203, (617) 223-4635.

Final

North Bradford Wastewater Mgmt. Program, Grant, New Haven County, Conn., October 15: Proposed are alternatives for a local wastewater management program for the town of North Bradford, New Haven County, Connecticut. The alternatives considered are: no action, on-site, local sewer systems, and town-wide sewer systems. The on-site alternatives for the existing systems include: changes in use, repairs, expansion, replacement of leaching field, site modification/curtain drains, and mounded/pumped systems. The recommended plan is for a limited sewer system for the Foxon area of the community. Comments made by: AHP, FERC, DOT, DOI State and local agencies, individuals. (EIS order No. 91069.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets, N.W., Washington, D.C. 20405, (202) 566-1416.

Draft

Union Station Rehabilitation, Montgomery, Montgomery County, Ala., October 15: Proposed is the rehabilitation of Union Station, an abandoned historic railroad terminal, for use as Federal office space in the City and County of Montgomery, Alabama. The new facility would provide space for eight agencies presently housed in outlying leased locations. The action will involve rehabilitation of architectural features, modification of structural elements, provision of partitioning for office space, installation of air conditioning, and installation of a new electrical system. (EIS order No. 91063.)

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.

Draft

Landing Subdivision, League City, Galveston County, Tex., October 18: Proposed is the issuance of HUD home mortgage insurance for the landing subdivision located in Galveston County, Texas. The subdivision will encompass 751.4 acres and will contain approximately 2,664 residences, schools, shopping and recreational facilities. (HUD–RO6–EIS–79–10D.) (EIS order No. 91077.)

Northshore Country Club Estates, Pierce County, Wash., October 16: Proposed is the issuance of HUD home mortgage insurance for the Northshore Country Club Estates in the City of Tacoma, Pierce County, Washington. The project consists of constructing a planned residential development containing 416 single-family dwellings, 57 duplexes and 835 condominium units. The alternatives consider construction of: 1) 1,131 single-family units with a golf course; 2) 466 single-family units, 57 duplexes, 679 condominium units and a golf course; 3) 596 to 606 single-family units, 57 duplexes, and golf course: and 4) no action. (EIS order No., 91062.)

Final

Spring Valley, Village of Carol Stream, DuPage County, Ill., October 18: Proposed is the issuance of FHA mortgage insurance by the Department of Housing and Urban Development for the Spring Valley project located in the northwest edge of the village of Carol Stream in western DuPage County, Illinois. The project proposed includes 888 housing units on 160 acres with a potential for an additional 421 units, allocation of land for supporting uses to the above dwelling units for open spaces, schools, storm water retention, and commercial use, and provision of a coordinated plan for the integreated growth of the project. Several alternatives have been considered in the proposal.(HUD–RO5–EIS–78–13–F) Comments made by: FEA, USDA, DOI, DOT, EPA, COE, State, and local agencies (EIS order No. 91080.)

Final Supplement

Smokey Hill 400 Development, Water Supply (FS–1), Arapahoe County, Colo., Oct. 15: This statement supplements a final EIS concerning several housing developments in the city of Aurora, Arapahoe County, Colorado. This statement concerns the issuance of HUD home mortgage insurance for one development known as smokey hill 400, and is limited to a discussion of water supply. The development encompasses a 967 acre site and will include nearly 3,200 living units along with park and school sites. (HUD–1.0.8–EIS–78–IX-addendum 1) (EIS Order No. 91067.)

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 obained from the office of the appropriate local executive. Copies are not available from HUD.

Draft

Wausau Downtown Shopping Center, Wausua, UDAG, Marathon County, Wis., Oct. 19: Proposed is the awarding of a UDA grant to the city of Wausa, Marathon County, Wisconsin for the Construction of a downtown shopping center on eight blocks at the southern end of the CBD. The project will include three major department stores, about 55 smaller shops, an enclosed mall and two parking ramps with a capacity of 1,575 cars. The alternatives considered included three sites for the center and no action which will involve the construction of a regional shipping center which would be developed at the urban fringe. (HUD–RO5) (EIS Order No. 91087.)

INTERSTATE COMMERCE COMMISSION

Contact: Mr. Carl Bausch, Chief, section of Energy and Environment Interstate Commerce Commission, Room 3371, 12th & Constitution Ave., NW., Washington, D.C. 20423, 202–275–7658.

Final

Control-Merger, Burlington N & St. Louis-San Francisco, Oct. 19: Several of the proposals concern two railroad companies, Burlington Northern, Inc. and the St. Louis-San Francisco Railway Company, which propose to merge their operations into one system. This end-to-end merger would create a company with lines extending from the northwestern United States to the Gulf Coast. A certain amount of traffic will be diverted from other railroads to routes of the merged system, creating additional traffic over some routes and through some terminals. (Finance Docket No. 28583 Sub No. 1F) comments made by: EPA groups and business (EIS Order No. 91084.)

DEPARTMENT OF LABOR

Contact: Ms. Joanne Lindhart, Chief, Office of Environmental Impact Assessment, Department of Labor, Room No–3673, Washington, D.C. 20210, 202–523–7111.

Final

Beryllium—Proposed Standards for Exposure, Oct. 17: the occupational safety and health administration proposes to limit employee exposure to beryllium, a toxic substance known to produce both acute and chronic disease and suspected of being a human carcinogen. The proposed establishes a permissable exposure limit of 1.0 ug/m3 (averaged over an 8-hour work day) and a ceiling limit of 5.0 ug/m3 (measured over a 15-minute sampling period). The workplace environment and the general human environment are discussed in the statement. Comments made by: DOI, HEW, DOE, DLAB, State Agencies, Businesses. (EIS Order No. 91074.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 (202) 426–4357.

Federal Highway Administration

Draft

Madison Street Improvement, I–55 to FAP–662, Sangamon County, Illinois, October 15: Proposed is the improvement of Madison Street between the intersection of Clear Lake Avenue and I–55 and FAP–662 in Springfield, Sangamon County, Illinois. The length of the improvement is 5.9 miles. The alternatives considered are: (1) Postpone the improvement, (2) Provide a lower level of service, (3) Provide improved public transportation, (4) No action, and (5) Improve the facility. (FHWA–ILL–EIS–79–04–D). (EIS order No. 91065.)

Final

Relocation of U.S. 278, Gadsden to Piedmont, Etowah, and Calhoun Counties, Alabama, October 18: Proposed is the improvement of U.S. 278 from the Eastern Gadsden city limits to the Western Piedmont city limits located in Etowah and Calhoun Counties. This new four-lane facility will replace the old two-lane road from the end of the present four-lane in Gadsden and link it to the beginning of the four-lane in Piedmont. The total length of the project is 19.6 miles of non-controlled access. (FHWA–AL–EIS–78–02F). Comments made by: HEW, DOI, DOT, USDA, AHP, EPA, HUD, State and local agencies. (EIS order No. 91078.)

Final

Fort Wayne Southeast Bypass, I–69 to U.S. 30, Allen County, Indiana, October 17: This statement finalizes two draft EIS's, No. 60983 and No. 60984, filed 7–6–76. Proposed is the construction of the Fort Wayne Southeast bypass from I–69 to U.S. 30 near New Haven in Allen County, Illinois. From I–69 to U.S. 27 would be an initial two-lanes of an ultimate four-lane divided facility. From U.S. 27 to U.S. 30 the facility would be four lanes divided by a median. Partial access control will be maintained. The total length of the facility would be approximately 20 miles on new alignment. (FHWA–IND–EIS–75–07–F.) Comments made by: USDA, DOI, EPA, State and local agencies. (EIS order No. 91075.)

U.S. 23, Louisa Bypass, relocation, Lawrence County, Kentucky, October 15: Proposed is the relocation of five miles of U.S. 23 from Isacc's branch road south of Louisa to KY–3 north of Louisa, Lawrence County, Kentucky. The facility will be a four-lane, partially controlled access highway. In

addition to no-build, three alternatives within three separate corridors are considered. (FHWA–KY–EIS–78–03–F.) Comments made by: DOI, HEW, HUD, DOT, USDA, State agencies. (EIS order No. 91068.)

VA–76 Powhite Parkway Extension, Chesterfield County, Virginia, October 18: Proposed is the construction of the Powhite Parkway extension, located in Chesterfield County, Virginia. The project begins 1.2 miles west of proposed VA–288 at VA–604 and ends at the intersection of VA–150 and existing Powhite Parkway. The corridor will vary from 2 to 6 lanes. The various alternatives range in length from 9.02 to 10.1 miles. (FHWA–VA–EIS–76–06–F.) Comments made by: DOI, EPA, USDA, State agencies, individuals. (EIS order No. 91079.)

Final

Railroad Consolidation, City of Oshkosh, Winnebago County, Wisconsin, October 15: Proposed is the consolidation of the Soo Line and C&NW Rail traffic affecting the city of Oshkosh, Winnebago County, Wisconsin. The proposed Consolidation would transfer train movements of the Soo Line onto the C&NW tracks in joint operation. To accomplish this change, four sets of crossover switches would be constructed on existing railroad right-of-way and the C&NW tracks and swing bridge across the Fox River would be upgraded. As part of the project an underpass at Irving Avenue has been recommended. (FHWA–WISC–EIS–78–01–F.) Comments made by: DOI, DOT, State and local agencies, individuals and businesses. (EIS order No. 91066.)

Taylor Drive, OHT PP to STH 42, Sheboygan, Sheboygan County, Wisconsin, October 19: The proposed action concerns the construction of a major arterial roadway in Sheboygan City, Sheboygan County, Wisconsin. The roadway, to be known as Taylor Drive (OTH–TA), will extend northward from CTP PP to North Avenue and then eastward to STH 42. The construction will consist of the initial 1.16 mile segment of new roadway with approximately 250 feet of right-of-way and the upgrading of a 3.0 mile segment of existing roadway, the majority of which will be contained within the existing right-of-way. (FHWA–WISC–EIS–77–02–F.) Comments made by: DOI, EPA, USDA, State and local agencies, individuals and businesses. (EIS order No. 91085.)

Federal Railroad Administration

Draft

Mystic River Bridge and Approaches, Replacement, New London, Connecticut, October 16: Proposed is the replacement of the Mystic River Bridge and approaches in the towns of Groton and Stonington in New London County, Connecticut. The preferred type of replacement is a swing-span bridge on a new alignment approximately 75 feet south of the existing structure with two 90-foot-wide channels and a vertical clearance of 8.9 feet above mean high water in the closed position. Total project length between tie-in points with the existing track alignment is 1 mile. (FRA–RNC–EIS–79–01–0.) (EIS order No. 91072.)

EIS's Filed During the Week of Oct. 15 to Oct. 19, 1979

[Statement title index—by State and county]

State	County	Status	Statement title	Accession No.	Date Filed	Orig. agency No.
		Final	Beryllium—Proposed Standards for Exposure	91074	10–17–79	DLAB
	Galveston	Draft	Landing Subdivision, League City	91077	10–18–79	HUD
Alabama	Calhoun	Final	Relocation of U.S. 278, Gadsden to Piedmont	91078	10–18–79	DOT
	Etowah	Final	Relocation of U.S. 278, Gadsden to Piedmont	91078	10–18–79	DOT
	Montgomery	Draft	Union Station Rehabilitation, Montgomery	91063	10–15–79	GSA
California	Riverside	Draft	Colorado River Bank Stabilization, Blythe, Permit	91083	10–19–79	COE
	San Diego	Final	New Naval Regional Medical Center	91081	10–18–79	USN
Colorado	Arapahoe	Supple	Smokey Hill 400 Development, Water Supply (FS-1).	91067	10–15–79	HUD
Connecticut	New Haven	Final	North Bradford Wastewater Mgmt. Program, Grant	91069	10–15–79	EPA
	New London	Draft	Mystic River Bridge and Approaches, Replacement	91072	10–16–79	DOT
Georgia		Final	Richard B. Russell Dam and Lake, Pumped Storage.	91071	10–15–79	COE
Illinois	Du Page	Final	Spring Valley, Village of Carol Stream	91080	10–18–79	HUD
	Sangamon	Draft	Madison Street Improvement, I–55 to FAP–662	91065	10–15–79	DOT
Indiana	Allen	Final	Fort Wayne Southeast Bypass, I–69 to US 30	91075	10–17–79	DOT
Kentucky	Lawrence	Final	U.S. 23, Louisa By-pass, Relocation	91068	10–15–79	DOT
Oregon	Curry	Final	Rouge-Illinois Unit Plan, Siskiyou NF, Revised	91070	10–15–79	USDA
	Deschutes	Draft	Bend City Sewage Effluent Disposal	91076	10–18–79	EPA
	Josephine	Final	Rouge-Illinois Unit Plan, Siskiyou NF, Revised	91070	10–15–79	USDA
Programmatic		Draft	Multiple Permissive Entry Policy	91073	10–16–79	CAB
Several		Final	Control-Merger, Burlington N & St. Louis-San Francisco.	91084	10–19–79	ICC
South Carolina		Final	Richard B. Russell Dam and Lake, Pumped Storage.	91071	10–15–79	COE
Texas	Bexar	Draft	Fort Sam Houston Overall Mission, San Antonio	91086	10–19–79	USA
Virginia	Chesterfield	Final	VA–76–Powhite Parkway Extension	91079	10–18–79	DOT
Washington	Klickitat		White/Panther Planning Unit, Gifford Pinchot NF	91064	10–15–79	USDA
	Pierce	Draft	Northshore Country Club Estates	91062	10–16–79	HUD
	Skamania		White/Panther Planning Unit, Gifford Pinchot NF	91064	10–15–79	USDA
	Yakima		White/Panther Planning Unit, Gifford Pinchot NF	91064	10–15–79	USDA
Wisconsin	Sheboygan	Final	Taylor Drive, CHT PP to STH 42, Sheboygan	91085	10–19–79	DOT
	Winnebago	Final	Railroad Consolidation, City of Oshkosh	91066	10–15–79	DOT
	Marathon	Draft	Wausau Downtown Shopping Center, Wausau, UDAG.	91087	10–19–79	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
CIVIL AERONAUTICS BOARD					
Mr Steve Rothenburg, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5205.	Multiple Permissive Entry Policy	Draft 91073	Oct. 26, 1979	Extension	Dec. 21, 1979.

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/No.	Date notice published in "Federal Register"	Reason for retraction
U.S. ARMY CORPS OF ENGINEERS				
Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.	Great Lakes-St. Lawrence Seaway Season Extension.	Final 90973	Sept. 21, 1979	The final EIS was not distributed at the time the notice of availability was published in the Sept. 21, 1979, FEDERAL REGISTER. The EIS was resubmitted for filing on Oct. 5, 1979. The date review terminated is Nov. 30, 1979.

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.
U.S. ARMY CORPS OF ENGINEERS			
Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.	Richmond Water Filtration Plant, Flood Protection Project, Richmond, Virginia.	Oct. 18, 1979	91082

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
None.				

[FR Doc. 79-33104 Filed 10-25-79; 8:45 am]
BILLING CODE 6560-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and

requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than November 15, 1979.

A. *Federal Reserve Bank of St. Louis*, 411 Locust Street, St. Louis, Missouri 63166:

Ozark Bancshares, Inc., Springfield, Missouri, (insurance activities; Missouri): to continue to act as agent or broker for the sale of credit life and credit accident and health insurance related to extensions of credit made by its subsidiary bank. This activity would be conducted at the offices of Bank of Houston, Houston, Missouri, serving Texas County, Missouri.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 19, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-33074 Filed 10-25-79; 8:45 am]

BILLING CODE 6210-01-M

Grandville Financial Holdings Ltd., et al.; Formation of Bank Holding Companies

Grandville Financial Holdings Limited, Hong Kong, B.C.C. Grandville California Holdings Inc., San Francisco, California, and Halifax Financial Holdings Inc., San Francisco, California, have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring 100 per cent of the voting shares of Independence Bank, Encino, California. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the applications should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 19, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 19, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-33075 Filed 10-25-79; 8:45 am]

BILLING CODE 6210-01-M

North Platte Corp.; Acquisition of Bank

North Platte Corporation, Torrington, Wyoming, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire an additional 10 per cent of the voting shares of Wyoming Bancorporation, Cheyenne, Wyoming. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 19, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 19, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-33076 Filed 10-25-79; 8:45 am]

BILLING CODE 6210-01-M

Pioneer Bancshares, Inc.; Formation of Bank Holding Company

Pioneer Bancshares, Inc., Ponca City, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares (less directors' qualifying shares) of Pioneer National Bank, Ponca City, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 19, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 19, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-33077 Filed 10-25-79; 8:45 am]

BILLING CODE 6210-01-M

Purdy Bancshares, Inc.; Formation of Bank Holding Company

Purdy Bancshares, Inc., Purdy, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 88.8 per cent or more of the voting shares of First State Bank of Purdy, Purdy, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 19, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 18, 1979.

William N. McDonough,

Assistant Secretary of the Baord.

[FR Doc. 79-33078 Filed 10-25-79; 8:45 am]

BILLING CODE 6210-01-M

Southern National Corp.; Proposed Retention of Unified Investors Life Insurance Co.

Southern National Corporation, Lumberton, North Carolina, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain voting shares of United Investors Life Insurance Company, Phoenix, Arizona.

Applicant states that the subsidiary would continue to engage in the activities of underwriting, as reinsurer, the credit life and credit accident and health insurance written in connection with extensions of credit by Applicant's banking subsidiary, Southern National

Bank of North Carolina. These activities would be performed from the office of Applicant's subsidiary in Phoenix, Arizona, serving North Carolina. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 19, 1979.

Board of Governors of the Federal Reserve System, October 18, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-33079 Filed 10-25-79; 8:45 am]

BILLING CODE 6210-01-M

Toledo Trustcrop, Inc.; Acquisition of Bank

Toledo Trustcrop, Inc., Toledo, Ohio, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Oak Harbor State Bank Company, Oak Harbor, Ohio. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 19, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 19, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-33080 Filed 10-25-79; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of September 18, 1979

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the Committee's Domestic Policy Directive issued at its meeting held on September 18, 1979.[1]

The information reviewed at this meeting suggests that in the third quarter real output of goods and services remained near the reduced level of the preceding quarter and that prices on the average continued to rise rapidly. In August, as in July, the dollar value of retail sales expanded moderately, but sales in real terms changed little and were substantially below those of last December. Industrial production dropped from the May–July level, largely because of sharp curtailments in output of motor vehicles and parts. Nonfarm payroll employment was unchanged; the unemployment rate rose from 5.7 percent to 6.0 percent, thus moving above the narrow range in which it had fluctuated since the beginning of the year. Producer prices of finished goods continued to rise rapidly in August, led by further large increases in energy items and a substantial advance in consumer foods following a significant decline over the preceding four months. The rise in the index of average hourly earnings over the first eight months of this year was moderately below the pace during 1978, but the increase in total hourly compensation in the nonfarm business sector has been about as rapid this year as last.

The dollar came under downward pressure in foreign exchange markets in the last days of August and the early days of September, but its trade-weighted value against major foreign currencies has changed little on balance since mid-August. The U.S. trade deficit in July was sharply reduced from the average in the first half of the year.

Growth of M–1, M–2, and M–3 was relatively rapid in August and early September, although not so rapid as in June and July. Market interest rates have risen appreciably over recent weeks. An increase in Federal Reserve discount rates from 10 to 10½ percent was announced on August 16.

Taking account of past and prospective developments in employment, unemployment, production, investment, real income, productivity, international trade and payments, and prices, the Federal Open Market Committee seeks to foster monetary and financial conditions that will resist inflationary pressures while encouraging moderate economic expansion and contributing to a sustainable pattern of international transactions. At its meeting on July 11, 1979, the Committee agreed that these objectives would be furthered by growth of M–1, M–2, and M–3 from the fourth quarter of 1978 to the fourth quarter of 1979 within ranges of 1½ to 4½ percent, 5 to 8 percent, and 6 to 9 percent respectively, the same ranges that had been established in February. Having established the range for M–1 in February on the assumption that expansion of ATS and NOW accounts would dampen growth by about 3 percentage points over the year, the Committee also agreed that actual growth in M–1 might vary in relation to its range to the extent of any deviation from that estimate. The associated range for bank credit is 7½ to 10½ percent. The Committee anticipates that for the period from the fourth quarter of 1979 to the fourth quarter of 1980, growth may be within the same ranges, depending upon emerging economic conditions and appropriate adjustments that may be required by legislation or judicial developments affecting interest-bearing transactions accounts. These ranges will be reconsidered at any time as conditions warrant.

In the short-run, the Committee seeks to achieve bank reserve and money market conditions that are broadly consistent with the longer-run ranges for monetary aggregates cited above, while giving due regard to developing conditions in foreign exchange and domestic financial markets. Early in the period before the next regular meeting, System open market operations are to be directed at attaining a weekly average federal funds rate slightly above the current level. Subsequently, operations shall be directly at maintaining the weekly average federal funds rate within the range of 11¼ to 11¾ percent. In deciding on the specific objective for the federal funds rate the Manager for Domestic Operations shall be guided mainly by the relationship between the latest estimates of annual rates of growth in the September–October period of M–1 and M–2 and the following ranges of tolerance: 3 to 8 percent for M–1 and 6½ to 10½ percent for M–2. If rates of growth of M–1 and M–2, given approximately equal weight, appear to be close to or beyond the upper or lower limits of the indicated ranges, the objective for the funds rate is to be raised or lowered in an orderly fashion within its range.

If the rates of growth in the aggregates appear to be beyond the upper or lower limits of the indicated ranges at a time when the objective for the funds rate has already been moved to the corresponding limit of its range, the Manager shall promptly notify the Chairman, who will then decide whether the situation calls for supplementary instructions from the Committee.

[1] The Record of Policy Actions of the Committee for the meeting of September 18, 1979, is filed as part of the original document. Copies are available on request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

By order of the Federal Open Market Committee, October 19, 1979

Murray Altmann,

Secretary

[FR Doc. 79-33081 Filed 10-25-79; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 79P-0266/CP]

Canned Peaches Deviating From Identity Standards; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that a temporary permit has been issued to the Del Monte Corp. to market test a new style of canned peaches designated as "chunky." The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective on the date the new food is introduced into or caused to be introduced into interstate commerce, but no later than January 24, 1980; the permit is effective for 15 months, but will terminate on the effective date of an affirmative order ruling on Libby, McNeill and Libby's petition of June 6, 1977 proposing amendment of the standards of identity and quality for canned peaches or 30 days after a negative ruling on the proposal, if such a ruling is made before the permit expires.

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: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods varying from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), notice is given that a temporary permit has been issued to the Del Monte Corp., San Francisco, CA 94119. This permit will cover limited interstate marketing tests of canned peaches that deviate from the standard of identity prescribed in § 145.170(a) (21 CFR 145.170(a)), in that the standard does not provide for the optional style of chunky peaches (units predominantly greater than ½ inch and less than 1¾ inches in the largest dimension). The permit provides for the temporary marketing of 100,000 cases of twenty-four 16-ounce cans of the product to be distributed in all States except Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, Ohio, South Dakota, and Wisconsin.

The test product will be packed at the Del Monte Corp. plant located in Emeryville, CA. The product will be packed in heavy syrup prepared from ingredients (water, sugar, and corn syrup) which are already provided for in the standard.

The principal display panel of the label will state the product name as "Chunky Peaches." Wherever the name of the food appears on the label the words "in heavy syrup" will appear in letters not less than one-half the size of those used in the name. The ingredients used will be stated on the label as required by the applicable sections of Part 101 (21 CFR Part 101). This permit is effective beginning on the date the new food is introduced or caused to be introduced into interstate commerce, but no later than January 24, 1980. However, this permit as issued to the Del Monte Corp. terminates either on the effective date of an affirmative order ruling on a proposal based on the Libby, McNeill and Libby petition to amend the canned peach standard or 30 days after a negative order ruling on the proposal, whichever the case may be.

Dated: October 18, 1979.

William F. Randolph,

Acting Associate Commissioner, Regulatory Affairs.

[FR Doc. 79-32833 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79P-0312/CP]

Canned Pears Deviating From Identity Standards; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that a temporary permit has been issued to the Del Monte Corp. to market test a new style of canned pears designated as "chunky." The purpose of the temporary permit is to permit the applicant to measure consumer acceptance of the food.

DATES: This permit is effective on the date the new food is introduced into or caused to be introduced into interstate commerce, but no later than January 24, 1980; the permit is effective for 15 months, but will terminate on the effective date of an affirmative order ruling on FDA's proposal of June 1, 1979 (44 FR 31669), to amend the standards of identity and quality for canned pears or 30 days after a negative ruling on the proposal, if such a ruling is made before the permit expires.

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: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods varying from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), notice is given that a temporary permit has been issued to the Del Monte Corp., San Francisco, CA 94119. This permit will cover limited interstate marketing tests of canned pears that deviate from the standard of identity prescribed in § 145.175(a) (21 CFR 145.175(a)), in that the standard does not provide for the optional style of chunky pears (units predominantly greater than ½ inch and less than 1¾ inches in the largest dimension). The permit provides for the temporary marketing of 100,000 cases of twenty-four 16-ounce cans of the product to be distributed in all States except Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, Ohio, South Dakota, and Wisconsin.

The test product will be packed at the Del Monte Corp. plant located in Emerville, CA. The product will be packed in heavy syrup prepared from ingredients (water, sugar, and corn syrup) which are already provided for in the standard.

The principal display panel of the label will state the product name as "Chunky Pears." Wherever the name of the food appears on the label, the words "in heavy syrup" will appear in letters not less than one-half the size of those used in the name. The ingredients used will be stated on the label as required by the applicable sections of Part 101 (21 CFR Part 101). This permit is effective beginning on the date the new food is introduced or caused to be introduced into interstate commerce, but no later than January 24, 1980. However, the permit may terminate sooner, depending on the final action on FDA's proposal to amend the standards of identity and quality for canned pears published in the Federal Register of June 1, 1979 (44 FR 31669). If the proposal is affirmed, the permit will terminate on the effective date of the final regulation. If

the proposal is rejected, the permit will expire 30 days after the negative ruling on the proposal.

Dated: October 18, 1979.

William F. Randolph,

Acting Associate Commissioner, Regulatory Affairs.

[FR Doc. 79-32832 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-03-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Alan L. Hoeting, District Director, Detroit District Office, Detroit, MI.

DATE: The meeting will be held at 9:30 a.m., Tuesday, January 8, 1980.

ADDRESS: The meeting will held at the George Potter Larrick Building, Conference Room, 1560 E. Jefferson Ave., Detroit, MI 48207.

FOR FURTHER INFORMATION CONTACT: Diane M. Place, Consumer Affairs Officer, Food and Drug Administration, Department of Health, Education, and Welfare, 1560 E. Jefferson Ave., Detroit, MI 48207. 313-226-6260.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Detroit District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 22, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-32989 Filed 10-25-79; 8:45]

BILLING CODE 4110-03-M

Cobra and Krait Products in Medicine; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces a public meeting to discuss the prospects of utilizing cobra and krait products in medicine. This meeting will give interested persons an opportunity to discuss, in an open workshop, data relating to the experimental use of cobra and krait venom fractions in the treatment of human diseases.

DATE: Meeting on November 5, 1979.

ADDRESS: The meeting will be held in Rm. 115, Building 29, Food and Drug Administration, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205.

FOR FURTHER INFORMATION CONTACT: Elaine C. Esber, Bureau of Biologics (HFB-710), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-4864.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the prospects of utilizing experimental cobra and krait products in medicine. It will specifically discuss data relating to the experimental use of cobra and krait venom fractions in the treatment of human diseases.

The workshop will be held from 9 a.m. to 4:30 p.m. in Rm. 115, Building 29, Food and Drug Administration, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205. Persons planning to attend should contact Elaine C. Esber.

Dated: October 24, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-33329 Filed 10-25-79; 10:16 am]

BILLING CODE 4110-03-M

Health Resources Administration

National Advisory Council on Nurse Training; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1979:

Name: National Advisory Council on Nurse Training

Date and Time: December 14, 1979, 9:00 a.m.

Place: Conference Room 7-32, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782; Open for entire meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources Administration, concerning general regulations and policy matters arising in the administration of the Nurse Training Act of 1975. The Council also performs final review of grant applications for Federal assistance, and makes recommendations to the Administrator, HRA.

Agenda: This special meeting of the Council has been called to confer with the Administrator, Health Resources Administration, and agenda items will include the discussion and exploration of nursing issues by members and the Administrator, HRA.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should contact Dr. Mary S. Hill, Bureau of Health Manpower, Room 3-50, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-6681.

Agenda items are subject to change as priorities dictate.

Dated: October 19, 1979.

James A. Walsh,

Associated Administrator for Operations and Management.

[FR Doc. 79-32972 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-83-M

Office of Education

U.S. Commissioner of Education's Advisory Committee on Accreditation and Institutional Eligiblity; Cancellation of Public Meeting

AGENCY: Department of Health, Education, and Welfare Office of Education.

ACTION: Notice of Cancellation of Public Meeting.

SUMMARY: This notice is intended to advise the public that the meeting of the U.S. Commissioner of Education's Advisory Committee on Accreditation and Institutional Eligiblity has been cancelled. The meeting was scheduled for October 31 and November 1, 1979, at the Dulles Marriott Hotel, Dulles International Airport, Washington, D.C. 20041. Notice of the meeting was published in the **Federal Register** on September 19, 1979, 44 FR, 54360-54361.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Proffitt, Director, Division of Eligiblity and Agency Evaluation, Office of Education, Room 3030, ROB 3, 400 Maryland Avenue, S.W., Washington, D.C. (202/245-9873) Signed at Washington, D.C. on October 22, 1979.

John R. Proffitt,

Director, Division of Eligiblity and Agency Evaluation, Office of Education.

[FR Doc. 79-32979 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-02-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM (Alcohol, Drug Abuse, and Mental Health Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (39 FR 1654, January 11, 1974, as amended most recently at 44 FR 35297, June 19, 1979) is revised to reflect the transfer of the functions of construction management liaison, energy conservation, pollution control and coordination responsibility for the

National Environmental Policy Act from the Division of Management Policy to the Division of General Services in the Office of Management, Office of the Administrator.

Section HM–B, *Organization and Functions* is amended as follows:

1. Under the *Division of Management Policy (HMA74)*, change item (8) to read: (8) plans and coordinates safety management activities for ADAMHA. Delete item (9).

2. Under the *Division of General Services (HMA75)*, make the following changes:

(a) Amend item (1) to read: (1) Plans and coordinates the provision of general services for the Administration including procurement and material management, personal property management and accountability, real property management, telecommunications, space management, transportation, mail services, facilities acquisition, construction management liaison, energy conservation, pollution control, printing management, publications management, forms management, duplicating services and equipment, and editorial services;

(b) Add item (5) as follows: (5) coordinates responsibility for the National Environmental Policy Act of 1969 within the Alcohol, Drug Abuse, and Mental Health Administration.

Dated: October 16, 1979.

Patricia Roberts Harris,

Secretary.

[FR Doc. 79-33027 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-88-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6979-A and AA-6979-B]

Alaska Native Claims Selection

Correction

In FR Doc. 79–30930, appearing at page 57510 in the issue for Friday, October 5, 1979, make the following correction:

On page 57511, in the 38th line of the first column, under 74 S., R. 80 E., Sec. 1 change "AA–7833" to read "AA–7883".

BILLING CODE 1505-01-M

California; Mount Dome Grazing Management Plan, Intent To Prepare an Environmental Impact Statement and Conduct Scoping Meeting

Department of the Interior, Bureau of Land Management, Redding District, California, will prepare an Environmental Impact Statement on a proposed grazing management plan on approximately 42,000 acres of the Mount Dome Planning Unit in Siskiyou and Modoc Counties, California. The statement will analyze anticipated environmental consequences which would result from the implementation of alternative grazing plans proposed by the Siskiyou Area Manager. These alternative plans will incorporate variations in location, seasonal use, and intensity of livestock grazing. The final statement is scheduled for completion by December 31, 1980.

Public meetings will be held to review recommended and alternative grazing plans and the manner in which they were developed and to scope resulting anticipated environmental consequences and related public concerns:

November 28, 1979, 7:30 p.m., Dorris City Hall, Dorris, California.

November 29, 1979, 7:30 p.m., Tulelake Butte Valley Fairgrounds, Home Economics Building, Tulelake, California.

Further information on the Mount Dome Grazing Environmental Impact Statement may be obtained from:

Jan Miller, Siskiyou Area Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96001.

Charles R. Knight,

Acting State Director.

[FR Doc 79-32903 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-84-M

[F-14903-C]

Alaska Native Claims Selection

The State of Alaska filed general purposes selection applications F–024520, as amended, on November 30, 1959; F–026794 and F–026795, both as amended, on September 29, 1960; and F–028930, F–028931, F–028932 and F–028933, all as amended, on January 25, 1962 for lands in Tps. 2 and 3 S., Rs. 8 and 9 W., Fairbanks Meridian, pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1976)). By decision of October 5, 1961, the State of Alaska was granted tentative approval for the E½ of T. 2 S., R. 8 W., Fairbanks Meridian (F–026794). All of the above lands are near the Native village of Nenana.

Section 11 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 696; 43 U.S.C. 1601, 1610 (1976)) (ANCSA), withdrew the lands surrounding the village of Nenana for Native selection.

On December 11, 1974, Toghotthele Corporation, for the Native village of Nenana, filed selection application F–14903–C, as amended, under the provisions of Sec. 12 of ANCSA for the surface estate of certain lands in the vicinity of Nenana.

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(b) (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 following described lands, which are State selected and were tentatively approved in part, have been properly selected under village selection application F–14903–C. Accordingly, the tentative approval of October 5, 1961, is rescinded in part and the State selection applications identified below are rejected as to the following described lands:

State Selections F–024520, F–026794, and F–026795

U.S. Survey No. 4137C, Alaska, located on the left bank of the Tanana River approximately nine miles north of Nenana, Alaska.

Containing 79.99 acres.

State Selection F–026794

U.S. Survey No. 4473A, Alaska, located on the right bank of the Tanana River 10¼ miles north of Nenana, Alaska.

Containing 40.00 acres.

State Selection F–026794

T. 2 S., R. 8 W., Fairbanks Meridian, Alaska (Surveyed). Those portions of Tract "A" more particularly described as (protracted):

Sec. 2, all;
Sec. 3, excluding U.S. Survey 4453A, the Tanana River and its interconnecting slough;
Sec. 4, excluding U.S. Survey 4453A;
Sec. 9, all;
Sec. 10, excluding Native allotment F–14578 Parcel B and the Tanana River;
Sec. 11, excluding Native allotment F–14578 Parcel B;
Sec. 14, excluding Native allotment F–14578 Parcel B and the Tanana River;
Sec. 15, excluding U.S. Survey 4470C, Native allotment F–14578 Parcel B and the Tanana River;
Secs. 21, 22 and 23, excluding the Tanana River and its interconnecting slough;
Sec. 26, all;
Sec. 27, excluding U.S. Survey 4473A, the Tanana River and its interconnecting slough;

Sec. 28, excluding the Tanana River and its interconnecting slough;
Secs. 31 and 32, all;
Sec. 33, excluding U.S. Survey 4064, and the interconnecting slough of the Tanana River;
Sec. 34, excluding U.S. Survey 4137C, the Tanana River and its interconnecting slough;
Sec. 35, excluding the Tanana River.
Containing approximately 10,042 acres.

State Selections F-024520 and F-026795

T. 3 S., R. 8 W., Fairbanks Meridian, Alaska (Surveyed).
Sec. 25, E½SW¼SE¼ and SE¼SE¼;
Sec. 26, lots 1 and 2, NE¼ and E½NW¼;
Sec. 34, E½SW¼NE¼, SE¼NE¼ and E½SE¼;
Sec. 35, N½NE¼ and W½.
Containing 912.55 acres.
Sec. 25, SW¼SW¼, excluding the bed of the Alaska Railroad one-hundred (100) feet each side of the centerline (Alaska Native Claims Settlement Act Sec. 3(e) application F-52300).
Containing approximately 38 acres.
Those portions of Tract "A" more particularly described as (protracted):
Sec. 2, excluding the Tanana River and its interconnecting slough;
Sec. 3, excluding U.S. Survey 4137C, the Tanana River and its interconnecting sloughs;
Sec. 4, excluding the interconnecting slough of the Tanana River;
Secs. 5, 6 and 9, all;
Sec. 10, excluding the Tanana River and its interconnecting slough;
Sec. 11, excluding Native allotment F-027045 Tract 2, the Tanana River and its interconnecting slough;
Sec. 14, excluding Native allotment F-027045 Tract 2;
Sec. 15, excluding Native allotment F-14583, the Tanana River and its interconnecting sloughs;
Sec. 16, excluding Native allotments F-18266 Parcel D and F-02478 and the Tanana River and its interconnecting slough;
Sec. 21, excluding the Tanana River and its interconnecting slough;
Sec. 28, excluding the West Middle River;
Sec. 33, excluding the Tanana River and the West Middle River.
Containing approximately 7,695 acres.

State Selections F-028930 and F-028931

T. 2 S., R. 9 W., Fairbanks Meridian, Alaska (Surveyed). Those portions of the township more particularly described as (protracted):
Secs. 33, 34, 35 and 36, all.
Containing approximately 2,560 acres.

State Selections F-028932 and F-028933

T. 3 S., R. 9 W., Fairbanks Meridian, Alaska (Surveyed). Those portions of the township more particularly described as (protracted):
Secs. 1 to 4, inclusive, all;
Secs. 9 to 16 inclusive, all;
Secs. 21 to 24, inclusive, all.
Containing approximately 10,240 acres.

The State selected lands rejected above aggregate approximately 31,608 acres; however, 332.55 acres were not valid selections and will not be charged against the village corporation as State selected lands. Further action on the subject State selection applications as to those lands nor rejected herein will be taken at a later date.

The total amount of lands which have been properly selected by the State, including any selection applications previously rejected to permit conveyances to Toghotthele Corporation is approximately 54,894 acres, which is less than the 69,120 acres permitted by Sec. 12(a)(1) of ANCSA.

As to the lands described below, the application, as amended, is properly filed and meets 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 31,608 acres, is considered proper for acquisition by Tohhotthele Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

U.S. Survey No. 4137C, Alaska, located on the left bank of the Tanana River approximately nine miles north of Nenana, Alaska.
Containing 79.99 acres.
U.S. Survey No. 4473A, Alaska, located on the right bank of the Tanana River 10¼ miles north of Nenana, Alaska.
Containing 40.00 acres.

Fairbanks Meridian, Alaska

Surveyed Lands

T. 3 S., R. 8 W.,
Sec. 25, E½SW¼SE¼ and SE¼SE¼;
Sec. 26, lots 1 and 2, NE¼ and E½NW¼;
Sec. 34, E½SW¼NE¼ SE¼NE¼ and E½SE¼;
Sec. 35, N½NE¼ and W½.
Containing 912.55 acres.

Surveyed Lands Requiring Additional Survey

T. 2 S., R. 8 W., those portions of Tract "A" more particularly described as (protracted):
Sec. 2, all;
Sec. 3, excluding U.S. Survey 4453A, the Tanana River and its interconnecting slough;
Sec. 4, excluding U.S. Survey 4453A;
Sec. 9, all;
Sec. 10, excluding Native allotment F-14578 Parcel B and the Tanana River;
Sec. 11, excluding Native allotment F-14578 Parcel B;
Sec. 14, excluding Native allotment F-14578 Parcel B and the Tanana River;
Sec. 15, excluding U.S. Survey 4470C, Native allotment F-14578 parcel B and the Tanana River;
Secs. 21, 22 and 23, excluding the Tanana River and its interconnecting slough;
Sec. 26, all;
Sec. 27, excluding U.S. Survey 4473A, the Tanana River and its interconnecting slough;
Sec. 28, excluding the Tanana River and its interconnecting slough;
Secs. 31 and 32, all;
Sec. 33, excluding U.S. Survey 4064 and the interconnecting slough of the Tanana River;
Sec. 34, excluding U.S. Survey 4137C, the Tanana River and its interconnecting slough;
Sec. 35, excluding the Tanana River.
Containing approximately 10,042 acres.
T. 3 S., R 8 W.,
Sec. 25, SW¼SW¼, excluding the bed of the Alaska Railroad one-hundred (100) feet each side of the centerline (Alaska Native Claims Settlement Act Sec. 3(e) application F-52300).
Containing approximately 38 acres.
Sec. Those portions of Tract "A" more particularly described as (protracted):
Sec. 2, excluding the Tanana River and its interconnecting slough;
Sec. 3, excluding U.S. Survey 4137C, the Tanana River and its interconnecting sloughs;
Sec. 4, excluding the interconnecting slough of the Tanana River;
Secs. 5, 6 and 9, all;
Sec. 10, excluding the Tanana River and its interconnecting slough;
Sec. 11, excluding Native allotment F-027045 Tract 2, the Tanana River and its interconnecting slough;
Sec. 14, excluding Native allotment F-027045 Tract 2;
Sec. 15, excluding Native allotment F-14583, the Tanana River and its interconnecting sloughs;
Sec. 16, excluding Native allotments F-18266 Parcel D and F-02478 and the Tanana River and its interconnecting slough;
Sec. 21, excluding the Tanana River and its interconnecting slough;
Sec. 28, excluding the West Middle River;
Sec. 33, excluding the Tanana River and the West Middle River.
Containing approximately 7,695 acres.
T. 2 S., R. 9 W., those portions of the township more particularly described as (protracted):
Secs. 33, 34, 35 and 36, all.
Containing approximately 2,560 acres.
T. 3 S., R. 9 W., those portions of the township more particularly described as (protracted):
Secs. 1 to 4, inclusive, all;
Secs. 9 to 16, inclusive, all;
Secs. 21 to 24, inclusive, all.
Containing approximately 10,240 acres.
Aggregating approximately 31,608 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservation to the United States:

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)).

There are no easements to be reserved to the United States pursuant

to Sec. 17(b) of the Alaska Native Claims Settlement Act.

The grant of the above-described lands shall be subject to:

1. 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;

2. Valid existing rights therein, if any, including but not limited to those created by an 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 the Alaska Native Claims Settlement Act, any valid existing right recognized by the Alaska Native Claims Settlement Act shall continue to have whatever right of access as is now provided for under existing law;

3. A right-of-way, F-034779, for a transmission line one-hundred (100) feet in width located in SW¼SW¼ of Sec. 25 and NE¼NE¼, SE¼SW¼ of Sec. 35 in T. 3 S., R. 8 W., Fairbanks Meridian, for the Golden Valley Electric Association, Inc., under the act of March 4, 1911 (36 Stat. 1253), as amended; 43 U.S.C. 961 (1976);

4. Any right-of-way interest in the Fairbanks-Nenana Highway transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Pub. L. 86-70 (73 Stat. 141) as to:

T. 3 S., R. 8 W., Fairbanks Meridian,
Sec. 35, SW¼.

5. A right-of-way, F-024985, for a Federal aid material site located in NE¼SW¼SE¼ of Sec. 25 in T. 3 S., R. 8 W., Fairbanks Meridian. Act of August 27, 1958, as amended, 23 U.S.C. 317; and

6. 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.

Toghotthele Corporation is entitled to conveyance of 138,240 acres of land selected pursuant to Sec. 12(a) of NACSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 55,306 acres. The remaining entitlement of approximately 82,934 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of NACSA, conveyance of the subsurface estate of the lands described above shall be issued to Doyon, Limited when the surface estate is conveyed to Toghotthele 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: Tanana River and it interconnecting sloughs; West Middle River.

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 Fairbanks Daily News-Miner. 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. Box 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 November 25, 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:

Toghotthele Corporation, Nenana Village Corporation, Box 322, Nenana, Alaska 99760

Doyon, Limited, First and Hall Streets, Fairbanks, Alaska 99701.

State of Alaska, Department of Natural Resources, Division of Research and Development, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Sue A. Wolf,

Chief, Branch of Adjudication.

[FR Doc 79-32996 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 26176-M]

Colorado; R/W Application for Pipeline; Northwest Pipeline Corp.

October 16, 1979.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corporation, P.O. Box 1526, Salt Lake City, Utah 84110, has applied for a right-of-way addition 79243 for the Rocky Mountain Gathering System of approximately 0.177 miles of pipeline on the following Public Land:

Sixth Principal Meridian, Moffat County, Colo.

T. 10 N., R. 93 W.,
Sec. 34: SW¼SW¼.

The above-named gathering system will enable the applicant to collect natural gas and to convey it to its customers. The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports necessary for determining whether or not the application should be approved and if approved, under what terms and conditions; (2) to give all interested parties the opportunity to comment on the application; (3) to allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on *Northwest Pipeline Corporation.*

Any comment, claim, or objections must be filed with the Chief, Branch of Ajudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

John R. Bernick,

Acting Leader, Craig Team, Branch of Adjudication.

[FR Doc. 79-32985 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 24128-Y]

Colorado; R/W Application for Pipeline; Northwest Pipeline Corp.

October 16, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corporation, P.O. Box 1526, Salt Lake City, Utah 84110, has applied for a right-of-way for a 4¼" o.d. natural gas pipeline for the Philadelphia Creek Gathering System approximately 3.127 miles long across the following Public Lands:

Sixth Principal Meridian, Rio Blanco County, Colo.

T. 2 S., R. 101 W.,
Sec. 9: S½SE¼;
Sec. 16: NW¼NE¼, NW¼, NW¼SW¼;
Sec. 17: SE¼NE¼, NE¼SE¼, SE¼NW¼SE¼, SW¼SE¼, S½SW¼;
Sec. 19: NE¼;
Sec. 20: NW¼NW¼NW¼.

The above-named gathering system will enable the applicant to collect natural gas in areas through which the pipeline will pass and to convey it to the applicants' customers.

The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports necessary for determining whether or not the application should be approved and if approved, under what terms and conditions; (2) to give all interested parties the opportunity to comment on the application; (3) to allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on *Northwest Pipeline Corporation.*

Any comment, claim or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Managment, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

John R. Bernick,

Acting Leader, Craig Team, Branch of Adjudication.

[FR Doc. 79-32986 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-84-M

[W-65973]

Wyoming; Application

October 19, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Montana-Dakota Utilities Company of Bismarck, North Dakota filed an application to amend their existing right-of-way grant to construct an additional 4" buried pipeline for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 49 N., R. 94 W.,
Sec. 11, E½NE¼;
Sec. 12, W½NW¼ and SE¼NW¼.

The proposed additional pipeline will transport natural gas from the American Quasar #11-2 well located in the NE¼NE¼ of Section 11 to a point of connection with an existing 8" buried pipeline at a point located in the NE¼SW¼ of Section 12, all within T. 49 N., R. 94 W., Big Horn 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.

Marla B. Bohl,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc 79-32987 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

[Serial No. A-12415]

Arizona; Application

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Southwest Gas Corporation, P.O. Box 15015, Las Vegas, Nevada 89114, filed an application for a right-of-way to construct a 4½" O.D. pipeline for the purposes of transporting natural gas across the following described public lands:

Gila and Salt River Meridian, Arizona

T. 20 N., R. 22 W.,
Section 20, lot 5, N½N½N½SW¼, and N½N½NW¼SE¼.

The pipeline will transport natural gas to the Bullhead City, Arizona area.

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 on this matter should be do promptly. Persons submitting comments should include their name and address, and send them to the District Manager, Yuma District Office, Bureau of Land Management, 2450 Fourth Avenue, Yuma, Arizona 85364.

Dated: October 15, 1979.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-33086 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-84-M

Preplanning Activities for Resource Management Plan, Glenwood Springs Resource Area, Grand Junction District, Colo.

Pursuant to the Federal land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management, Grand Junction District office has begun planning and preparation for a resource management plan to analyze alternative proposals for the development of multiple-use recommendations for management of public lands within the Glenwood Springs Resource Area.

The Glenwood Springs Resource Area covers 1,310,000 acres in Garfield, Eagle, and Pitkin counties, with small portions in Routt and Mesa counties. The 1,310,000 acres include 54 percent privately-owned land, 2 percent state-owned land, and 44 percent public land (579,000 acres administered by BLM). The Naval Oil Shale Reserve comprises 52,000 acres of the resource area (BLM administers the surface area). The resource area is bounded on the north and east by White River National Forest and Craig District BLM; on the south by the White River National Forest, Grand Mesa National Forest, and Grand Junction Resource Area; and on the west by the Grand Junction Resource Area.

The resource managment plan (RMP) is a land use plan that encompasses all resources within a given area and meets the requirements of the FLPMA. The RMP will establish goals and strategies by which these land management requirements are to be accomplished. The Glenwood Springs Resource Area is divided into planning units which are now being inventoried for resource evaluation and analysis. Once the inventories are completed, alternatives

for management will be developed; each alternative will be assessed as to its environmental impacts, and preferred alternatives will be identified.

General issues as identified by BLM that will be addressed by the RMP include present and future resource demands for minerals; land development; forestry products; rangeland uses; recreation use, including visual resource management, cultural resources; wilderness and wildlife areas; social and economic conditions; and soil, water, and air quality. Fire management, access rights-of-way, and engineering demands will also be examined for each alternative. The public is requested to present their issues at the public meetings scheduled below.

Disciplines represented on the technical team will include:

Geologist, Realty Specialist, Forester, Range Conservationist, Recreation Specialist, Archaeologist, Soil Scientist, Hydrologist, Wildlife Biologist, Fire Management Specialist, Sociologist, Economist, Engineer, Access Specialist, Cartographer, Other management and support positions.

Public involvement will be an essential part of the decision-making process. The Bureau of Land Manageent is a public resource management agency and will make every effort to insure that attitudes, interests, and desires of local, regional, and national groups are considered in the decision-making process.

Following this information release, an up-to-date newsletter for the Glenwood Springs Resource Area planning effort will be published at least every six months to inform the public of planning progress; dates, times, and locations of meetings; and the availability of planning documents and related information.

Public information meetings will be called as needed and/or requested. Public comments are requested during all phases of the planning. The first public scoping meetings will be in November 1979. Dates and locations of upcoming meetings are given below and will also be announced by the local news media and a BLM newsletter. Future meetings will be announced by the media and newsletters as they are scheduled:

Date and Time, Location

November 26, 1979, 7 p.m., Rifle, Colorado, Colorado Mountain College Aud., 703 Railroad Street.

November 27, 1979, 7 p.m., Glenwood Springs, Colorado, Holiday Inn, 51359 U.S. Hwy. 6 and 24.

November 28, 1979, 7 p.m., Eagle, Colorado Community House, 108 W. 2nd.

November 29, 1979, 7 p.m., McCoy, Colorado, McCoy Public School.

December 6, 1979, 7 p.m., Grand Junction, Colorado, 764 Horizon Drive.

December 13, 1979, 7 p.m., Denver, Colorado, Ramada Inn, 11494 West 6th Ave., Lakewood, Colo.

If you wish to discuss, review, or obtain copies of preplanning documents for the Glenwood Springs Resource Area you may write, call, or visit BLM offices at the addresses below:

Dave Jones, District Manager, BLM District Office, 764 Horizon Drive, 3rd Floor, Grand Junction, Colorado 81501 (303–243–6552), or Al Wright, Area Manager, Glenwood Springs Resource Area Office, 50629 Highways 6 and 24, Glenwood Springs, Colorado 81601 (303–945–2341)

Lee Lauritzen,

Acting District Manager.

[FR Doc. 79–33266 Filed 10–25–79; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Mines

Oil Shale Processing Research Program; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Mines, Denver Research Center will be preparing a draft Environmental Impact Statement (EIS) in connection with a proposed one-year oil shale processing research program to be conducted by the Multi Mineral Corporation of Houston, Texas, at the Bureau of Mines Oil Shale Mining Environmental Research Facility in Rio Blanco County, Colorado.

The proposed processing research program has evolved from and would follow the successful completion of a mining research program currently being conducted at the facility. The objectives of the proposed program are to prove the process and to generate firm data from which the environmental impact and the economic feasibility of a full-scale modular project can be determined more accurately.

The EIS will include alternatives to the proposed processing research program. Some of the expected alternatives include taking no action, closing down the facility, using alternative processes, or developing full-scale modules. The EIS will identify the impacts that can be expected from implementation of either the proposed processing research program or one of the alternatives.

Preparation and processing of the environmental impact statement for this proposed project will be in accordance with provisions of the National Environmental Policy Act of 1969, and will be accomplished under the new Council on Environmental Quality (CEQ) regulations published in the **Federal Register** on November 29, 1978. Pursuant to these new CEQ regulations and in accordance with Office of Management and Budget Circular No. A–95, "Evaluation, Review and Coordination of Federal and Federally Assisted Programs," we are soliciting the active participation of Federal, State, and local agencies, affected private groups, and individuals in a process for determining significant environmental items to be analyzed.

A public meeting will be held on November 8, 1979, at 9:00 a.m., at the Fairfield Center in Meeker, Colorado. The meeting will concentrate on determining the scope of the issues to be addressed in the EIS, and identifying those issues that do not require detailed study.

For information concerning the proposed action or the environmental statement, please contact: Rober L. Bolmer, Project Manager, Denver Research Center, Bureau of Mines, USDI, Building 20, Denver Federal Center, Denver, Colorado 80225, Phone: (303) 234–3848.

October 11, 1979.

Lindsay Norman,

Assistant Director, Bureau of Mines.

[FR Doc. 79–33093 Filed 10–25–79; 8:45 am]

BILLING CODE 4310–53–M

National Park Service

Intention To Extend a Concessions Permit

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice (November 26, 1979), the Department of the Interior, through the Rocky Mountain Regional Director, proposes to extend the concession permit with Mr. Carl Oberlitner, authorizing him to continue to provide food and merchandise facilities and services for the public at Wind Cave National Park, for a period of two (2) years from January 1, 1980 through December 31, 1981.

As assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the Office of the Superintendent, Wind Cave

National Park, Hot Springs, South Dakota 57747.

The foregoing concessioner has performend his obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1979, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. This provision, in effect, grants Mr. Carl Oberlitner, the present satisfactory concessioner, the right to meet the terms of responsive offers for the proposed renewed or extended permit and a preference in the award of the permit, if, thereafter, the offer of Mr. Carl Oberlitner is substantially equal to others received. The Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice.

Interested parties should contact the Superintendent, Wind Cave National Park, Hot Springs, South Dakota 57747, for information as to the requirements of the proposed permit.

Dated: September 28, 1979.

James B. Thompson,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 79-33029 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-70-M

Big Thicket National Preserve, Tex.; Public Hearing Regarding Wilderness Study

Notice is hereby given in accordance with Section 7 of the Act of October 11, 1974 (88 Stat. 1257, 16 U.S.C. 698d), and in accordance with Departmental procedures as identified in 43 CFR 19.5 that public hearings will be held at the following location and time for the purpose of receiving comments and suggestions as to the suitability of lands within Big Thicket National Preserve for designation as wilderness.

November 29, 1979 at 7:30 p.m.
Junior High Campus Auditorium, corner of U.S. Highways 69/287 and Vaughn Street, Kountze, Tex.

A packet containing a preliminary wilderness study report may be obtained from the Superintendent, Big Thicket National Preserve, Post Office Box 7408, Beaumont, Texas 77706, telephone (713) 838-0271, or from the Regional Director, Southwest Region, National Park Service Post Office Box 728, Santa Fe, New Mexico 87501, telephone (505) 988-6388.

The preliminary wilderness study report and a map of the areas studied for their suitability or nonsuitability as wilderness is available for review at the locations noted above and in Room 1210 of the Department of the Interior Building at 18th and C Streets, NW., Washington, D.C. 20240.

Interested individuals, representatives of organizations and public officials are invited to express their views in person at the aforementioned public hearings, provided they notify the Hearing Officer by November 26, 1979, of their desire to appear. Those not wishing to appear in person may submit written statements on the wilderness study report to the Hearing Officer for inclusion in the official record which will be held open for written statements until January 4, 1980. The Hearing Officer may be reached by writing or telephoning the Superintendent, Big Thicket National Preserve.

Time limitations may make it necessary to limit the length of oral presentations and to restrict to one person the presentation made in behalf of an organization. An oral statement may, however, be supplemented by a more complete written statement that may be submitted to the Hearing Officer at the time of presentation of the oral statement. Written statements presented in person at the hearing will be considered for inclusion in the transcribed hearing record. However, all materials presented at the hearing shall be subject to a determination by the Hearing Officer that they are appropriate for inclusion in the hearing record. To the extent that time is available after presentation of oral statements by those who have given the required advanced notice, the Hearing Officer will give others present an opportunity to be heard.

After an explanation of the preliminary wilderness study report by a representative of the National Park Service, the Hearing Officer insofar as possible, will adhere to the following order in calling for the presentation of oral statements:

1. Governor of the State of his representative.
2. Members of Congress.
3. Members of the State Legislature.
4. Official representatives of the counties in which the national preserve is located.
5. Officials of other Federal agencies or public bodies.
6. Organizations in alphabetical order.
7. Individuals in alphabetical order.
8. Others not giving advance notice, to the extent there is remaining time.

Dated: October 17, 1979.

Ira J. Hutchison,

Acting Director, National Park Service.

[FR Doc. 79-33028 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION; UNITED STATES AND MEXICO; UNITED STATES SECTION

Operational Procedures for Implementing Section 102 of the National Environmental Policy Act of 1969, Other Laws Pertaining to Specific Aspects of the Environment and Applicable Executive Orders

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: The purpose of this document is to publish the United States Section's Proposed Operational Procedures.

SUMMARY: The draft procedures prescribes policies and procedures utilized or to be utilized by the United States Section in implementing Section 102 of the National Environmental Policy Act of 1969, Other Laws Pertaining to Specific Aspects of the Environment and Applicable Executive Orders in the planning, design and construction of treaty projects along the United States and Mexican international boundary and to the United States Section's operation and maintenance activities in connection with treaty projects. The draft procedures are designed to be coordinated with the environmental review of requirement established in the National Environmental Policy Act (NEPA).

DATE: Comments must be received by December 21, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Frank P. Fullerton, Legal Adviser, International Boundary and Water Commission, United States Section, United States and Mexico, 4110 Rio Bravo, 200 IBWC Building, El Paso, Texas 79902, (915) 543-7393—FTS: 572-7393.

INTERNATIONAL BOUNDARY AND WATER COMMISSION; UNITED STATES AND MEXICO; UNITED STATES SECTION

Operational Procedures for Implementing Section 102 of the National Environmental Policy Act of 1969, Other Laws Pertaining to Specific Aspects of the Environment and Applicable Executive Orders

100. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (Public Law 91-190, 42 U.S.C.A. § 4321); Executive Order No. 11514 (E.O. 11514), Protection and Enhancement of Environmental Quality, dated March 5, 1970; Executive Order No. 11991 (E.O. 11991), Relating to Protection and Enhancement of Environmental Quality, dated May 24, 1977; and the Regulations of the Council on Environmental Quality (CEQ or Council), dated November 29, 1978; provide that enivronmental considerations are to be given careful attention and appropriate weight in every recommendation or report on proposals for legislation and for other federal actions significantly affecting the quality of the human environment. The requirements of NEPA are to be integrated with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively. The United States Section will hereafter be referred to as the Section.

100.1 Purpose

The Operational Procedures:

a. Prescribe guides to be utilized by the Section to implement NEPA and supplement CEQ Final Regulations for Implementation of NEPA, dated November 29, 1978 (43 FR 55978).

b. Insure commencement of NEPA process by the Section at the earliest possible time, provide for assistance and consultation to individuals and non-federal entities who plan to take action before involvement of the Section, appropriate state and local agencies, and with interested private persons and organizations.

c. Provide procedures for introducing a supplement into the Section's formal administrative record.

d. Designate the major decision points for principal programs of the Section.

e. Advise where interested persons may obtain information or status reports on environmental impact statements and other elements of the NEPA process.

f. Identify categorical exclusions.

g. Provide that environmental information is to be made available to the public before decisions are made about actions that significantly affect the human environment.

h. Direct that documents are to concentrate on the issues that are timely and significant to the action in question.

i. Establish early identification of actions that have significant effects on the human environment.

100.2 Policy

The Section's Policy is to:

a. Give proper attention to actions that could impact the environment to enable early and appropriate consideration of such actions on all environmental values.

b. Invite early and continued cooperation, where appropriate, from federal, state, local and regional authorities and the public, in the Section's planning and decision-making processes to develop alternatives and measures which will protect, restore or enhance the quality of the environment, and minimize and mitigate unavoidable harmful effects.

c. Recognize the international and long-range character of environmental concerns and, when consistent with the foreign policy of the United States and its own responsibilities, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation, anticipating and preventing a decline in the quality of the world environment.

d. Implementing domestic legislation to the extent practicable without impairing the Section's international mission because the international projects under the jurisdiction of the International Boundary and Water Commission are partly or wholly located within the United States.

100.3 Applicability

The Operational Procedures apply to all Section programs and activities insofar as is possible or practicable without impairing its international mission. Domestic requirements must not impair the Section's performance of the United States' international obligations which are carried out consistent with the treaties and foreign policy of the United States.

100.4 References

a. Treaties and International Agreements

(1) Convention between the United States and Mexico concerning the equitable distribution of the waters of the Rio Grande (T.S. 455, 54 Stat. 2953, signed May 21, 1906, entered into force January 16, 1907).

(2) Treaty between the United States of America and Mexico entitled "Utilization of the Waters of the Colorado and Tijuana Rivers and of the Rio Grande" (T.S. 994, 59 Stat. 1219, signed February 3, 1944, entered into force November 8, 1945).

(3) Convention Between the United States of America and Mexico entitled "Rectification of the Rio Grande" (T.S. 864, 48 Stat. 1621, signed February 1, 1933, entered into force November 13, 1933).

(4) Convention Between the United States of America and the United Mexican States for the Solution of the Problem of the Chamizal (T.S. 5515-15 U.S.T. 21, signed August 29, 1963, entered into force January 14, 1964).

(5) Treaty Between the United States of America and the United Mexican States entitled "Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary" (TIAS 7313, signed November 23, 1970, entered into force April 18, 1972).

b. International Agreements

International projects were constructed in accordance with the provisions of the above-referenced treaties. In addition, the United States and Mexico, through the International Boundary and Water Commission, have constructed international projects in accordance with each of the following agreements.

(1) Minute No. 144, "Plans for Final Location of Rectified Channel of the Rio Grande in the El Paso-Juarez Valley," signed June 14, 1934.

(2) Minute No. 148, "Allocation of Works for each Government to Undertake on the Rio Grande Rectification Project in Accordance with the Convention of February 1, 1933," signed October 28, 1935.

(3) Minute No. 165, "Adoption of Rules and Regulations for the Maintenance and Preservation of the Rio Grande Rectification Project, in the El Paso-Juarez Valley," signed August 13, 1938.

(4) Minute No. 174, "Supplemental Construction Work Which Each Government Should Undertake Under the Convention of February 1, 1933 to Preserve the Benefits that Have Been Obtained by Previous Construction on Rio Grande Rectification Project in the El Paso-Juarez Valley," signed March 3, 1942.

(5) Minute No. 182, "Approval of Joint Report on Engineering Conference on Studies, Investigations and Procedures for the Planning of Works to be Built in Accordance with the Treaty of February 3, 1944," signed September 23, 1946.

(6) Minute No. 187, "Determinations as to Site and Required Capacities of the Lowest Major International Storage

Dam to be Built on the Rio Grande, in Accordance with the Provisions of Article 5 of the Treaty Concluded February 3, 1944," signed December 20, 1947.

(7) Minute No. 190, "Allocation to the Two Sections of the Commission of Remaining Items of Work Preparatory to Construction of Falcon Dam," signed August 13, 1948.

(8) Minute No. 192, "Plans and Procedures for Construction of Falcon Dam and Recommendations for Construction of Falcon Hydroelectric Plants," signed September 7, 1949.

(9) The Lower Rio Grande Flood Control Project was approved in an exchange of Notes in 1932 between the two Governments in which each country agreed to a coordinated plan for flood protection and to perform the work within its own territory. Subsequently, additions and modifications to the plan were adopted in the following agreements: Minute No. 196, "Improvement of the Channel of the Lower Rio Grande," signed December 22, 1961; and Minute No. 238, "Improvement of the International Flood Control Works of the Lower Rio Grande," signed September 10, 1970.

(10) The Joint Report of the United States and Mexican Commissioners for a coordinated plan of international flood protection facilities for Nogales, Arizona and Nogales, Sonora, signed on November 22, 1932, was subsequently approved by the two Governments by an exchange of notes.

(11) Minute No. 202, "Bases for Joint Operation and Maintenance of the Falcon Dam and Hydroelectric Plant and for Division of Cost Thereof," signed January 11, 1955.

(12) Minute No. 207, "Consideration of Joint Report of the Principal Engineers on Site, Capacities and Type of Dam for the Second Major International Storage Dam on the Rio Grande," signed June 19, 1958.

(13) Minute No. 210, "Recommendations Regarding Construction of Amistad Dam," signed January 12, 1961.

(14) Minute No. 215, "Design and Procedures for Construction of Amistad Dam," signed September 28, 1963.

(15) Minute No. 217, "Clearing of the Colorado River Channel Downstream From Morelos Dam," signed November 30, 1964.

(16) Minute No. 220, "Improvement and Expansion of the International Plant for the Treatment of Douglas, Arizona and Agua Prieta, Sonora Sewage," signed July 16, 1965.

(17) Minute No. 222, "Emergency Connection of the Sewage System of the City of Tijuana, Baja, California to the Metropolitan Sewage System of the City of San Diego, California," signed September 29, 1965.

(18) Minute No. 224, "Recommendations Concerning the Lower Rio Grande Salinity Problem," signed January 16, 1967.

(19) Minute No. 225, "Channelization of the Tijuana River," signed June 19, 1967.

(20) Minute No. 227, "Enlargement of the International Facilities for the Treatment of Nogales, Arizona and Nogales, Sonora Sewage," signed September 5, 1967.

(21) Minute No. 235, "Division of Operation and Maintenance Cost of Amistad Dam," signed December 3, 1969.

(22) Minute No. 236, "Construction of Works for Channelization of the Tijuana River," signed July 2, 1970.

(23) Minute No. 242, "Permanent and Definitive Solution to the International Problem of the Salinity of the Colorado River," signed August 30, 1973.

(24) Minute No. 247, "International Plan for the Protection of the Presidio-Ojinago Valley Against Floods of the Rio Grande," signed February 7, 1975.

(25) Minute No. 258, "Modification of the United States Portion of the Plan for the Channelization of the Tijuana River," signed May 27, 1977.

(26) Pending agreement pertaining to the restoration and preservation of the International Boundary near Fort Quitman, Texas to near Presidio, Texas.

At the time the Final Procedures are published in the **Federal Register**, it is contemplated, as a matter of economics, to eliminate the title and date of signing of the Minutes and include in a single paragraph all of the Minute numbers.

c. Laws

(1) National Environmental Policy Act, 42 U.S.C.A. § 4331.

(2) Fish and Wildlife Coordination Act, 16 U.S.C.A. § 661.

(3) Endangered Species Act, 16 U.S.C.A. § 1531.

(4) National Historic Preservation Act, 16 U.S.C.A. § 470, 470f.

(5) Archeological and Historic Preservation Act of 1974, 16 U.S.C.A. § 469a–1.

(6) Water and Environmental Quality Improvement Act of 1970, Public Law 91–224, 84 Stat. 91 (amends Federal Water Pollution Control Act).

(7) Federal Water Pollution Control Act Amendments of 1972, Public Law 92–500, 33 U.S.C.A. § 1151.

(8) Clean Water Act of 1977, 33 U.S.C.A. § 1251, *et seq.*

(9) Section 309 of the Clean Air Act Amendments of 1970, Public Law 91–224, 15 U.S.C.A. 792; revised by Public Law 95–95, 42 U.S.C.A. 7401, *et seq.*

(10) The Safe Drinking Water Act, 42 U.S.C.A. §§ 300f, 300j.

(11) Coastal Zone Management Act, 16 U.S.C.A. § 1451, *et seq.*

(12) Estuary Protection Act, 16 U.S.C.A. § 1221, *et seq.*

(13) Federal Water Project Recreation Act, 16 U.S.C.A. § 4601–12, 15, 16.

(14) Wild and Scenic Rivers Act, 16 U.S.C.A. §§ 1271, 1276.

(15) Resource Conservation and Recovery Act, 42 U.S.C.A. §§ 6901, 6912.

(16) Watershed Protection and Flood Prevention Act, 16 U.S.C.A. § 1001.

(17) Rivers and Harbors Act of 1899, 33 U.S.C.A. §§ 401, 403.

(18) Rio Grande Bank Protection Act, Public Law 59 Stat. 89; Act of April 25, 1945.

d. Executive Orders

(1) Executive Order No. 11514, "Protection and Enhancement of Environmental Quality," March 5, 1970; 35 Fed. Reg. 4247.

(2) Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," May 13, 1971; 36 Fed. Reg. 8921.

(3) Executive Order No. 11752, "Prevention, Control, and Abatement of Environmental Pollution at Federal Facilities," December 17, 1973; 38 Fed. Reg. 34793.

(4) Executive Order No. 11988, "Floodplain Management," May 24, 1977; 42 FR 26951.

(5) Executive Order No. 11990, "Protection of Wetlands," May 24, 1977; 42 FR 26961.

(6) Executive Order No. 11991, "Relating to Protection and Enhancement of Environmental Qaulity," May 24, 1977; 42 FR 26927.

(7) Executive Order No. 12114, "Environmental Effects Abroad of Major Federal Actions," January 4, 1979; 44 FR 1957.

e. Regulation

Council on Environmental Quality: "Implementation of Procedural Provisions; Final Regulations, National Environental Policy Act," dated November 29, 1978; 43 FR 55978.

100.5 Responsibilities Within the U.S. Section

a. Chief, Planning and Reports Branch

The Chief, Planning and Reports Branch, under the supervision of the Division Engineer, Investigations and Planning Division, is designated as the responsible official within the meaning of Section 102 of NEPA and is responsible for the preparation and the

processing of environmental assessments, environmental impact statements (EIS) (draft and final), and memoradums in implementing the requirements of the Act. For each proposed action, he will submit through the Division Engineer to the Commissioner, an outline of the environmental actions to be taken, including analyses and the coordination and consultation with other agencies, groups and individuals. When it is appropriate to obtain supplemental information in evaluating the environmental impact of a proposed action, he will solicit information from within the Section, other government agencies (federal, state and local) with jurisdiction by law or special expertise with respect to any environmental impact involved, and interested individuals, associations or groups.

Chief, Planning and Reports Branch, will draft and obtain Section approval of all notices to be published in the **Federal Register** except when another agency or agencies act as agent for the Section.

Persons interested in obtaining information of status reports on EIS and other elements of the NEPA process should address their requests to: Chief, Planning and Reports Branch, United States Section, International Boundary and Water Commission, 4110 Rio Bravo, El Paso, Texas 79902.

In the case of an agency or agencies acting as agent for the Section in the design and construction of a project (as distinguished from merely preparing an EIS for the Section's use) that agent will prepare, distribute and coordinate the reveiw of the EIS according to established procedures, except that the formal transmittal of the EIS to the Department of State and to EPA (as representing CEQ) will be by the Commissioner of the Section. The agent has the responsibility to confer with the Section through the agency's responsible official and to keep it fully informed.

b. Division Engineer, Investigations and Planning Division

In addition to responsibilites under a., the Division Engineer, Investigations and Planning Division, will assure review is made of studies and analyses to insure the professional and scientific integrity of discussion, analyses and conclusions in the environmental documents, and that an inter-disciplinary approach has been used in the evaluations.

The Division Engineeer will also be responsible for consultation with the Fish and Wildlife Service on mitigation and/or enhancement measures, and the transmittal to agencies, associations and individuals of draft statements.

c. Secretary

The Secretary will be responsible for providing policy guidance on the international aspects of proposals, inputs to the environmental docuements pertaining to international consideration, including treaties and agreements, and review of draft environmental documents for international considerations.

d. Legal Adviser

The Legal Adviser shall provide staff advice concerning legislative actions covered by NEPA, interpretations of NEPA and other acts, executive orders, regulations, and all legal requirements pertaining to environmental actions.

When uncertainty exists within the Section as to the requirement in a specific case for preparing an environmental assessment or an EIS, the Legal Adviser will initiate consultations with the Office of Environment and Health (OES/ENH—Department of State), and follow through to a final determination. In every case where the Section determines from an environmental assessment that an EIS is not required, the Legal Adviser shall so inform OES/ENH.

The Legal Adviser will approve and be responsible for the publication of the necessary notices in the **Federal Register.**

100.6 Categories of Environmental Actions

a. Categorical Exclusions

Some Section program or activities, or parts thereof, do not normally create significant or cumulative impacts and therefore will not be considered a major federal action significantly affecting the quality of the human environment for the purposes of NEPA. Further, domestic requirements must not impair the United States' international obligations. For example, the following general classes of actions ordinarily do not require the preparation of an environmental assessment or an EIS.

(1) Normal Section housekeeping functions (procedural, ministerial or internal) including, but not limited to, personnel actions, procurement for general supplies, contract for personal services;

(2) Reports or recommendations on legislation not initiated by the Section;

(3) Legislative proposals that only request appropriations;

(4) Participation in research or study projects;

(5) Actions required under any treaty or international agreement, or pursuant thereto, to which the United States is a party, or required by the decision of international organizations (including courts), authorities or consultations in which the United State is a member or partcipant;

(6) Mapping and surveying activities;

(7) Stream gaging and sampling, routine hydrologic test drilling, well logging, aquifer response testing, and similar data-gathering activities in connection with water resources investigations;

(8) Leases of government land for grazing and agricultural purposes;

(9) Emergency actions;

(10) Recreational leases to any city, county, state or federal agency;

(11) Leases of licenses regarding buried utilities, including gas, water, and sewer pipelines, and telephone cables, irrigation drains, and storm sewers, sanitary sewers discharging treated effluent, telephone and electric power poles and lines, irrigation pumps, drain structures and ditches, fences, roads, highways and bridges, water wells, boat docks and boat launching facilities;

(12) Temporary or single-time permit of project facilities;

(13) Any actions or works for which an EIS or environmental assessment has been submitted and filed by others.

In and extraordinary circumstance in which a normal excluded action may have a significant environmental effect, an environmental assessment may be prepared. Domestic requirements will not be permitted to impair the international mission of the Section.

b. Criteria for Environmental Assessments

An environmental assessment will be prepared for any proposed action which is not categorically excluded, or when there is sufficient information to indicate the preparation of an EIS should be initiated.

The environmental assessment will describe the proposed action, the need for the action, alternatives to the proposed action, discussion of the extent of impacts, if any, of the proposed action and alternatives, a summary of the agencies and persons consulted and the view of each, and conclude with a supported recommendation of whether to prepare an EIS or a finding of no significant impact.

c. Criteria for Environmental Impact Statements

An EIS will be prepared when the proposed action is a "major Federal" action which involves the quality of the human environment, either by directly affecting human beings or by indirectly affecting human beings through adverse effects on the environment, and are not

listed as categorical exclusions. The following criteria will be employed in deciding whether a proposed action requires the preparation of an EIS.

(1) "Major actions," defined by these operational procedures include, but are not limited to:

(a) Projects and activities that are part of treaties or other international commitments which significantly affect the quality of the human environment in the United States and to which domestic requirements may be applied without impairing the international obligations of the United States;

(b) Recommendations or reports to the Congress on proposals for legislation affecting proposals to authorize projects;

(c) Recommendations or reports on proposals for authorization of projects except for emergency measures;

(d) Initiation of construction or land acquisition on projects which are not yet started for which funds have been appropriated or are provided by an Appropriation Act;

(e) Budget submissions requesting funds for the initiation of construction or land acquisition on authorized projects.

(f) Policy and procedure making, especially proposed actions which are highly controversial when domestic requirements may be applied without impairing the international obligations of the United States.

(2) The statutory clause "major Federal actions significantly affecting the quality of the human environment" is to be construed with a view to the overall, cumulative impact of the action proposed (and of further actions contemplated) and reasonable alternatives thereto, including those not within the authority of the Section. Such actions may be localized in their impact, but if there is potential that the quality of the human environment may be significantly affected, an EIS is to be prepared.

Proposed action, the environmental impact is which is likely to be highly controversial or unresolved conflicts concerning alternative use of available resources exist, shall be covered by an EIS.

In considering what constitutes a "major Federal action significantly affecting the quality of the human environment," the Section personnel will bear in mind that the effect of many federal decisions about a project or complex of projects can be individually limited, but cumulatively significant. This can occur when one or more agencies over a period of years put into a project, individually minor, but collectively major resources, when one decision involving a limited amount of money is a precedent for action in much larger cases, or represents a decision in principle about a future major course of action, or when several government agencies individually make decisions about partial aspects of a major federal action. The lead agency shall prepare an EIS if it is reasonable to anticipate a cumulatively significant effect on the quality of the human environment from the federal action.

(3) Section 101(b) of NEPA indicates the broad ranges of aspects of the environment to be surveyed in any assessment of significant effect. NEPA also indicates that adverse significant effects include those that degrade the quality of the environment, curtail the range of beneficial uses of the environment or serve short-term, to the disadvantage of long-term, environmental goals.

Significant effects can also include actions which may have both beneficial and detrimental effects even if, on balance, the agency believes that the effect will be beneficial. Significant adverse effects on the quality of the human environment include both those that directly affect human beings and those that indirectly affect human beings through adverse effects on the environment.

Careful attention will be given to identifying and defining the purpose and scope of the action which would most appropriately serve as the subject of the EIS. In many cases, broad program statements will be required to assess the environmental effects of a number of individual actions on a given geographical area, or environmental impacts that are common to a series of agency actions, or the overall impact of a large-scale program or chain of contemplated projects. Subsequent EIS on major individual actions will be necessary where such actions have significant environmental impacts not adequately evaluated in the program statement.

d. Criteria for Supplemental Statements

A supplement may be prepared to either a draft or final EIS if the agency determines that:

(1) The proposed action has been significantly changed to involve environmental concerns; or

(2) New environmental concerns are found which had not been covered in the previously circulated document; or

(3) One or more additional alternatives should be discussed; or

(4) The purposes of NEPA will be furthered by doing so.

100.7 Procedures

a. Categorical Exclusions

An environmental memorandum will be prepared which includes a description of the proposed action, and a finding that the action is categorically excluded and no further environmental action is needed to comply with NEPA, executive orders, regulations and other acts. This memorandum shall be referenced in decision documents.

b. Environmental Assessments

(1) *Proposed Action and Alternatives.* The possible environmental effects of a proposed action must be considered along with technical, economic and other factors, in the earliest planning. At this stage, the responsible official shall take the necessary steps to comply with the requirements of NEPA by the preparation of an environmental assessment. The assessment, to be meaningful for review and decision, will provide a concise description of the proposed action, need for action, and alternatives to be considered. The assessment will be prepared as an interdisciplinary approach, with the discipline of the preparers appropriate to the environmental impacts possible, with the proposed action and alternatives to be considered.

(2) *Environmental Impacts.* The assessment is to be brief, yet provide sufficient evidence of environmental impacts to determine whether to prepare an EIS. It shall include an appraisal of environmental effects, good and bad, if any, of the proposed action and the alternatives. In no case will adverse effects, either real or potential be ignored or slighted. Similarly, care must be taken to avoid overstating favorable effects. The National Register of historic places will be consulted and notation made whether National Register properties will be affected by the proposed action and whether known historical or archeological resources would be affected. The assessment will note the result of the review of the lists of designated, and proposed for designation, endangered species in the area, and have a sufficient basis to state the proposed action will not impact endangered species or habitat critical to the continuation of these species. Discussion will be included in connection with the existing federal, state or local legislation, action, program or study on which the proposed action would have an effect.

(3) *Consultation With Agencies and Individuals.* After preparing the draft description of the proposed action and alternatives, representatives of appropriate federal, state and local

agencies, conservation associations and individuals in the area will be consulted to obtain their views, comments, and suggestions on the effects, if any, of the proposed action and alternatives. The extent of these consultations will vary with the type and subject matter of the action being considered, with consideration being given to consultation on most matters with the Environmental Protection Agency, Fish and Wildlife Service, State Fish and Wildlife Agernoy, State Historical Preservation Officer and the regional council of governments or planning council. Individuals and environmental associations who have expressed an interest in specific areas or subjects will be contacted for their comments. The assessment will list the agencies and individuals consulted and summarize their views.

(4) *Finding of No Significant Impact.* When an environmental assessment concludes the proposed action will not have a significant effect on the human environment, a draft "Finding of No Significant Impact" shall accompany the assessment through the agency's internal review process. The draft finding shall include a description of the proposed action and the alternatives considered, shall state an assessment has been made and the findings thereof, and the name and address of the person from whom additional information can be obtained. The finding shall be circulated for comments to agencies, associations and individuals in the general area, or who have expressed an interest in the proposed action, with at least thirty (30) days allowed for comments, and be published in the **Federal Register.**

(5) *Recommendation.* Findings in the environmental assessment, supported by the information obtained from various sources, will be summarized and lead to the recommendation that the agency:

(a) Prepare a finding of no significant impact, or

(b) Prepare an EIS.

The internal routing memorandum for agency review of the assessment will describe what further actions, if any, are necessary under other acts, regulations and executive orders, and recommend actions to accomplish such actions. As appropriate to the recommendation in the assessment, one of the following will accompany the assessment:

(a) A draft finding of no significant impact, including a mailing list for the finding.

(b) For the initiation of a draft EIS:

(1) A draft notice of intent to prepare an EIS;

(2) A mailing list for the notice;

(3) a draft letter inviting participation in a meeting for determining the scope of the EIS; and

(4) A list of individuals, associations and agencies to invite to participate in the scoping.

(6) *Circulation.* Following internal agency approval of the assessment one of the following two procedures will be followed:

(a) The finding of no significant impact shall be published in the **Federal Register** and mailed to Federal, State and local agencies, conservation associations and individuals, and include the sentence, "An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice."

(b) A Notice of Intent to Prepare an Environmental Impact Statement will be circulated to Federal, State and local agencies, conservation associations and individuals, be published in the **Federal Register** and sent to news media. This notice should describe the proposed action and include an invitation to Federal, State and local agencies, conserviation associations and individuals to participate in the scoping of the studies to be done.

c. Environmental Impact Statement

The EIS process will usually have the following major stages, with some variations depending upon the nature and extent of the proposed action:

(1) Defining the environmental studies to be done;

(2) Performing the studies;

(3) Concurrent action under other laws and executive orders;

(4) Assessing the impacts;

(5) Writing the draft EIS;

(6) Circulating the draft EIS; and

(7) Preparation of and circulation of the final EIS.

(1) *Defining the Environmental Studies To Be Done.* CEQ Regulation 1501.7 describes the purpose and extent of the scoping process, and Regulation 1508.25 defines the scope and the range of actions, alternatives and impacts to be considered in an EIS. In scoping the agency will:

(a) Identify and categorize significant environmental issues so that an analytical EIS can be prepared that will reduce paperwork and avoid delay.

(b) Arrange "Scoping meeting" with Federal, State or local agencies that have special expertise or legal jurisdiction concerning resource values that may be significantly affected. The meeting will identify agencies that may become cooperating agencies.

(c) Determine and define the range of actions, alternatives and impacts to be included in the EIS. Tiering may be used to define the relation of the proposed EIS to other statements.

(d) Schedule periodic meetings of the cooperating agencies which are to be held at important decision making points to provide timely interagency interdiciplinary participation.

(e) Include the items listed in Section 1501.7(a) of the CEQ Regulation dated November 29, 1978, and may also include any of the activities in Section 1501.7(b).

(f) Promote public participation by making timely notifications.

The objective of the scoping process is to determine the significant issues to be analyzed in depth in the EIS, to eliminate from detailed study the issues which are not significant, and to narrow the discussion of these issues in the EIS to a brief presentation of why they do not have a significant impact.

Where appropriate and possible, a field examination of the area of the proposed action should be made in conjunction with the scoping meeting. The invitation to participate in the scoping meeting should include a description of the proposed action and the alternatives to be considered.

The time schedule for the studies will be established, the preparation of the draft EIS will be initiated at or immediately following the scoping meeting, consistent with Regulation 1501.8, and agreement will be reached between the Section and cooperating agencies on the details of assignments and the time schedule for completing the assignments. In drafting the time schedule, consideration will be given to having periodic meetings of agency and association representatives and individuals, to discuss the results being obtained and to receive further input on the studies.

A federal agency which has jurisdiction by law regarding a specific aspect of the environment shall be a cooperating agency. In addition, any other federal agency which has special expertise with respect to any environmental issue which should be addressed in the EIS may be a cooperating agency upon request of the Section while acting as the lead agency.

The Section will request the participation of each cooperating agency at the earliest possible time and in advance of the initial scoping meeting. The extent of participation desired from each cooperating agency will be described by the Section in accordance with CEQ Regulation 1501.6.

The Section's staff will make diligent efforts to involve the public in

implementing its NEPA procedures in accordance with CEQ Regulation 1506.6. Notices of public meetings and of the availability of environmental documents will be sent to interested conservation associations and individuals, and this information provided to news media. The notices of public meetings will include requests for information from the public and encourage their participation. The notices will also provide a clear description of the proposed action and the alternatives being considered so the public can provide meaningful information and data contributions. Additional meetings with the public may be scheduled at intervals through the planning to provide additional opportunities for public participation in the environmental considerations. The Section's responsible official shall maintain lists of agencies, associations and individuals to whom to provide notices.

(2) *Performing the studies.* Environmental studies to provide basic information and to forecast changes under proposed conditions will be performed by professionally competent personnel using generally recognized and accepted scientific methods. The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process. Studies may be performed by the staff, by consultants, including university personnel, and by federal, state or local agencies. Staff studies will be scheduled with the approval of the Division Engineer, Investigation and Planning Division. The scope of studies to be performed by consultants and agencies and the agencies or consultants to perform the studies will be recommended to the Commissioner, the head of the Section, by the Division Engineer, Investigation and Planning Division. The Section's responsible official will be the agency's representative in monitoring studies being performed for it, and be responsible for review of the draft reports of the studies.

(3) *Concurrent Action Under Other Laws, Regulations and Executive Orders.* During planning and environmental studies, the responsible official will take all appropriate actions to assure that there will be concurrent consideration of the requirements established in other laws, regulations and in executive orders, as stated in CEQ Regulation 1502.25 and by these operational procedures. This concurrent consideration will be documented and summarized in the draft EIS.

(4) *Assessing the Impacts.* Interdisciplinary evaluations will be made of the proposed actions and alternatives considered, and will include comparison between the proposed action and the no-action alternative. Evaluations will give emphasis to the significant issues selected in the scoping process for in-depth analysis. For evaluations of proposed projects, the analyses shall consider separately the impacts from initial construction, and from the operation and maintenance. The evaluations shall be objective appraisals of the effects, good and bad, and where possible, include the benefit to cost ratios of the alternatives or the differences in annual costs. In no case will adverse effects, either real or potential, be ignored or slighted in an attempt to justify a proposed action. Similarly care must be taken to avoid overstating favorable effects.

Impacts should be quantified where possible, and described and compared qualitatively where it is not possible to quantify impacts. The comparisons should describe the impacts of alternative in terms and with understandable illustrations so that the severity or mildness of the adverse or beneficial impacts is clear.

Evaluations should provide responses to the five points in NEPA and the international considerations and, as appropriate, the engineering, hydraulic and hydrologic, social and economic, and the ecological consequences of the alternatives. The engineering analyses shall include a comparison of initial and annual energy requirements.

The reports of investigations and of the analyses of impacts should contain a description of the methodology used and make explicit reference to the scientific and other sources relied upon. Methods which are in general use can be referenced by name and publication citation, while new or relatively unknown methods should be described.

Analyses shall include the requirements for mitigation, if needed, for proposed action and each alternative, in accordance with CEQ Regulations 1502.14(f), 1502.16(h), 1503.3(d), 1505.2(c), 1505.3 and 1508.20. The methodology used in determining mitigation needs shall be described in a supporting memorandum. Mitigation may include a monitoring and/or enforcement program where such is applicable.

(5) *Writing the Draft Statement.* The EIS shall be written in plain language and make use of appropriate illustrations so that the public can readily understand its contents, meaning and application and the effect of the proposed project. The preliminary draft EIS shall be prepared minimizing the use of technical terms and shall be rewritten or edited to assure clarity. The edited draft shall be given a thorough review by qualified personnel to assure its accuracy. The statement length shall be limited to not more than 150 pages, and the appended material (appendix) limited to not more than 150 pages.

The format shall follow that described in CEQ Regulations 1502.10 through 1502.18. The focus of the EIS should be on the alternatives including the proposed action, the affected environmental and the environmental consequences. The EIS will be analytic and be directed to the significant issues determined during the scoping process while avoiding unnecessary detail. The affected environment will be described only in sufficient detail for the reviewer to understand the alternatives and consequences. Where possible, photographs which assist in understanding important topics will be used. Extraneous data and information should be omitted from the statement and be included in the investigation's supporting information file or record.

The EIS will cover the five points in NEPA; primary and secondary impacts; impacts on environmental resources of national or regional significance when the impact extends beyond the immediate area; and discuss the significant relationships between the proposal and other existing, authorized or proposed developments. A section will be included describing the scoping, coordination and consultation procedures; the views including objections raised by other agencies, interested individuals, associations and groups; and the disposition of these issues.

The EIS shall state which of the alternatives the agency considers to be (1) its preferred alternative, and (2) the environmentally preferred alternative; and the reasons for the selection of each.

Where international consequences of the proposed action are a significant factor, the preliminary draft EIS shall be provided to the Department of State for its consideration and comment.

The approach to preparing the appendix shall be to limit its length and include only that information which is required in the CEQ Regulations and relevant to the decision to be made. Other information shall be included in supporting reports which will be prepared in limited number and be provided to libraries and specific agencies for the convenience of the public when reviewing the EIS. The appendix shall include the list of preparers, the list of supporting reports, the list of agencies, organizations and persons to whom copies of the

statement are sent, the listing of references, bibliography, a summary of the scoping meeting(s), tables, photographs, and exhibits. Generally correspondence, reports and methodology will be included where appropriate as supporting reports, but a particularly relevant letter, such as the Fish and Wildlife Service advice on endangered species, may be included in the appendix.

(6) *Circulating the Draft Statement.* The draft EIS shall be circulated in accordance with CEQ Regulations 1502.19, and 1503.1, with five copies sent to the Environmental Protection Agency, Washington, D.C. which acts as the reviewer for CEQ. A notice of availability of the EIS shall be published in the **Federal Register** and information furnished to news media should include a description of the proposed action and alternatives considered, the environmental consequences, the coordination and consultation procedure, and prior public meetings. The letter transmitting the draft EIS should include the date and place for a public meeting on the draft EIS, if such a meeting is planned. This information will also be furnished to the news media.

The letter of transmittal shall specify the date when comments are requested, and unless prior approval has been obtained from the CEQ for a shorter time, at least forty-five days will be allowed for the receipt of comments.

The draft EIS shall be transmitted by the Commissioner or his designee to the United States Department of State and with their concurrence to the Environmental Protection Agency.

For international undertakings the United States Commissioner shall consult with the Mexican Commissioner and provide him a copy of the draft EIS at the time he deems appropriate for consideration by Mexico and submittal of such views and comments as it may desire to provide.

(7) *The Final Statement.* The final EIS shall be prepared in accordance with CEQ Regulations 1502.9(b) and 1503.4.

In instances where only minor comments are received, the final EIS may take the form of a description of comments received, the changes made to the text of the draft EIS, the change, if any, in the conclusions as a result of the comments and copies of the significant comments received.

For clarity or where the comments raise significant questions or issues, the agency may prepare the final EIS as a revision of the draft EIS, making such changes and additions as are determined appropriate to accurately reflect the pertinent comments received.

The final EIS shall contain a discussion of the pertinent comments received and the actions taken by the Section in response to the comments.

The final EIS will be circulated by providing copies to Environmental Protection Agency and to each agency, organization and individual who provided comments on the draft EIS. A notice of the availability of the final statement shall be published in the **Federal Register** and information furnished to news media on the availability of the final EIS.

d. Supplemental Environmental Impact Statements

The supplemental EIS will be prepared, circulated and filed in the same manner as a draft EIS except that the scoping process may be omitted.

(1) When a supplement is issued to a draft EIS:

(a) Combined comments should be requested on the original draft, plus the supplement; and

(b) The final EIS should be issued as a new document covering the draft EIS as amended by the supplement and as a result of the comments received on the combined draft and supplement EIS.

(2) When a supplement is issued to a final EIS:

(a) Combined comments should be requested on the previously circulated final EIS, plus the supplement; and

(b) A revised final EIS shall be issued and include a discussion of the comments received on the combined EIS, and the responses made to these comments. If the supplement considers alternatives not previously considered or considers significant impacts not covered in the first EIS, the revised final EIS should reflect that the agency has reconsidered its preferred alternative and provide further discussion, as appropriate, for its selection of the preferred alternative.

e. Exceptions

The nature of negotiations and relations at the international level may make it necessary to depart in some instances from the procedures in the CEQ Regulations. CEQ foresaw the need for such departures in its Regulation 1507.3(c). Exceptions applicable to the Section are set forth below.

(1) The environmental documents which are written to comply with NEPA should not normally include any classified or administratively controlled material nor should they normally include statements with respect to positions other than the preferred position of the United States in any ensuing negotiation or discussion. Although environmental documents should, whenever possible, be unclassified and hence available to the public, there may be situations where such documents cannot adequately discuss environmental effects without disclosure of classified information. In these instances the EIS will be appropriately classified. Whenever possible, the classification should terminate on a specified date or upon the happening of a described event. Such EIS, so long as it is classified, will not be made available to the public. Consultation will be carried on with appropriate agencies on classified matters.

(2) Since final EIS may not be available until the conclusion of negotiations for an agreement or of a discussion, the 30-day time delay between submission of such a document and final federal action set out in CEQ Regulation 1506.10(b)(2) will not apply to actions taken in these situations. Every attempt will be made to comply with the 90-day period which Regulation 1506.10(b)(1) requires between submission of the draft EIS and final EIS, with the draft EIS circulation being limited to appropriate agencies. Where schedules of international conferences make this impossible, the Section will notify CEQ as soon as possible of the circumstances with the purpose of fulfilling the intent of NEPA insofar as possible.

(3) In certain exceptional instances it may be necessary to reduce the 45-day period for agency comments set out in CEQ Regulation 1506.10(c). When this is the case, all agencies to whom the draft EIS has been sent will be informed by the Section of the reduced time period. The reduced time period must also be included in the public notice published in the **Federal Register.**

(4) From time to time there will arise good and valid reasons for a deviation from these procedures. The procedures are not intended to be a substitute for sound professional judgment. Accordingly, if and as problems arise which justify a deviation, the proposed deviation and supporting rationale shall be forwarded to the United States Commissioner, the head of the agency.

(5) Section 2(b) of Executive Order 11514 and CEQ Regulation 1506.6 establishes requirements for providing public information on federal actions and impact statements, and envisions extensive use of public hearings. Public hearings will be utilized by the Section only upon a determination by the head of the Section (United States Commissioner) that the requirements of carrying on international relations, including the constraints of time and the posture of the United States in

negotiations allow such hearings to be carried out without prejudice to the national interests.

(6) In those instances wherein the draft and/or final EIS is submitted to the Department (OES/ENH) for concurrence before distribution outside the Section, the Department has agreed to make its comments within thirty (30) days of receipt of an EIS from the Section.

f. Decision Documents

Environmental documents shall upon completion be made available to decision makers at any major decision point.

At the time of the decision or, if appropriate, its recommendation to the Congress, a concise public record of decision shall be prepared in accordance with CEQ Regulation § 1505.2 and shall:

(1) State what the decision was;

(2) Identify all alternatives considered and specify the agency's preferred alternative and the environmentally preferred alternative;

(3) Identify and discuss the factors leading to the decision including international consideration, national policy, economic and technical factors, and the Section's statutory mission; and

(4) Describe mitigation measures which are being included if the proposed action adversely impacts the environment.

No administrative action, to the maximum extent possible, is to be taken sooner than ninety (90) days after a draft EIS has been furnished to and received by the Environmental Protection Agency for CEQ, circulated for comment and, except where advance public disclosure will result in significantly increased cost of procurement to the Government, made available to the public. Further, no administrative action should be taken sooner than thirty (30) days after the final EIS, together with comments, has been received by the Environmental Protection Agency and made available to the public. In the event the final EIS is filed within ninety (90) days after a draft EIS has been circulated for comment, received by the Environmental Protection Agency and made public pursuant to these procedures, the thirty (30) day period and ninety (90) day period may run concurrently to the extent that they overlap. The time periods shall be computed from the date the Environmental Protection Agency publishes in the **Federal Register** that the EIS has been received and is available for public comment.

g. Actions Planned by Private Applicants

Actions planned by a private applicant or non-federal entities prior to or concurrent with the initiation of the Section's studies, or involving an existing project shall be handled in the following manner in accordance with CEQ Regulations 1501.2(d)(1), 1501.4(b), 1501.8(a), 1502.19(b), 1503.1(a)(3), 1506.1(d), 1506.5(a) and 1506.5(b):

(1) The potential applicant shall be advised by letter of the action being studied by the Section and that information pertaining to our studies is available and that the policies and types of information which may be required of a future applicant can be obtained from the Section's responsible official;

(2) Applicants shall be requested to participate in the Section's scoping process and any subsequent meetings;

(3) The Section shall provide time limits for processing the application if the applicant requests them;

(4) Copies of environmental documents prepared by the Section will be furnished to the applicant with a request for comments;

(5) The applicant will be informed of the results of studies conducted by the Section as to whether development by applicants of plans or designs or performance of other work necessary to support an application for federal, State or local permits or assistance is appropriate;

(6) The Section will assist the applicant by outlining the types of information required for either an environmental assessment or an EIS;

(7) The Section will review any assessment or EIS prepared by a private applicant or a non-federal entity to verify its accuracy and shall make its own evaluation of the environmental issues and accept responsibility for the scope and content of the environmental document.

100.8 Definition of Key Terms

The definition contained within CEQ Regulations, Part 1508, apply to these Procedures.

100.9 Budget Process

The requirement of NEPA, Water Quality Improvement Act, Executive Order No. 11514, the Regulation and Office of Management and Budget Bulletin No. 72-6, shall be met through the Section's budget process to the maximum extent practicable. The following requirements of the budget process will be met:

a. Legislation

This Section is responsible for identifying those of its legislative proposals, or favorable reports on bills on which it is the principal agency concerned, that would require the preparation of the EIS and receipt of the comments required the under Section 102 of NEPA. When there is doubt as to which is the principal agency concerned the Legal Adviser shall consult with the Office of Management and Budget's Legislative Reference Division.

The proposed Section 102(2) EIS and the required comments shall accompany legislative proposals and reports when these are sent to the Office of Management and Budget for clearance. Copies of this material shall have been previously furnished directly to the CEQ for its information. As a part of the normal clearance process, the Office of Management and Budget will circulate the proposed statements along with the proposals or reports to appropriate federal agencies and will consult with CEQ. In certain cases the clearance process may disclose the need for a Section 102(2) (C) EIS where none has been prepared. In this event the Office of Management and Budget will request the Section to develop and submit an EIS.

After differences, if any, with other agencies over the legislative proposal or report have been resolved and after the legislative proposal or report has been cleared by the Office of Management and Budget, the final EIS and comments shall accompany the proposal or report to the Congress as supporting material.

b. Annual Budget Estimates

In the event the Section has major program actions which significantly affect the quality of the human environment, annual budget estimates shall be accompanied by a special summary statement explaining generally the environmental impact expected to result from those activities and programs for which it is not possible to make an assessment of the potential impact on specific areas of the environment. Special summary statements shall include relevant information about general environmental problems that may be caused by proposed actions but which still must be assessed as plans for programs and activities are further refined. The special summary statement shall also include the following information by appropriation or fund account:

(1) *Action, project or activity.* Identify the agency actions and individual projects and activities and the amounts

of funds involved that are considered subject to Section 102(2)(C). Where the action is a part of a larger activity, identify only the project or action subject to Section 102(2)(C) and the amount involved.

(2) *Final EIS completed.* If there are significant unresolved issues with other agencies, include a copy of the EIS with the submission to the Office of Management and Budget.

(3) *EIS being prepared.* Give the status (e.g.—awaiting comments from interested parties) and estimated completion date.

If the Section prepares an EIS for any of its authorizing legislation it shall submit the EIS in lieu of a special summary statement required by paragraph b. above, except that the information required for the special summary exhibit shall be submitted along with the EIS. Copies of the special summary statement or the EIS (accompanied by information for the special summary exhibit) shall be furnished directly to the CEQ.

100.10 Lease, License, and Permit Applications

Lease, license and permit applications except for those types of leases and licenses which were previously enumerated as Categorical Exclusions, will be coordinated with federal, state and local agencies which are authorized to develop and enforce environmental standards. Comments from such agencies or from the Section will be presented to the applicant who will be given the opportunity to modify the application so as to remove the cause, if any, for an agency's objection that there will be a significant effect on the quality of the human environment.

The applicant may be required to develop at the applicant's expense the necessary environmental assessment or EIS as may be required by the Section, in addition to any information the applicant may wish to furnish in order to demonstrate that granting of the lease, license or permit is in the public interest. A summary of the information on which the EIS is based will be furnished to the public in the notice of public hearing and at the hearing if one is held. In the event an applicant does not take action to remove an objective, the Section will prepare the assessment or EIS required by Section 102(2)(C) of NEPA at the applicant's expense.

The applicant may propose mitigation measure to offset the ecological impacts of the proposed action, or the Section may proscribe such mitigation measures as it deems appropriate. Any such measures will be made a requirement of the lease, license or permit.

The granting of the lease, license or permit is the "federal action" which may require an environmental document. While the applicant has the duty and responsibility to undertake the environmental assessment and investigation, the Section has the primary and non-delegable responsibility for determining environmental impact of an action at every distinctive and comprehensive state. The Section may adopt the assessment after verifying it and concurring with the scope and conclusions of the assessment.

Failure of an applicant to furnish the requested information shall result in the denial of an application.

Leases, licenses or permits granted or approved by the Section will contain provisions to assure compliance with applicable air and water quality standards; to conserve and protect the environment including wetlands and to avoid, minimize or correct hazards to the public health and safety. The lessee, licensee or permittee will be required to provide adequate measures (mitigation) to avoid, control, minimize or correct erosion, contamination or other abuses and damages to the environment within or without the premises under lease, license or permit that may result from or have been caused by operations conducted on the premises.

Farming and grazing operations shall be conducted in accordance with recognized principles of good practice, conservation and prudent management. Land use stipulations or conservation plans to define such use and the measures necessary for the conservation, protection and control of the environment shall be incorporated in and made a part of the lease, license or permit.

Commercial and industrial developments may be permitted to be conducted on the premises under lease, license or permit if appropriate measures are taken so that the quality of the human environment will not be significantly affected, and providing such developments are in accord with the requirement Order No. 11938, "Floodplain Management," Executive Order No. 11990, "Protection of Wetlands," and the 1970 Boundary Treaty. Leases, licenses and permits shall contain provisions for the lessee, licensee or permittee to submit for advance approval, general and comprehensive plans of any proposed construction or developments for the use and conduct of operations as authorized for the premises prior to commencing any actual construction or development activities. Such plans, including architects' designs, construction specifications, machinery or equipment installation and operation or specifications for other operations or developments, shall provide measures necessary to protect, control or abate environmental pollution or abuses and avoid, minimize or correct hazards to the public health and safety.

Other uses as authorized by leases, licenses or permits issued shall conform to the requirements and provisions formulated for each such use as adapted to local conditions and the environmental factors which are in need of protection and control measures.

Due to the nature of this Section's leasing, licensing and permit program, all factors are to be carefully considered before determining what is needed for the protection of the environment, conservation and land use requirements.

Application involving power transmission lines will be prepared in accordance with the Bureau of Land Management, Department of the Interior, Regulations as published in Subchapter B, Subpart 2850 of Title 43 C.F.R. Section 2851.2–1 or any revisions or amendments thereto.

100.12 Operations at Construction Sites

Some operations that contribute to pollution and noise at construction sites and therefore require close surveillance, are enumerated in the following list:

a. Air Pollution

(1) Burning.
(2) Earth moving operations (dust).
(3) Sandblasting.
(4) Sprayed-on coatings.
(5) Soil stabilization operations (cement or lime).
(6) Concrete mixing plant (dust).
(7) Batch truck operation (dust).
(8) Winter heating equipment (smoke and fumes).
(9) Gunite operations (rebound).
(10) Asphalt operations (dust, smoke, volatiles).

b. Water Pollution

(1) Solid Wastes.
(2) Earth moving operations (runoff).
(3) Clearing operations (erosion).
(4) Core drilling and grouting operations (waste water).
(5) Wellpoint system runoff (erosion).
(6) Concrete operations:
(a) Aggregate washing,
(b) Spillage,
(c) Water curing,
(d) Washing of mixers and batch trucks.

c. Noise

(1) Pile driving.
(2) Equipment noise.

(3) Drilling and blasting.

(4) Rock crushing.

The construction engineer should ascertain that the contractor complies with:

(1) The current applicable federal regulations.

(2) The current applicable local regulations.

(3) Methods and restrictions of operations that are contract, permit and license requirements.

On projects where regulations and contract requirements do not specifically outline procedures, the contractor's cooperation should be encouraged in an effort to obtain a clean and safe operation.

Appropriate provisions will be included in the contract specifications for the works to be performed requiring compliance with federal, state and local pollution laws, regulations and rules. Examples of contract specifications are attached at Appendix A.

100.12 Section 309 of the Clean Air Act Amendments of 1970

Sections 1504.1 and 1508.19 of the CEQ's Regulation's require that, in addition to normal coordination procedures, the following procedures shall apply to coordination with the EPA:

a. Upon circulation of draft EIS to the EPA, comments shall be requested under both the NEPA and Section 309 of the Clean Air Act.

b. Comments of the Administrator, EPA, or his designated representative will accompany each final EIS on matters related to air or water quality, noise control, solid waste disposal, radiation criteria and standards or other provisions relating to the authority of EPA.

c. Copies of basic proposals (studies, proposed legislation, rules, leases, permits, etc.) will be furnished to EPA with each statement. For actions for which EIS are not being prepared but which involve the authority of EPA, EPA will be informed that no EIS will be prepared and that comments are requested on the proposal.

d. In the event EPA should, as a result of their considerations of factors covered during continuing coordination, indicate that the proposed action as presented is unsatisfactory from the standpoint of public health or welfare or environmental quality, the Division Engineer, Investigations and Planning Division, shall make every attempt to resolve the differences with EPA prior to completion of the draft EIS.

100.13 Predecision Referrals to CEQ

If a federal agency should refer an unresolved difference to CEQ for decision under Regulation 1504, the responsible official shall in fifteen (15) days draft the agency's response to the referring agency's recommendation addressing fully the issues raised in the referral, and providing evidence to support the agency's position.

If the Section determines, after unsuccessful attempts to resolve differences with a lead agency, an EIS for a proposed action has potential adverse environmental impacts, Chief, Planning and Reports Branch, shall document the impacts, the differences with the lead agency, the actions taken to resolve the differences, and include all information identified in CEQ Regulation 1504.3. The Legal Adviser shall prepare the outgoing documents listed in Regulation 1504.3 for consideration by the Commissioner after review by the Division Engineer, Investigations and Planning Division.

100.14 Responsibility as a Commenting Agency

The Chief, Planning and Reports Branch, will review draft and final EIS submitted by other agencies and prepare the draft letter of comments for the agency in keeping with the intent of CEQ Regulations 1503.2 and 1503.3. Such comments should be as specific, substantive and factual as possible without undue attention to matters of form in the EIS. Emphasis should be placed on the assessment of the environmental impacts of the proposed action, including the international aspects of the acceptability of those impacts on the quality of the environment, particularly as contrasted with impacts of reasonable alternatives to the action. The agency may in its comments recommend modifications to the proposed action and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts. Our comments should indicate the environmental interrelationship of the proposed action to any of our existing projects, or those being planned. The comments may include the nature of any monitoring of the environmental effects of the proposed project that appears particularly appropriate. If comments cannot be provided in the forty-five (45) day comment period, a request should be made for an extension of time, normally fifteen (15) days. In the event there are significant international factors to be considered, and completion of comments will require a longer extension of time, the request should explain the reason for the longer period.

100.15 Effective Date

These procedures supersede any draft of proposed procedures which has been published in the **Federal Register** or circulated to other agencies (local, state or federal), interested individuals, associations or groups. These procedures become effective upon the date of their publication in final form in the **Federal Register**.

Frank P. Fullerton,

Legal Adviser.

Appendix A

SC Landscape Preservation

(a) General—The Contractor shall exercise care to preserve the natural landscape and shall conduct his construction operations so as to prevent any unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the work. Except where clearing is required for permanent works, for approved construction roads and for excavation operations, all trees, native shrubbery, and vegetation shall be preserved and shall be protected from damage which may be caused by the Contractor's construction operations and equipment. Movement of crews and equipment within the right-of-way and over routes used for access to the work shall be performed in a manner to prevent damage to grazing land, crops, or property.

No special reseeding or replanting will be required under these specifications; however, on completion of the work all work areas shall be smoothed and graded in a manner to conform to the natural appearance of the landscape. Where unnecessary destruction, scarring, damage, or defacing may occur as a result of the Contractor's operations, as determined by the Contracting Officer, the same shall be repaired, replanted, reseeded, or otherwise corrected at the Contractor's expense.

(b) Construction roads—The locations, alignment, and grade of construction roads shall be subject to approval of the Contracting Officer. When no longer required by the Contractor, construction roads shall be made impassable to vehicular traffic and the surfaces shall be sacrificed and left in a condition which will facilitate natural revegetation.

(c) Contractor's yard area—The Contractor's shop, office, and yard area shall be located and arranged in a manner to preserve trees and vegetation to the maximum practicable extent. On abandonment, all storage construction buildings including concrete footings and slabs, and all construction materials and debris shall be removed from the site, or subject to the Contracting Officer's approval, may be buried on the site. The yard area shall be left in a neat and natural appearing condition.

(d) Costs—Except as otherwise provided, the cost of all work required by this paragraph shall be included in the prices bid in the schedule for other items of work.

SC Prevention of Water Pollution

The Contractor shall comply with applicable Federal and State laws, orders, and regulations concerning the control and abatement of water pollution.

The Contractor's construction activities shall be performed by methods that will prevent entrance, or accidental spillage, of solid matter, contaminants, debris, and other objectionable pollutants and wastes into streams, flowing or dry watercourses, lakes and underground water sources. Such pollutants and wastes include, but are not restricted to, refuse, garbage, cement, concrete, sewage effluent, industrial waste, radioactive substances, oil and other petroleum products, aggregate processing tailings, mineral salts, and thermal pollution. Sanitary wastes shall be disposed of in accordance with State and local laws and ordinances.

Unwatering work for structure foundations or earthwork operations near streams or watercourses shall be conducted in a manner to prevent excessive muddy water and eroded materials from entering the streams or watercourses by construction of intercepting ditches, bypass channels, barriers, settling ponds, or by other approved means.

Waste waters from aggregate processing, concrete batching, or other construction operations shall not enter streams, watercourses, or other surface waters without the use of such turbidity control methods as settling ponds, gravel filter entrapment dikes, approved flocculating processes that are not harmful to fish, recirculation systems for washing of aggregates, or other approved methods. Any such waste waters discharged into surface waters shall be essentially free of settleable material. For the purpose of these specifications, settleable material is defined as that material which will settle from the water by gravity during a 1-hour quiescent detention period.

Sanitary facilities shall be provided and maintained in accordance with the Department of Labor "Safety and Health Regulations for Construction".

The costs of complying with this paragraph shall be included in the prices bid in the schedule for the various items of work.

SC Abatement of Air Pollution

The Contractor shall comply with applicable Federal, State, interstate, and local laws and regulations concerning the prevention and control of air pollution.

In the conduct of construction activities and operation of equipment, the Contractor shall utilize such practicable methods and devices as are reasonably available to control, prevent, and otherwise minimize atmospheric emissions or discharges of air contaminants. Equipment and vehicles that show excessive emissions shall not be operated until corrective repairs or adjustments are made.

The Contractor's methods of storing and handling cement shall include means of controlling atmospheric discharges of dust.

Burning of materials resulting from clearing of trees and brush, combustible construction materials, and rubbish will be permitted only when atmospheric conditions for burning are considered favorable and the burning is done in accordance with Texas Air Control Board and local air pollution regulations. In lieu of burning, such combustible materials shall be removed from the site and disposed of in accordance with applicable regulations and laws.

During the performance of the work required by these specifications or any operations appurtenant thereto, whether on right-of-way provided by the Government or elsewhere, the Contractor shall furnish all the labor, equipment, materials, and means required, and shall carry out proper and efficient measures wherever and as often as necessary to reduce the dust nuisance, and to prevent dust which has originated from his operations from damaging crops, vegetation, lands, and dwellings, or causing a nuisance to persons. The Contractor will be held liable for any damages resulting from dust originating from his operations under these specifications on the Government right-of-way or elsewhere.

If the Contractor does not provide and perform the necessary dust control measures within a reasonable time after need for such control arises, the Government will cause the work to be performed and will backcharge the Contractor for such work.

The costs of complying with this paragraph, including the cost of sprinkling for dust control or other methods of reducing formation of air pollution shall be included in the prices bid in the schedule for the various items of work.

[FR Doc. 79-32994 Filed 10-25-79; 8:45 am]

BILLING CODE 4710-03-M

DEPARTMENT OF LABOR

Employment and Training Administration

Ending of Extended Benefit Period in the State of New Jersey

This notice announces the ending of the Extended Benefit Period in the State of New Jersey, effective on October 27, 1979.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970, Public Law 91-373; 26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. This Act is implemented by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when unemployment in the State or in all States collectively reaches the high levels set in the Act. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when unemployment in the State is no longer at the high levels set in the Act. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of New Jersey on October 27, 1974, and has now triggered off.

Determination of "Off" Indicator

The head of the employment security agency of the State of New Jersey has determined, in accordance with the State law and 20 CFR 615.12(e), that the average rate of insured unemployment in the State for the period consisting of the week ending on October 6, 1979, and the immediately preceding twelve weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the Extended Benefit Period in that State terminates with the week ending on October 27, 1979.

Information for Claimants

Persons who wish information about their rights to Extended Benefits in the State of New Jersey should contact the nearest local office of the New Jersey Department of Labor and Industry.

Signed at Washington, D.C., on the 22nd of October 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-33118 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-30-M

Office of the Secretary

Privacy Act Issuances; Annual Notice of Systems of Records

AGENCY: Office of the Secretary.

ACTION: Annual Publication of Systems of Records.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 to give annual notice of those records covered by the Act which they maintain.

Previous notices were compiled by the Office of the Federal Register into "Privacy Act Issuances—1978 Compilation." The purpose of this document is to publish in full the systems that this agency has published since the last full text publication of the systems of records (42 FR 49654, September 27, 1977 as updated at 43 FR 42106, September 19, 1978); and to add new systems of records which are being published for the first time.

DATE: Persons wishing to comment on the newly published systems may do so by November 26, 1979.

EFFECTIVE DATE: Unless otherwise noticed in the **Federal Register**, this notice shall become final November 26, 1979.

COMMENTS MAY BE ADDRESSED TO: Seth D. Zinman, Associate Solicitor for Legislation and Legal Counsel, U.S. Department of Labor, Room N–2428, 200 Constitution Ave. NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Sofia P. Petters, 523–8065.

Pursuant to 5 U.S.C. 552(a)(e)(4), section 3 of the Privacy Act of 1974, the Department of Labor hereby publishes notice of its system of records currently maintained pursuant to the Privacy Act of 1974. The systems were previously published at 42 FR 49654 (September 27, 1977); 43 FR 42106 (September 19, 1978); and in Volume III of the 1978 Privacy Act Issuances Compilation (page 184).[1] This notice republishes three new systems of records published in 1979; four systems of records not previously reported; and deletes two existing systems of records.

Since publication of the 1978 annual notice of systems of records at 43 FR 42106 (September 19, 1978), the Department of Labor has published three new systems of records: DOL/LMSA–18, Veterans Reemployment Rights Impact Survey and Analysis, 44 FR 10140 (February 16, 1979); DOL/LMSA–19, Private Pension Plans Benefit Payments, 44 FR 51373 (August 31, 1979) and DOL/LMSA–20, LMSA Division of Employee Protections, 44 FR 33753 (June 12, 1979).

LMSA–18 contains records compiled by a contractor for a statistical study analyzing the information delivery system of the Veterans Reemployment Rights program.

LMSA–19 contains records compiled by a contractor for the formulation of a date base on the benefits received by private pension plan beneficiaries.

LMSA–20 contains information on applicants covered by the Redwood Employee Protection Program activities.

The Department of Labor hereby publishes notice of four new systems of records: DOL/MSHA–17, MSHA Education and Training Activities Report; DOL/MSHA–18, Coal Mine Safety and Health Management Information System; DOL/MSHA–19, Supervisors' Records of Employees; and DOL/OIG–1, General Investigative Files. MSHA–17 contains information on work and leave time for MSHA personnel and on the type of assignments given to such personnel. MSHA–18 contains information on MSHA personnel and key officials at surface and underground coal installations. MSHA–19 contains information maintained by MSHA supervisors on current employees and employees departed within one year.

DOL/OIG–1 reflects the establishment of an Office of the Inspector General in the Department of Labor and the transfer to that office of certain functions carried out by other Department of Labor agencies. The system of records includes investigative and audit files on Department of Labor personnel, contractors and other persons whose activities are under investigation or review. The system includes those records previously maintained by the Directorate of Audit and Investigations, Office of the Assistant Secretary for Administration and Management and those previously maintained by the Employment Standards Administration, Office of Workers' Compensation Programs. These systems of records were published as DOL/OASAM–3, General Investigations Files, and DOL/ESA–23, Office of Workers' Compensation Act Investigation Files.

DOL/OIG–1 is reported as a new system of records because of the transfer of the function to an office with broader functions and because the co-mingling of the records from the two prior systems reflects a substantial change in the manner in which these systems are handled, as well as in their location. Since the two systems have been merged and are now maintained by a new agency, DOL/OASAM–3 and DOL/ESA–23 are hereby deleted.

The changes in the systems of records for the Department of Labor are as follows:

DOL/LMSA–18: Veterans Reemployment Rights Impact Survey and Analysis—new system.

DOL/LMSA–19: Private Pension Plans Benefit Payments—new system.

DOL/LMSA–20: LMSA Division of Employee Protections—new system.

DOL/MSHA–17: MSHA Education and Training Activities Report—new system.

DOL/MSHA–18: Coal Mine Safety and Health Management Information System—new system.

DOL/MSHA–19: Supervisors' Records of Employees—new system.

DOL/OIG–1: General Investigative Files—new system.

DOL/OASAM–3: General Investigations File—deleted.

DOL/ESA–23: Office of Workers' Compensation Act Investigations Files—deleted.

This notice fulfills the annual notice requirements of the Privacy Act for the year 1979.

Dated: October 23, 1979.

Ray Marshall,

Secretary of Labor.

DOL/LMSA–18

SYSTEM NAME:

Veterans' Reemployment Rights Impact Survey and Analysis.

SYSTEM LOCATION:

Arthur Young and Company, 1025 Connecticut Avenue NW., Washington, D.C. 20036 and Market Facts, Inc., 1750 K Street NW., Washington, D.C. 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Recently discharged veterans of military service.
2. Members of military reserve.
3. National Guard members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal, employment, and reemployment data on reservists, National Guard members, and recently discharged veterans.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 43 of Title 38, United States Code and predecessor statutes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Arthur Young and Company—to aid contractor in developing alternate information delivery systems.

Department of Defense, National Committee for Employer Support of the Guard and Reserve and Veterans' Administration.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Lists of names and addresses maintained in locked files until transferred to computer tapes. Tapes

[1] This volume may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The price of the volume is $10.25.

returned to original source after use. Tapes and questionnaires maintained by Arthur Young with access limited to authorized personnel and then returned to Department of Labor and stored in locked files until eventual destruction. Statistical analysis on computer tape and then distributed to appropriate agencies.

RETRIEVABILITY:

By name and address of individual until tabulation of survey data. After coding of questionnaires, retrievable solely through statistical category with no individual identifications.

SAFEGUARDS:

Original lists maintained in locked files at Department of Labor until transferred to tapes by contractor. Address tapes, post cards and questionnaires maintained by contractor, Arthur Young, with access limited to personnel working on contract. Materials are not used for any other purpose. Individual identifiers will be removed from questionnaires upon coding for computers.

RETENTION AND DISPOSAL:

Final report retained by systems managers for Department of Labor, Department of Defense, Veterans' Administration, and the National Committee for Employer Support of the Guard and Reserve. Post cards destroyed by Arthur Young after telephone interviews completed. Lists and address tapes returned to Department of Defense and Department of Labor to be erased. Questionnaires retained in locked files for 6 months by systems manager, Department of Labor, and then destroyed.

SYSTEMS MANAGER(S) AND ADDRESSES:

William J. Kruse, Arthur Young and Company, 1025 Connecticut Avenue NW., Washington, D.C. 20036.

James T. Heisler, Market Facts, Inc., 1750 K Street NW., Washington, D.C. 20036.

Walter Steiner, U.S. Department of Labor, Labor-Management Services Admin., Room N–4101, 200 Constitution Avenue NW., Washington, D.C. 20216.

NOTIFICATION PROCEDURE:

Walter Steiner, Systems Manager.

RECORD ACCESS PROCEDURES:

As above.

CONTESTING RECORD PROCEDURES:

As above.

RECORD SOURCE CATEGORIES:

Data voluntarily provided by veterans, reservists, and members of the National Guard in telephone survey.

DOL/LMSA–19

SYSTEM NAME:

Private Pension Plan Benefit Payments.

SYSTEM LOCATION:

Arthur Young & Company, 1025 Connecticut Ave., N.W., Washington, D.C. 20036, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210, Social Security Administration, Baltimore, Md.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retirees, Terminated Employees and Beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data collected in field survey and transferred into magnetic tape.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 43 of Title 38, United States Code and predecessor statutes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Arthur Young & Company to create data base. The Social Security Administration to link up with social security records and creates final data base. The Department may hire other contractors for further tape manipulation or to rearrange the contents of the tape.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape.

RETRIEVABILITY:

Indexed by social security number.

SAFEGUARDS:

Tapes and other documents containing the personal information being collected and processed by Arthur Young & Company under this contract are to be accessible only to personnel working on the contract to create the data base. Materials are not to be used for any other purpose. The same safeguards hold for the U.S. Department of Labor and the Social Security Administration.

RETENTION AND DISPOSAL:

Has not yet been decided.

SYSTEMS MANAGER(S) AND ADDRESS:

Director, Office of Policy Planning and Research, Pension and Welfare Benefit Programs, Labor Management Services Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

NOTIFICATION PROCEDURE:

As above.

RECORD ACCESS PROCEDURES:

As above.

CONTESTING RECORD PROCEDURES:

As above.

RECORD SOURCE CATEGORIES:

Pension plan records of private pension plan administrators.

DOL/LMSA–20

SYSTEM NAME:

LMSA, Division of Employee Protections.

SYSTEM LOCATION:

Redwood Program Office, Federal Office Building, Room 101, 5th & H Streets, Eureka, California 95501.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Redwood Employee Protection Program Applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Financial, medical, and personal information concerning applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–250.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Not disclosed to public. Used as supporting and background information in eligibility determinations for Program benefits. Information can be shared with the following agencies:

California Economic Development Department.

All participating Health & Welfare Trusts, Administrators, and Pension Insurance Carriers.

Prospective employers of affected employees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3×5 index cards; letter size folders.

RETRIEVABILITY:

Filed alphabetically, manually, and by Social Security Number.

SAFEGUARDS:

Maintained in Eureka branch office of LMSA, accessible to Program personnel only.

RETENTION AND DISPOSAL:

September 30, 1996.

SYSTEMS MANAGER(S) AND ADDRESS:

Mr. Michael Venuto, Program Officer, Redwood Program Office, Federal Office Building, Room 101, 5th & H Streets, Eureka, California 95501.

NOTIFICATION PROCEDURE:

Address as above.

RECORD ACCESS PROCEDURES:

Written requests should be submitted to: Ms. Beatrice Burgoon, Disclosure Officer, Room N-5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216.

CONTESTING RECORD PROCEDURES:

See "Record access procedures."

RECORD SOURCE CATEGORIES:

Individual applicants, employer health and welfare trusts, California Economic Development Department.

DOL/MSHA-17

SYSTEM NAME:

MSHA Education & Training Activities Report.

SYSTEM LOCATION:

Qualification & Certification Unit, Education & Training, Mine Safety and Health Administration, U.S. Department of Labor, 730 Simms Street, Lakewood, Colorado 80215 and all Training Centers listed in appendix.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

MSHA Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel activity records including work times, allocated according to types of assignments, and leave time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Section 302(a) of Public Law 95-164.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To record the time utilization of Education and Training personnel and:

A. to determine the workload and work scheduling

B. to assist in budgeting & staffing of Education and Training

C. to assess training needs of MSHA personnel

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files. Punchcards and Mag tapes.

RETRIEVABILITY:

Computerized records are indexed by social security number and training center.

SAFEGUARDS:

Manual records kept in locked file cabinets. Computerized data accessible only by authorized personnel.

SYSTEM MANAGER(S) AND ADDRESS:

Education Specialist, Qualification & Certification Unit, Education & Training, MSHA, 730 Simms St., Lakewood, Colorado 80215.

NOTIFICATION PROCEDURE:

To determine whether the records are maintained on you in this system write the system manager, or to the Training Centers cited under "system location".

RECORD ACCESS PROCEDURES:

To see your records write the systems manager or the Training Centers under "system location". Describe as specifically as possible the records sought.

CONTESTING RECORD PROCEDURES:

To request correction or the removal of material from your files write the system manager.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

DOL/MSHA-18

SYSTEM NAME:

Coal Mine Safety and Health Management Information System.

SYSTEM LOCATION:

(1) Office of the Administrator for Coal Mine Safety and Health, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, Virginia 22203. (2) Basically all District and Subdistrict Offices (See appendix for addresses).

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

All Coal Mine Safety and Health personnel and key officials at surface and underground coal installations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Annual manpower and activity plans; operational characteristics of surface and underground coal operations; identification of key officials at individual mines; functional time utilization information for all Coal Mine Safety and Health personnel; location categorization of all time utilized by inspection personnel for on-site visits to individual mines; violation information on individual mines, and information on plans and other documents submitted by coal mine operators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

30 U.S.C. 813; 29 U.S.C. 668.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To record the time utilization of Coal Mine Safety and Health personnel and:

A. To maintain information on characteristics of mining operations.

B. To maintain violation information.

C. To monitor the submission and subsequent actions taken on plans and other documents submitted by coal mine operators.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files. Magnetic tape and disk units.

RETRIEVABILITY:

By mine identification number, social security number for noninspection personnel, Authorized Representative for inspection personnel, by organization code, and by violation number.

SAFEGUARDS:

Access limited to authorized representatives in regard to computerized data. Manual records kept in locked file cabinets.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator for Coal Mine Safety and Health, Department of Labor, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

NOTIFICATION PROCEDURE:

To determine whether the records are maintained on you, write to the System Manager.

RECORD ACCESS PROCEDURES:

To see your records, write the System Manager. Describe as specifically as possible the records sought.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of materials from your files, write to the System Manager.

RECORD SOURCE CATEGORIES:

Coal Mine Safety and Health personnel submit inspection, time

utilization, violation and other enforcement information in accordance with prescribed procedures.

DOL/MSHA-19

SYSTEM NAME:

Supervisors' Records of Employees.

SYSTEM LOCATION:

Authorized to be maintained by immediate supervisors and one additional organizational level at all facilities of the Mine Safety and Health Administration. (See Appendix for addresses.)

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

Current employees and employees departed within the past year.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records related to individuals while employed by the Mine Safety and Health Administration and contain such information as: emergency addressee information; record of personnel actions; record of employee/supervisor discussions; supervisory copies of officially recommended actions such as personnel actions, awards, disciplinary actions, and training requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 2951, 4118, 4308, 4506, 3101, 43 U.S.C. 1457, Reorganization Plan 3 of 1950, Executive Order 10561 (September 13, 1954).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The employee record is used as a source of data to initiate requests for personnel actions, to plan and schedule training, to counsel employees on their performance, to establish a basis for proposing commendations or disciplinary actions, and to carry out their personnel management responsibilities in general. (2) To complete reference checks or supervisory appraisals. (3) Transfer to the U.S. Department of Justice in the event of litigation involving the records or the subject matter of the records. (4) Transfer, in the event there is indicated a violation or potential violation of a statute, rule, regulation, order or license, whether civil, criminal or regulatory in nature, to the appropriate agency or agencies, whether Federal, State, local or foreign, charged with the responsibility of investigation or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, order or license violated or potentially violated.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on SF-7B's and/or authorized attachments thereto.

RETRIEVABILITY:

Records are indexed by any combination of name or Social Security Account Number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are maintained on current employees. Records on former employees are kept for one year, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Personnel Officer, 4015 Wilson Boulevard, Arlington, Virginia 22203.

NOTIFICATION PROCEDURE:

An individual may inquire whether or not the system contains a record pertaining to him by contacting his supervisor and/or the Personnel Office who services the installation where the employee is (or was) employed. See 43 CFR 2.60 for procedures.

RECORD ACCESS PROCEDURES:

Requests for access to records should be addressed to the requester's supervisor and/or the Personnel Office servicing the installation where the employee is (or was) employed. See 43 CFR 2.63 for procedures.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the appropriate System Manager and must meet the content requirements of 43 CFR 2.72.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or is derived from information he supplied, except information provided by agency officials.

DOL/OIG-1

SYSTEM NAME:

General Investigative Files, Case Tracking Files, and Subject/Title Index, USDOL/OIG.

SYSTEM LOCATION:

In the Headquarters Office of the Inspector General, U.S. Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, and in the OIG Investigative Field Office listed at 29 CFR Part 70a.4.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOL employees, applicants, contractors, subcontractors, grantees, subgrantees, claimants, individuals threatening DOL employees or the Secretary of Labor, alleged violators of Labor laws and regulations, union officers, individuals investigated and interviewed; and individuals filing claims for workers' compensation benefits under (1) the Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101 et seq.) (except 8149 as it pertains to the Employees' Compensation Appeals Board) (2) the Longshoremen's and Harbor Workers' Compensation Act as amended and extended (33 U.S.C. 901 et seq.) (except 33 U.S.C. 921(b) as it applies to the Benefits Review Board) and (3) Title IV, Section 415 and Part C, of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, 30 U.S.C. 901 et seq; individuals providing medical and other services to OWCP; employees of insurance companies and of medical and other services provided to OWCP; and other persons suspected of violations of law under the above Acts and related civil and criminal provisions.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains investigation files regarding possible violations of Federal law whether civil or criminal, resolution of investigations of criminal or conduct violations, investigatory index card files, information relating to investigations under the LMRDA-1959 and EO 11491 and information concerning possible violations of (1) the Federal Employees' Compensation Act and related Acts (2) the Longshoremen's and Harbor Workers' Compensation Act and related Acts and (3) Title IV, Section 415 and Part C, of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, 30 U.S.C 901 et seq. This information may be derived from records filed with the Department of Labor, other Federal, State and local departments and agencies, court records, medical records, insurance records, records of employers, articles from publications, published financial data, corporate information, bank information, telephone data, statements of witnesses information received from Federal, State, local and foreign regulatory and law enforcement organizations and from other sources. The records also contain information obtained by DOL investigators, auditors, and other government personnel and consultants involved in investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

EO 11222, EO 11491, LMRDA–1959, 5 U.S.C. 301, 5 U.S.C. 8101 et seq.; 20 CFR 1.1, et seq.; 33 U.S.C. 901 et seq.; 20 CFR 701 et seq.; 36 U.S.C. 501 et seq.; 42 U.S.C. 1951 et seq.; 43 U.S.C. 1331 et seq.; 5 U.S.C. 8171 et seq.; 30 U.S.C. 901 et seq.; 20 CFR 715 et seq.; 20 CFR 720.1 et seq.; 20 CFR 725.1 et seq., and Pub. L. 95–452.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to other Federal, State and local law enforcement agencies for civil or criminal law enforcement, including the Justice Department regarding potential litigation and during the course of actual litigation. These records may be disclosed to other Federal Agencies for hiring or retention of employees, security clearances, letting of contracts, issuance of licenses, grant or other benefits, and in the President's Anti-Organized Crime Program, in any proceeding where the Federal Employees' Compensation Act and related Acts, Longshoremen's and Harbor Worker's Compensation Act and related Acts, Title IV, Section 415 and Part C, of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972 is in issue or in which the Secretary of Labor, any past or present Federal employee or consultant directly or indirectly involved in investigations or other enforcement activities under the above Acts is a party or otherwise involved in an official capacity. Records may also be provided to the Merit Protection Board and Office of Personnel Management.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is maintained both as written records stored in manual case files and on 3 × 5 index file cards, and as automated case files stored on punch cards, disc/magnetic tape, and computer printed listings. The investigative files and indicies are stored in steel file and lektriever cabinets or in Federal Records Centers (FARC). These records are maintained in limited access areas during duty hours and in locked offices at all other times.

RETRIEVABILITY:

The written case records are indexed by case number, while the file cards are indexed by subject name. The automated records are retrieved by using batch retrieval applications.

SAFEGUARDS:

Direct access is restricted to authorized staff members of the OIG. Access within DOL is limited to the Secretary, Under-Secretary, Inspector General, and other officials and employees on a need-to-know basis. Automated records can be accessed only through use of confidential procedures and passwords.

RETENTION AND DISPOSAL:

Investigative case files are retained for 5 years after completion of the investigation and/or actions based thereon, and are transferred to the Federal Records Centers (FARC). The files are held in FARC for 10 years and then destroyed. Index and cross-index cards are retained permanently. The disposal process for the automated records has not yet been defined.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of Inspector General, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1303, Washington, D.C. 20210.

NOTIFICATION PROCEDURE:

Mail all inquiries to System Manager at above address.

RECORD ACCESS PROCEDURES:

Investigatory data compiled for civil or criminal law enforcement purposes are exempt from the access provisions pursuant to 5 U.S.C. 552a(J)(k). Individuals desiring to contest or amend information maintained in the system should direct their requests to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The information contained in this system was received from individual complaints, witnesses, interviews conducted during investigations, respondents, Federal, State and local government records, individual or company records, claim and payment files, employees, insurers, service providers, grantees, sub-grantees, contractors and sub-contractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

a. *Criminal Law Enforcement:* In accordance with paragraph 3(j)(2) of the Privacy Act, information maintained in the files of the Office of Inspector General is exempt from all provisions contained in 5 U.S.C. 552a except those requirements set forth in paragraphs (b), (c) (1) and (2), (e)(4) (A) through (F)(e) (6), (7), (9) (10) and (11), and paragraph (i) of the Act. A function of OIG is that of enforcement of criminal laws within (1) the meaning of 5 U.S.C. 552a(j)(2), and (2) the provisions of the President's Anti-Organized Crime Program and Titled II, V, and VI of the Labor-Mangement Reporting and Disclosure Act of 1959; as amended. The disclosure of information contained in the criminal investigative files, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations could enable subjects to take such action as is necessary to prevent detection of criminal activities, conceal evidence, or to escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their respective families, and could jeopardize the safety and well-being of investigative personnel and their families. This imposition of certain restrictions on the manner in which investigative informtion is collected, verified or retained would impede significantly the effectiveness of OIG investigatory activities, and in addition, may often preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

b. *Other Law Enforcement:* In accordance with paragraph 3(k)(2) of the Privacy Act, investigatory material compiled for law enforcement purposes other than material declared exempt under paragraph 3(j)(2) of the Act, including certain material compiled from reciprocal investigations, which is maintained in OIG investigative files is exempt from paragraphs (c)(3), (d), (e)(4), (G), (H) and (I), and (f) of 5 U.S.C. 552a, until such time as a determination is made based upon such information. The disclosure of information contained in civil investigative files, including names of persons and agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations would enable subjects to take such action as is necessary to prevent detection of illegal activities, conceal evidence, or otherwise escape civil enforcement action. Disclosure of this information could lead to the intimidation of, or harm to informants, witnesses, and their respective families, and in addition,

could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, and retained would also impede significantly the effectiveness of OIG investigatory activities.

c. *Protective Service:* In accordance with paragraph 3(k)(3) of the Act, OIG investigatory material maintained in connection with assisting the U.S. Secret Service (USSS) to provide protective service to the President of the United States or other individuals pursuant to Section 3056 of Title 18 is exempt from paragraph (c)(3), (d), (e)(4), (G)(H), and (I) paragraph (f) of the Act. This exemption will enable OIG to continue its support of the U.S. Secret Service without compromising the effectiveness of either agency's activity.

d. *Contract Investigations:* In accordance with paragraph 3(k)(5) of the Act, investigatory material compiled in connection with contract investigations solely for the purpose of determining integrity, suitability, eligibility, or qualification for a DOL contract is exempt from paragraphs (c)(3), (d) and (f) of the Act to the extent that disclosure of such material would reveal the identity of a confidential source when an express promise has been given to withhold the identity of the source (or prior to September 27, 1975, under an implied promise that the source's identity would not be revealed). This exemption is necessary for OIG to collect information from certain sources who would otherwise be unwilling to provide information necessary to conduct such investigations.

[FR Doc. 79-33189 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-23-M

Abbott Machine Co., Inc., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, 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, or such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 5, 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 November 5, 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 18th day of October 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petiton	Petiton No.	Articles produced
Abbott Machine Co., Inc. (workers)	Wilton, N.H	10/11/79	10/3/79	TA-W-6,224	Textile equipment.
Avtex Fibers, Inc., Aston Plant (ACTWU)	Aston, Pa	10/16/79	10/11/79	TA-W-6,225	Textile machine parts.
Brown Shoe Co. (ACTWU—Shoe Division)	Leachville, Ark	10/16/79	10/8/79	TA-W-6,226	Children's and Women's shoes.
Consolidation Coal Co., Rowland Mine (workers).	Workman Creek, W. Va	10/10/79	9/17/79	TA-W-6,227	Coal.
Dickerson Trucking Company, Inc. (workers)	Dehue, W. Va	10/16/79	10/10/79	TA-W-6,228	Haul coal, rock, and gravel.
Dietrich Brothers (workers)	Baltimore, Md	10/15/79	10/9/79	TA-W-6,229	Fabricated steel, rebars, ornamental iron (railing).
Excel Corporation (UAW)	Elkhart, Ind	10/11/79	10/1/79	TA-W-6,230	Windows for automotive and truck industry.
Flavorland Industries, Inc. (workers)	Toppenish, Wash	10/16/79	10/8/79	TA-W-6,231	Beef slaughtering.
Gold Medal Cedar Products (workers)	Garibaldi, Oreg	10/16/79	10/9/79	TA-W-6,232	Cedar roofing (shingles and shakes).
H & D Coal Co., Inc. (company)	North Tazewell, Va	10/16/79	10/3/79	TA-W-6,233	Coal.
Instrument Specialties Co. (workers)	West Paterson, N.J	10/16/79	10/5/79	TA-W-6,234	Springs for electronic parts.
Molins Machine Co., Inc., Langston Division (workers).	Cherry Hill, N.J	10/16/79	10/5/79	TA-W-6,235	Machinery for corrugated wood products.
Palm Beach Co. (ACTWU)	Rockwood, Tenn	10/9/79	10/3/79	TA-W-6,236	Men's vests and pants.
Peerless Umbrella Co., Inc. (company)	New York, N.Y	10/16/79	10/11/79	TA-W-6,237	All types of umbrellas.
Sands Fashions (workers)	New York, N.Y	10/16/79	10/11/79	TA-W-6,238	Ladies' coats, leather and suede.
Sophia Electric (USWA)	Sophia, W. Va	10/16/79	10/2/79	TA-W-6,239	Repair of electric motors, also coils.

[FR Doc. 79-33105 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5527, et al.]

Act III, Inc., and Butte Knitting Mills, Inc., Divisions of Jonathan Logan, Inc.; Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification Regarding Eligibility To Apply for Worker Adjustment Assistance on August 7, 1979, applicable to all workers covered under the following petitions, TA-W-5527, TA-W-5528, TA-W-5531, TA-W-5532, TA-W-5533, TA-W-5537, TA-W-5538, TA-W-5539, TA-W-5540, TA-W-5543, TA-W-5545, and TA-W-5548 cited above of Act III, Inc., Division of Jonathan Logan, Inc., Spartanburg, South Carolina. The Notice of Certification was published in the Federal Register on August 14, 1979, (44 FR 47636). The Department also issued another Certification of Eligibility To Apply for Worker Adjustment Assistance on August 7, 1979, (44 FR 47638), applicable to all workers covered under the following petitions, TA-W-5530, TA-W-5530A, TA-W-5534, TA-W-5535, TA-W-5536, TA-W-5542, TA-W-5544, TA-W-5547, TA-W-5549, TA-W-5689, TA-W-5715 and TA-W-5717 cited above of Butte Knitting Mills, Inc., Division of Jonathan Logan, Inc., Spartanburg, South Carolina.

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, revised the certifications. The review revealed that several subdivisions of Jonathan Logan, Inc., Spartanburg, South Carolina, were certified under the two above-mentioned certifications. The review further revealed that several workers in Spartanburg, South Carolina, were employed by more than one of these certified subdivisions in the 52 weeks prior to their layoffs.

The intent of the certifications is to cover all workers at several locations at Act III and Butte Knitting Mills, Divisions of Jonathan Logan, Inc., Spartanburg, South Carolina, who were affected by the decline in the sales or production of ladies' suits and dresses related to import competition. The certifications, therefore, are revised to include all workers at the Act III Division and the Butte Knitting Mills Division of Jonathan Logan, Inc., Spartanburg, South Carolina.

The separate certifications applicable to the Act III Division and the Butte Knitting Mills Division of Jonathan Logan, Inc., Spartanburg, South Carolina, are hereby revised as follows:

All workers of the following facilities of Act III, Inc., and Butte Knitting Mills, Inc., who became totally or partially separated from employment on or after the indicated impact dates are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

TA-W-	Plant	Impact date
5527	Act III Distribution Center, Spartanburg, S.C.	5/23/78
5528	Andrew Knit, Tuscaloosa, Ala.	5/23/78
5530	Butte Knitting Mills, Spartanburg, S.C.	5/23/78
5530A	David Knit, Northumberland, Pa.	5/23/78
5531	Columbus Fashions, Columbus, Ga.	5/23/78
5532	Debra Knit, Northport, Ala.	5/23/78
5533	Eufaula Fashions, Eufaula, Ala.	5/23/78
5534	Greene Manufacturing Co., Greeneville, Tenn.	5/23/78
5535	Jonathan Logan Transportation, Spartanburg, S.C.	5/23/78
5536	Kim Fashions, Hialeah, Fla.	5/29/78
5537	Livingston Fashions, Livingston, Ala.	5/23/78
5538	Lynn Fashions, Brent, Ala.	5/23/78
5539	Margaret Fashions, Panama City, Fla.	5/23/78
5540	Michael Fashions, Miami, Fla.	5/29/78
5542	Nancy Fashions, Spartanburg, S.C.	5/23/78
5543	Oxford Fashions, Oxford, Ala.	5/23/78
5544	Plaza Manufacturing Co., Spartanburg, S.C.	5/23/78
5545	Roanoke Fashions, Roanoke, Ala	5/23/78
5547	Sandra Fashions, Sanford, Fla.	5/23/78
5548	Stevens Fashions, Carrollton, Ala.	5/23/78
5549	Terrence Fashions, Miami, Fla.	5/29/78
5689	York Dress Company, York, Pa.	6/25/78
5715	Tracey Fashions, Chambersburg, Pa.	6/25/78
5717	Westminster Knit Corporation, Westminster, Md.	6/25/78

Signed at Washington, D.C., this 18th day of October 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-33106 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5898]

Aris Electric Co., Inc., Brooklyn, N.Y.; 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.

The investigation was initiated on August 27, 1979, in response to a worker petition received on August 21, 1979, which was filed by the Industrial Union of Marine & Shipbuilding Workers of America on behalf of workers and former workers of Aris Electric, Brooklyn, New York, engaged in conversion, repair, overhaul, and maintenance of marine vessels. The investigation revealed that the legal title of the firm is Aris Electric Company, Incorporated.

Aris Electric Company, Incorporated is engaged in providing the service of installing, repairing, and winding electrical equipment of ships.

Thus, workers of Aris Electric Company, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Aris Electric Company, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Aris Electric Company, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in installing, repairing, and winding electrical equipment at Aris Electric Company, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Aris Electric Company, Incorporated. All employee benefits are provided and maintained by Aris Electric Company, Incorporated. Workers are not, at any time, under employment or supervision by customers of Aris Electric Company, Incorporated. Thus, Aris Electric Company, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Aris Electric Company, Incorporated, Brooklyn, New York 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 19th day of October 1979.

Harry J. Gilman,

Supervisory Interational Economist, Office of Foreign Economic Research.

[FR Doc. 79-33107 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

Arthur Richards, Ltd., 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 of 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 related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 5, 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 November 5, 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 23rd day of October 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Arthur Richards, Ltd. (ACTWU)	New York, N.Y	10/9/79	10/3/79	TA-W-6,240	Tailored clothing.
Bishop Coal Corp., Dry Fork Mine #37 (workers).	Bandy, Va	10/17/79	10/8/79	TA-W-6,241	Mine coal.
Eleanor Brenner, Inc. (ILGWU)	New York, N.Y	10/10/79	10/4/79	TA-W-6,242	Dresses and sportswear.
Elkins Energy Corp. (UMWA)	Clintwood, Va	10/17/79	10/10/79	TA-W-6,243	Mine coal.
Globe Union, Inc., Sounobuoy Department, Keefe Battery Plant (Allied Industrial Workers of America).	Milwaukee, Wis	10/18/79	10/11/79	TA-W-6,244	Seawater batteries.
International Shoe Company, Gratiot Street Truck Terminal (Teamsters).	St. Louis, Mo	10/12/79	10/4/79	TA-W-6,245	Receive and transport materials to shoe plants and to transport finished shoes to the warehouse.
Jay Garment Company (ACTWU)	Clarksville, Tenn	10/10/79	10/1/79	TA-W-6,246	Work suits and work shirts.
The Mohawk Rubber Company (workers)	Memphis, Tenn	10/18/79	10/12/79	TA-W-6,247	Warehousing of passenger tires, light weight and heavy duty truck tires.
Mr. Knit, Inc. (ILGWU)	New York, N.Y	10/10/79	10/8/79	TA-W-6,248	Ladies' bathing suits and sportswear.
Phoenix Clothes (ACTWU)	Vineland, N.J	10/10/79	9/28/79	TA-W-6,249	Men's coats and vests.
Quality Coat Co., Inc. (ACTWU)	New York, N.Y	10/9/79	10/3/79	TA-W-6,250	Ladies' apparel.
Quality Coat Co. (ACTWU)	New York, N.Y	10/9/79	10/3/79	TA-W-6,251	Ladies' apparel.
Riverside Novelty (ACTWU)	Paterson, N.J	10/10/79	10/2/79	TA-W-6,252	Roller printing on materials.
Smart Maid Coat & Suit Corp. (ILGWU)	New York, N.Y	10/10/79	10/4/79	TA-W-6,253	Misses and junior's coats.
Simpson Trucking Company (workers)	Gilbert, W. Va	10/18/79	10/11/79	TA-W-6,254	Hauled metallurgical coal.

[FR Doc. 79-33108 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5847]

Bay-Bee Shoe Co., Dresden, Tenn.; 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 August 13, 1979, in response to a worker petition received on August 8, 1979, which was filed on behalf of workers and former workers producing children's western-style boots at Bay-Bee Shoe Company, Dresden, Tennessee. It is concluded that all of the requirements have been met.

U.S. imports of nonrubber footwear increased absolutely and relative to domestic production in 1978 compared to 1977 and in the first quarter of 1979 compared to the like period in 1978. U.S. imports of children's nonrubber footwear, except athletic increased relative to domestic production in the first quarter of 1979 compared to the like quarter of 1978.

Bay-Bee Shoe Company is a contractor producing children's western-style boots for a single manufacturer. This manufacturer's sales declined in the first eight months of 1979 compared to the like period in 1978. The Department surveyed customers of this manufacturer. The survey revealed that a customer accounting for a significant proportion of the Manufacturer's sales decline reduced its domestic purchases of children's boots in 1979 and increased its import purchases at that time.

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 western-style boots produced at Bay-Bee Shoe Company, Dresden, Tennessee 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 Bay-Bee Shoe Company, Dresden, Tennessee who became totally or partially separated from employment on or after October 14, 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 18th day of October 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-33109 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5960]

Bethlehem Steel Corp., Hoboken, Shipyard, Hoboken, N.J.; 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.

The investigation was initiated on September 5, 1979 in response to a worker petition received on August 21, 1979 which was filed by the Industrial Union of Marine and Shipbuilding Workers of America on behalf of workers and former workers converting, repairing, and overhauling marine vessels at Bethlehem Steel Corporation, Hoboken Shipyard, Hoboken, New Jersey. The investigation revealed that the Hoboken Shipyard operates a repair facility at Bayonne, New Jersey.

Bethlehem Steel Corporation, Hoboken Shipyard is engaged in providing the service of repairing, overhauling and converting U.S. merchant and naval vessels and foreign-flag ships.

Thus, workers of Bethlehem Steel Corporation, Hoboken Shipyard do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Bethlehem Steel Corporation, Hoboken Shipyard by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory critiera for certification and that reduction must directly relate to the product impacted by imports.

Bethlehem Steel Corporation, Hoboken Shipyard and its customers have no controlling interest in one another. The subject firm does not build ships nor does it provide parts for ships being built at other shipyards.

All workers engaged in reparing, overhauling and converting ships at Bethlehem Steel Corporation, Hoboken Shipyard are employed by that firm. All personnel actions and payroll transactions are controlled by Bethlehem Steel Corporation, Hoboken Shipyard. All employee benefits are provided and maintained by Bethlehem Steel Corporation. Workers are not, at any time, under employment or supervision by customers of Bethlehem Steel Corporation, Hoboken Shipyard. Thus, Bethlehem Steel Corporation, Hoboken Shipyard, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After carefule review, I determine that all workers of Bethlehem Steel Corporation, Hoboken Shipyard, Hoboken, New Jersey are denied elgibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of October 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-33110 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

Cabin Creek Coal Co., 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 interst in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 5, 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 November 5, 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 4th day of September 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 produces
Cabin Creek Coal Co., Coal Fork Mine No. 1 (UMWA).	Cabin Creek, W. Va	8/29/79	8/21/79	TA-W-5,950	Metallurgical coal.
Cabin Creek Coal Co., Coal Fork Mine No. 2 (UMWA).	Cabin Creek, W. Va	8/29/79	8/21/79	TA-W-5,951	Metallurgical coal.
Menser Industries, Inc. (ACTWU)	Plymouth, Ind	8/27/79	8/21/79	TA-W-5,952	Bedspreads, baby blankets, pot holders, and other miscellaneous merchandise.
Packing Corporation of America (workers)	Clifton, N.J	8/27/79	8/23/79	TA-W-5,953	Corrogated boxes.
Reserve Mining Co. (USWA)	Silver Bay, Minn	8/16/79	8/10/79	TA-W-5,954	Taconite pellets.
Richcraft Textile Corp. (ACTWU)	Easton, Pa	8/27/79	8/21/79	TA-W-5,955	Textile fabrics.
Talon Division of Textron, Inc. (Teamsers)	St. Louis, Mo	8/27/79	8/20/79	TA-W-5,956	Assemble zippers (fastners).
Walter Wright, Inc. (company)	Williamstown, N.J	8/27/79	8/21/79	TA-W-5,957	Double knit and polyester fabric.
Ware Knitters, Inc. (company)	Calais, Maine	8/27/79	8/23/79	TA-W-5,958	Sub-contractors for men's and ladies' outerwear.

[FR Doc. 79-33111 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5866]

Cranston Print Works Co., Fletcher Division, Fletcher, N.C.; 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.

The investigation was initiated on August 17, 1979, in response to a worker petition received on August 10, 1979, which was filed by the Machine Printers and Engravers Association on behalf of workers and former workers engaged in the printing of textile cloth at the Fletcher Division of Cranston Print Works Company, Fletcher, North Carolina. At a later date the U.S. Department of Labor received a petition for trade adjustment assistance filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers of the Fletcher Division of the Cranston Print Works Company, Fletcher, North Carolina. In the following determination, 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 Fletcher Division of Cranston Print Works Company prints fabric on a contract basis for outside customers, and for the Cranston Company's merchandising divisions. The Department conducted a survey of the outside customers. The survey indicated that the customers did not increase purchases of imported fabirc and decrease purchases of domestically produced fabric. The Department also surveyed customers of the Cranston Company's merchandising division. This survey revealed that customers increased purchases from domestic sources and decreased purchases from foreign sources.

The ration of imports to domestic production of finished fabric has not exceeded two percent in any year from 1974 through 1978. Imports of finished fabric declined in quantity in the first half of 1979 compared to the first half of 1978.

Conclusion

After careful review, I determine that all workers of Cranston Print Works Company, Fletcher Division, Fletcher, North Carolina, 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 19th day of October 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-33112 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5961]

Curlee Clothing Co., Mayfield, Ky.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 5, 1979, in response to a worker petition received on August 21, 1979, which was filed on behalf of workers and former workers producing men's suits, vests, slacks and sportcoats at the Mayfield, Kentucky plant of Curlee Clothing Company.

The investigation revealed that all workers of the Mayfield, Kentucky plant of Curlee Clothing Company were certified as eligible to apply for adjustment assistance under a previous certification issued in August 1977 (TA-W-1548). That certification remained in effect until August 18, 1979, two years from its date of issuance. The Mayfield, Kentucky plant of Curlee Clothing Company was closed permanently on September 30, 1978, therefore, all workers separated from employment at the Mayfield plant were covered under the existing certification (TA-W-1548).

The Mayfield, Kentucky plant was leased to Mayfield Manufacturing Company in February 1979. Workers of the Mayfield plant under the new management produce women's blouses, tops, skirts and slacks as well as a small proportion of men's slacks (less than seven percent). Production began in March 1979.

Due to the short term of operation of Mayfield Manufacturing Company, there is not sufficient information upon which to base a determination. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 18th day of October 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-33113 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5973]

Deluxe Fashions, New York, N.Y.; 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.

The investigation was initiated on September 6, 1979 in response to a worker petition received on September 4, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing brassieres and girdles at DeLuxe Fashions, Incorporated, New York, N.Y. The investigation revealed that the plant also sells halter tops and bra-and-pant sets. In the following determination, without regard to whether any of the 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.

Workers of DeLuxe Fashions were certified as eligible to apply for adjustment assistance (TA-W-1665) on July 15, 1977 when the cutting and sewing of girdles was performed at the New York plant. That certification terminated on July 15, 1979. DeLuxe's plant in New York no longer cuts and sews; rather it is engaged in importing and contracting out for the cutting and sewing of brassieres (including halter tops), bra-and-panty sets, and girdles. Declines in employment which have taken place at DeLuxe Fashions, Incorporated since the earliest possible impact date of July 15, 1979, were caused by the company's transfer of the cutting of brassieres and the cutting and sewing of girdles from the New York factory to other domestic firms.

Sales of brassieres (including halter tops), bra-and-panty sets, and girdles by DeLuxe Fashions increased in value in 1978 compared with 1977 and increased again in the first half of 1979 compared with the like period in 1978. The company began importing brassieres and bra-and-panty sets under Tariff Provision 807.00 in 1978. Company imports have increased since that time. However, these imports which represent sewing done by contractors located in Haiti, Jamaica and St. Lucia have not caused declines in employment at the company. DeLuxe never sewed brassieres in New York.

Workers at DeLuxe Fashions, Incorporated who were laid off since the earliest possible impact date of July 15, 1979, lost their jobs because the cutting and sewing of girdles were moved out of New York and shifted to contractors in Puerto Rico. No cutting or sewing is currently done by DeLuxe Fashions in New York City. As of September 1979, production workers at DeLuxe are engaged in trimming, finishing, packing, assorting and shipping girdles as well as brassieres (including halter tops) and bra-and-panty sets.

Cutting for brassieres, which was previously done by DeLuxe at the New York plant, has been contracted to other domestic firms since mid-1979.

Conclusion

After careful review, I determine that all workers of DeLuxe Fashions, Incorporated, New York, N.Y. 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 22nd day of October 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-33114 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5917]

Douglas & Lomason Co., Marianna, Ark.; 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.

The investigation was initiated on August 27, 1979 in response to a worker petition received on August 16, 1979 which was filed by the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America on behalf of workers and former workers producing metal frames at the Marianna, Arkansas plant of Douglas & Lomason Company. The investigation revealed that the plant produces primarily metal seat frames for automobiles. In the following determination, without regard to whether any of the 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.

Shipments of metal seat frames for automobiles from the Marianna, Arkansas plant increased in terms of quantity in 1977 compared with 1976, increased in 1978 compared with 1977, and increased during the first half of 1979 compared with the same period in 1978.

The Department conducted a survey of the plant's principal customer for its purchases of metal seat frames for automobiles. The survey results indicated the customer did not purchase any imported seat frames or contract the manufacture of seat frames offshore during the period 1977 through June 1979. This was the only customer to reduce purchases from the plant in 1978 or 1979.

Conclusion

After careful review, I determine that all workers of the Marianna, Arkansas plant of Douglas & Lomason Company 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 19th day of October 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-33115 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5904]

General Dynamics Corp., Quincy Shipbuilding Division, Quincy, Mass.; 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.

The investigation was initiated on August 27, 1979 in response to a worker petition received on August 21, 1979 which was filed by the Industrial Union of Marine and Shipbuilding Workers of America on behalf of workers and former workers producing ocean-going vessels at the Quincy Shipbuilding Division of General Dynamics Corporation, Quincy, Massachusetts (TA-W-5904). In the following determination, without regard 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.

With the exception of three barge ships delivered in 1972 and 1973, the Quincy Shipbuilding Division of General Dynamics Corporation has constructed Liquid Natural Gas tankers (LNG's), exclusively from 1972 through October, 1979. The firm's specialization in LNG's has enabled it to reduce costs through economies of scale and improve its competitive position vis-a-vis other domestic shipbuilders.

Shipyards in the United States have generated a competitive advantage in the worldwide production of LNG's.

The Quincy Shipbuilding Division has not recently bid on any contracts for the production of merchant ships which were awarded to foreign firms. The only contract bids made by the Quincy Shipbuilding Division from 1977 through 1979 were with the Navy. The contracts were awarded to other domestic shipyards.

Conclusion

After careful review, I determine that all workers of the Quincy Shipbuilding Division of General Dynamics Corporation, Quincy, 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 22nd day of October 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-33116 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5938]

Key Chrysler-Plymouth, Inc., Madison, Tenn.; 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.

The investigation was initiated on August 30, 1979, in response to a worker petition received on August 27, 1979, which was filed on behalf of workers and former workers of Key Chrysler-Plymouth, Madison, Tennessee, an auto dealership. The investigation revealed that the legal title of the firm is Key Chrysler-Plymouth, Incorporated.

Key Chrysler-Plymouth, Incorporated was engaged in providing the service of selling and servicing passenger cars.

Thus, workers of Key Chrysler-Plymouth, Incorporated did not produce an article within the meaning of section 222(3) of the act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Key Chrysler-Plymouth, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Key Chrysler-Plymouth, Incorporated was not corporately affiliated with any other company.

All workers engaged in selling and servicing passenger cars at Key Chrysler-Plymouth, Incorporated. All employee benefits were provided and maintained by Key Chrysler-Plymouth, Incorporated. Workers were not, at any time, under employment or supervision by any firm other than Key Chrysler-Plymouth, Incorporated. Thus, Key Chrysler-Plymouth, Incorporated, and not any other firm, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Key Chrysler-Plymouth, Incorporated, Madison, Tennessee 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 19th day of October 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-33117 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5779]

Loudspeaker Component Corp., Lancaster, Wis.; 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 July 26, 1979 in response to a worker petition received on July 24, 1979 which was filed on behalf of workers and former workers producing gaskets and speaker cones for televisions and stereos at Loudspeaker Component Corporation, Lancaster, Wisconsin. It is concluded that all of the requirements have been met.

U.S. imports of loudspeaker cones and gaskets increased both absolutely and relative to domestic production during 1978 compared with 1977. Imports increased relative to domestic production during the first six months of 1979 compared with the first six months of 1978.

Loudspeaker Component Corporation produces cones, gaskets and metal stampings for loudspeakers; the primary end use of these loudspeakers is in automobile loudspeakers. Loudspeaker Components Corporation and a related foreign firm, which also produces loudspeaker cones and suspensions for speaker coils for automobile speakers, use the same sales agent for all sales. Production of some cones was transferred from Loudspeaker Component Corporation to the foreign firm in late 1975. During the first half of 1979, these imports, measured as a percentage of total sales by foreign operations and Loudspeaker Component Corporation, increased compared to the first half of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with loudspeaker cones and gaskets produced at Loudspeaker Component Corporation, Lancaster, Wisconsin 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 Loudspeaker Component Corporation, Lancaster, Wisconsin who became totally or partially separated from employment on or after July 19, 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 18th day of October 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-33154 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4133]

Mansfield Tire & Rubber Co., Mansfield, Ohio, Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility To Apply for Adjustment Assistance on December 22, 1978, applicable to workers and former workers of Mansfield Tire and Rubber Company, Mansfield, Ohio. The Notice of Certification was published in the Federal Register on January 12, 1979 (44 FR 2732).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motioin, reviewed the Department's determination with regard to the petition filed on behalf of workers and former workers at Mansfield Tire and Rubber Company. The original certification applies to all workers at the Mansfield, Ohio plants of Mansfield Tire and Rubber Company. The eligibility to apply for adjustment assistance of the workers of Pennsylvania Tire Company of Ohio, a direct selling office of Mansfield Tire and Rubber Company, was not specifically addressed in the Department's Notice of Determination. Pennsylvania Tire Company of Ohio is a wholly-owned subsidiary of Mansfield Tire and Rubber Company and sales and employment at Pennsylvania Tire Company are closely tied to production at Mansfield. It is concluded that the two entities constitute a single firm for purposes of Section 222 of the Trade Act of 1974 and 29 CFR 90.2.

The certification is revised to include all workers of Mansfield Tire and Rubber Company and Pennsylvania Tire Company of Ohio who were adversely affected by the decline in sales and employment resulting from increased import competition.

The revised certification applicable to TA-W-4133 is hereby issued as follows:

All workers of the Mansfield, Ohio plants of Mansfield Tire and Rubber Company and all workers of Pennsylvania Tire Company of Ohio at the following locations: Mansfield, Ohio, Atlanta, Georgia, Forest Park, Georgia, Allentown, Pennsylvania, Clinton, Iowa, Fullerton, California, Tupelo, Mississippi, and Dallas, Texas, who became totally or partially separated from employment on or after August 30, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 18th day of October 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-33129 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5976; TA-W-6139]

Northern Yarn Manufacturing Corp., Humboldt Dye Works, Inc., Brooklyn, N.Y.; Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the result of investigations 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 investigations were initiated on September 6, 1979 (TA-W-5976) and October 2, 1979 (TA-W-6139) in response to a worker petition received on September 4, 1979 which was filed on behalf of workers and former workers winding yarn at Northern Yarn Manufacturing Corporation (TA-W-5976) and dyeing yarn at Humboldt Dye Works, Inc., (TA-W-6139). In the following determinations, without regard to whether any of the 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.

Imports of all yarn, finished and unfinished, decreased in the first half of 1979 compared to the like period of 1978. Imports of man-made fiber yarns—which includes acrylic—from Japan decreased 65 percent in the first six months of 1979 compared to the first six months of 1978. Imports of all yarn did not exceed 1.7 percent of domestic production during the period 1974-1977.

Northern Yarn Manufacturing Corporation and Humboldt Dye Works, Inc., received the majority of their orders from one customer in 1978 and 1979. This customer does not purchase imported finished yarn. Previous to 1979, this customer purchased unfinished acrylic yarn from Japan, and had it finished, by domestic firms, including the subject firms. Beginning in 1979, this customer encountered difficulty in obtaining acrylic yarn. As a result, it decreased business with domestic firms who finished the yarn.

Conclusion

After careful review, I determine that all workers of Northern Yarn Manufacturing Corporation, Brooklyn, New York (TA-W-5976) and Humboldt Dye Works, Inc., Brooklyn, New York (TA-W-6139) 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 18th day of October 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-33130 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5891]

Parisian Garment Co., Bridgeport, Conn.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on August 23, 1979, in response to a worker petition received on August 21, 1979,

which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's coats for Parisian Garment Company, Bridgeport, Connecticut. In the following determination, 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.

Parisian Garment Company produces on a contract basis for one manufacturer. The manufacturer did not import women's coats similar to those produced by Parisian Garment, nor use foreign contractors for such production.

Conclusion

After careful review, I determine that all workers of Parisian Garment Company, Bridgeport, Connecticut 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 22d day of October 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-33131 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5927, 5927A]

Patton Shirt Manufacturing Co., Inc., Patton, Pa., and Mil-Rob Corp., New York, N.Y.; 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 made 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 August 29, 1979 in response to a worker petition received on August 27, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing men's and women's shirts at Patton Shirt Manufacturing Company, Incorporated, Patton, Pennsylvania. The investigation revealed that ladies' blouses and men's shirts are produced at the plant and that the petition was filed by the United Garment Workers of America. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' woven dress and business shirts increased absolutely from 1976 to 1977, from 1977 to 1978 and for the January-June period of 1979 compared to the corresponding period of 1978. U.S. imports increased relative to domestic production from 1977 to 1978. The ratio of imports to domestic production is not available for 1979.

Evidence developed during the course of the investigation revealed that Patton Shirt Manufacturing Company, Incorporated is a wholly-owned subsidiary of Mil-Rob Corporation of New York, New York. Mil-Rob Corporation functions solely as the sales and administrative office for Patton.

Patton Shirt Manufacturing Company, Incorporated was founded in November 1977 as a contractor, producing men's shirts for one manufacturer. This manufacturer ended its contract work with Patton in January of 1978. At that time, Patton began producing men's shirts for another manufacturer and also began producing women's blouses. All production of men's shirts ceased in December 1978, when Patton's sole manufacturer with which it contracted men's shirt production became bankrupt. This manufacturer accounted for a significant amount of Patton's 1978 sales and the manufacturer's bankruptcy resulted in a weakening of Patton's financial position.

On January 11, 1979 this manufacturer was certified by the U.S. Department of Commerce as eligible to apply for firm trade adjustment assistance. A survey conducted by the Department of Commerce indicated that some retail customers of the manufacturer reduced their purchases of men's shirts from this manufacturer and increased their reliance on imported men's shirts in 1978 compared to 1977.

Patton's production of women's blouses in 1979 did not compensate for the overall decline in sales, resultant from the loss of men's shirt contracts at the end of 1978. A worsening of Patton's financial position subsequent to the bankruptcy of Patton's men's shirt manufacturer led to Patton's temporary closure on August 24, 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's shirts produced at Patton Shirt Manufacturing Company, Incorporated, Patton, 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 Patton Shirt Manufacturing Company, Incorporated, Patton, Pennsylvania and of Mil-Rob Corporation, New York, New York who became totally or partially separated from employment on or after March 11, 1979 and before September 1, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22d day of October 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-33132 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5855]

Pfister & Vogel Tanning Co., Milwaukee, Wis.; 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 August 13, 1979 in response to a worker petition received on August 8, 1979 which was filed on behalf of workers and former workers producing tanned leather at Pfister and Vogel Tanning Company. It is concluded that all of the requirements have been met.

U.S. imports of tanned and finished cattlehides, in terms of quantity, increased both absolutely and relative to domestic production in 1978 compared to 1977 and in the first six months of 1979 compared to the same period in 1978.

A customer survey conducted by the Department revealed that several customers of Pfister and Vogel Tanning Company decreased purchases from the subject firm and increased purchases of imported tanned leather.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with tanned

leather produced at Pfister and Vogel Tanning Company, Milwaukee, Wisconsin 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 Pfister and Vogel Tanning Company, Milwaukee, Wisconsin who became totally or partially separated from employment on or after August 8, 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 18th day of October 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-33133 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5919]

P.L.P. Sportswear, Inc., New York, N.Y.; 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 August 27, 1979 in response to a worker petition received on August 21, 1979 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing ladies' coats at P.L.P. Sportswear, Inc., New York, New York. It is concluded that all of the requirements have been met.

Imports of "women's, misses' and children's coats and jackets", a category which includes coats like those produced by P.L.P. Sportswear, Inc., increased both absolutely and relative to domestic production in every year from 1974 through 1978.

A survey was conducted of a sample of the customers of P.L.P. Sportswear, Inc. The survey indicated that several of these customers decreased purchases of coats from P.L.P. Sportswear, Inc. while increasing purchases of imported coats.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' coats produced by P.L.P. Sportswear, Inc., New York, New York 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 P.L.P. Sportswear, Inc., New York, New York who became totally or partially separated from employment on or after August 1, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of October 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-33134 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5928]

Premier Shoe Products, Wilkes-Barre, Pa.; 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.

The investigation was initiated on August 29, 1979 in response to a worker petition received on August 27, 1979 which was filed on behalf of workers and former workers producing straps for women's shoes. The investigation revealed that the plant produces primarily straps and bindings for men's, women's and children's shoes, boots and sandals. In the following determination, 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.

U.S. imports of shoe trimmings are negligible. Time limitations in the shoe manufacturing industry make importation of trimmings impractical.

The Department of Labor conducted a survey of the customers of Premier Shoe Products. The survey revealed that customers for whom Premier manufactured straps and bindings did not purchase imported straps or bindings in 1977, 1978 or in the January–August period of 1979.

Conclusion

After careful review, I determine that all workers of Premier Shoe Products, Wilkes-Barre, 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 18th day of October 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-33135 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5921]

Rochelles Modes, Bronx, N.Y.; 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.

The investigation was initiated on August 27, 1979 in response to a worker petition received on August 22, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' robes at Rochelle Modes, Bronx, New York. The investigation revealed that the company produced women's housecoats and dusters as well as robes. In the following determination, without regard to whether any of the 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.

Imports of women's, misses' and children's robes, dressing gowns and housecoats increased in 1978 as compared with 1977 but decreased absolutely in the first six months of 1979 as compared with the same period in 1978.

Results of a U.S. Department of Labor survey indicted that most customers of Rochelle Modes who responded to the survey did not increase their purchases of imported housecoats, dusters and robes while decreasing their purchases from the subject firm in the two periods surveyed. The only customer who reported increased imports and decreased purchases from Rochelle Modes during the period under investigation also reported increased purchases from other domestic sources. This customer represented less than one percent of the subject firm's sales during the period March 1, 1978 through February 28, 1979.

Conclusion

After careful review, I determine that all workers of Rochelle Modes, Bronx, New York 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 22nd day of October 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-33136 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5910]

Scandinavian Marine Products Inc., Port Newark, N.J.; 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 eligiblity 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 August 27, 1979, in response to a worker petiton received on August 21, 1979, which was filed by the Industrial Union of Marine & Shipbuilding Workers of America on behalf of workers and former workers of Scandinavian Marine Products, Port Newark, New Jersey, engaged in conversion, repair, overhaul, and maintenance of marine vessels. The investigation revealed that the legal title of the firm is Scandinavian Marine Products, Incorporated.

Scandinavian Marine Products, Incorporated is engaged in providing the service of repairing ships.

Thus, workers of Scandinavian Marine Products, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Scandinavian Marine Products, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Scandinavian Marine Products, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company. Although the subject firm shares common ownership with a producer of an article, the subject firm does not direct any services toward that company.

All workers engaged in repairing ships at Scandinavian Marine Products, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Scandinavian Marine Products, Incorporated. All employee benefits are provided and maintained by Scandinavian Marine Products, Incorporated. Workers are not, at any time, under employment or supervision by customers of Scandinavian Marine Products, Incorporated. Thus, Scandinavian Marine Products, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Scandinavian Marine Products, Incorporated, Port Newark, New Jersey 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 22nd day of October 1979.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 79-33137 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5978]

Step Master Shoes, Greenup, ILL.; 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 September 6, 1979 in response to a worker petition received on September 4, 1979 which was filed on behalf of workers and former workers engaged in the warehousing, shipping and sale of infant and youth shoes for Step Master Shoes, Greenup, Illinois, a division of Ettelbrick Shoe Company. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

Average employment of warehouse and shipping employees of Step Master Shoes remained the same in 1978 from 1977 and increased during January–August 1979 compared to January–August 1978. The average weekly hours worked by these employees increased in 1978 from 1977 and during January–August 1979 compared to the same period of 1978. Compared to the same quarter of the previous year, employment of the warehouse and shipping workers of Step Master increased or remained the same during each quarter from the second quarter of 1978 through the third quarter of 1979.

Any declines in employment of sales personnel by Step Master in 1978 and the first eight months of 1979 were principally due to quits, retirements and the consolidation of individual sales regions.

Conclusion

After careful review, I determine that all workers of Step Master Shoes, Greenup, Illinois 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 18th day of October 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-33138 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5931]

Uniroyal, Inc., Dublin, Ga.; 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 result of investigations 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 August 29, 1979 in response to a worker petition received on August 27, 1979 which was filed on behalf of workers and former workers producing shoes at the Dublin, Georgia plant of Uniroyal, Incorporated. The investigation revealed that the plant produces rubber/canvas footwear. It is concluded that all of the requirements have been met.

U.S. imports of rubber/fabric footwear increased absolutely and relative to domestic production from 1977 to 1978. While decreasing during the first half of 1979 compared to the first half of 1978, the ratio of imports to domestic production remained well above 150 percent.

Company imports of rubber/canvas footwear and company imports as a percentage of total sales of rubber/canvas footwear increased from 1977 to 1978 and during the first eight months of 1979 compared with the same period of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with rubber/canvas footwear produced at the Dublin, Georgia plant of Uniroyal, Incorporated 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 Dublin, Georgia plant of Uniroyal, Incorporated who became totally or partially separated from employment on or after June 1, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of October 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-33139 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6169]

Walworth Co., Kewanee, Ill.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 9, 1979 in response to a worker petition received on September 28, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing iron valves at the Kewanee, Illinois plant of the Walworth Company.

Notice of the Investigation was published in the **Federal Register** on Oct. 12, 1979 (44 FR 59010). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers at the Kewanee, Illinois plant were previously certified as eligible to apply for adjustment assistance on June 30, 1977 (See TA-W-1359). That certification expired on June 30, 1979.

The plant in question was shutdown in October 1978 and employment of all workers at the plant was terminated in November 1978.

Since the certification issued in TA-W-1359 was still in effect at the time of the plant closing and all workers laid off due to the closing of the plant were covered by that certification, and since the plant has never since reopened, a new investigation would serve no purpose; consequently, the investigation has been terminated. Signed at Washington, D.C. this 17th day of October 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-33140 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5883]

West Virginia Auger Corp., Charleston, W. Va.; 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.

The investigation was initiated on August 21, 1979 in response to a worker petition received on August 16, 1979 which was filed on behalf of workers and former workers mining metallurgical coal at a Fenwick, West Virginia mine for the West Virginia Auger Corporation of Charleston, West Virginia. In the following determination, 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 West Virginia Auger Corporation mined coal on a contract basis for another company, which owned the mine and mineral rights to the coal. The company ended its contract with the West Virginia Auger Corporation in July 1978. The company's total sales of coal decreased in 1978 compared to 1977; however, domestic sales increased while export sales declined. Since the decline in sales was due to a decrease in exports, increased imports of coal or coke into the United States could not affect sales and production levels at that company or its contractors, including the West Virginia Auger Corporation.

Conclusion

After careful review of the facts obtained in the investigation, I determine that all workers of the West Virginia Auger Corporation 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 19th day of October 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-33141 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5896]

Will Knit Fabrics, Ltd., New Hyde Park, N.Y.; 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.

The investigation was initiated on August 23, 1979 in response to a worker petition received on August 20, 1979 which was filed on behalf of workers and former workers producing double knit fabrics at Will Knit Fabrics, Limited, New Hyde Park, New York. In the following determination, without regard to whether any of the 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.

Will Knit Fabrics, Limited produces double knit fabrics for the apparel industry. The fabric leaves Will Knit as greige fabric. The ratio of imported knit fabrics (finished and unfinished) to domestic production decreased from .50 percent to .49 percent from 1977 to 1978. U.S. imports decreased from 1977 to 1978 and decreased in the first six months of 1979 when compared with the same period in 1978. U.S. imports of gray woven fabric increased from 1977 to 1978 and then declined in the first six months of 1979 compared with the same period in 1978.

Customers of Will Knit Fabrics, all converters of fabric, were surveyed by the Department of Labor and reported that they did not purchase imported greige goods during the period under investigation.

Conclusion

After careful review, I determine that all workers of Will Knit Fabrics, Limited, New Hyde Park, New York 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 22nd day of October 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-33142 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5949]

York Leather Fashions, Inc., New York, N.Y.; 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 made 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 August 30, 1979 in response to a worker petition received on August 27, 1979 which was filed on behalf of workers and former workers producing women's and men's leather apparel at York Leather Fashions, Incorporated, New York, New York. It is concluded that all of the requirements have been met.

U.S. imports of leather apparel increased in dollar value in 1978 from 1977 and decreased in the first half of 1979 compared to the first half of 1978. The ratio of imports to domestic production increased from 115.8 percent in 1977 to 117.9 percent in 1978.

A Department survey revealed that from 1977 to 1978 some customers reduced purchases from York Leather Fashions and increased purchases of imported leather apparel.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's and men's leather apparel produced at York Leather Fashions, Incorporated, New York, New York 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 York Leather Fashions, Incorporated, New York, New York who became totally or partially separated from employment on or after August 20, 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 22nd day of October 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-33143 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

Steel Tripartite Committee, Working Group On Technological Research and Development; Meeting; Correction

On October 23, 1979, the notice of Meeting was published in the **Federal Register** (44 FR 61118) for the rescheduling of a meeting of the Steel Tripartite Committee's Working Group on Technological Research and Development, to be held on November 7, 1979, at 2:00 p.m., in room 4830 Main Commerce Building, U.S. Department of Commerce, Washington, D.C.

Due to an unavoidable conflict in the availability of the room, the place of the meeting has been changed to room 5851, Main Commerce Building, U.S. Department of Commerce, Washington, D.C.

There are no other changes to the notice.

Signed at Washington, D.C. this 24th day of October 1979.

Herbert N. Blackman,

Deputy Under Secretary for International Affairs (Acting), U.S. Department of Labor.

[FR Doc. 79-33263 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-28-M

Pension and Welfare Benefit Programs

Proposed Class Exemption for Certain Transactions Involving Bank Collective Investment Funds; Hearing

By notice published in the **Federal Register** on July 27, 1979 (44 FR 44290), the Department of Labor (hereinafter the Department) proposed a class exemption from certain of the prohibited transaction restrictions contained in the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The proposed exemption would apply to certain transactions engaged in by bank-maintained collective investment funds in which employee benefit plans participate.

A hearing on the proposed class exemption has been requested. Accordingly, a public hearing will be held on December 3, 1979, beginning at 10:00 a.m. in Room N-4437 A and B of the Department of Labor Building, 200 Constitution Avenue N.W., Washington, D.C.

Any interested person who wishes to be assured of the opportunity to present oral comments at the hearing should submit by 3:30 p.m., November 26, 1979: (1) A written request to be heard, and (2) an outline (preferably five copies) of the topics to be discussed, indicating the time to be allocated to each topic. The request to be heard and accompanying outline should be submitted to the Office of Fiduciary Standards, Pension and

Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20216. Attention: Application D-784 Hearing. Individuals who did not file written comments regarding the proposed class exemption may nonetheless request to make oral comments at the hearing.

The Department will prepare an agenda indicating the order of presentation of oral comments and the time allotted to each person making oral comments. In the absence of special circumstances, each commentator will be allotted ten minutes in which to complete his presentation. Information about the agenda may be obtained on or after November 30, 1979, by telephoning Barry Barbash, Esq., Washington, D.C. (202) 523-9146 (not a toll free number). Individuals not listed in the agenda will be allowed to make oral comments at the hearing to the extent time permits. Those individuals who make oral comments at the hearing should be prepared to answer questions regarding their comments.

A written record of the hearing will be made.

Signed at Washington, D.C., this 19th day of October 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-32908 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-61; Exemption Application No. L-1360]

Exemption From the Prohibitions for Certain Transactions Involving the Iron Workers Local Union No. 8 Joint Apprenticeship and Advanced Journeyman Training Trust Fund

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the cash sale of real property by the Iron Workers Local Union No. 8 Joint Apprenticeship and Advanced Journeyman Training Trust Fund (the Plan) to the Iron Workers Local Union No. 8 (the Union) for its fair market value as of the closing date of the transaction, to be established by an independent real estate appraiser, but not less than $75,000.

FOR FURTHER INFORMATION CONTACT: Ronald D. Allen of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-7901. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 7, 1979 notice was published in the **Federal Register** (44 FR 52367) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) for a transaction described in an application filed by the Board of Trustees of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. No public comments were received by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404 (a)(1)(B) of the Act.

(2) This exemption does not extend to transactions prohibited under section 406(b) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

The restrictions of section 406(a) of the Act shall not apply to the cash sale of real property located at 12110 West Adler Lane, West Allis, Milwaukee County, Wisconsin, by the Plan to the Union for its fair market value as of the closing date of the transaction, to be established by an independent real estate appraiser but not less than $75,000.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 18th day of October, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-32953 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-62; Exemption Application No. L-1048]

Exemption From the Prohibitions for Certain Transactions Involving the New Mexico Electricians Retirement Benefit Fund and the New Mexico Electrical Industry Joint Apprenticeship and Training Fund

AGENCY: Department of Labor.

ACTION: Grant of Individual exemption.

SUMMARY: This exemption permits, retroactively and prospectively, the continuing acts of the common fiduciary, under the terms of the 20 year construction and mortgage loan, made on March 1, 1978, by the New Mexico Electricians Retirement Benefit Fund (the Plan) to the Joint Apprenticeship and Training Committee for the Electrical Industry, Building Corporation (the Building Corporation), and permits, retroactively and prospectively, the continuing acts of the common fiduciaries, under the terms of a 20 year lease of real property, made on March 1, 1978, by the Building Corporation to the New Mexico Electrical Industry Joint Apprenticeship and Training Fund (the Welfare Plan).

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 31, 1979, notice was published in the **Federal Register** (44 FR 51382) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act), for transactions described in an application filed by the trustees of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) This exemption does not extend to transactions prohibited under section 406(a) and 406(b)(1) and (b)(3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

The restrictions of section 406(b)(2) of the Act shall not apply, retroactively or prospectively, to the continuing acts of the common fiduciary, under the terms of the construction and mortgage loan in the amount of $150,000, with a 9¼ percent interest charge, made on March 1, 1978, by the Plan to the Building Corporation, and to the continuing acts of the common fiduciaries under the terms of the 20 year lease of real property, made on March 1, 1978, by the Building Corporation to the Welfare Plan for the consideration of $150,000 plus 9¼ percent interest charge and the payment of all utilities, insurance premiums on insurance for protection of the property, and all property taxes.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 18th day of October, 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-32954 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee on Science and Society; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee on Science and Society.

Date, time, and place: November 19–20, 1979, 9:00 a.m. to 5:00 p.m. both days, Room 540, 1800 G Street, N.W., Washington, D.C. 20550.

Contact person: Marian Scheiner, Administrative Assistant, Office of Science and Society Directorate for Science Education, National Science Foundation, Room W–651, Washington, D.C. 20550, Telephone 202–282–7770.

Type of meeting: Open.

Purpose of committee: To identify problems and priorities and to increase the effectiveness of the Office of Science and Society (OSS) and its constituent programs.

Agenda: (1) Current activities and status of program; (2) discussion of Oversight Subcommittee activities; (3) Objectives and goals of the Office of Science and Society.

Summary Minutes: May be obtained from Marian Scheiner, contact person at the address given above.

M. Rebecca Winkler,

Committee Management Coordinator.

October 23, 1979.

[FR Doc. 79-33156 Filed 10-25-79; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Updated and Expanded List of Minority-Owned Media Outlets, Production Companies, Advertising Firms, and Newspaper and Magazine Publishing Companies

October 22, 1979.

Memorandum to OFPP Agency Contact Points

OFPP Policy Letter 78–1 was issued January 31, 1978 in the interest of increasing awards to minority advertising agencies and other minority media organizations as part of the national program to increase Federal Government minority business awards.

In support of this program you have been furnished lists of minority advertising agencies and media outlets to facilitate your efforts to inform such organizations of your contracting and subcontracting opportunities.

The attached directory is an updated and expanded list of minority-owned media outlets, production companies, advertising firms and newspaper and magazine publishing firms. It replaces the list furnished you by transmittal of March 23, 1979.

For further information, contact Dorothy Dickerson, Deputy Associate

Administrator of Acquisition Law, 395–3455.

Sincerely,

James D. Currie,

Acting Administrator.

MINORITY-OWNED BROADCAST PROPERTIES (COMMERCIAL)

Radio

Alabama

WEUP–AM, 2609 Jordan Lane, N.W., Huntsville, Ala. 35806. Licensee: Garrett Broadcasting, Inc., President and General Manager: LeRoy Garrett

WBIL–AM, Main Street, Box 666, Tuskegee, Ala. 36083. Licensee: All Channel TV Service, General Manager: George Clay

WENN–AM/FM, P.O. Box 697, Birmingham, Ala. 35201. Licensee: Booker T. Washington Broadcasting Co., Inc., President: A. G. Gaston, General Manager: Larry Hayes

WQTX–AM, P.O. Box 1307, Selma, Ala. 36701. (205) 874–9062, President and General Manager: Bob Carl Bailey

WZZA–AM, 1570 Woodmont Drive, Tuscombia, Ala., (202) 838–5810, Licensee: Muscle Shoals Broadcasting, 301 North Montgomery Avenue, Sheffield, Ala. 35560, President: Bob Carl Bailey

Alaska

KCAM (Athabascan), Glennallen, Alaska

Arizona

KXEW–AM/FM, Box 2248, Tucson, Arizona, (602) 263–6429, Licensee: Radio Fiesta, Inc., President and General Manager: Ernesto Portillo

KCLS (Navajo), Flagstaff, Arizona

KDJI (Navajo), Holbrook, Arizona

KINO (Navajo and Hopi), Winslow, Arizona

KMDX(FM), Old Tribal Jail Bldg., Parker, Arizona. Licensee: Gilbert Leivas, BINA Broadcasting Co., Parker, Arizona

KXEW, P.O. Box 2284, Tucson, Arizona 85702, (602) 632–6429

KAZZ–FM, 4748 West Laurie Lane, Glendale, Arizona 85302, (602) 866–9110, Licensee: KAZZ, Inc., President: Ray Johnson

California

KJLH–FM (Compton), 384 S. Crenshaw Blvd., Los Angeles, CA 90008, (213) 299–2992, Licensee: Stevie Wonder Taxi Production, General Manager: Deloris Gardner

KSRT–FM, Stockton, CA

KBRG–FM, San Francisco, CA

KRDU, Dinuba, CA

KLIP, Fowler, CA

Jose Molina, KROQ–XPRS, 6290 Sunset Blvd., Suite 1600, Los Angeles, CA 90028, (213) 461–3905

Golden Star Radio (105.3), Thomas C. Tong, 846 Clay Street, San Francisco, CA 94108, 421–6228

KKTT–AM, 5900 Wilshire Blvd., Los Angeles, CA 90036, (213) 937–5900, Licensee: Inner City Broadcasting Corporation of Los Angeles, President: Pierre M. Sutton, General Manager: Robert Sabo

KMPX–FM, 655 Sutter Street, San Francisco, CA 94105, (415) 775–5679, Licensee: Golden Gate Radio, President: Lloyd Edwards, General Manager: Harvey Stone

KUTE–FM, 5900 Wilshire Blvd., Los Angeles, CA 90059, Licensee: Inner City Broadcasting Corporation of Los Angeles, President: Pierre M. Sutton, General Manager: Robert Sabo

KACE–FM, 1710 East 111th Street, Los Angeles, CA, 90059, (213) 564–7951, Licensee: Willie Davis, General Manager: Bill Shearer

KBLX–FM, 601 Ashby Avenue, Berkley, CA 94710, (415) 848–7713, President: Pierre M. Sutton, General Manager: Robert Sabo

KRE–AM, 601 Ashby Avenue, Berkley, CA 94710, (415) 848–7713, President: Pierre M. Sutton, General Manager: Robert Sabo

KAZA–AM, Box 1290, San Jose, CA 95108, Licensee: Radio Fiesta Corp., President and General Manager: Ines Castillo

KFTV–AM, Hanford, CA 95108, Licensee: Spanish International Communication Corporation, 250 Park Avenue, New York, NY 10017, (212) 967–0585

KITA–FM, Box 3408, Modesto, CA 95353, (209) 1672, Licensee: KITA Broadcasting, Inc., General Manager: Adelita R. Morales

Colorado

KVFC (Navajo and Ute), Cortex, CO

Andres Neidig, KAPI, 2829 Lowell Avenue, Pueblo, Colorado 81003, (303) 545–2883

Ed Romero, KNBO, 1601 West Jewell Avenue, Denver, Colorado 80223, (303) 922–1151.

Connecticut

WLVH–FM, Hartford, CT

District of Columbia

WHUR–FM, 2600 Fourth Street, N.W., Washington, D.C. 20059, (202) 265–9494, Licensee: Howard University, General Manager: Robert Taylor

WYCB, 1140 Connecticut Avenue, NW, Suite 801, Washington, DC 20036, (202) 457–0877, Licensee: Washington Community Broadcasting Co., Inc., General Manager: Howard Sanders

Florida

WTMP, P.O. Box 1101, Tampa, FL 33601, (813) 626–4108, Licensee: Robert Gilder, Owner: R. A. McLeod

WTAN/WOKF, P.O. Box 1109, Clearwater, FL 33517, (813) 461–1131, Licensee: BENI of Florida, Inc., General Manager: William Schriker

WOWD–FM, P.O. Box 6065, Tallahassee, FL 32301, (904) 386–5141, Licensee: Amrad Corporation President: Dr. Claude Anderson, General Manager: Jim Boraddus

Georgia

WAOK, 75 Piedmond Avenue, NE, Atlanta, GA 30303, (404) 659–1380, Licensee: Atlanta OK Broadcasting Co., General Manager: William Green

WEDW–AM, P.O. Box 1405, Augusta, Georgia 30903, Licensee: JB Broadcasting Co., President: James Brown, General Manager: Al Garner

WSOK–AM, P.O. Box 1288, Savannah, Georgia 31402, (912) 232–3322, Licensee: Black Communications Corp. of Georgia, Inc., Chairman and General Manager: Benjamin M. Tucker

Hawaii

KHLO, Hilo, Hawaii

KNDI, Honolulu, Hawaii

KZOO, Honolulu, Hawaii

KKON, Kealalekua, Hawaii

Illinois

WJPC–AM, 820 S. Michigan Ave., Chicago, IL 60605, Licensee: Johnson Publishing Co., General Manager: Marvin Dyson

WMPP–AM, 1000 Lincoln Highway, E. Chicago Heights, IL 60611, (312) 758–1400, Licensee: George Pinckard, Seaway Broadcasting Co., Inc., General Manager: Allen Wheller

Indiana

WTLC–FM, 2128 N. Meridian Street, Indianapolis, IN 48604, Licensee: Community Media Corp., President: Dr. Frank P. Lloyd

WCMX–FM, 424 Reed Road, Fort Wayne, IN 46815, (219) 422–4646, Licensee: HMH Communications Corp., Owner: Charles Hatch, P.O. Box 6240, Fort Wayne, IN 46806

WLTH–AM, 3669 Broadway, Gary, IN 60653, Licensee: Southside Bank, President: Thomas Lewis

Kansas

KPTK–FM, 910 First National Bank Tower, Topeka, KS 66603, (913) 234–2627, President: Dr. Marvin Wilsin, General Manager: H. Pat Powers

Kentucky

WLOU–AM, 2549 S. Third Street, Louisville, KY 40208, (502) 636–3535, Licensee: Summers Broadcasting, Inc., President and General Manager: Bill Summers

WSTM–FM, Oxmoor Shopping Center, P.O. Box 6011, Louisville, KY 40206, Licensee: Summers Boradcasting, Inc., General Manager: Don Rogan

Louisiana

WWIW–AM, New Orleans Superdome, New Orleans, LA 70153, (504) 587–3000, Licensee: Lonnie Murray

KTRY–AM/FM, P.O. Box 1075, Bastrop, LA 71220, (318) 281–3656, Licensee: North Delta Broadcasting, Inc., President and General Manager: Henry Cotton

Maryland

WEBB–AM, Clifton & Denison Streets, Baltimore, MD 21216, (301) 947–1245, Licensee: J. B. Broadcasting, President: James Brown, General Manager: James Clark

Massachusetts

WILD–AM, 390 Commonwealth Avenue, Boston, MA 02215, (617) 267–1900, Licensee: Sheridan Broadcasting Corp., General Manager: Al Williams

Michigan

WCHB–AM, 32790 Henry Ruff Road, Inkster, MI 48141, (313) 278–1440, Licensee: Bell Broadcasting Corp., General Manager: Dr. Wendell Cox

WCHB–FM, 299 W. Grand Blvd., Detroit, MI 48202, (313) 871–0590, Licensee: Bell Broadcasting Corp., General Manager: Robert Bass

WPGR–FM, 3146 E. Jefferson St., Detroit, MI 48207, (313) 259–8862, Licensee: William V. Banks, President: Dr. William V. Banks, General Manager: Tenicia Gregory

WWWS–FM, 4624 Dixie Highway, Saginaw, MI 48601, (517) 777–8011, Licensee: Saginaw

Broadcasting Co., General Manager: Robert O'Bannon
WJZZ–FM, 2994 E. Grand Boulevard, Detroit, MI 48202, (313) 971–0590, Licensee: Bell Broadcasting Corp., General Manager: Robert Bass
WBLS–FM, 15565 Northland Drive, Suite 500 E., Southfield, MI 48075, Licensee: Inner City Broadcasting Co. of Michigan, President: Pierre M. Sutton, General Manager: Janie Washington

Mississippi

WORV–AM, 604 Gussie Avenue, Hattiesburg, Miss., (601) 544–1941, Licensee: Circuit Broadcasting Co., President and General Manager: Vernon Floyd
WBAD–FM, P.O. Box 4426, 7 Oaks Road, Greenville, MS 38701, General Manager: William D. Jackson
WTNK, Greater Mississippi Life Bldg., Meridian, MS 39301, (601) 693–3242/1961, President: Charles L. Young, General Manager: Len Maith

Missouri

KPRS–AM/FM, 2301 Grand Avenue, Kansas City, MO 64108, Licensee: KPRS Broadcasting Co., President: Andrew P. Carter, General Manager: John E. Carter
KPRT–AM, 3 Crown Center, Suite 118, Kansas City, MO 64108, (816) 471–2100, Licensee: Andrew P. Carter, General Manager: John E. Carter

Nebraska

KOWH/AM/FM, 3910 Harney Street, Omaha, NE 68131, (402) 422–1600, Licensee: Reconciliation Inc., General Manager: Keith Donald

New Jersey

WNJR, 17 Union Avenue, Union, New Jersey 07083, (201) 688–5000, Owner: Dan Robinson, General Manager: William Donahue
WUSS–AM, 1500 Absencon Blvd., Atlantic City, N.J. 08401, (609) 344–5861, Licensee: Atlantic Business and Community Development Corp., President: Edward Darden, General Manager: John Hickman

New Mexico

KABZ, Box 4486, 1309 Yale Street, East Albuquerque, New Mexico, Licensee: Albuquerque Corp., President and General Manager: Ed Gomez
KRDD, Box 1615, Roswell, New Mexico, (505) 623–1330, Owner: Reginald Espinoza
KEDE, Santa Fe, New Mexico
KENN (Navajo), Farmington, New Mexico
KWYK (Navajo), Farmington, New Mexico
KGAK (Navajo), Gallup, New Mexico
KKIT (Taos Pueblo), Taos, New Mexico
Ed Gomez, KABQ, P.O. Box 4486, Albuquerque, N.M. 87106
KTDB–FM, Box 18, Romah, NM 87321, Licensee: Ramah Navajo School Board, President: Chavez Coho

New York

WLIB–AM, WBLS–FM, 801 Second Avenue, New York, N.Y. 10017, (212) 661–3344
WUFO–AM (Amherst/Buffalo), 89 La Salle Avenue, Buffalo, New York 14214, (716) 834–1080, Licensee: Sheridan Broadcasting Corp., President: Tom McKinney, General Manager: Donald Mullins
WDKX–FM, 1337 Main Street East, Rochester, N.Y. 14609, (716) 288–5470, Licensee: Monroe Broadcasting Co., Inc., President: Andrew Langston, General Manager: Bill Curtis
WOKO, 1450 Western Ave., Albany, N.Y. 12203, (518) 449–1460, Licensee: October Mountain Broadcasting Co., President: Anthony B. Mason
WEVD, New York, New York

North Carolina

WGIV–AM, P.O. Box 3856, Charlotte, NC 28203, (704) 333–3991, Licensee: New GIV, Inc., General Manager: Ken Goldblatt
WVOE–AM, P.O. Box 328, (919) 654–3991, Licensee: Ebony Enterprises, Inc., President: Lester Moore, General Manager: Stacy Newkirk
WBMU–FM, 90 Lookout Road, Asheville, N.C. 28804, (704) 253–5381, Licensee: Greater Asheville Educational Radio Association, General Manager: James Robinson
WARR–AM, P.O. Box 577, Warranton, NC 27589, (919) 257–2121, Licensee: Warr, Inc., President: Ralph Coleman, General Manager: Bob Rogers

Ohio

WELX–AM, P.O. Box 456, Xenia, Ohio 45385, (513) 372–7649
WCIN, 106 Glenwood Avenue, Cincinnati, Ohio 45271, (513) 281–7180, Licensee: BENI of Ohio, Inc., Vice President and General Manager: H.E. Sunny Burns
WHBM–FM, P.O. Box 456, Xenia, Ohio 45385, (513) 372–7649, Licensee: H&H Broadcasters, Inc., President: Harold Wright
WKOV, 804 First Nat'l Bank Bldg., Third and High Streets, Hamilton, Ohio 45011, (513) 863–3600, Licensee: YCH Associates, General Manager: Fred Newbill

Oklahoma

KOLS (Cherokee), Pryor, Oklahoma
KAEZ–FM, P.O. Box 11333, Oklahoma City, Oklahoma 73136, (405) 424–3376, President and General Manager: Jimmy Miller

Pennsylvania

WAMO–AM/FM, 1811 Boulevard of Allies, Pittsburgh, Pa. 15219, (412) 471–2181, Licensee: Ronald Davenport
WYIS–AM, 400 Main Street, Phoenixville, Pa., (215) 783–5545, President: Dr. B. Samuel Hart, General Manager: Mr. Toni Hart
WYJZ–AM, 1811 Blvd. of Allies, Pittsburgh, Pa., 15219, (412) 471–2181, Licensee: Sheridan Broadcasting Co., President and General Manager: Tom McKinney

South Carolina

WOIC–AM, P.O. Box 565, Columbia, S.C. 29202, (803) 796–0927, Licensee: Nuance Corporation, General Manager: Elliott E. Franks

South Dakota

KCCR (Sioux), Pierre, South Dakota
KYNT (Sioux), Yankton, South Dakota

Tennessee

WJBE–AM, P.O. Box 281, Knoxville, Tennessee 37914, (615) 637–1430, Licensee: Broadcast Media of Knoxville, Vice President: Timothy F. Beshea, General Manager: Bernice Fowler
WLOK–AM, 363 S. Second Street, Memphis, Tennessee 38103, (901) 527–9565, Licensee: Gilliam Communications, Inc., President and General Manager: Art Gilliams
WVOL–AM, 1320 Brick Church Pike, Nashville, Tennessee 37207, Licensee: Robert Rounsville, President: Sam Howard, General Manager: Clarence Kilcicse

Texas

KESS, Box 6195, Dallas-Fort Worth, Texas, Licensee: Latin American Broadcasting Co., President and General Manager: Marcos Rodriquez
KLVL, Houston, Texas
KLFB, Lubbock, Texas
KNOK–AM/FM, 3601 Kimbo Street, Forth Worth, Texas 76111, Licensee: EGG Dallas Broadcasting, Inc., General Manager: Waynett Sobers
KOOH–AM, 5011 Almeda, Houston, Texas 77004, (713) 527–7175, Licensee: Call of Houston, Inc., General Manager: Mike Petrizzo
Manuel Davila, Jr., KCCT, P.O. Box 5206, Corpus Christi, Texas 78405, (512) 884–2426
Manuel Davila, Sr., KEDA, 226½ Dolorosa Street, San Antonio, Texas 78205, (512) 226–5254
Marcos Rodriguez, KESS, P.O. Box 6195, Forth Worth, Texas 76115, (817) 429–1037
Ed Gomez, KIRT/KQXX, 608 S. 10th Street, McAllen, Texas 78501, (512) 682–3231
Marcelo Tafoya, KIFB, P.O. Box 5697, Lubbock, Texas 79417, (806) 765–8114
Roberto Villanueva, KMXX, 8703 Stillwood Lane, Austin, Texas 78758, (512) 478–5699
Sonny Martinez, KVEO–TV, P.O. Box 3588, McAllen, Texas 78501
KTSU–FM, Texas Southern University, Houston, Texas 77004, (713) 527–7175, Licensee: Texas Southern, General Manager: Mike Petrizzo
KQZZ–FM, 608 South 10th Street, McAllen, Texas 78501, (512) 682–3231, Licensee: Rio Broadcasting Co., President: Edward L. Gomez
KWGO–FM, 6025 Avenue a, Lubbock, Texas 79404, (806) 747–6942, Licensee: Mexican American Services, Inc.

Utah

KUTA (Navajo), Blanding, Utah

Virgin Islands

WVIS–FM, P.O. Box 1403, St. Croix, Virgin Islands 00840, (809) 772–0968, President: Joseph Bahr, General Manager: Julio Bahr

Virginia

WPCE–AM, WOWI–FM, 1010 Park Avenue, Norfolk, VA 23504, (804) 622–4600, Licensee: Metro Communications, President: L. E. Willis, Sr., General Manager: Levi Willis, Sr.
WENZ–AM, 4719 Nine Mile Road, Richmond, VA 23223, (804) 222–7000, Licensee: Drum Communications, President: Daniel Mitchell
WKIE–AM, 6001 Wilkinson Road, Richmond, VA 23219, (804) 264–1540, Licensee: 1540 Broadcasting Co., President: Dr. Jean Haris, General Manager: James Carter

WPAK, P.O. Box 494, Farmville, VA 23901, (804) 392–8114, Licensee: Everette Broadcasting Corp., President: Shirley Everette, General Manager: Cle Eerette

Washington

KYAC–FM, 427 3rd Avenue, Seattle, Washington 98119, Licensee: Dudley Communications, Ltd., President and General Manager: Donald T. Dudley
Daniel Robles, Radio Cadena, 1406 Harvard, Seattle, Washington 98122

Wisconsin

WNOV–AM, 3801 N. 20th Street, Milwaukee, Wisconsin 53206, (414) 445–1986, Licensee: Courier Communications Corp., President and General Manager: Jerrel W. Jones
WAWA–AM/FM, 12800 West Bluemound Road, Elm Grove, Wisconsin 53122, (414) 786–1590, Licensee: All-Pro Broadcasting, Inc., President: Willie Davis

RADIO DISTRIBUTION NETWORK

National Black Network, 1350 Avenue of the Americas, New York, New York 10019
Sheridan Broadcasting Network, 1745 South Jefferson Davis Highway, Suite 404, Arlington, VA 22202, (703) 685–2146, President: Tom McKinney

TELEVISION

California

KMEX–TV, Channel 34, 1520 Melrose, Los Angeles, CA, Licensee: Spanish International

District of Columbia

Black Entertainment Television Network, 3544 Brandywine Street, NW, Washington, DC 20008, (202) 244–3642

Florida

WLTV–TV, Channel 23, 695 N.W. 199th Street, Miami, FL 33169, Licensee: Spanish International

Michigan

WGPR–TV, Channel 2, 3140 E. Jefferson, Detroit, Michigan 48207, Licensee: WGPR–TV, Inc., General Manager: William V. Banks

New Jersey

WGRB–TV, Channel 65, (609) 871–2316, Licensee: Renaissance Broadcasting Co., 145 Tyler Drive, Willingboro, NJ 08046, President: Donald C. McMeans
WXTV–TV, Channel 41, 641 Main Street, Patterson, NY 07503, Licensee: Spanish International

New Mexico

KMXN–TV, Channel 23, 7221 North Hills Blvd. NE, Albuquerque, NM 87109, Licensee: Spanish TV of New Mexico

New York

WHEC–TV, 191 East Avenue, Rochester, NY 14604, (716) 546–5670, Licensee: BENI Broadcasting of Rochester, Inc., President: Jack Deckers

Texas

KWEX–TV, Box 9255, San Antonio, TX 78204, (512) 227–4141, Licensee: Spanish International

Virgin Islands

WBNB–TV, Channel 10, P.O. Box 1947, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00801, Licensee: Island Teleradio Service, Inc., General Manager: Shirlee T. Haizlip
WVIS–TW, Channel 8, P.O. Box 487, Christiansted, St. Croix 00820, (809) 772–2257, Licensee: Peoples Broadcasting Corp., General Manager: Arthur Swanson

Wisconsin

WAEO–TV, Rhinelander, Wisconsin, Licensee: Seaway Broadcasting

MINORITY ADVERTISING FIRMS

California

Meta 4 Productions, Inc., Terry Carter, 8727 West 3rd Street, Suite 293, Los Angeles, CA 90048
Cunningham, Short, Berryman and Associates, 2120 W. 8th Street, Los Angeles, CA 90057
Polymedia Corporation, Robert W. Dockery, Jr., 5371 Wilshire Blvd., Suite 212, Los Angeles, CA 90036
Imagery International, Elsa R. Saxod, Vice President, 110 West C Street, Suite 701, San Diego, CA 92101, (714) 239–1221
Williamson and Associates, Alfred Williamson, General Partner, 681 Market Street, Suite 877, San Francisco, CA 94105
Carranza Associates, Inc., Jess Lopez 3055 Wilshire Blvd., Suite 830, Los Angeles, CA 90010

District of Columbia

Thomas Buffington Associates, Inc., 1053 31st Street, N.W., Washington, D.C. 20007, (202) 337–1750
Wilson, Baptiste & Associates, Inc., 4500 Connecticut Ave., N.W., Suite 206, Washington, D.C. 20015, (202) 785–2931
Ofield Dukes and Associates, National Press Building, Suite 716, Washington, D.C. 20004
New Wave Communications, 1612 K Street, N.W., Suite 508, Washington, D.C. 20006
Pat Toney Associates, Inc., 1025 15th Street, N.W., Suite 600, Washington, D.C. 20005, (202) 737–0202
Effective Communications Corp., Darryl R. Kemp, President, 4410 29th Street, N.E., Washington, D.C. 20018, (202) 387–1828
Creative Resources International, Joan O. Parrott, 1029 Vermont Ave., N.W., Suite 875, Washington, D.C. 20005, (202) 357–2247
McLeod, Baptiste and Associates, Inc., 4545 42nd Street, NW, Suite 303, Washington, DC 20016, (202) 452–0694
Neiceon Enterprises, Inc., Bernice Williams, President, 5408 Silverhill Road, Suite 303, Washington, DC 20023, (301) 736–8206
America's Black Forum Productions, Walker Williams, President, 904 National Building, Washington, D.C. 20045, (202) 347–9168
Kendrick & Company, Carrie L. Fair, Esq., Chairman, 1037 Woodward Building, 733 15th Street, N.W., Washington, D.C. 20005, (202) 638–7627
First Georgetown Advertising, Inc., Paul A. Wallace, President, 733 15th Street, N.W., Washington, D.C. 20005, (202) 638–4602
Labero, Inc., Larry Bryant, President, 535 Edgewood Street, N.W., Suite 1, Washington, D.C. 20017
Plus Publications, Roy Betts, Editor, 2626 Pennsylvania Ave., N.W., Washington, D.C. 20237, (202) 333–5444, Ext. 61
Creative Universal Products, Inc., Robert W. Ewell, Vice President, Operations, 800 18th Street, N.W., Washington, D.C. 20006, (202) 347–2535
Mr. Paul Tapia, PCB International Ltd., 1735 K Street, NW, Suite 1201, Washington, DC 20006
Rutherford Associates, 2700 Q Street, NE, Washington, DC 20007
Vanguard Advertising Agency, Inc., 1029 Vermont Avenue, NW, Washington, DC 20005, (202) 737–3110
Effective Marketing and Advertising Company, Marvin D. Mondres, President, 499 S. Capitol Street, SW, Suite 515, Washington, DC 20003

Georgia

A.H. Anderson and Associates, Inc., 55 Marietta Street, NW, Suite 1810, Atlanta, GA 30303, (404) 522–1515
Rutherford Associates, William A. Rutherford, President, 616 Peyton Road, S.W., Atlanta, GA 30301

Illinois

Burrell Advertising, Thomas J. Burrell, President, 625 N. Michigan Avenue, Chicago, IL 60601, (312) 266–0880
Ralph Kolonay, Barbara Proctor, President, Proctor and Gardner, 111 E. Wacker Drive, Chicago, IL 60601, (312) 644–7950
Tilmon Productions, Inc., James Tilmon, 589 Clavey Court, Highland Park, IL 60035
OMAR, Inc., Dr. Marcelino Miyares, President, 5525 North Broadway, Chicago, IL 60640, (312) 271–1686
Gary Info, James T. Harris, Jr., Editor-Publisher, 1953 Broadway, P.O. Box M587, Gary, Indiana 46401
Gary Crusader, Dorothy Leavell, Publisher, 1549 Broadway, Gary, Indiana 46407

Iowa

New Iowa Bystander, Charles McCauley, Editor, 140 4th St. West, Des Moines, Iowa 50265

Kentucky

Louisville Defender, Kenneth T. Stanley, Editor-Publisher, 1720 Dixie Highway, Lousiville, Kentucky 40210

Louisiana

Community Ebony Tribune, Alonzo Hodge, Circulation & Advertising Director, P.O. Box 3857, Shreveport, LA 71103
The Alexandria News Weekly, H. Nicholas Stull, Publisher, P.O. Box 608, Alexandria, LA 71301
Louisiana Weekly, C. C. Dejoie, Jr., Editor-Publisher, 640 Rampart Street, New Orleans, LA 70150
Black Data Weekly, Joseph "Scoop" Jones, Editor, P.O. Box 51933, New Orleans, LA 70151
Black DATA Weekly, 2037 Orleans Avenue, P.O. Box 51933, New Orleans, LA 70151

Maryland

Afro-American Newspapers, Raymond H. Boone, Vice President and Editorial Director, 628 N. Eutaw Street, Baltimore, MD 21201

Baltimore News American, E. Lee Lassiter, 301 East Lumbar, Baltimore, MD 21203
Dawn Magazine, Afro-American Co., Inc., Baltimore, MD 21203, Arthur Carter, Editor

Michigan

Michigan Chronicle, Longworth M. Quinn, Editor-Publisher, 479 Ledyard Street, Detroit, Michigan 48201
Ecorse Telegram, J. C. Wall, Editor-Publisher, 4122 10th Street, Ecorse, Michigan 48229
U.S. Black Business, 415 Fidelity Building, Benton Harbor, Michigan 49022

New York

Uniworld Group, Inc., Byron Lewis, President, Shirley Kalunda, 101 Park Avenue, New York, New York
Frank Mingo, Carolyn Jones, and Richard Guilmenot, 285 Lexington Avenue, New York, New York 10017, (212) 697–4515
Rogers, Watkins & Brown, Suite 519, Statler-Hilton, Buffalo, New York 14202, (716) 856–5450
Ong & Associates, Inc., 485 Madison Avenue, New York, N.Y. 10022
Joseph A. Davis Consultants, Inc., 104 East 49th Street, New York, New York 10016
Amclar Tirado Film Production, Amclar Tirado, 100 West 94th Street, Apt. 156, New York, N.Y. 10025
The Link Advertising Corp., Castor A. Fernandez, President, 101 Park Avenue, Room 204, New York, N.Y. 10017, (212) 686–6048
Hispano Americano Advertising, Inc., J. Ralph Infante, President, 230 Park Avenue, New York, N.Y. 10017, (212) 697–6313
Lockhart, Pettus & Hammer, Inc., Keith E. Lockhart, President, 60 East 42nd Street, New York, N.Y. 10017, (212) 682–7898
National Alliance of Chinese-American Media, Inc., Bordon K. D. Yen, Executive Director, 401 Broadway, Suite 1907, New York, N.Y. 10013, (212) 431–3755
Robert Dibue' Associates, Inc., Robert Dibue', President, 245 East 40th Street, New York, N.Y. 10016, (212) 490–0486
J. P. Martin Associates, Inc., Joel P. Martin, President, 200 Madison Avenue, Suite 1904, New York, N.Y. 10016
Inner-Cities Communications, Inc., 507 5th Avenue, New York, N.Y. 10017
Minorities in Media, Inc., 342 Madison Avenue, Suite 567, New York, N.Y. 10017
Asure Blue, One Pennsylvania Plaza, Suite 2215, New York, N.Y. 10001, (212) 736–4660

North Carolina

Add Systems, 114 N. Myers Street, Charlotte, N.C. 28212, (704) 568–1316

Pennsylvania

Portfolio Associates, Inc., Dwight L. Pickard, Jr., Project Director, University City Science Center, Suite 202, Philadelphia, PA 19104
Greenwood Associates, Inc., Raymond Wood, General Manager, 1530 Chestnut Street, Suite 820, Philadelphia, PA 19102

Texas

Ed Yardang & Associates, Lionel Sosa, President, One Romana Plaza, San Antonio, Texas 78205, (512) 227–8141

Tennessee

Panda Communications, Inc., Ms. Verni Nerren, President, 902 Tenoke Bldg., 161 Jefferson Avenue, Memphis, TN 38103, (901) 521–0818

MINORITY PRODUCTION FIRMS

California

Professional International Productions and Public Relations, Ron Townson, President, 6155 South Bedford Avenue, Los Angeles, California 90056, (213) 611–1307
BCTV, Benjamin A. Soria, Vice President, 460 Hegenberger Road, Suite 750, Oakland, California 94621, (415) 632–7474
La Luz Cinema Video Productions, Heather Rae Howell, Executive Vice President, 5380 East Whittier Blvd., Los Angeles, California 90022, (213) 728–6107
Leroy Robinson, Chocolate Chip Productions, 6515 Sunset Blvd., Suite 206, Los Angeles, CA 90028
Frank Clarke, Meta 4 Productions, 8727 W. 3rd Street, Suite 203, Los Angeles, CA 90048
Masui Enterprises, Inc., Fritz Goode, President, 6922 Hollywood Blvd., Suite M–2, Hollywood, CA 90028, (213) 466–5451
Fuji Telecast & Production Co., Christopher Hirose, 1731 Buchanan Street, San Francisco, CA 94115, 346–7173
Ruiz Productions, Inc., Jose-Luis Ruiz, President, P.O. Box 27788, Los Angeles, California 90027, (213) 851–8110

District of Columbia

Baker F. Morten, Morbak Productions, Washington, D.C.
KIM Productions, Inc., Gordon G. Alexander, 1411 K Street, NW., Suite 920, Washington, D.C. 20005
Free Spirit Design Co., Donna Howell, President, 11 Fifteenth Street, NE., Suite 300, Washington, DC 20002, (202) 546–7337

Georgia

Image 7, Daniel A. Moore, President, 2964 Peachtree Road, N.W., Suite 790, Atlanta, GA 30305, (404) 237–0777

Illinois

Lakeshore Productions, Nathaniel Grant, President, 360 N. Michigan Avenue, Chicago, Illinois 60601, (312) 236–1890
The Real and Realities, Jarvus Grant, President, 9340 South Lafayette Avenue, Chicago, Illinois 60620

New York

Parrott & People Productions, 132 Madison Avenue, New York, N.Y. 10016
Sigma Sports, Inc., Dick Martin, President, 50 West 96th Street, New York, N.Y. 10025, (212) 245–3560
Toussant Group, 420 East 51st Street, New York, New York 10022
Wm Greaves Productions, 1776 Broadway, New York, N.Y. 10019
James E. Hinton Entertainment, 159 West 53rd Street, New York, N.Y. 10019
Peconic Bay Telecommunications,
Antonio De Grassee, P.O. Box 633, Jamesport, N.Y. 11947
Starke-Reid Televideo Corp., 249 W. 29th Street, New York, N.Y. 10001
Hinton Productions, Inc., 159 W. 53rd Street, New York, N.Y. 10019

Massachusetts

Jose M. Quinters, 79 Paulgore Street, Jamaica Plan, MA 02130
Media Arts, Inc., Guy F. Baughms, President, 253 Summer Street, Boston, MA 02210, (617) 426–5998

Mississippi

Spectrum Productions, Inc., Tom Alexander, President, P.O. Box 3215, Jackson, Mississippi 39207

Pennsylvania

Mr. D. Outlaw, 3627–29 Lancaster Avenue, Philadelphia, PA 19104

MINORITY NEWSPAPERS/MAGAZINES

Alabama

Birmingham World, Marcel Hopson, Publisher, 312 17th Street North, Birmingham, Alabama 35203
Mobile Beacon, Lancie M. Thomas, Editor-Publisher, 2312 Coastside Street, Mobile, Alabama 35203
The Montgomery Times, Al Dixon, Editor, 211 Dexter Avenue, Montgomery, Alabama 36104

Arizona

Arizona Informant, Charles R. Campbell, Co-Publisher, 222 North 9th Street, Phoenix, Arizona 85034

California

Asian American News Service, Charles Leong, Bureau Manager, 622 Washington Street, San Francisco, CA 94111, 986–2336
Soul Productions, Soul Magazine, Soul Illustrated, 8271 Melrose Avenue, Suite 208, Los Angeles, CA 90046 Judy Spiegelman, Managing Editor
The Black Panther, Intercommunal News Service, David DuBois, Editor, 8501 East 14th Street, Oakland, CA 94621, 638–0195
El Bohemio Magazine, Fred Rosado, Editor, 2828 Mission Street, San Francisco, CA 94110, 647–1924
California Voice, Arthur Jackson, Editor, 814 27th Street, Oakland, CA 94607, 465–8552
Central News Wave, Chester L. Washington, Editor-Publisher, 2621 W. 54th Street, Los Angeles, CA 90043
L. A. Sentinal, Ruth Washington, Publisher, 1112 E. 43rd Street, Los Angeles, CA 90011
California Voice, Carlton B. Goodlett, Editor-Publisher, 814 27th Street, Oakland, California 94607
Sacramento Observer, William H. Lee, Editor-Publisher, P.O. Box 209, Sacramento, CA 958801
S. F. Sun-Reporter, Carlton B. Goodlett, 1366 Turk Street, San Francisco, CA 94115
Precinct-Reporter, Art Townsend, Owner-Publisher, 1673 W. Baseline Street, San Bernadino, CA 92411

Canada

Contrast Publications Limited, Alfred W. Hamilton, Publisher, 28 Lennox Street, Toronto 4, Ontario—Canada

Connecticut

The Hartford Inquirer, William R. Hales, Editor-Publisher, P.O. Box 275, Hartford, Conn. 06101

District of Columbia

Washington Afro-American, Arther M. Carter, Publisher, 2002 11th St., N.W., Washington, DC. 20001
The Washington Informer, Calvin Rolark, Editor-Publisher 1343 H St., NW., Suite 600, Washington, D.C. 20001
African Directions, 884 National Press Building, Washington, D.C. 20045
National Alliance 1644 Eleventh Street, NW., Washington, D.C. 20001
Soul Journey, Box 336, Washington, D.C. 20044

Florida

Westside Gazette, Levi Henry, Jr., Editor-Publisher P.O. Box 9281, Fort Lauderdale, Fla. 33301
Miami Times, Garth C. Reeves, Sr., Editor-Publisher 6530 N.W. 15th Avenue, Miami, Florida 33147
Orlando Times, Norris D. Woolfork, III, Publisher, 2393 West Church Street, Orlando, Florida 32805
Florida Sun, James W. Macon, Publisher, 4020 W. Columbia, Orlando, Fla. 32805
Florida Sentinel Bulletin, C. Blythe Andrews, Jr., Publisher, P.O. Box 3363, Tampa, Florida 33601
Daytona Times, Charles W. Cherry, Publisher, 429 S. Campbell Street, Daytona Beach, Florida 72014
The Pensacola Voice, Les Humphrey, 263 East Yonge Street, Pensacola, Florida 32503

Georgia

Atlanta Daily World, C. A. Scott, Editor-General Manager, 145 Auburn Avenue, N.E., Atlanta, Georgia 30303
Black Capital Digest, D. Marcus Ranger, Publisher, P.O. Box 1056, Atlanta, GA 30301, (404) 344–9658
Atlanta Inquirer, John B. Smith, Executive Vice President, 947 Martin Luther King, Jr., Drive, N.E. Atlanta, Georgia 30314
The News Review, Mallory K. Millender, Editor-Publisher, P.O. Box 953, Augusta, Georgia 30901
The Herald of Savannah, Floyd Adams, Sr., Publisher, P.O. Box 41, Savannah, Georgia 31402
Columbia Times, Helmut Gerdes, Managing Editor 1304 Midway Drive, Columbus, Georgia 31902
The Savannah Tribune, Robert E. James, Publisher, 916 Montgomery Street, Savannah, Georgia 31401
Albany Times, W. L. Russell, Editor-Publisher, 315 Highland Avenue, Albany, GA 31701
The Macon Courier, Alex C. Habersham, Publisher, 2661 Montpelier Avenue, Macon, Georgia 31202

Illinois

Chicago Daily Defender, John H. Sengstacke, Editor-Publisher, 2400 S. Michigan Avenue, Chicago, Illinois 60616
Chicago Metro-News, Charles B. Armstrong, Editor-Publisher, 2600 South Michigan Avenue, Chicago, Illinois 60616
Voice of the Black Community, Horace G. Livingston, Jr., Publisher, 3180 N. Woodford, Decatur, Illinois 62521
Citizen Newspapers, Agustus Savage, Editor, 412 E. 87th Street, Chicago, Illinois 60619
Chicago Independent Bulletin, Hurley L. Green, Editor-Publisher, 728 W. 65th Street, Chicago, Ill. 60621
Chicago New Crusader, Dorothy Leavell, Publisher, 6429 South King Drive, Chicago, Ill. 60637
Observer Publications, Ibn Sharrieff, Publisher-General Manager, 1180 E. 63rd Street, Chicago, Ill. 60636
East St. Louis Crusader, Joe Lewis, Editor-Publisher, 2206 Missouri Avenue, East St. Louis, Ill. 62205
Black Stars, Black World, Ebony Magazine, Jet Magazine, Johnson Publications, 820 S. Michigan Avenue, Chicago, Ill. 60606

Indiana

Indianapolis Recorder, Marcus C. Stewart, Editor-Publisher, 2901 N. Tacoma Avenue, Indianapolis, Indiana 46218
Indiana Herald, O. L. Tandy, Editor-Publisher, 2449 Radar Street, Indianapolis, Indiana 46208
Proctor & Gardner Advertising Agency, Barbara Proctor, President, 111 E. Wacker Drive, Suite 326, Chicago, IL 60610, (312) 644–7950
Franklin T. Lett Associates, Franklin T. Lett, President, Suite 2720, 35 East Wacker Drive, Chicago, IL 60601

Louisiana

Kleck, Pourciau and Carvin, Inc., Karry L. Pourciau, President, 912 Louisiana Avenue, New Orleans, LA 70115, (504) 897–1367

Ohio

Asure Blue, 12429 Cedar Road, Suite 28, Cleveland Heights, Ohio 44106, (216) 368–1100
Burns Public Relations, Inc., 666 Euclid Avenue, Cleveland, Ohio 44114
Advertising Design Consultants Studio, George T. Linyear, President, 1266 East Broad Street, Columbus, Ohio 43205, (614) 253–3868
Rogers, Thomas, Cross and Long Advertising, A. R. Thomas, Vice President, Account Services, 1148 Euclid Avenue, Cleveland, Ohio 44115, (216) 241–3998

Maryland

Glenn Moy/Art Studio, 11222 Cherry Hill Road #302, Beltsville, MD 20705, (301) 937–0298

Massachusetts

Blackside, Inc., Henry Hampton, 501 Shawmut Avenue, Boston, Mass. 02118

Michigan

United Communications, Inc., Oliver Wilson, President, 707 Northland Towers East, Southfield, Michigan 48075

Minnesota

Vanguard Advertising Agency, Inc., Dr. Thomas Timpton, President, 15 South Ninth Street, Suite 485, Minneapolis, Minn. 55402, (621) 338–5386

Missouri

Inez Kaiser and Associates, 906 Grand Avenue, Kansas City, Missouri 64106
Effective Marketing and Advertising Company, Pierre Laclede Center, 7701 Forsyth, Suite 1353, Clayton, Missouri 63105

Montana

North Country Productions, Inc., Carl Kochman, President, Box 6459, Great Falls, Montana 59406

New Mexico

Ed Delgado Advertising Agency, Delgado Advertising Building, 1505 Llano Street, Santa Fe, NM

Minnesota

Twin Cities Courier, Mary J. Kyle, Editor-Publisher, 84 S. 6th Street, Suite 501, Minneapolis, Minn. 55402
Minneapolis Spokesman, Oscar H. Newman, Editor, 3744 4th Avenue, Minneapolis, Minn. 55409

Mississippi

Mississippi Memo Digest, Robert E. Williams, Editor-Publisher, 2511 5th Street, Meridian, Miss. 39301
Jackson Advocate, Charles Tisdale, Editor-Publisher, 115 East Hamilton Street, Jackson, Miss. 39202

Missouri

Kansas City Call, J. Reuben Benton, Advertising Director, 1715 E. 18th Street, Kansas City, MO 64141
Editorial Page Editor, St. Louis American, 2618 N. Kings Highway, St. Louis, MO 63113
The Crusader, William P. Russell, Chairman of the Board, 4371 Finney, St. Louis, MO 63113
St. Louis Argus, Eugene Mitchell, Publisher, 4595 Martin Luther King Drive, St. Louis, MO 63113
St. Louis Metro Sentinel, Jane Woods, Editor-Publisher, 3338 Olive, Suite 206, St. Louis, MO 63103

Nebraska

Omaha Star, Mildred Brown, Editor-Publisher, 2216 N. 24th Street, Omaha, Nebraska 68110

Nevada

Las Vegas Voice, Lawrence Albert, Publisher-Owner, P.O. Box 4684, Las Vegas, Nevada 81906

North Carolina

The Carolina Times, Vivian A. Edmonds, Editor-Publisher, 923 Old Fayetteville Street, Durham, N.C. 27702
Carolina Peacemaker, Culey V. Kilimanjaro, Secretary-Treasurer, P.O. Box 20853, Greensboro, N.C. 27420
Carolinian, P. R. Jervay, Editor-Publisher, 518 E. Martin Street, Raleigh, N.C. 27601
Wilmington Journal, T. C. Jervay, Editor-Publisher, 412 S. 7th Street, Wilmington, N.C. 20841
Charlotte Post, Bill Johnson, Editor-Publisher, 9139 Trinity Road, Charlotte, N.C. 28216

New York

N. Y. Daily Challenge, Thomas H. Watkins, Publisher, 1368 Fulton Street, Brooklyn, N.Y. 11207
Commission, News Travis L. Francis, Editor, 297 Park Ave. South, Suite 23, New York, N.Y. 10010

Westchester County Press, Alger L. Adams, Editor-Publisher, 61 Pinecrest Drive, Hastings-On-Hudson, N.Y. 10706
NY Amsterdam News, John L. Procope, Publisher, NY Amsterdam News, 2340 8th Avenue, New York, N.Y. 10027
New York Voice, Jimmy L. Hicks, Editor, 78-36 Parsons Boulevard, Flushing, N.Y. 11366
Filipino Reporter Enterprises, Inc., 41 Union Square, Suite 325-27, New York, NY 10003
Black Enterprise, 295 Madison Avenue, New York, NY 10017, Earl Graves, Publisher
Black Sports, 386 Park Ave. South, New York, NY 10016, Rick Edwards, Editor, Allan P. Barron, Publisher
Contact, 11 E. 44th Street, New York, NY 10017, Richard Clarke, Publishing Editor, Booker Williams, Managing Editor
Essence Magazine, 1500 Broadway, New York, NY 10036, Marcia Ann Gillsepie, Editor
National Scene, L.H. Stanton Publications, New York, NY 10017
Black Monitor, Black Media, Inc., Suite 1101, 507 5th Avenue, New York, NY 10017
The Crisis, NAACP, Crisis Publishing Co., 1790 Broadway, New York, NY 10019, (212) 245-2100

Ohio

The Akron Reporter, William R. Ellis, Editor-Publisher, P.O. Box 2042, Akron, Ohio 44309
Cleveland Call and Post, William O. Walker, Editor-Publisher, 1949 105th Street, Cleveland, Ohio 44106
Cincinnati Herald, Majorie B. Parham, Editor-Publisher, 863 Lincoln Avenue, Cincinnati, Ohio 45206
The Toledo Journal, Myron Alfred Steward, Publisher, 1816 Bancroft, Toledo, Ohio 43607
Buckeye Review, Margaret Linton, Editor, P.O. Box 1436, Youngstown, Ohio 44501

Oklahoma

Oklahoma Eagle, Robert K. Goodwin, Publisher, 122 N. Greenwood, Tulsa, Oklahoma 74120
Black Dispatch Publishing Co., Russell Perry, Co-Publisher, P.O. Box 1254, Oklahoma City, Okla. 73101

Oregon

The Skanner, Bernard V. Foster, Editor-Publisher, P.O. Box 5455, Portland, Oregon 97228

Pennsylvania

Philadelphia Tribune, Alfred L. Morris, President, 520 16th Street, Philadelphia, PA
New Pittsburgh Courier, James D. Lewis, General Manager, 315 E. Carson Street, Pittsburgh, PA 15219
Black Business Digest, 3133 North Broad Street, Philadelphia, PA 19132, Albert Hendricks, Executive Editor, Vincent Capozzi, Managing Editor

South Carolina

Black News, Redfern II, Publisher, P.O. Box 11128, Columbia, S.C. 29403
Low Country Star, Donna D. Scott, Editor-Publisher, 1114 S. Ribart Road, Port Royal, S.C. 29935

Tennessee

Tri-State Defender, Robert Sengstacke, General Manager, 124 E. Calhoun Street, Memphis, Tenn. 38103

Texas

Post Tribune, Dickie Foster, Editor, 3428 Sunnyvale, Dallas, Texas 72516
Houston Forward Times, Lenora Carter, Publisher, 4411 Almeda Road, Houston, Texas 77004
Houston Informer, George McElroy, Editor, P.O. Box 3086, Houston, Texas 77001
The Texarkana Courier, Elridge Robertson, Publisher, 504 W. 3rd Street, Texarkana, Texas 75501
Great Circle News, Tony Davis, 3101 Forest Avenue, Dallas, Texas 75215
Freedom's Journal, Emerson Emory, 2814 S. Beckley, Dallas, Texas 75224
Sepia Magazine, Hep, Bronze Thrills, Jive, 1220 Harding Street, Fort Worth, Texas 76102, Ben Burnes, Editor

Virgin Islands

Daily News of Virgin Islands, Ariel Melchior, Jr., Publisher, P.O. Box 7638, St. Thomas, U.S., V.I. 00801

Virginia

New Journal and Guide, Milton A. Reid, Editor-Publisher, 1017 Church Street, Norfolk, VA 23501
Richmond Afro-American, 301 E. Clay Street, Richmond, VA 23219

Washington

Seattle Medium, Christopher H. Bennett, Editor-Publisher, 2600 S. Jackson Street, Seattle, Wash. 98122

Wisconsin

Milwaukee Courier, Jerrel Jones, Publisher, 2431 W. Hopkins Street, Milwaukee, Wis. 53206
Black Excellence, Mildred E. Parrish, Editor, P.O. Box 26191, Milwaukee, Wisconsin 53268
Milwaukee Star, Cal Patterson, Publisher, 3811 N. 20th Street, Milwaukee, Wis. 53206
Racine Star, Sharon Schumann, Editor, 2431 W. Hopkins Street, Milwaukee, Wis. 53206
Milwaukee Community Journal, Robert J. Thomas, Co-Publisher/Chairman of the Board, 3764 N. Port Washington Road, Milwaukee, Wis. 53212

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OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Adoption of Systems of Records

AGENCY: Office of Personnel Management.

ACTION: Notice: Adoption of Systems of Records.

SUMMARY: The Office of Personnel Management (OPM) has previously published a notice of proposed Privacy Act systems of records. The purposes of this notice are to: (1) identify certain of those proposed systems of records, where comments were received and where substantial changes have resulted from the comments, as being adopted; (2) identify changes to those adopted; and (3) completes OPM action to meet the Privacy Act requirement for annual publication of notices of systems of records. This action is required by the creation of OPM by the President's Reorganization Plan No. 2 of 1978 and to implement the Privacy Act and has the effect of establishing systems of records for use by OPM.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: William H. Lynch, Work Force Records Management Branch, Agency Compliance and Evaluation, (202) 254-9778.

SUPPLEMENTARY INFORMATION: When the Office proposed the systems of records (44 FR 30836, May 29, 1979) identified as OPM/INTERNAL-1 through OPM/INTERNAL-22, OPM/CENTRAL-1 through OPM/CENTRAL-14, and OPM/GOVT-1 through OPM/GOVT-5, a report on New Systems was also filed with OMB and Congress. The required 60-day advance notice period ended on July 30, 1979. Comments were received concerning only some of the proposed systems and, those systems receiving no comments were adopted by a separate **Federal Register** notice. (44 FR 60450, October 19, 1979). The systems herein adopted were changed, where appropriate, as a result of comments received or changes in OPM policy.

Most of the comments received, with which the Office agrees, requested that the Office continue the concept of Government-wide system notices to cover personnel records common to all agencies. Therefore, this notice will identify several proposed OPM/INTERNAL systems that will not be adopted. Rather the records identified in the proposed system will be incorporated as a category of records in one or more of OPM's Government-wide systems of records.

Therefore, this notice shows that: (1) The OPM/INTERNAL-2 and OPM/CENTRAL-1 systems of records are to be covered under the OPM/GOVT-8, Confidental Statements of Employment and Financial Interest records; (2) the OPM/CENTRAL-2 system is modified to provide for coverage of Position Classification Review and Retained Rate of Pay Appeal records in a Government-wide system of records (OPM/GOVT-9); (3) the OPM/CENTRAL-3, Personnel Research and Test Validation Records, will be elevated to a Government-wide system

(OPM/GOVT–6) and that the action effecting this change is the subject of a separate FR notice; and (4) several changes to OPM/GOVT–2, OPM/GOVT–3, and OPM/GOVT–5 are incorporated. Except for the elevation of OPM/CENTRAL–3 to OPM/GOVT–6, the other changes result from comments received and require no additional public comment period.

The Office agrees to continue coverage of Confidential Statements of Employment and Financial Interests records under a Government-wide systems, as was done by the former CSC/GOVT–2 system now being replaced by the OPM/GOVT–8 system, at the request of serveral agencies. For the present, the Office agrees to cover grievance records (both under an agency plan and under a negotiated grievance procedure) under the OPM/GOVT–2 system. However, comments received indicate that for a system of grievance records maintained under a negotiated plan, the records should be under an agency specific system notice. Additionally, several agencies have suggested that all grievance records should be under an agency specific system notice and the Office intends, absent comment to the contrary, to eliminate the OPM/GOVT–2 system of records at a future date. The elimination of this Government-wide system will not be effective until sufficient time has elapsed to allow agencies to establish their own systems, and will be preceded by a notice to agencies through the Interagency Advisory Group. However, should it be demonstrated, through written comments to the Office from agencies employing a majority of the Federal civilian work force, that records under an agency grievance plan should remain in a Government-wide system, OPM will reconsider this approach.

It is the intention of the Office to make records related to actions based on unacceptable performance, shown as being a part of the OPM/GOVT–3 system in the proposed notices, part of a new Government-wide sytem of employee performance records that is being developed. Therefore, such records have been removed from the adopted OPM/GOVT–3, Adverse Action Records, and are shown temporarily as a separate category of the records under the OPM/GOVT–1 system. When the sytem of employee performance records is proposed, consistent with OMB requirements for a Report on New Systems, these records will be removed from the OPM/GOVT–1 system and included in the new system.

The Office has also made several changes to the OPM/GOVT–1 and OPM/GOVT–5 system notices which are designed to enhance understanding, by agencies and covered individuals, of exactly what records are covered by these systems. The more specific categories of records for these systems do not include any records that were not already covered by the former CSC/GOVT–3 and CSC/GOVT–5 systems. The old CSC/GOVT–3 and CSC-GOVT–5 systems are now replaced by the adoption of the OPM/GOVT–1 and OPM/GOVT–5 systems.

Because of the changes to the OPM/CENTRAL–2, OPM/GOVT–1, OPM/GOVT–3, and OPM/GOVT–5 systems resulting from comments received, and the need to elevate certain records to a Government-wide system at the request of those commenting (OPM/GOVT–8 and OPM/GOVT–9), the complete text of these notices appears below. The OPM/GOVT–4, Ethics in Government Financial Disclosure Records system was adopted by a separate notice in the **Federal Register** on April 27, 1979 (44 FR 24965). Where no changes to the proposed text of a system adopted by this notice are necessary, only the system name and **Federal Register** page citation are listed. In some cases there may be a non-substantive change required in the text and in those cases the entire altered section of the notice is reprinted with the changes included. Where the adopted system completely replaces an existing CSC system (in some cases the CSC system must remain in effect to cover records currently maintained by another agency, e.g., the Merit Systems Protection Board), it is so noted. Because of changes to OPM's list of regional offices, a new Appendix listing regional office addresses is also provided. Finally, the Office found it necessary to publish new routine uses for the CSC/GOVT–3 General Personnel Records system during the transition period from CSC to OPM, which routine uses are now being incorporated into the OPM/GOVT–1 General Personnel Records system. These routine uses, were previously published for the required 30-day comment period and are now in effect. Moreover, because the Office is of the opinion that where individuals provide volunteer services to agencies (where such services require access to records in systems of records) such individuals are included within the meaning of the term "officers and employees" as used in section 552a(b)(1) of the Privacy Act and, therefore, no specific routine use to permit disclosure to these individuals is required. The systems adopted, the new numerical system designations, and the new Appendix appear below.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

OPM/INTERNAL–2 Confidential Statements of Employment and Financial Interests system (44 FR 30838) becomes part of OPM/GOVT–8 below.

OPM/INTERNAL–9 Applicants for Employment Records and OPM/INTERNAL–10 Pre-employment Inquiry Records systems (44 FR 30845 and 30847) become part of OPM/GOVT–5 below.

OPM/INTERNAL–11 Intergovernmental Personnel Act Assignment Records, OPM/INTERNAL–12 Employee Incentive Award and Recognition Files, and OPM/INTERNAL–14 Federal Executive Development Program Records systems (44 FR 30849, 30850, and 30853) become part of OPM/GOVT–1 below.

OPM/INTERNAL–20 Training Records, OPM/INTERNAL–21 Performance Evaluation Rating Records, and OPM/INTERNAL–22 Internal Program and Upward Mobility Program Records systems (44 FR 30858, 30859, and 30860) become part of OPM/GOVT–1 below.

OPM/CENTRAL–1 Confidential Statements of Employment and Financial Interests system (44 FR 30861) becomes part of OPM/GOVT–8 below.

OPM/CENTRAL–2 Complaints and Position Classification or Retained Rate of Pay Appeals Records (44 FR 30862) is modified to make classification review and retained rate of pay appeal records a Government-wide system. The complete text of the modified OPM/CENTRAL–2 Complaint Records appears below.

OPM/CENTRAL–3 Personnel Research and Test Validation Records system (44 FR 30864) becomes OPM/GOVT–6, which system is the subject of a separate **Federal Register** notice (44 FR 59024, October 12, 1979).

OPM/CENTRAL–15 Senior Executive Service Records system was the subject of a separate **Federal Register** notice on July 6, 1979 (44 FR 39659). As indicated by that notice, this system became effective on September 4, 1979. There is, however, a new numerical designation for this system. It will now be OPM/CENTRAL–13.

OPM-CENTRAL—2

SYSTEM NAME:

Complaints Records

SYSTEM LOCATION:

Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, and OPM

regional offices. (See list of regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees, who have filed complaints about conditions of the agency or agency personnel actions affecting the individuals, e.g., allegations of improper promotion actions, reduction-in-force procedures, or Fair Labor Standards Act (FLSA) procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a complaint made to the Office under its regulations. The records may include information and documents regarding the actual personnel action of the agency in question and the decision or determination rendered by an agency regarding the issue raised.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C., Sections 1302, 3502; Executive Orders 9830, 10577, and 11491; and Public Law 93–259.

PURPOSE:

The principal purposes for which these records are established are to document the processing and to adjudicate any complaint filed with the Office. Internally, the Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency (the Office of Personnel Management) becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to any source from which additional information is requested in the course of adjudicating an appeal or complaint, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring, retention, or assignment of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To disclose information to a Federal agency or to a court when the Government is a party to a judicial proceeding before the court.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, or on index cards.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in a secured room with access limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

1. Records related to most complaints about conditions at an agency or an agency's personnel actions affecting an individual, are maintained for three years after closing action on the complaint.

2. Records related to Fair Labor Standards Act complaints are maintained indefinitely.

3. All records are destroyed by shredding or burning.

SYSTEM MANAGERS AND ADDRESS:

Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager indicated above, WITH THE FOLLOWING EXCEPTION: Individuals who have properly filed complaints with an OPM regional office should contact that regional office at the address listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when complaint was filed and approximate dates of the closing of the case.

d. Kind of action taken by the agency.

RECORD ACCESS PROCEDURES:

Individuals who have filed a complaint about an agency personnel action or about conditions existing in an agency must be provided access to the record. However, after the complaint to the Office has been closed, an individual may request access to the official copy of the complaint record by writing the System Manager or OPM regional office indicated in the Notification procedures. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the complaint was filed and approximate date of the closing of the case.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

a. Individual to whom the record pertains.

b. Agency and/or Office of Personnel Management.

c. Official documents relating to the complaint.

d. Related correspondence from organizations or persons.

OPM/GOVT-1

SYSTEM NAME:

General Personnel Records. (Replaces the CSC/GOVT-3 system of records).

SYSTEM LOCATION:

Records on current Federal employees are located at the Personnel Office or other designated office of the local installation of the Department or Agency which currently employs the individual. These records are retained either on the left or right side of the Official Personnel Folder (OPF), in separate folders or envelopes which may remain in the OPF or apart from it, or in an automated media. Permanent records on former Federal employees are located at the National Personnel Records Center, General Services Administration, 111 Winnebago Street, St. Louis, Missouri 63118. Temporary records of former employees are generally retained for a short period of time (two to five years) by the employing agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records include identifying information such as name(s), date of birth, home residence, mailing address, Social Security Number, home telephone, name of person to be contacted in an emergency, and veterans status. Other records in this system are:

a. Records reflecting work experience, educational level achieved, and specialized education or training occurring outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about: past and present positions held; grades, salaries, and duty station locations; commendations, awards, or other data reflecting special recognition of an employees performance and supporting documentation; and notices of appointments, transfers, reassignments, details, promotions, demotions, reductions in force, resignations, separations, suspensions and removals.

c. Information relating to enrollment or declination of enrollment in the Federal Employee's Group Life Insurance Program and federally sponsored health benefit programs, as well as forms showing designation of beneficiary.

d. Information of a medical nature including records compiled during an agency initiated fitness for duty examination or request for approval of disability retirement. Such medical records are to be retained in separate envelopes from the OPF and include records of medical examinations that are to remain as a permanent record in the OPF (see "Retention and disposal" section below). (Note: this system does not cover agency dispensary records or records of drug or alcohol abuse counseling or other such counseling records.)

e. Information relating to an Intergovernmental Personnel Act assignment or Federal-private exchange program. (Note: some of these records may also become part of the OPM/CENTRAL-7 Intergovernmental Personnel Act Assignment Records system.)

b. Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about: past and present positions held; grades, salaries, and duty station locations; commendations, awards, or other data reflecting special recognition of an employees performance and supporting documentation; and noticers of appointments, transfers, reassignments, details, promotions, demotions, reductions in force, resignations, separations, suspensions and removals.

c. Information relating to enrollment or declination of enrollment in the Federal Employee's Group Life Insurance Program and federally sponsored health benefit programs, as well as forms showing designation of beneficiary.

d. Information of a medical nature including records compiled during an agency initiated fitness for duty examination or request for approval of disability retirement. Such medical records are to be retained in separate envelopes from the OPF and include records of medical examinations that are to remain as a permanent record in the OPF (see "Retention and disposal" section below). (Note: this system does not cover agency dispensary records or records of drug or alcohol abuse counseling or other such counseling records.)

e. Information relating to an Intergovernmental Personnel Act assignment or Federal-private exchange program. (Note: some of these records may also become part of the OPM/CENTRAL-7 Intergovernmental Personnel Act Assignment Records system.)

f. Information relating to participation in an agency Federal Executive or SES Candidate Development Program. (Note: some of these records may also become part of the OPM/CENTRAL-5 Federal Executive Development Program Records or OPM/CENTRAL-13 Senior Executive Service Records systems.)

g. Records relating to Training or participation in an agency's Upward Mobility Program or other personnel programs designed to broaden an employee's work experiences and for purposes of advancement (e.g., an administrative intern program).

h. Information contained in the Central Personnel Data File (CPDF) maintained by the Office. These data elements include many of the above records along with handicap and minority group designator codes. A definitive list of CPDF data elements is contained in Federal Personnel Manual Supplement 292-1.

i. Records connected with the Senior Executive Service, maintained by agencies for use in making decisions affecting incumbents of these positions, e.g., relating to sabbatical leave programs, training, reassignments, and details, that are perhaps unique to the SES and which may or may not be filed in the employee's Official Personnel Folder. These records may also serve as the basis for reports submitted to OPM's Executive Personnel and Management Development Group for purposes of implementing the Office's oversight responsibilities concerning the SES.

j. Performance appraisal records including: appraisal forms and

supporting documentation issued under employee (including SES employees) appraisal systems; recommendations for personnel actions; Performance Review or Executive Resource Board records; forms and supporting documentation issued in connection with removal actions; letters of commendation, reprimands, admonishments, cautions, or warnings and supporting-documentation; and documents certifying satisfactory completion of probationary periods or recommendations for within grade or merit pay actions.

k. To the extent that the above records are also maintained in an agency automated personnel records system, these automated versions of the above records are considered to be covered by this system notice. Record categories beyond those described here and any additional copies of paper documents (except for performance appraisal related documents maintained by first line supervisors and managers) maintained by agencies are not considered part of this system and must be covered by an agency specific internal system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 2951, 3301, 3372, 4118, 4303, 8347; 5 CFR 432 of OPM regulations; and Executive Orders 9397, and 12107.

PURPOSE:

The Official Personnel Folder and other general personnel record files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, filed as permanent records in these files, give legal and effect to personnel transactions and establish employee rights and benefits under the pertinent laws and regulations governing Federal employment.

These files are maintained by agencies for the Office. The Official Personnel Folder is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage or, alternatively, to the next employing agency. Other records are either retained at the agency for various lengths of time in accordance with General Services Administration records schedules or destroyed when the employee leaves the agency. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in these folders are used primarily by agency personnel offices in screening qualifications of employees; determining status, eligibility, and employees rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and for other information needed in providing personnel services. These records may also be used to locate individuals for personnel research.

Temporary documents on the left side of the OPF may lead (or have led) to a formal action, but do not constitute a record of it, nor make a substantial permanent contribution to the employee's record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To disclose information to educational institutions on appointment of a recent graduate to a position in the Federal service, and to provide college and university officials with information about their students working under the Cooperative Education, Volunteer Service, or other similar programs where necessary to the students obtaining of credit for the experience gained.

c. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

d. To disclose information to the Department of Labor; Veterans Administration; Social Security Administration; Department of Defense; Federal agencies that have special civilian employee retirement programs; or a national, state, county, municipal, or other publicly recognized charitable or social security administration agency (e.g., state unemployment compensation agencies); where necessary to adjudicate a claim under the retirement, insurance or health benefit program(s) of the Office of Personnel Management or an agency cited above, or to conduct an analytical study of benefits being paid under such programs.

e. To disclose to the Official of Federal Employee's Group Life Insurance information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of claim for life insurance.

f. To disclose to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination of benefits provisions of such contracts.

g. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

h. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors.

i. To consider employees for recognition through quality step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

j. To disclose information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

m. To disclose information to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability

investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

n. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

o. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

p. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

q. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

r. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

s. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

t. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

u. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with a psychiatric examination ordered by the agency under:

(1) fitness-for-duty examination procedures; or

(2) agency-filed disability retirement procedures.

v. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

w. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

x. To disclose to a requesting agency the home address and other relevant information concerning those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while employed in the Federal work force.

y. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve, to assure continuous mobilization readiness of Ready Reserve units and members.

z. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, United States Public Health Service, and the United States Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of Section 5532 of title 5, United States Code.

aa. To disclose to prospective non-Federal employers, the following information about a current or former Federal employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government; and

(4) When separated, the date and nature of action as shown on the Notification of Personnel Action, Standard Form 50.

Note.—The following routine use is unspecified as it is temporary in nature, i.e., will cease to exist after February 25, 1980.

To disclose the name, date of birth, Social Security Number, salary, work schedule, and duty station location of Federal employees as of March 31, 1979, to the Department of Health, Education, and Welfare in connection with that agency's Aid to Families with Dependent Children (AFDC) matching program. Pursuant to Pub. L. 94–505, the Department of Health, Education, and Welfare is conducting a matching program to reduce fraud and unauthorized payments in Federal programs, and to collect debts owed to the Federal government. This routine use will be operative for a limited period of six months from its effective date.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, and in computer processible storage media.

RETRIEVABILITY:

These records are retrieved by various combinations of name, birth date, Social Security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

a. Permanent Records. The Official Personnel Folder (OPF) is retained by the employing agency as long as the individual is employed with that agency. Medical records are kept separate from the OPF while the individual is employed by an agency. When the individual transfers to another Federal agency or to another appointing office, the OPF, with permanent medical records inserted therein in a separate envelope, is sent to that agency or office. Other medical records covered by this system, i.e., fitness for duty examinations, are considered temporary in nature. Such records, when not submitted to the Office for retention in a disability retirement file (or submitted, but the Office does not approve retirement), shall be destroyed no later than six months after closing action on the case or sooner at the discretion of the agency.

Within 90 days after the individual separates from the Federal service, the OPF is sent to the National Personnel Records Center for permanent storage. In the case of a retired employee or one who dies in service, the OPF is sent to the Records Center within 120 days.

b. Other Records. These records are retained for varying periods of time. Generally these records are maintained for a minimum of one year, or until the employee transfers or separates. Letters of caution, warning, admonishment, or for similar disciplinary action are maintained for a maximum of two years, but they may be disposed of at any time before the end of the two year period when: (1) it is decided through an

administrative procedure that the action was unwarranted; (2) management determines that the letter has served its purpose (i.e., caused improvement in the employee's performance); (3) the head of the agency or designee determines that the letter should be removed; or (4) at the discretion of the issuing authority. Obsolete performance ratings and appraisals are disposed of when a new rating or appraisal is completed, usually on a yearly basis. Some appraisal records are retained for five years (pertaining to an employee in an SES covered position) and some for three years, e.g., in support of a merit pay action.

c. Records contained on computer processible media within the Central Personnel Data File (and in agency automated personnel records) may be retained indefinitely as a basis for longitudinal work history statistical studies.

All records are disposed of by shredding, burning, or erasure of magnetic disks and tapes.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate OPM or agency office, as follows:

a. Current Federal employees should contact the Personnel Officer or other responsible official (as designated by the employing agency), Department or Agency with which employed, Local Agency Installation, regarding records in this system.

b. Former Federal employees should contact the System Manager indicated above, one of the Office's regional or area offices (see list of regional and area office addresses in the Appendix), or, as explained in the Note below, the National Personnel Records Center (Civilian), 111 Winnebago St., St. Louis, Missouri 63118, regarding the records in this system.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Last employing agency (including duty station) and approximate date of the employment (for former Federal employees).

e. Signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the appropriate OPM or agency office, as specified in the *Notification procedures* above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Last employing agency (including duty station) and approximate date of the employment (for former Federal employees).

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

Note.—An individual who is a former Federal employee may direct a request to the National Personnel Records Center (NPRC) only for a transcript of his or her own employment history. The transcript includes the individual's name; date of birth; Social Security Number; past and present grades, position titles, duty stations, and salaries; and dates of personnel actions.

Under no circumstances shall an individual direct a request for access to copies of records in this system to the NPRC. Though NPRC stores and services some of the records on former Federal employees in this system, those records remain the property of the Office of Personnel Management, and for the access provisions of the Privacy Act, will be handled and processed by the Office.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to their records should contact the appropriate Office or agency offices, as specified in the *Notification procedures* above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Last employing agency (including duty station) and approximate dates of the employment (for former Federal employees).

e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

Note.—Under no circumstances shall an individual direct a request for amendment to records in this system to the NPRC. Though NPRC stores and services some of the records on former Federal employees in this system, those records remain the property of the Office of Personnel Management, and for the amendment provisions of the Privacy Act, will be handled and processed by the system manager at the Office.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

b. Physicians examining the individual.

c. Educational institutions.

d. Agency officials.

e. Other sources of information for permanent records maintained in an employee's OPF, in accordance with Federal Personnel Manual Chapter 293.

OPM/GOVT–2 Grievance Records (44 FR 30884) is adopted as proposed, except for the change to the categories of records section as shown below.

Note.—During the comment period several agencies suggested that this system be modified to drop coverage of grievance records maintained under the terms of an agency negotiated grievance plan and, in one case, it was suggested that the system be dropped entirely. The Office believes that to take the steps suggested without sufficient lead time to allow establishment of a new or modified agency specific system to cover these records is inappropriate. Therefore, although the Office is adopting this system, it is doing so with the understanding that, because agencies wish to adopt internal systems for such records, there will eventually be no need for a Government-wide grievance record system. The Office, absent persuasive arguments to the contrary, will discontinue this system of records with the next publication of the annual notice of systems of records.

OPM/GOVT–2

SYSTEM NAME:

Grievance Records.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by agency employees under part 771 of the Office's regulations. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that agencies may establish through negotiations with recognized labor organizations.

* * * * *

OPM/GOVT-3

SYSTEM NAME:

Adverse Action Records.

SYSTEM LOCATIONS:

These records are located in personnel or designated offices in federal agencies in which the actions were processed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees against whom such an action has been proposed or taken in accordance with Parts 752 and 754 of the Office's regulations (5 CFR 752 and 5 CFR 754).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents related to the processing of an adverse action. The records include copies of the notice of proposed action; materials relied on by the agency to support the reasons in the notice; replies by the employee; statements of witnesses; hearing notices; reports; and decisions.

Note.—This system does not include records, including the action file itself, compiled when such actions are appealed to the Merit Systems Protection Board (MSPB) or become part of a discrimination complaint record at the Equal Employment Opportunity Commission (EEOC). Such appeal and discrimination complaint file records are covered by the appropriate MSPB or EEOC system of records. Records maintained in connection with actions based on unacceptable performance are covered by the OPM/GOVT–1 General Personnel Records system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, and 3302; E.O. 10577 and E.O. 11491; 3 CFR, 1954–1958 Comp. p218 and 3 CFR 1966–1970 Comp. p861.

PURPOSE:

These records are used to propose, process, and document adverse actions taken by the Office or agencies against agency employees in accordance with Parts 752 and 754 of the regulations (5 CFR 752 and 5 CFR 754).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested in the course of processing an adverse action, appeal, or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, or the classifying of jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

k. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting an adverse action are disposed of 4 years after the closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals receiving notice of a proposed adverse action must be provided access to all documents supporting the notice. At any time thereafter, individuals involved in the action will be provided access to the completed record. Individuals should contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORD ACCESS PROCEDURES:

Individuals involved in such actions must be provided access to the record. However, after the action has been closed, an individual may request access to the official copy of an adverse action file by contacting the agency personnel or designated office where the action was processed. Individuals must furnish the following information for

their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendment to records and verifications of identify (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By agency officials.

d. From related correspondence from organizations or persons.

OPM/GOVT-4 Ethics in Government Financial Disclosure Records system was adopted by **Federal Register** notice of April 27, 1979 (44 FR 24965). The complete text of that system notice appeared in the **Federal Register** of December 29, 1978 (43 FR 60983).

OPM/GOVT-5

SYSTEM NAME:

Recruiting, Examining, and Placement Records.

SYSTEM LOCATION:

Associate Director for Staffing Services, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, OPM regional and area offices (see list of OPM office addresses in the Appendix), Office of Personnel Management Job Information Centers, and personnel offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied to the Office of Personnel Management or agencies for Federal Employment and current and former Federal employees submitting applications for other positions in the Federal service.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including: name, date of birth, Social Security Number, and home address. Additionally, this system contains records consisting of:

a. Applications for employment that contain information on work and educational experience; convictions for offenses against the law; military service, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information; on the ranking of an applicant; on their placement on a list of eligibles; on what certificates their names appeared on; reflecting an agency request for Office approval for the agency's objection to an eligible's qualification and OPM's decisions in the matter; reflecting an agency request for Office approval for the agency to pass over an eligible and OPM's decision in the matter; and reflecting an agency decision to object/pass over an eligible where the agency has authority for making such decisions under agreement with OPM.

c. Records regarding OPM's final decision regarding an agency's decision to object/pass over an eligible for suitability or medical reasons or where the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability.

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. Registration sheets completed by displaced employees or displaced employee control cards and related documents regarding such individuals.

g. Records concerning non-competitive action cases referred to the Office for decision. These files include such records as waiver of time in grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and waiver of requirement to reduce retired pay. Authority for making decisions regarding many of these type of actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to OPM, along with records that agencies maintained as a result of OPM's delegation of authorities are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals, both retained by OPM and agencies acting under OPM delegated authorities, are part of this system.

i. Agency applicant supply file systems, along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

Note: To the extent that an agency utilizes an automated medium in connection with maintenance of this system of records, the automated versions of these records are considered covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Sections 1302, 3109, 3301, 3302, 3304, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 4103, 5532, 5533, and 5723; Executive Order 9397.

PURPOSE:

The records are used to consider individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment considerations, including appointment, transfer, reinstatement, reassignment, or promotion. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer applicants including current and former Federal employees, to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigation, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of positions, the letting of a contract, or the issuance of a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of positions, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

i. By the National Archives and Records Service (General Service Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

j. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instance the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

k. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

l. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on magnetic tapes, discs, punched cards, microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, or Social Security Number of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to five years. Most records are retained for a period of one or two years. Some records, such as individual applications, become part of the persons permanent official records when hired, while some records, e.g., non-competitive action case files are retained for five years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Staffing Services, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or OPM office where application was made, or where an examination was taken. Resource specialists should contact the OPM Area Office which provides examining and rating assistance. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social Security Number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a (c)(3) and (d), regarding access to records. The section of the notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from access. individuals wishing to request access to their non-exempt records should contact the agency or OPM office where application was made, or where an examination was taken. Resource specialists should contact the OPM Area Office providing examining and rating assistance. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social Security Number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and reasons for exempting them from amendment. An individual may contact an agency or an

OPM Area Office where his or her application is filed at any time to update qualifications, education, experience, or other data maintained in the system. Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the agency or OPM office where application was made, or where an examination was taken. Resource specialists should contact the OPM Area Office providing examining or rating assistance. Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Social Security Number.

d. Identification number (if known).

e. Approximate date of record.

f. Title of examination or announcement with which concerned.

g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information the individual supplied, except reports from medical personnel on physical qualifications; results of examination which are made known to applicants; and vouchers supplied by references the applicant lists.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from provisions of the Act (5 U.S.C. 552a (c)(3) and (d)) relating to accounting of disclosures and access to records, to the extent that release of the material to the individual whom the information is about would:

1. reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or,

2. reveal the identity of a source who, prior to Septemter 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contains testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, where disclosure of the material would compromise the objectivity or fairness of the testing or examination process. At 5 CFR 297.304, the Office of Personnel Management has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records (i.e., from 5 CFR 297.203 and 208).

OPM/GOVT—8

SYSTEM NAME:

Confidential Statements of Employment and Financial Interests.

SYSTEM LOCATION:

Records in this system may be located as follows:

a. For those statements filed with the Office of Personnel Management: Director, Office of Government Ethics, 1900 E Street, N.W., Washington, D.C. 20415; and

b. For those statements filed with the individual's agency: Agency Ethics Officer, or designee, Department or Agency address as appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Certain Presidential appointees in the Executive Office of the President and Presidentially appointed full-time members of committees, boards, or commissions specifically required by Executive Order 11222 to file such statements directly with the Office of Personnel Management; and

b. Regular and special employees who have been directed by the head of their agency, under authority of Executive Order 11222, to file such statements with the agency Ethics Officer or designee.

Individuals in this system include both current and former employees.

Note.—This system does not include records for those individuals who file employment and financial interests statements as required by the Ethics in Government Act of 1978, Public Law 95-521. Those individuals and their statements are covered by the OPM/GOVT-4, Ethics in Government Financial Disclosure Records; system of records.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain statements of personal and family holdings and other interests in business enterprises and real property; listings of creditors and outside employment; opinions of counsel; confirmation material; and other information related to conflict of interest determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222.

PURPOSE:

These records are maintained to meet requirements of Executive Order 11222 regarding the filing of employment and financial interest statements. Such statements are required to assure compliance with the standards of conduct for Government employees enumerated in the Executive Order and title 18 of the U.S. Code, and to determine if a conflict of interest exists between the employment of individuals by the Federal Government and their personal employment and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used as follows, but only where the Director of the Office of Government Ethics or the head of the agency determines, in addition that good cause has been shown for such use and disclosure:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to another Federal agency or to a court when the Government is party to adjudicial proceeding before the court.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of a job, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. By the Office of Personnel Management in the production of

summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To disclose information to any source where necessary to obtain information relevant to a conflict-of-interest investigation or determination.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARD:

These records are located in lockable metal file cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records on current employees are updated yearly and are retained so long as the individual occupies a covered position. Records on former employees are disposed of 5 years after the date they leave a covered position. Disposal is by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Government Ethics, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact their agency Ethics Officer or designee, as appropriate. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records about them should contact their agency Ethics Officer or designee as appropriate. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting access must also follow the Office's Privacy Act regulations regarding access to records and proof of identify (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact their agency Ethics Officer or designee as appropriate. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendment must also comply with the Office's regulations regarding amendment of records and verification of identify (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person such as a trustee, attorney, accountant, or relative;

b. Federal officials who review the statements to make conflict of interest determinations.

OPM/GOVT–9

SYSTEM NAME:

Position Classification Review and Retained Rate of Pay Appeal Files.

SYSTEM LOCATION:

The records are located at the Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, OPM's regional offices (see Appendix for a list of OPM regional office addresses) or agency personnel offices (or other designated offices).

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

a. Current and former Federal employees who have filed request for review of a position classification decision with the Agency Compliance and Evaluation Group of OPM, an OPM regional office, or with their agency.

b. Current and former Federal employees who have filed a retained rate of pay appeal with the Office's Agency Compliance and Evaluation Group.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a request for review of a position classification decision or retained rate of pay appeal. The records may include information and documents regarding a personnel action of the agency involved, and the decision or determination rendered by an agency regarding the classifying of a position on whether an employee is to remain in a retained rate of pay category. This system may also include transcripts of hearings and statements from agency employees.

Note.—Agency files created when an employee requests review of a position classification decision, when the review decision is *not* subsquently fowarded to OPM for another review, are also covered by this system notice. Any copies of the file created by OPM when in receipt of a retained rate of pay appeal, that is also maintained by the agency involved, is covered by this notice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 5115 and 5366 of title 5, U.S. Code.

PURPOSE:

These records are primarily used to document the processing and adjudication of a request for review of a position classification or a retained rate of pay appeal action. Internally, the Office may use these records to locate individuals for personnel research.

ROUTINE USERS OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclosure information to any source from which additional information is requested in the course of adjudicating an appeal or request for a position classification review to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring, retention, or assignment of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To disclose information to a Federal agency or to a court when the Government is a party to a judicial proceeding before the court.

g. By the Office of Personnel Management or an agency in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. By the National Archives and Records Service [General Services Administration] in records management inspection conducted under authority of 44 U.S.C. 2904 and 2906.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal labor Relation Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES OF STORING RETRIEVING ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and on index cards, magnetic tape, and microfiche.

RETRIEVABILITY:

These records are retrieved by the name, date of birth, and name of employing agency of the individual on whom the record is maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in a secured room, with access limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records related to a request for review of a position classification decision and retained rate of pay appeal files are maintained for seven years often closing action on the case. Some records are destroyed by shredding or burning while magnetic tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Agency Compliance and Evaluation; Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact:

a. For records pertaining to retained rate of pay appeals, the system manager shown above;

b. For records pertaining to requests for review of an agency position classification decision, where the request for review was made only to the Office, the system manager shown above or the OPM regional office, as appropriate. (See list of OPM regional office addresses in Appendix.)

c. For records pertaining to requests for a position classification review filed with an agency, whether a request for a review of the agency decision is filed with the Office, the agency personnel officer or other designated officer.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the request for review or appeal was filed and the approximately dates of the closing of the case.

d. Kind of action (e.g., position classification review or retained rate of pay appeal).

RECORD ACCESS PROCEDURES:

Individuals who have filed a position classification review request or retained rate of pay appeal, must be provided access to the record. However, after the review or appeal has been closed, an individual may request access to the official copy of the record by writing the official indicated in the *Notification procedures*. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the request for review or appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification review or retained rate of pay appeal).

Individuals requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request an amendment to their records to correct factual errors should contact the appropriate official indicated in the *Notification procedures*. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the request for review or appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification review or retained rate of pay appeal).

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

a. Individual to whom the record pertains.

b. Agency and/or Office records related to the action.

c. Statements from employees or testimony of witnesses.

d. Transcript of hearings.

OFFICE OF PERSONNEL MANAGEMENT REGIONAL AND AREA OFFICES

Southeast Region

Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303.

Area Offices

Southerland Building, 806 Governors Dr., S.W., Huntsville, Alabama 35801.
Federal Building, 80 N. Hughey Avenue, Orlando, Florida 32801.
Federal Office Building, 275 Peachtree St., N.E., Atlanta, Georgia 30303.
600 Federal Place, Louisville, Kentucky 40202.
802 N. State St., Jackson, Mississippi 39201.
310 New Bern Ave., Raleigh, North Carolina 27601.
Federal Office Building, 334 Meeting St., Charleston, South Carolina 29403.
100 N. Main St., Memphis, Tennessee 38103.

New England Region

John W. McCormack Post Office and Courthouse Building, Boston, Massachusetts 02109.

Area Offices

Federal Building, 450 Main St., Hartford, Connecticut 06103.
Federal Building, Augusta, Maine 04330.
3 Center Plaza, Boston, Massachusetts, 02108.
Federal Building, Portsmouth, New Hampshire 03801.
Federal-Post Office Building, Kennedy Plaza, Providence, Rhode Island 02903.
Federal Building, Burlington, Vermont 05401.

Great Lakes Region

Federal Office Building, 29th Floor, 230 South Dearborn St., Chicago, Illinois 60604.

Area Offices

219 S. Dearborn St., Chicago, Illinois 60604.
U.S. Courthouse and Federal Building, 46 E. Ohio St., Indianapolis, Indiana 46204.
477 Michigan Ave., Room 565, Detroit, Michigan 48226.
Federal Building, Room 196, Fort Snelling, Twin Cities, Minnesota 55111.
U.S. Courthouse and Federal Building, Room 507, 200 W. 2nd Street, Dayton, Ohio 45402.
161 W. Wisconsin Ave., Milwaukee, Wisconsin 53203.

Southwest Region

1100 Commerce St., Dallas, Texas 75242.

Area Offices

Federal Office Building, Room 3305, 700 W. Capitol Ave., Little Rock, Arkansas 72201.
Federal Building, 610 South St., New Orleans, Louisiana 70130.
421 Gold Ave., S.W. Albuquerque, New Mexico 87102.
210 NW. 6th St., Oklahoma City, Oklahoma 73102.
1100 Commerce St., Room 6B4, Dallas, Texas 75242.
Property Trust Building Suite N302, 2211 E. Missouri Ave., El Paso, Texas 79903.
702 Caroline St., Houston, Texas 77002.
643 E. Durango Blvd., San Antonio, Texas 78206.

Rocky Mountain Region

Building 20, Denver Federal Center, Denver, Colorado 80225.

Area Offices

U.S. Post Office Building, 1845 Sherman Avenue, Denver, Colorado 80203.
130 Neill Ave., Helena, Montana 59601.
657 2nd Ave. North, Fargo, North Dakota 58102.
Federal Building—U.S. Courthouse, Room 201, 515 9th St., Rapid City, South Dakota 57701.
350 S. Main St., Room 484, Salt Lake City, Utah 84101.
1805 Capitol Avenue, P.O. Box 967, Cheyenne, Wyoming 82001.

Eastern Region

New Federal Building, 26 Federal Plaza, New York, New York 10007.

Area Offices

970 Broad St., Newark, New Jersey 07102.
26 Federal Plaza, New York, New York 10007.
U.S. Courthouse and Federal Bldg., 100 S. Clinton St., Syracuse, New York 13202.
U.S. Courthouse and Federal Office Building, Carlos A. Chardon St., Hato Rey, Puerto Rico 00918.

Mid-Atlantic Region

William J. Green, Jr., Federal Building, 600 Arch St., Philadelphia, Pennsylvania 19106.

Area Offices

Federal Office Building, 844 King St., Wilmington, Delaware 19801.
Federal Building, Lombard St. and Hopkins Place, Baltimore, Maryland 21201.
William J. Green, Jr., Federal Building, 600 Arch St., Philadelphia, Pennsylvania 19106.
Federal Building, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.
Atlantic National Bank Building, 415 St. Paul Blvd., Norfolk, Virginia 23510.
Federal Building, 500 Quarrier St., Charleston, West Virginia 25301.

Mid-Continent Region

1256 Federal Building, 1520 Market St., St. Louis, Missouri 63103.

Area Offices

120 S. Market St., Wichita, Kansas 67202.
601 E. 12th St., Kansas City, Missouri 64106.
1520 Market St., St. Louis, Missouri 63103.

Western Region

525 Market Street, San Francisco, California 94105.

Area Offices

522 North Central Ave., Phoenix, Arizona 85004.
845 S. Figueroa Street, 3rd Floor, Los Angeles, California 90017.
650 Capitol Mall, Sacramento, California 95814.
880 Front Street, San Diego, California 92188.
525 Market Street, San Francisco, California 94105.
1000 Bishop Street, Suite 1500, Honolulu, Hawaii 96813.
50 S. Virginia St., Box 3296, Reno, Nevada 89505.

Northwest Region

Federal Building, 26th Floor, 915 Second Avenue, Seattle, Washington 98174.

Area Offices

701 C Street, Box 22, Anchorage, Alaska 99513.
Federal Building, 550 W. Fort St., Boise, Idaho 83702.
Federal Building, Room 376, 1220 S.W. 3rd St., Portland, Oregon 97204.
Federal Building, 26th Floor, 915 Second Ave., Seattle, Washington 96174.

[FR Doc. 79-32633 Filed 10-25-79; 8:45 am]
BILLING CODE 6325-01-M

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

Articles That May Be Considered for Modification or Continuance of U.S. Duties or Additional Duties

1. In conformity with section 131 of the Trade Act of 1974 (19 USC 2151),

notice is hereby given of articles that may be considered for modification or continuance of United States duties, or for additional duties. These articles are set forth in List 1 below.

2. The U.S. International Trade Commission is being requested to furnish its advice pursuant to section 131 of the Trade Act of 1974 as to the probable economic effects of increases in existing [1] rates of duty for the items on the list.

List 1

Articles which will be considered for modification or continuance of United States duties or additional duties in international trade negotiations, in particular with the United States and Mexico, to the extent permitted by sections 101(a), 101(b), 101(c), and 109 of the Trade Act of 1974.

TSUS item [2] and articles

135.90—Cucumbers, Dec. 1 to End of Feb.[3]
136.20—Eggplants, April 1 to Nov. 30 [3]
137.10—Peppers
137.50—Squash
137.60—Tomatoes, March 1 to July 14 and Sept. 1 to Nov. 14 [3]
137.63—Tomatoes, Nov. 15 to End of Feb. [3]

William B. Kelly, Jr.,

Acting Deputy, Special Representative for Trade Negotiations.

[FR Doc. 79-32990 Filed 10-25-79; 8:45 am]

BILLING CODE 3190-01-M

OHIO RIVER BASIN COMMISSION

Availability of Report for Review on the Kentucky/Licking River Basins Regional Water and Land Resources Plan and Draft Environmental Impact Statement

Pursuant to section 204(3) of the Water Resources Planning Act of 1965 (Pub. L. 89-80), the Ohio River Basin Commission has completed a report summarizing the current Plan for the Kentucky/Licking River Basins' portion of the Ohio River Basin. The Report currently is being reviewed by the Governors of each state, the heads of each department or agency, and interstate agency for which a member of the Commission has been appointed.

Views, comments and recommendations on the Plan are requested by January 19, 1980. Copies are available on request to the Ohio River Basin Commission, 36 E. Fourth Street, Cincinnati, Ohio 45202.

Fred J. Krumholtz,

Chairman.

[FR Doc. 79-32988 Filed 10-25-79; 8:45 am]

BILLING CODE 8410-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1694]

Alabama; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration I find that the following 11 counties: Baldwin, Choctaw, Clarke, Conecuh, Covington, Escambia, Geneva, Marengo, Mobile, Monroe and Washington Counties and adjacent counties within the State of Alabama, constitute a disaster area because of damage resulting from Hurricane Frederic beginning on or about September 12, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the colse of business on November 13, 1979, and for economic injury until close of business on June 13, 1980, at: Small Business Administration, District Office, 908 South 20th Street, Room 202, Birmingham, Alabama 35205; or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: September 21, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33024 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1700]

California; Declaration of Disaster Loan Area

San Benito and Santa Clara Counties and adjacent counties within the State of California constitute a disaster area as a result of damage caused by an earthquake which occurred on August 6, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 26, 1979, and for economic injury until the close of business on June 25, 1980, at: Small Business Administration, District Office, 211 Main Street, 4th Floor, San Francisco, California 94105; or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: September 25, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-33035 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1716]

Connecticut; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration I find that Hartford County and adjacent counties within the State of Connecticut constitute a disaster area because of damage resulting from severe storms and a tornado beginning on October 3, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 3, 1979, and for economic injury until the close of business on July 7, 1980, at: Small Business Administration, District Office, One Financial Plaza, Hartford, Connecticut 06103; or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59808)

Dated: October 12, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33036 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

(Declaration of Disaster Loan Area No. 1692)

Florida; Declaration of Disaster Loan Area

Indian River, St. Lucie, Brevard and Martin Counties and adjacent counties within the State of Florida constitute a disaster area as a result of damage caused by Hurricane David beginning on or about September 2-3, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 13, 1979, and for economic injury until the close of business on June 13, 1980, at:

Small Business Administration, District Office, 400 West Bay Street, Jacksonville, Florida 32202
or
Small Business Administration, District Office, 2222 Ponce de Leon Blvd., 5th Floor, Coral Gables, Florida 33134;

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

[1] The term "existing" is used herein as defined in section 601(7) of the Trade Act of 1974: "The term 'existing' means (a) when used, without the specification of any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this Act, existing on the day on which such trade agreement is entered into or such other action is taken; . . ."

[2] Tariff Schedules of the United States (19 U.S.C. 1202).

[3] If entered during the period shown.

Date: September 13, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33037 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1696]

Florida; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration I find that the following 5 counties: Bay, Escambia, Okaloosa, San Rosa and Walton Counties and adjacent counties within the State of Florida constitute a disaster area because of damage resulting from Hurricane Frederic beginning on or about September 12, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 13, 1979, and for economic injury until the close of business on June 13, 1980, at: Small Business Administration, District Office, 400 West Bay Street, Room 261, Jacksonville, Florida;

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: September 21, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33038 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

(Declaration of Disaster Loan Area No. 1717)

Florida; Declaration of Disaster Loan Area

Duval County and adjacent counties within the State of Florida constitutes a disaster area as a result of damage caused by heavy rains and flooding which occurred on September 25, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 10, 1979, and for economic injury until the close of business on July 10, 1980, at: Small Business Administration, District Office, 400 West Bay Street, Room 261, Jacksonville, Florida 32202;

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: October 10, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33039 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1693]

Georgia; Declaration of Disaster Loan Area

Chatham County and adjacent counties within the State of Georgia constitute a disaster area as a result of damage caused by Hurricane David beginning on or about September 3–4, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 15, 1979, and for economic injury until the close of business on June 15, 1980, at: Small Business Administration, District Office, 1720 Peachtree Street NW., Atlanta, Georgia 30309;

or other locally announced locations.

(Catalog of Federal Domestic Program Nos. 59002 and 59008)

Date: September 14, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33040 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1693]

Georgia; Declaration of Disaster Loan Area; Amendment No. 1

The above numbered Declaration is amended by adding Liberty County and adjacent counties within the State of Georgia. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on November 15, 1979, and for economic injury until the close of business on June 16, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 25, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-33041 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1684]

Indiana; Declaration of Disaster Loan Area

Jackson County and adjacent counties within the State of Indiana constitute a disaster area as a result of natural disasters as indicated:

County, Natural Disaster(s), Date(s)

Jackson, severe storm, heavy rain and flooding, beginning on or about July 27, 1979 through August 8, 1979

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 4, 1980 and for economic injury until the close of business on June 4, 1980, at:

Small Business Administration, District Office, Federal Building, 5th Floor, 575 North Pennsylvania Street, Indianapolis, Indiana 46204

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 4, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33042 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1699]

Indiana; Declaration of Disaster Loan Area

Randolph County and adjacent counties within the State of Indiana constitute a disaster area as a result of natural disaster as indicated:

County, Natural Disaster, Date

Randolph, Flooding, 7/13/79–7/31/79

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 21, 1980, and for economic injury until the close of business on June 23, 1980, at:

Small Business Administration, District Office, Federal Building, Room 552, 575 North Pennsylvania Street, Indianapolis, Indiana 46204.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 21, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33043 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Area No. 1689]

Iowa; Declaration of Disaster Loan Area

Buena Vista, Kossuth and Winnebago counties within the State of Iowa constitute a disaster area as a result of damage caused by heavy rains, strong winds, hail and flooding which occurred on August 19–20, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 13, 1979, and for economic injury until the close of business on June 11, 1980 at:

Small Business Administration, District Office, 210 Walnut Street, Room 749, Des Moines, Iowa 50309

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 11, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33044 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1691]

Iowa; Declaration of Disaster Loan Area

The following 5 Counties and adjacent counties within the State of Iowa constitute a disaster area as a result of natural disasters as indicated:

County, Natural Disaster(s), Date(s)

Bremer, Heavy Rains, High Winds and Flooding, 8/28–29/79
Buchanan, Heavy Rains, High Winds and Flooding, 8/28–29/79
Fayette, Heavy Rains, High Winds and Flooding, 8/28–29/79
Fremont, Tornado, 8/28/79
Page, Tornado, 8/28/79

Eligible Persons, firms and organizations may file applications for loans for physical damage until the close of business on November 19, 1979, and for economic injury until the close of business on June 18, 1980, at:

Small Business Administration, District Office, 210 Walnut Street, Room 749, Des Moines, Iowa 50309

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 18, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33045 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1707]

Louisiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the following 3 parishes: Allen, Calcasieu, and Rapides and adjacent parishes within the State of Louisiana, constitute a disaster area because of damage resulting from severe storms and flooding beginning on September 19, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 26, 1979, and for economic injury until the close of business on June 25, 1980, at:

Small Business Administration, District Office, Plaza Tower, 17th Floor, 1001 Howard Avenue, New Orleans, Louisiana 70113

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 3, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33046 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1697]

Maryland; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that Baltimore City and the following counties: Anne Arundel, Baltimore, Frederic and Calvert Counties and adjacent counties within the State of Maryland, constitute a disaster area because of damage resulting from severe storms, tornadoes and flooding which occurred on September 5–6, 1979. Eligible persons, firms and organizations may file applictions for loans for physical damage until the close of business on November 15, 1979, and for economic injury until the close of business on June 16, 1980, at:

Small Business Administration, District Office, Oxford Building, Room 630, 8600 LaSalle Road, Towson, Maryland 21204

or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008.)

Dated: September 19, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33047 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1710]

Maryland; Declaration of Disaster Loan Area

Cecil County and adjacent counties within the State of Maryland constitute a disaster area as a result of damage caused by rain storms, high wind and flooding from tropical storm David which occurred on September 5–6, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 3, 1979, and for economic injury until the close of business on July 3, 1980, at:

Small Business Administration, District Office, Oxford Building, Room 630, 8600 La Salle Road, Towson, Maryland 21204

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 3, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33048 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1709]

Michigan; Declaration of Disaster Loan Area

The following 10 counties and adjacent counties within the State of Michigan constitute a disaster area as a result of natural disaster as indicated:

County, Natural Disaster(s), and Date(s)

Antrim, Extreme Low Temperature, 1/1/79–3/31/79
Antrim, Killing Frost, 4/29/79
Benzie, Extreme Low Temperature, 2/1/79–4/30/79
Grand Traverse, Extreme Low Temperature, 2/1/79–4/30/79
Grand Traverse, Killing Frost, 4/29/79
Leelanau, Extreme Low Temperature, 1/1/79–3/31/79
Leelanau, Killing Frost, 4/29/79
Mason, Extreme Low Temperature, 2/1/79–3/31/79
Mason, Killing Frost, 4/25/79, 5/1/79
Manistee, Extreme Low Temperature, 2/1/79–2/28/79
Manistee, Killing Frost, 4/17/79, 4/27/79
Newaygo, Killing Frost, 5/1/79
Oceana, Extreme Low Temperature, 1/1/79–3/31/79
Oceana, Killing Frost, 4/25/79–4/28/79
Ottawa, Killing Frost, 5/1/79–5/31/79, 6/25/79
Ottawa, Hail Storm, 6/20/79
Van Buren, Extreme Low Temperature, 12/31/78–2/28/79
Van Buren, Hail, Wind and excessive rain, 5/1/79, 6/30/79

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on April 3, 1980, and for economic injury until the close of business on July 3, 1980, at:

Small Business Administration, District Office, 477 Michigan Avenue, McNamara Building, Room 515, Detroit, Michigan 48226.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 3, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33049 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1695]

Mississippi; Declaration of Disaster Loan Area

As result of the President's major disaster declaration I find that the following 14 counties: Clarke, Covington, Forrest, George, Greene, Hancock, Harrison, Jackson, Jones, Lauderdale, Pearl River, Perry, Stone, and Wayne Counties and adjacent counties within the State of Mississippi, constitute a disaster area because of damage resulting from Hurricane Frederic beginning on or about September 12, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 13, 1979, and for economic injury until the close of business on June 13, 1980, at:

Small Business Administration, District Office, 100 West Capitol Street Suite 322, Jackson, Mississippi 39201

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 21, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33050 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1701]

Nebraska; Declaration of Disaster Loan Area

Dixon County and adjacent counties within the State of Nebraska constitutes a disaster area as a result of natural disaster as indicated:

County, Natural Disaster, and Date

Dixon, Hail, rain storm, and flooding, 8/18-19/79

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 25, 1980, and for economic injury until the close of business on June 25, 1980, at:

Small Business Administration, District Office, Empire State Bldg., 19th and Farnum Street, 2nd Floor, Omaha, Nebraska 68102

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 25, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-33051 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1686]

New Jersey; Declaration of Disaster Loan Area

The area of stores on Broadwalk 24th and 25th Aves. in the City of North Wildwood, Cape May County, New Jersey, constitute a disaster area because of damage resulting from a fire which occurred on August 4, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 13, 1979, and for economic injury until the close of business on June 11, 1980, at:

Small Business Administration, District Office, 970 Broad Street, Room 1635, Newark, New Jersey 07102

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 11, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33052 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1702

New York; Declaration of Disaster Loan Area

The area of Edgewater Park Shopping Center between #1 Centre and #28 Centre, Bronx County, New York, constitute a disaster area because of damage resulting from a fire which occurred on August 14, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 26, 1979, and for economic injury until the close of business on June 26, 1979, at:

Small Business Administration, District Office, 26 Federal Plaza, Room 3100, New York, New York 10007

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 26, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33053 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1703]

New York; Declaration of Disaster Loan Area

The area of Queens Boulevard and on Greenpoint Avenue between 46th and 47th Street, Queens County, New York, constitute a disaster area because of damage resulting from a fire which occurred on August 8, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 29, 1979, and for economic injury until the close of business on June 30, 1980, at:

Small Business Administration, District Office, 26 Federal Plaza, Room 3100, New York, New York, 10007

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 28, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33054 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1711]

North Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that Surry County and adjacent counties within the State of North Carolina constitute a disaster area because of damage resulting from severe storms and flooding beginning on September 21, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 29, 1979, and for economic injury until close of business on June 30, 1980, at:

Small Business Administration, District Office, 230 South Tryon Street, Suite 700, Charlotte, North Carolina 28202

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 9, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33055 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1677]

Texas; Declaration of Disaster Loan Area

The following 3 counties and adjacent counties within the State of Texas constitute a disaster area as a result of natural disaster as indicated:

County, Natural Disaster(s), and Date(s)

King, Sandstorm, high winds, heavy rain, and hail, 7/9/79
Cottle, Sandstorm, high winds, heavy rain, and hail, 7/9/79
Hardeman, Heavy rain, hail, and high winds, 7/9/79

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 3, 1980, and for economic injury until the close of business on June 2, 1980 at:

Small Business Administration, District Office, 712 Federal Office Building and U.S. Courthouse, Lubbock, Texas 79401

or other locally announced locations.

(Catalog of Federal Domestic assistance Program Nos. 59002 and 59008)

Dated: August 31, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33056 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1708]

Texas; Declaration of Disaster Loan Area

The following 16 Counties and adjacent counties within the State of Texas constitute a disaster area as a result of natural disaster as indicated:

County, Natural Disaster(s), and Date(s)

Milan, Excessive Rain and Flooding, 7/27/79–7/28/79
Castro, Severe Hail Storm, Rain and Wind, 7/6/79, 7/7, 7/15–16/79, 7/30/79, 8/20, 8/24/79
Hockley, Severe Hail Storms, Rain, 7/4/79, 8/20/79, 8/24/79
Floyd, Hail, Rain and Wind, 6/23/79, 7/4/, 7/9, 7/18, 7/25, 7/30/79
Floyd, Unseasonally Cold Weather, 6/14/79–6/23/79
Hale, Hail Storm, Rain, 7/4, 7/9, 7/12, 7/30/79
Brisco, Excessive Rain, High Wind and Hail, 6/22/79, 6/23, 7/4/79, 7/16/79
Brisco, Extremely Wet and Cool, 6/25/79–7/14/79
Swisher, Hail Storm, 6/23/79, 7/9/79
Martin, Hail Storm, 8/20/79
Lamb, Hail Storm and Windstorm, 8/20/79 and 8/24/79
Dawson, Hail, 7/9/79, 8/10, 8/20, 8/21/79
Parmer, Hail, 7/23/79, 7/30/79, 8/20/79, 8/23/79, 9/3/79
Upton, Hail, 8/27/79–8/30/79
Gaines, Hailstorm, 8/19/79, 8/20, 8/24/79
Cochran, Hail, 7/24/79, 8/1, 8/20, 8/26/79
Yoakum, Hail, 8/20/79, 8/24, 8/26/79
Yoakum, Tornado, 8/24/79
Deaf Smith, Drought, 12/1/78–8/27/79
Deaf Smith, Hail, 7/21/79, 8/1/79, 7/30/79, 8/24/79

Eligible persons, firms and organizations may file applications for loans for physicial damage until the close of business on April 10, 1980, and for economic injury until the close of business on July 10, 1980, at:

Small Business Administration, District Office, One Allen Center, Suite 705, 500 Dallas, Houston, Texas 77002
or
Small Business Administration, District Office, 1205 Texas Avenue, Room 712, Lubbock, Texas 79401

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 10, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33057 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1704]

Virginia, Declaration of Disaster Loan Area

The Independent Cities of Fairfax and Newport News and the County of Fairfax and adjacent counties within the State of Virginia, constitute a disaster area because of damage resulting from tornadoes, torrential rains and Hurricane David which occurred on September 5, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 26, 1979, and for economic injury until the close of business on June 27, 1980, at:

Small Business Administration, District Office, Federal Building, Room 3015, 400 North Eighth Street, Richmond, Virginia 23240
or
Small Business Administration, District Office, 1030 15th Street, NW., Suite 250, Washington, D.C. 20417

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 27, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-33058 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 80-1; Reference: ATF O 1100.113]

Delegation of Certain Authorities of the Director in 27 CFR Parts 47, 178, and 179

Delegation Order

1. *Purpose.* This order delegates certain authorities now vested in the Director by regulations in 27 CFR Parts 47, 178, and 179 to the Assistant Director (Technical and Scientific Services) or the Assistant Director (Regulatory Enforcement). The order also permits the redelegation of certain authorities to lower organizational levels.

2. *Background.*

a. Under current regulations, the Director has authority to take final action on certain matters relating to:

(1) Commerce in Firearms and Ammunition, 27 CFR Part 178.

(2) Machineguns, Destructive Devices, and Certain Other Firearms; 27 CFR Part 179.

(3) Importation of Arms, Ammunition, and Implements of War; 27 CFR Part 47.

b. It has been administratively determined that certain authorities now vested in the Director by these regulations belong at, and should be delegated to a lower organizational level.

c. The delegations contained within this order will allow us to take action on these matters in an expeditious manner.

3. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701–9, the authority to take final action on the following matters is hereby delegated to:

a. *Assistant Director (Technical and Scientific Services).*

27 CFR Part 178

(1) To prescribe all forms required by subpart G of 27 CFR Part 178, under 27 CFR 178.21.

(2) To determine whether a particular firearm or ammunition is a curio or relic, under 27 CFR 178.26.

(3) To determine whether a device is excluded from the definition of a destructive device, under 27 CFR 178.27.

(4) To approve the transportation in interstate or foreign commerce of any destructive device, machinegun, short-barreled shotgun, or short-barreled rifle, under 27 CFR 178.28.

(5) To approve applications to import firearms and ammunition, under subpart

G of 27 CFR Part 178, under 27 CFR 178.112, 178.113, 178.114, and 178.116.

(6) To authorize alternate means of identification of a firearm or a destructive device by a licensed importer or licensed manufacturer, under 27 CFR 178.92.

(7) To require the filing of ATF F 4483–A, (5300.11), Quarterly Firearms Manufacturing and Exportation Report, under 27 CFR 178.126(a).

27 CFR Part 179

(8) To prescribe all forms required by 27 CFR Part 179, under 27 CFR 179.21.

(9) To determine whether a device is excluded from the definition of a destructive device, under 27 CFR 179.24.

(10) To determine whether a device or firearm may be removed from the National Firearms Act as a collector's item not likely to be used as a weapon, under 27 CFR 179.25.

(11) To relieve qualified persons of the requirement to pay special (occupational) tax, under 27 CFR 179.33(a).

(12) To relieve qualified manufacturers from compliance with any provision of 27 CFR Part 179, under 27 CFR 179.33(a).

(13) To approve applications to make a firearm, under 27 CFR 179.64.

(14) To approve applications to make a firearm for the United States, under 27 CFR 179.69.

(15) To approve applications to make a firearm by or on behalf of certain Government entities, under 27 CFR 179.70.

(16) To approve applications to transfer firearms, under 27 CFR 179.86.

(17) To approve applications to transfer firearms to special (occupational) taxpayers, under 27 CFR 179.88.

(18) To approve applications to transfer firearms to certain Government entities, under 27 CFR 179.90.

(19) To approve applications to transfer unserviceable firearms as a curio or ornament, under 27 CFR 179.91.

(20) To authorize other means of identification of firearms and destructive devices, under 27 CFR 179.102.

(21) To receive notice and effectuate registration of firearms manufactured, under 27 CFR 179.103.

(22) To approve registration of firearms acquired by certain Government entities, under 27 CFR 179.104.

(23) To approve importations of firearms, under 27 CFR 179.111.

(24) To receive notice and effectuate registration of imported firearms, under 27 CFR 179.112.

(25) To approve applications for the conditional importation of firearms, under 27 CFR 179.113.

(26) To approve applications and execute permits for the exportation of firearms, under 27 CFR 179.115.

(27) To vary the requirements relating to permits and supporting documents for firearms exported to persons in the insular possessions of the U.S., under 27 CFR 179.121.

(28) To issue duplicate documents evidencing possession of a firearm, under 27 CFR 179.142.

27 CFR Part 47

(29) To approve applications for registration of persons to import articles enumerated on the U.S. Munitions Import List, under 27 CFR 47.32.

(30) To approve the refund of registration fee, under 27 CFR 47.32.

(31) To prescribe a longer or shorter period of records retention, under 27 CFR 47.34(b).

(32) To prescribe all forms required by 27 CFR Part 47, under 27 CFR 47.35.

(33) To approve permit applications to import firearms, ammunition, and implements of war, under 27 CFR 47.42.

(34) To amend, alter, or certify permits to import firearms, ammunition, and implements of war, under 27 CFR 47.43(c).

(35) To deny, revoke, suspend, or revise permits to import firearms, ammunition, and implements of war, under 27 CFR 47.44 (a) and (b).

(36) To certify to the legality of importation of articles on the U.S. Munitions Import List, under 27 CFR 47.51.

b. *Assistant Director (Regulatory Enforcement).*

27 CFR Part 178

(1) To prescribe all forms required by 27 CFR Part 178 with the exception of those forms required by subpart G, under 27 CFR 178.21.

(2) To compile for publication in the **Federal Register**, and annually revise, a list of published ordinances which are relevant to the enforcement of Part 178, under 27 CFR 178.24.

(3) To approve written applications for emergency variations, under 27 CFR 178.22(a).

(4) To withdraw authority for any variation, under 27 CFR 178.22(b).

4. *Redelegation.*

a. The authorities in paragraphs 3a(1), 3a(8) pertaining to importation forms, 3a(31), 3a(32), and 3a(35) may be redelegated to personnel in the Technical Services Division, Imports Branch but not lower than the position of branch chief.

b. The authorities in paragraphs 3a(5), 3a(23), 3a(25), 3a(28) pertaining to importation forms, 3a(29), 3a(30), 3a(33), 3a(34), and 3a(36) may be redelegated to personnel in the Technical Services Division, Imports Branch, but not lower than the position of application examiner.

c. The authorities in paragraphs 3a(4), 3a(13), 3a(14), 3a(15), 3a(16), 3a(17), 3a(18), 3a(19), 3a(21), 3a(22), 3a(24), 3a(26), and 3a(27), may be redelegated to personnel in the Technical Services Division, National Firearms Act Branch, but not lower than the position of NFA specialist.

d. The authorities in paragraphs 3a(8), pertaining to NFA forms, 3a(11) and 3a(12), may be redelegated to personnel in the Technical Services Division, National Firearms Act Branch, but not lower than the position of branch chief.

e. The authorities in paragraphs 3b(1) and 3b(4) may be redelegated to Regulatory Enforcement personnel in Bureau Headquarters but not lower than the position of branch chief.

f. The authorities in paragraphs 3b(2) and 3b(3) may be redelegated to Regulatory Enforcement personnel in Bureau Headquarters but not lower than the position of specialist. The authority in paragraph 3b(3) may also be redelegated to the regional regulatory administrator who may redelegate the authority to a position not lower than chief, technical services, or area supervisor.

g. The authority in paragraph 3b(4) may be redelegated to the regional regulatory administrator who may redelegate the authority to a position not lower than chief, technical services, only regarding emergency variations approved by regional officials.

h. The authority in paragraph 3a(7) may be redelegated to personnel in the Technical Services Division, Firearms Technology Branch, but not lower than the position of branch chief.

i. The authority in paragraph 3a(28) pertaining to NFA forms, may be redelegated to personnel in the Technical Services Division, National Firearms Act Branch, but not lower than the position of application examiner.

j. The authorities in paragraphs 3a(2), 3a(3), 3a(6), 3a(9), 3a(10), and 3a(20) may not be redelegated.

5. *For Information Contact.* Jeff Bucher, Procedures Branch, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226 (202–566–7602).

Effective Date: This order becomes effective October 26, 1979.

Approved: October 4, 1979.

G. R. Dickerson,

Director.

[FR Doc. 79-33008 Filed 10-25-79; 8:45 am]

BILLING CODE 4810-31-M

Office of the Secretary

Certain Steel Wire Nails From the Republic of Korea; Antidumping; Tentative Determination of Sales at Not Less Than Fair Value and Tentative Discontinuance of Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Tentative Determination of Sales at Not Less Than Fair Value and Tentative Discontinuance of Antidumping Investigation.

SUMMARY: This notice is to advise the public that, with the exception of the merchandise produced by Murakami Kogyo Company, there is no reason to believe or suspect that steel wire nails from the Republic of Korea are being sold to the United States at less than fair value within the meaning of the Antidumping Act, 1921. In the case of Murakami Kogyo, the investigation is being discontinued because the margins found have been determined to be minimal in size and assurances of no future sales at less than fair value have been received. Interested persons are invited to comment on this action.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Operations Officer, Trade Analysis Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229; (202) 566-5492.

SUPPLEMENTARY INFORMATION: On April 20, 1979, an "Antidumping Proceeding Notice" was published in the Federal Register (44 FR 23621). This investigation was initiated by the Treasury Department in conjunction with its administration of the "Trigger Price Mechanism" (TPM), a program established in December 1977 to monitor prices at which certain steel mill products enter the United States. As stated in the Federal Register of December 30, 1977 (42 FR 65214), the TPM consists of four major parts: (1) the establishment of trigger prices for certain steel mill products imported into the United States; (2) the use of a Special Summary Steel Invoice ("SSSI") applicable to imports of all steel mill products; (3) the continuous collection and analysis of data concerning (a) the cost of production and prices of steel mill products exported to the United States, and (b) the condition of the domestic steel industry; and (4) where appropriate, the expedited initiation and disposition of proceedings under the Antidumping Act of 1921 with respect to imports entering the U.S. at prices below the Trigger Prices. This case was initiated after information developed from SSSI's submitted by importers indicated that quantities of steel wire nails imported from 22 Korean companies were being sold at prices less than the appropriate "trigger price" for that product. Further investigation revealed the possibility that the subject steel wire nails were being, or were 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.*) (hereinafter referred to as "the Act").

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelihood of injury to an industry in the United States. However, the Notice also indicated that there was substantial doubt that imports of such merchandise from Korea were causing, or were likely to cause, injury. Accordingly, the United States International Trade Commission (ITC) was advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

On May 23, 1979, the ITC published its decision that it could not find "no reasonable indication" that an industry in the United States is being or is likely to be injured by reason of the importation of certain steel wire nails from Korea possibly sold at LTFV (44 FR 29989). Therefore, the investigation proceeded.

In conducting its preliminary injury investigation, the ITC concluded that a modification in the definition of the class or kind of merchandise covered by the investigation as set out in the "Antidumping Proceeding Notice" was necessary. Accordingly, and consistently with the Commission's conclusion, for purposes of this determination, the term "steel wire nails" refers to nails, brads, spikes, staples and tacks of one-piece construction which are made of round steel wire and which enter the United States under item numbers 646.25 and 646.26 of the Tariff Schedules of the United States Annotated (TSUSA).

The "Antidumping Proceeding Notice" stated in part: "Certain companies known to sell nails to the U.S. but which did not sell below trigger prices in the relevant period are listed below. These companies are excluded from the present investigation: Blobcar Ltd., Dae Bong Industrial, Daeger Trading Company, Daewo Industrial, Dong-A-Nails Company, Jesse Industries, Kang Wan Industries, Lee Chun Steel Co., Ltd., Pacific Chemical Co., Sunkyong, Ltd., Tong Myung Industries." It has subsequently been determined that some of the firms listed are trading companies, exporting nails to the U.S. manufactured by other Korean firms. Therefore, in the event that a "Finding of Dumping" is ultimately issued in this case, exports of any of the 11 firms determined to be trading companies to the United States would be subject to the possible imposition of antidumping duties to the extent that the nails exported were manufactured by firms covered by that Finding.

Tenatative Determination of Sales at Not Less Than Fair Value

On the basis of information developed in the Customs investigation and for the reasons noted below, pursuant to section 201(b) of the Act (19 U.S.C. 160(b)) I hereby determine that, with the exception of merchandise produced by Murakami Kogyo Co. Ltd. there are no reasonable grounds to believe or suspect that steel wire nails from the Republic of Korea are being sold at less than fair value. In the case of Murakami Kogyo the margins were found to be minimal and assurances of no future sales at less than fair value have been received. Therefore, with respect to this firm, I hereby tentatively discontinue the antidumping investigation pursuant to 153.33(a)(1), Customs Regulations, (19 CFR 153.33(a)(1)).

Statement of Reasons on Which This Determination is Based

The reasons and bases for the above determination are as follows:

a. *Scope of the Investigation.* It appears that approximately 65 percent of the imports of the subject merchandise were manufactured by the following firms:

1. Daegu Moolsan Co., Ltd. (Daegu Moolsan)
2. Dae Han Sang Sa Co., Ltd. (Dae Han Sang Sa)
3. Jim Heung Iron and Steel Co. (Jim Heung)
4. Kankoku Nittei Co., Ltd. (Kankoku Nittei)
5. Kankoku Nitto Co., Ltd. (Kankoku Nitto)
6. Korea Murata Industrial Co., Ltd. (Korea Murata)
7. Korea Nail Manufacturing Co., Ltd. (Korea Nail)
8. Korea Nippon Seisen Co., Ltd. (Korea Nippon Seisen)
9. Kuk Dong Metal Ind., Co. (Kuk Dong)
10. Murakami Kogyo Co., (Masan) Ltd. (Murakami Kogyo)
11. New Korea Nails Ind., Co., Ltd. (New Korea Nails)
12. Young Sin Metal Industrial Co., Ltd. (Young Sin).

The investigation for purposes of this determination was therefore limited to sales by these 12 companies. Another

Korean nail manufacturer, Korea Electrode, submitted a voluntary response pursuant to 153.38 of the Customs Regulations (19 CFR 153.38) to demonstrate that it did not sell the subject merchandise at less than fair value during the period under consideration. The response was not used for this determination because confidential portions were not properly summarized in acordance with 153.22(b) of the Customs Regulations (19 CFR 153.22(b)).

b. *Basis of Comparison.* For purposes of considering whether the merchandise in question is being sold at less than fair value within the meaning of the Act, the proper basis of comparison appears to be between purchase price and the home market price of such or similar merchandise on all shipments by Kuk Dong and New Korea Nails, between purchase price and third country prices of such or similar merchandise on shipments by Murakami Kogyo and Korea Nails, and between purchase price and the constructed value of the imported merchandise for the eight remaining companies whose shipments were considered in arriving at this determination. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used for shipments to the U.S. since all sales by investigated companies were made to unrelated U.S. customers prior to the time of exportation.

Home market price, as defined in 153.2, Customs Regulations (19 CFR 153.2), was used for fair value purposes in those cases where such or similar merchandise was sold in the home market in sufficient quantities to provide an adequate basis of comparison.

Sales for exportation to countries other than the United States, as defined in § 153.3, Customs Regulations (19 CFR 153.3), were used for fair value purposes for sales by Korea Nails and Murakami Kogyo since no sales of such or similar merchandise were made in the home market during the period under consideration and adequate quantities of such or similar merchandise were sold to a third country.

The home market and third country shipments made by Jim Heung and Daegu Moolsan were determined to be too small to provide an adequate basis for fair value comparisons. Therefore, pursuant to section 153.6, Customs Regulations (19 CFR 153.6), fair value was based on constructed value as defined in section 206 of the Act (19 U.S.C. 165). Constructed value was also used as the basis for fair value comparisons for the six other companies whose responses were used in arriving at this determination. These companies only manufactured nails for export to the United States during the period under consideration. Those companies were: Dae Han Sang Sa, Kankoku Nittei, Kankoku Nitto, Korea Murata, Korea Nippon Seisen, and Young Sin.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information and cost of production information obtained concerning shipments to the United States, to the home market, and to third countries during the period December 1, 1978, through March 21, 1979.

c. *Purchase Price.* Purchase price has been calculated on the basis of the f.o.b., f.o.b.c., c&f, and c.i.f., packed price to the United States, or to the unrelated trading company as appropriate, with deductions, where applicable, for ocean freight, insurance, stevedorage, wharfage, Customs clearance, handling, inland freight, and commissions, and additions, where applicable, for the Korean value-added tax and duties on imported raw material rebated on exports but which are included in the sales price of products sold in Korea.

d. *Home Market Price.* Home market prices have been calculated on the basis of the weighted-average ex-factory price to unrelated purchasers in the home market with adjustments for differences in packing.

In the case of Kuk Dong, an adjustment for extension of credit to domestic purchasers under section 153.10, Customs Regulations (19 CFR 153.10) was not allowed due to insufficient documentation.

e. *Third Country Price.* For both Murakami Kogyo and Korean Nails, prices of such or simiar merchandise sold to Canada were used as a basis for fair value.

In the case of Murakami Kogyo, fair value was based on the f.o.b. value of sales to unrelated Canadian purchasers with deductions for inland freight, brokerage, stevedorage, and wharfage.

In the case of Korean nails, fair value was based on the C&F value of sales to unrelated Canadian purchasers with deductions for ocean freight, wharfage, inland freight, stevedorage and Customs brokerage.

f. *Cost of Production.* At the time the investigation was initiated, it was determined that there was evidence indicating the possibility that significant sales of nails are being made in Korea at prices below the cost of production. Pursuant to section 205(b) of the Act (19 U.S.C. 164(b)), substantial home market or third country sales made at less than the cost of production would have to be disregarded in determining fair value. Cost of production data was collected from all of the companies under investigation for the most recent full fiscal year for which cost of production data was available. For all but one of the companies that period was calendar year 1978. For the remaining firm, cost of production data was supplied for the period April 1, 1978, through March 31, 1979.

On this basis, it has been determined that for those four companies in which home market price or third country price was used as the basis for value, no sales were made at prices below the cost of production and therefore no home market or third country sales were disregarded pursuant to section 205(b) of the Act (19 U.S.C. 164(b)).

(g) *Constructed Value.* Constructed value of the subject merchandise has been calculated on the basis of the sum of the cost of the materials and fabrication to the manufacturers under consideration, an amount for general expenses (statutory minimum amount of 10 percent if the actual general expenses do not meet the minimum requirements of the law) and profit pursuant to section 206(a)(2)(A) and (B) of the Act (19 U.S.C. 165(a)(2)(A) and (B)), and the cost of all containers and coverings used to pack the merchandise ready for shipment to the United States.

h. *Results of Fair Value Comparisons.* During the period under consideration, comparisons were made on all nails shipped to the United States by Dae Han Sang Sa, Kankoku Nittei, Kankoku Nitton, Korea Nippon Seisen, Kuk Dong and Young Sin. Approximately 95 percent, 98.6 percent, and 96 percent by value of the nails shipped by Daegu Moolsan, Jim Heung, and Korea Murata, respectively, were compared for this determination. In the case of Korea Nails, Murakami Kogyo, and New Korea Nails, approximately 78 percent, 88 percent, and 73 percent by valuye of their respective nail shipments to the U.S. were compared for this determination. Taken together, comparisons were made on approximately 65 percent by value of all nails shipped to the United States during the period of the investigation. No margins were found on the comparisons made on Dae Han Sang Sa, Jim Heung, Korea Nippon Seisen, Kuk Dong, New Korea Nails and Young Sin. Margins were found ranging from approximately 0.0 to 7.9 percent on sales by Daegu Moolsan, from 0.0 to 2.2 percent on sales by Kankuko Nittei, from 0.0 to 0.32 percent on sales by Kankoku Nitto, from 0.0 to 9.3 percent on sales by Korea Nails. The approximate weighted-average margin over total sales compared for each of these five companies was computed as follows:

Daegu Moolsan .046 percent; Kankoku Murata .20 percent; and Korea Nails .21 percent. These margins are considered *de minimis*.

The margin range for the twelfth company used for this determination, Murakami Kogyo, was approximately 0.0 to 11.39 percent. The weighted-average margin over total sales compared for this firm was approximately 0.65 percent. This margin is considered minimal in relation to the volume of exports from Murakami Kogyo and formal assurances have been received from this manufacturer indicating that all future sales to the United States will be at prices which are not less than fair value. Therefore, pursuant to 153.33(a)(1), Customs Regulations (19 CFR 153.33(a)(1)), the investigation with respect to Murakami Kogyo is being tentatively discontinued. The overall weighted-average margin for steel wire nails from Korea is approximately 0.58 percent.

In accordance with 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in time to be received by his office not later than 15 calendar days after publication of the notice in the **Federal Register.** Such request must be accompanied by a statement outlining issues wished to be discussed. These issues may be discussed in greater detail in a written brief.

All written views or arguments should likewise be addressed in ten copies to the Commissioner of Customs in time to be received in his office no later than 30 days after publication of this notice in the **Federal Register.** All persons submitting written views or arguments should avoid repetitious and merely cumulative material. Counsel for the petitioner and respondents are requested to send to each other all written submissions, including nonconfidential summaries or approximated presentations of all confidential information.

This tentative determination and the statement of the reasons therefore are published pursuant to 153.34(a) of the Customs Regulations (19 CFR 153.34(a)).

If the final determination in this case is not made by December 31, 1979, then in accordance with section 102(b)(2) of the Trade Agreements Act of 1979, (19 U.S.C. 1671 note), a final determination will be made not later than March 17, 1980.

October 19, 1979.

David R. Brennan,

Acting General Counsel of the Treasury.

[FR Doc. 79-33097 Filed 10-25-79; 8:45 am]

BILLING CODE 4810-22-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28640 Sub-5]

Chicago, Milwaukee, St. Paul & Pacific Railroad Co. Reorganization; (Association To Save Our Railroad Employment Plan of Reorganization)

October 22, 1979.

The Association To Save Our Railroad Employment (SORE), an Association of some 600 employees who work on the western lines of the railroad, represented by O. Yale Lewis, Jr. and Thomas J. Brewer of Wickwire, Lewis, Goldmark & Schorr, 500 Maynard Building, Seattle, Washington 98104, on October 3, 1979, filed a plan of reorganization with the Commission and the United States District Court for the Northern District of Illinois, Eastern Division, which contemplates establishing a company to acquire the assets of the Milwaukee, St. Paul & Pacific Railroad Company west of St. Paul, MN. The plan is available for public inspection at the offices of the Interstate Commerce Commission during normal business hours.

Interested persons may participate as parties in the hearing to be held before the Commission required by section 77(d) of the Bankruptcy Act. In order to be considered a party, a written statement should be submitted which shall include the person's position, e.g. party protestant, or party in support, of the reorganization proceeding, and a request for oral hearing, if one is desired. Plans of reorganization may likewise be filed at any time before, or with the consent of the Commission, during the hearings by or on behalf of creditors being not less than 10 per centum in amount of any class of creditors, or by or on behalf of any class of stockholders being not less than 10 per centum in amount of any such class, or with the consent of the Commission, by any party of interest. Such submissions shall indicate the proceeding designation Finance Docket No. 28640 Sub No. 5 and an original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 30 days after the date notice of this filing is published in the **Federal Register.** Persons submitting written statements to the Commission shall, at the same time serve copies of such statements upon the applicant and upon the Clerk, United States District Court for the Northern District of Illinois, Eastern Division, 209 South Dearborn Street, Chicago, IL 60606.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-32999 Filed 10-25-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket 28640 Sub-5]

Chicago, Milwaukee, St. Paul & Pacific Railroad Co.; Reorganization (New Milwaukee Lines' Plan of Reorganization)

October 22, 1979.

New Milwaukee Lines, a non-profit Corporation, that has been organized by representatives of Government, shippers and employees for the purpose of forming, obtaining funding for, and acquiring necessary licenses and Agency certifications for a new company that will purchase and operate portions of The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, represented by O. Yale Lewis, Jr., of Wichwire, Lewis, Goldmark & Schorr, 500 Maynard Building, Seattle, Washington 98104, on October 3, 1979 filed with this Commission and the United States District Court for the Northern District of Illinois, Eastern Division, a plan of reorganization for the Chicago, Milwaukee, St. Paul & Pacific Railroad Company. The plan is available for public inspection at the offices of the Interstate Commerce Commission during normal business hours.

Interested persons may participate as parties in the hearing to be held before the Commission required by section 77(d) of the Bankruptcy Act. In order to be considered a party, a written statement should be submitted which shall include the person's position, e.g. party protestant, or party in support, of the reorganization proceeding, and a request for oral hearing, if one is desired. Plans of reorganization may likewise be filed at any time before, or with the consent of the Commission, during the hearings by or on behalf of creditors being not less than 10 per centum in amount of any class of creditors, or by or on behalf of any class of stockholders being not less than 10 per centum in amount of any such class, or with the consent of the Commission, by any party of interest. Such submissions shall indicate the proceeding designation Finance Docket

No. 28640 Sub No. 5 and an original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than November 26, 1979. Persons submitting written statements to the Commission shall, at the same time serve copies of such statements upon the applicant and upon the Clerk, United States District Court for the Northern District of Illinois, Eastern Division, 209 South Dearborn Street, Chicago, Il 60606.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33000 Filed 10-25-79; 8:45 am]

BILLING CODE 7035-01-M

Fourth Section Application for Relief

October 23, 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. on or before November 13, 1979. FSA No. 43759, Trans-Continental Freight Bureau, Agent's No. 542, rates on sugar, beet or cane, in bags, in carloads, from Crocket, Calif. (on the Bay and River Navigation Company) and Richmond, Calif. (on the Atchison, Topeka and Santa Fe Railway Company), to Galesburg and Joliet, Ill. (AT&SF). Rates to be published in its Tariff ICC TCFB 7023-S. Grounds for relief—rate relationship.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33001 Filed 10-25-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 209
Friday, October 26, 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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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, October 30, 1979.

PLACE: Commission Conference Room 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E. Street NW., Washington, D.C.

MATTERS TO BE CONSIDERED:

1. Federal Instructions for Federal Affirmative Programs for FY-80.
2. Proposed Designation of North Dakota Department of Labor as a 706 Agency.
3. Proposed termination proceedings to withdraw 706 agency designation of Omaha (Neb.) Human Relations Department and proposed obligation of FY-80 funds for a backlog charge resolution contract and a new charge resolution contract to the Omaha Human Relations Department.
4. Age Discrimination in Employment Act Regulations.
5. Proposed questionnaire requesting information on the impact of Federal employment opportunity programs and activities, to be sent to employers.
6. Freedom of Information Act Appeal No. 79-8-FOIA-242 concerning a request by a university for copies of several Age Discrimination in Employment Act Complaints filed against the university.
7. Freedom of Information Act Appeal No. 79-8-FOIA-256 concerning a request for a copy of the notes taken by a Commission employee at a fact finding conference.
8. Job Segregation and Wage Discrimination under Title VII and the Equal Pay Act; Public Information Hearings.
9. Report on Commission Operations by the Executive Director.

Closed

1. Litigation authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This notice issued October 24, 1979.

[S-2095-79 Filed 10-24-79; 2:07 pm]

BILLING CODE 6570-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Time of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that the open meeting of the Corporation's Board of Directors scheduled for 2:00 p.m. on Monday, October 29, 1979, will be held instead at 3:30 p.m. on Monday, October 29, 1979, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C. No earlier notice of the change in the time of the meeting was practicable.

Dated: October 23, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-2093-79 Filed 10-24-79; 11:39 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Time of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that the closed meeting of the Corporation's Board of Directors scheduled for 2:30 p.m. on Monday, October 29, 1979, will be held instead at 4:00 p.m. on Monday, October 29, 1979, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C. No earlier notice of the change in the time of the meeting was practicable.

Dated: October 23, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-2094-79 Filed 10-24-79; 11:39 am]

BILLING CODE 6714-01-M

4

FEDERAL MARITIME COMMISSION.

TIME AND DATE: October 31, 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 September 1979.
2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during September 1979.
3. Report of the Secretary on Applications for Admission to Practice approved during September 1979, pursuant to delegated authority.
4. Assignment of Informal Dockets by the Secretary during September 1979.
5. Agreement No. 10376: Sailing agreement between Lykes Bros. Steamship Co. and China Ocean Shipping Company.
6. Petition of the Atlantic & Gulf-Indonesia Conference to allow officers or employees thereof to serve as the policing authority.
7. Cancellation of tariffs for failure to comply with Commission General Order 13.
8. Docket No. 79-65: Certificate of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States—Review of comments submitted in response to notice of proposed rulemaking.
9. Docket No. 79-66: Compromise, Assessment, Settlement and Collection of Civil Penalties under the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933—Review of comments submitted in response to notice of proposed rulemaking.
10. Special Docket No. 649: Application of Maersk Line Agency for the Benefit of Nomura (America) Corporation and Special Docket No. 652: Application of Maersk Line Agency for the Benefit of Wespac Corporation—Review of initial decisions.
11. Special Docket No. 671—Application of Sea-Land Service, Inc. for the Benefit of Alimenta (USA), Inc.—Review of initial decision.
12. Docket No. 79-83: Investigation of Unfiled Agreements in the North Atlantic Trades—Motion of Johnson Scanstar Line for dismissal.

Portions Closed to the Public

1. Outstanding section 21 orders issued against various independent ocean freight forwarders.

2. Docket No. 79-55: Matson Navigation Company—Proposed Bunker Surcharge in the Hawaii Trade—Review of the record.

3. Status of Grand Jury Investigation—Possible Shipping Act Violation in the North Atlantic Trades and Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

[S-2092-79 Filed 10-24-79; 10:29 am]

BILLING CODE 6730-01-M

5

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 9:30 a.m., Wednesday, October 24, 1979 (Following a recess, the Board commenced its previously announced open meeting at 10 a.m.)

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues relating to employee compensation. (This matter was originally announced for a meeting on Friday, September 28, 1979).

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: October 24, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S-2099-79 Filed 10-24-79; 3:20 pm]

BILLING CODE 6210-01-M

6

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, October 31, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed statement to be presented to the Senate Committee on Banking, Housing, and Urban Affairs regarding abuses involving federally-guaranteed securities.

2. Proposal to collect data on overnight Eurodollar deposits of U.S. residents in foreign branches of U.S. banks.

3. Proposed amendment to Regulation Y (Bank Holding Companies) to permit bank holding companies to act as general insurance agents in towns having a population of 5,000 or less. (Proposed earlier for public comment; docket No. R-0050-B).

4. Any agenda items carried forward from a previously announced meeting.

Note.—Anyone planning to attend specifically for Item I should contact the office below on Tuesday, October 30, 1979, to assure that it has not been postponed to a future meeting.

This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S-2096-79 Filed 10-24-79; 2:07 pm]

BILLING CODE 6210-01-M

7

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Wednesday, October 31, 1979.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Consideration of recommendation to propose rules on warranty readability and advertising (R711007), proposed 16 CFR Parts 706 & 707; to propose two amendments to Rule on Disclosure of Written Consumer Product Warranty Terms and Conditions, 16 CFR Part 701; and to decline to initiate rulemaking in five areas concerning warranties.

CONTACT PERSON FOR MORE INFORMATION: Ira J. Furman, Office of Public Information: (202) 523-3830; Recorded Message: (202) 523-3806.

[S-2091-79 Filed 10-24-79; 9:19 am]

BILLING CODE 6750-01-M

8

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Monday, November 5, 1979.

PLACE: Room 117, 701 L Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Marine radar from the United Kingdom (Inv. AA1921-210)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary.

[S-2097-79 Filed 10-24-79; 2:56 p.m.]

BILLING CODE 7020-02-M

9

NATIONAL RAILROAD PASSENGER CORPORATION.

Additional Agenda Item for Meeting.

In accordance with rule 4d. of Appendix A of the Bylaws of the National Railroad Passenger Corporation, notice is given that the following item will be added to the agenda for the Board of Directors meeting of October 31, 1979:

7. *Approval of Consulting Contract: Planning Through 1990.*

Board members Edwards, Boyd, Luna, Dunlop, Head, Lamphier, Langdon, Mills, Neel and Quinn determined by recorded vote that the business of the Corporation requires the change in subject matter by addition of the agenda item, and affirmed that no earlier announcement of the change was possible, and directed the issuance of this notice at the earliest practicable time. Board members Kling, Nathan and Goldschmidt were not reached for the vote.

The revised agenda to be discussed at the meeting follows:

Agenda—National Railroad Passenger Corporation; Meeting of the Board of Directors—October 31, 1979

Closed Session (9:30)

1. Internal Personnel Matters.
2. Litigation Matters.

Open Session (10:30)

3. Approval of Minutes of Regular Meeting of September 26, 1979

4. Commitment Approval Requests:

78-76-S1 Grade Crossing Improvements—Florida—Phase II.

80-09 Grade Crossing Improvements—New York State Empire Service.

80-10 California/Amtrak Joint Station Rehabilitation Program.

79-113-R1 Revision of CAR-113 to Modify Station Trackage at Temple, Texas.

79-133 Improvements to New Haven Mechanical Facility.

80-11 Conversion of Passenger Cars to Head-end Power.

80-12 Acquisition of HEP Diesel-Electric Locomotives.

79-78-S1 Installation of On-Board Service Crew Accomodations on 36 HEP Hi-Level Transition Coaches.

79-131 Handicapped On-Board Accessibility Modifications—HEP Program.

79-67 Retirement and Sale of Motive Power—Twenty-Three (23) Units.

5. Approval for Consulting Services to NECIP.

6. Delegation of Authority of NECIP Contracts.
7. Approval of Consulting Contract: Planning Through 1990.
8. Board Committee Reports: Equipment, Finance, Northeast Corridor Improvement Project, ad hoc By-Laws Revision.
9. Presentation of FY 80/81 Capital Plan.
10. President's Report.
11. Board Meeting Dates for 1980.
12. New Business.
13. Adjournment.

Inquiries regarding the agenda for the October 31, 1979 Board meeting should be directed to the Corporate Secretary at (202) 383–3973.

Barbara J. Willman,

Assistant Corporate Secretary.

October 24, 1979.

[S–2098–79 Filed 10–24–79; 2:57 pm]

BILLING CODE 0000–00–M

10

TENNESSEE VALLEY AUTHORITY.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 60892 (October 22, 1979).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., Thursday, October 25, 1979.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Conference Room B–32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following discussion item is added to the previously announced agenda:

Item for discussion: Proposed sale of permanent industrial easement for a coal loading barge terminal on Melton Hill Reservoir.

CONTACT PERSON FOR MORE INFORMATION: Lee C. Sheppeard, Acting Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting to be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Dated: October 24, 1979.

S. David Freeman.

Richard M. Freeman.

Robert N. Clement.

[S–2090–79 Filed 10–24–79; 9:19 am]

BILLING CODE 8120–01–M

11

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: November 1, 1979, 9 a.m.

PLACE: Board Room, Room 2–500, Fifth Floor, 955 L'Enfant Plaza North SW., Washington, D.C. 20595.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS:

Portions Closed to the Public (9 a.m.)

1. Consideration of internal personnel matters.
2. Review of Conrail proprietary and financial information for monitoring and investment purposes.
3. Litigation Report.

Portions Open to the Public (1 p.m.)

4. Approval of minutes of the October 4, 1979 Board of Directors Meeting.
5. Legislative Report.
6. Consideration of Conrail Alternatives.
7. Report on Conrail Monitoring.
8. Consideration of Conrail drawdown request for November.
9. Consideration of 211(h) Loan Program.
10. Employee Compensation Policy.

CONTACT PERSON FOR MORE INFORMATION: Alex Bilanow, (202) 426–4250.

[S–2100–79 Filed 10–24–79; 3:22 pm]

BILLING CODE 8240–01–M

federal register

Friday
October 26, 1979

Part II

Department of the Interior

Fish and Wildlife Service

Endangered Species Determinations; *Pediocactus Bradyi* (Brady Pincushion Cactus) and *Pediocactus Sileri* (Siler Pincushion Cactus)

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Determination That Pediocactus Bradyi is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Pediocactus bradyi* L. Benson (Brady pincushion cactus), a native plant of Arizona, to be an Endangered species. Removal of plants by private collectors and commercial suppliers constitutes the major threat to this cactus. Highway and powerline maintenance and construction, off-road vehicle use, and grazing also threaten this species. This action will extend the protection provided by the Endangered Species Act of 1973, as amended, to this plant.

DATE: This rulemaking becomes effective on November 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

Pediocactus bradyi (Brady pincushion cactus) occurs in one Arizona county. The range of this species is very small (only 20 km^2). This species is restricted to a specific soil, and occurs in desert scrub communities. *Pediocactus bradyi* is a small seimglobose cactus which reaches two inches in diameter and two and one-half inches in height. The flowers are straw yellow, and the fruits turn brown at maturity. The continued existence of this cactus is in danger, and this rule will extend to it the protection provided by the Endangered Species Act of 1973 as amended. The following paragraphs summarize the actions leading up to this final rule and the factors which cause this species to be Endangered.

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act of 1973, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94–51, contained lists of over 3,100 U.S. vascular plant taxa considered to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823–27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523–24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the above mentioned **Federal Register** publication.

Pediocactus bradyi was included in both July 1, 1975, notice of review and the June 16, 1976, proposal. A public hearing on the June 16, 1976, proposal was held on July 22, 1976, in El Segundo, California. A second public hearing was held on July 11, 1979, in Phoenix, Arizona for five Arizona cacti proposed as Endangered, including *Pediocactus bradyi*.

In the June 24, 1977, **Federal Register**, The Service published a final rulemaking (42 FR 32373–32381), codified at 50 CFR detailing the regulations to protect Endangered and Threatened plant species. The rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this listing does not meet the criteria for significance in the Department Regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909–17916). Some of these comments had addressed the general problems of cacti conservation. Additionally many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Section 9(2)(2) and 10(2) of the Act. These comments are summarized in the June 24, 1977, **Federal Register** final rule (43 FR 17909–17916) on plant prohibitions and permit provisions. No comments dealing specifically with *Pediocactus bradyi* were received during these official comment periods. The Governor of Arizona was also notified of the proposed action.

On July 11, 1979, the Service held a second public hearing in Phoenix, Arizona, and again solicited comments on five Arizona cacti. During this period the Bureau of Reclamation voiced concern that there was a lack of data to support the listing of these five cacti and a lack of detailed information on their Critical Habitats. However, extensive data supporting the listing of these taxa is available from either the Service's regional office in Albuquerque, N.M. or the Washington, D.C. Office of Endangered Species. It has been determined that designating Critical Habitat is imprudent due to the increased pressure this would cause due to over-collecting. Conservationists, botanists, the Bureau of Land Management, and the Arizona Commission of Agriculture and Horticulture all indicated their concurrence with and/or their strong support for the proposal to determine *Pediocactus bradyi* to be an Endangered species.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Pediocactus bradyi* L. Benson (Brady pin cushion cactus; synonyms: *Toumeya bradyi* (Benson) W. H. Earle) is in danger of becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Pediocactus bradyi* are as follows:

(1) *The presence of threatened destruction, modification, or curtailment of its habitat or range. Pediocactus bradyi* occurs only in one small area in one Arizona county, restricted to one soil type. The area is adjacent to a major highway and recreation area. Most of the land on which these plants occur is federally administered by the Bureau of Land Management and the National Park Service. The portion of the population lying adjacent to the highway has been disturbed through maintenance and construction activities. In some cases the plants appear to have recolonized roadside areas where disturbance occurred in the past. Power lines pass through part of the area and

have disturbed a minimal amount of the species' habitat. Any future work on the highway or power lines, especially any shift in the present right of ways, should take into account the presence of this cacti. The portion of the range which is on lands administered by the National Park Service is unfenced and is receiving increasing disturbance from illegal use of off-road vehicles.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Collection is the major threat to this species. The proximity of the range to a major highway makes it easily accessible to even casual collectors, unlike more protected remote and inaccessible locations of some other rare species. The species has been collected commercially and privately and is especially vulnerable during the short flowering season in the spring because of the ease with which the plants may be located when they are in flower. The seasonal nature of its vulnerability is accentuated by its retracting to or just below the soil surface during most of the year making the plants almost impossible to locate during hot, dry periods.

(3) *Disease or predation (including grazing).* Cattle grazing adversely affects the plants during the wet seasons and is a definite threat throughout most of this species' range. There is a possibility that the areas may be grazed by sheep in the future, an impact which could have a severe impact on the species because of the density of animals in flocks.

(4) *The inadequacy of existing regulatory mechanisms.* This species is offered some protection under Arizona law, A.R.S. Chapter 7, Section 3–901, which requires a permit for the collection of members of the genus *Pediocactus* in particular and all members of the family Cactaceae. *Pediocactus bradyi* occurs on lands administered by the Bureau of Land Management, the National Park Service, and on the Navajo Indian Reservation. The taking or vandalizing of plants is not prohibited by the Endangered Species Act. However, where Federal lands are involved, other restrictive provisions are available. Bureau of Land Management regulations prohibit the removal, destruction, and disturbance of vegetative resources unless such activities are specifically allowed or authorized (43 CFR 6010.2). National Park Service regulations prohibit the possession, destruction, injury, defacement, removal or disturbance of any plant in natural, historic, and/or recreational areas (36 CFR 2.20). The Navajo Indian Reservation is a Federal reservation and through tribal resolution has the ability to restrict the taking of plants form their lands, as well.

All native cacti are on Appendix II of the convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this convention regulates export of the taxon, but does not regulate internal trade in the cactus, or habitat destruction. Except as noted in the preceding paragraph, no other Federal protective laws currently apply to this species.

(5) *Other natural or manmade factors affecting its continued existence. Pediocactus bradyi* is restricted to a very specialized and localized soil type, and its total range is very geographically limited which tends to intensify any adverse modifications of the species habitat and depletion of populations due to over-collecting. The total remaining wild populations of the plant are estimated to contain only a few hundred individuals. Frost heaving is also a factor limiting the success of the species. Soil compaction by cattle may increase the effects of frost heaving. The heaving is a natural process which alone should not cause a serious decline in the numbers of the plant.

Effect of the Rulemaking

Section 7(a) of the Act, as amended in 1978, provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies, shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the Conservation of Endangered species and Threatened species listed pursuant to Section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, ensure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') does not jeopardize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with section 7(a) of the Act. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species.

Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered plant species are found at § 17.61–17.63 (42 FR 32378–32381).

Section 9(a)(2) of the Act, as implemented by § 17.61 would apply. With respect to any species of plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381, 50 CFR Part 17), also provide for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Endangered plants.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora which requires a permit for export of the taxon. The Service will review whether it should be considered under the convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

An Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat

of such species which is then considered to be Critical Habitat.

Pediocactus bradyi is threatened by taking (See discussion under factors 2 and 4 in the conclusion section of this rule), and the taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this species more vulnerable, and therefore it would not be prudent to determine Critical Habitat. Federal agencies and other parties will be notified of the locations of these plants for protection purposes. BLM, the principal federal agency involved, is aware of the location of this plant. The Service now proceeds with this final rulemaking to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

The primary author of this rule is Ms. E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975). Status information for this species was compiled by Dr. A. M. Phillips III, Dr. B. G. Phillips, Mr. L. T. Green, Ms. J. Mazzoni, and Ms. Elaine Peterson (Museum of Northern Arizona, Flagstaff, Arizona).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus Family:						
Pediocactus bradyi	Brady pincushion cactus.	U.S.A. (AZ)	Entire	E		NA

Dated: October 16, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79-32973 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Determination That Pediocactus sileri is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Pediocactus sileri* (Siler pincushion cactus), a native plant of Arizona and Utah, to be an Endangered species. Habitat destruction through mining, off-road vehicle use, and a power project threatens the plants in various parts of its range. Removal of the plants by private collectors and commercial suppliers has resulted in depletion of natural populations. Grazing is also negatively impacting this cactus. This action will extend to this plant the protection provided by the Endangered Species Act of 1973, as amended in 1978.

DATE: This rulemaking becomes effective on November 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (202/235–2771).

SUPPLEMENTARY INFORMATION:

Background

Pediocactus sileri (Siler pincushion cactus) occurs along the Arizona-Utah border in three adjacent counties (two in Arizona and one in Utah). This cactus is restricted to a specific soil type and has a very restricted range in desert shrub communities. There are probably fewer than 1,000 individuals of the species remaining. *Pediocactus sileri* is a small, solitary, globose cactus, about four inches tall and three to four inches in diameter. This species has maroon and yellow flowers and greenish-yellow fruits. The continued existence of this cactus is in danger, and this rule will extend to it the protection provided by the Endangered Species Act of 1973 as amended. The following paragraphs summarize the actions leading up to this final rule and the factors which cause this species to be Endangered.

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species act, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94–51, contained lists of over 3,100 U.S. vascular plant taxa considered to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823–27824) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523–24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data recieved by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the above mentioned **Federal Register** publication.

Pediocactus sileri was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. A public hearing on the June 16, 1976 proposal was held on July 22, 1976, in El Segundo, California. A second public hearing was held on July 11, 1979, in Phoenix, Arizona for five Arizona cacti proposed as Endangered, including *Pediocactus sileri.*

In the June 24, 1977, **Federal Register** the Service published a final rulemaking (42 FR 32373–32381, codified at 50 CFR) detailing the regulations to protect Endangered and Threatened plant species. The rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this rule does not meet the criteria for significance in the Department regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program, or the concept of Endangered and Threatened plants

and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909–17916). Some of these comments had addressed the general problems of cacti conservation. Additionally many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Section 9(a)(2) and 10(a) of the Act. These comments are summarized in the June 24, 1977, **Federal Register** final prohibitions and permit provisions. No comments dealing specifically with *Pediocactus sileri* were received during these official comment periods. The Governors of Arizona and Utah were also notified of the proposed action, but neither submitted any comments dealing specifically with *Pediocactus sileri*.

On July 11, 1979, the Service held a second public hearing in Phoenix, Arizona, and again solicited comments on five Arizona cacti. During this period the Bureau of Reclamation voiced concern that there was a lack of data to support the listing of these five cacti and a lack of detailed information on their Critical Habitat. However extensive data supporting the listing of these taxa are available from either the Service's regional office in Albuquerque, N. Mex.; or the Washington, D.C. Office of Endangered Species. It has been determined that designating Critical Habitat would be imprudent due to probability of increasing collection. Conservationists, botanists, the Bureau of Land Management, and the Arizona Commission of Agriculture and Horticulture all indicated their concurrence with and/or their strong support for the proposal to determine *Pediocactus sileri* to be an Endangered species.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Pediocactus sileri* (Engelm. ex Coult.) L. Benson (Siler pincushion cactus; synonyms: *Echinocactus sileri* Engelm. ex Coult., *Utahia sileri* (Engelm. ex Coult.) Britt. and Rose) is in danger of becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Pediocactus sileri* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* A major threat to the habitat of *Pediocactus sileri* is strip mining of gypsum deposits. Commercially valuable deposits occur at or near the surface of much of the potential habitat of the species. Some loss of habitat has already occurred from mining activities. Off-road vehicle use is a serious threat to the plants, and the rounded, largely unvegetative knobs where the species grows are an especially attractive area for this activity. Botanists note that aside from collectors, the rare plants of the Arizona strip are more severely impacted by off-road vehicle use than by any other single factor. This species occurs on lands administered by the Bureau of Land Management and the Kaibab Indian Reservation which is a Federal reservation, as well as on private lands.

The Utah populations are threatened by certain construction planned as a part of the Warner Valley Power project. As presently planned construction of a road associated with this generating plant to be built near St. George, Utah, could eliminate individuals of this cactus.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* As with other species in the genus, this species is in worldwide demand by collectors of rare cacti. Botanists have noted that the removal of plants from the wild has occurred and has resulted in the depletion of natural populations. A botanist who was contracted by the Service to carry out a status survey for this species also noted some commercial trade in this species. Overcollection is an ongoing threat to this species.

3. *Disease or predation* (including grazing). Cattle grazing, adversely affects this species by trampling, especially young plants during wet seasons of the year when the ground is muddy. Grazing is a definite threat since most of this species' range is heavily grazed.

4. *The inadequacy of existing regulatory mechanisms.* This species is offered protection under Arizona law, A.R.S. Chapter 7, Section 3–901, prohibiting collection of all members of the genus *Pediocactus*, except for scientific or educational purposes under permit from the State Commission of Agriculture and Horticulture. Utah has no State laws protecting Endangered and Threatened plants as yet.

This cactus occurs on lands administered by the Bureau of Land Management, on the Kaibab Indian Reservation and on private lands. The taking or vandalizing of plants is not prohibited by the Endangered Species Act. However, where Federal lands are involved, other restrictive provisions are available. Bureau of Land Management regulations prohibit the removal, destruction, and disturbance of vegetative resources unless such activities are specifically allowed or authorized (43 CFR 6010.2). The Kaibab Indian Reservation is a Federal reservation and through tribal resolutions may restrict the taking of plants from their lands, as well.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention regulates export of the taxon but does not regulate internal trade in the cactus or habitat destruction. Except as noted in the preceeding paragraph no other Federal protective laws currently apply to this species. The Endangered Species Act will now offer additional protection for the taxon.

5. *Other natural or manmade factors affecting its continued existence.* Restriction to a specialized and localized soil type, with a low total population level consisting of small, scattered and disjunct populations with a resultant restricted gene pool, are factors which tend to intensify the adverse effects of threats to the plants or their habitat.

Effect of the Rulemaking

Section 7(a) of the Act as amended in 1978 provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with, and with the assistance of, the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of Endangered species and Threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with, and with the assistance of, the Secretary, ensure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. This rulemaking requires Federal agencies to

satisfy these statutory and regulatory obligations with respect to this species.

Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered plant species, are found at §§ 17.61–17.63 (42 FR 32378–32381).

Section 9(a)(2) of the Act, as implemented by § 17.61 would apply. With respect to any species or plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381, 50 CFR Part 17), also provide for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Endangered plants.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora which requires a permit for export of the taxon. The Service will review whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

An Environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical habitat.

Pediocactus sileri is threatened by taking (See discussion under factors 2 and 4 in the Conclusion section of this rule), and the taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this species more vulnerable and there it would not be prudent to determine Critical Habitat. Federal agencies and other parties will be notified of the locations of these plants for protection purposes.

The Service now proceeds with the final rulemaking to determine this species to the Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531–1543).

The primary author of this rule is Ms. E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975). Status information for this species was compiled by Dr. A.M. Phillips, III, Dr. B. G. Phillips, Mr. L. T. Green, Ms. J. Mazzoni, and Ms. Elaine Peterson (Museum of Northern Arizona, Flagstaff, Arizona).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus Family:						
Pediocactus sileri	Siler pincushion cactus.	U.S.A. (AZ and UT)	Entire	E		NA

Dated: October 19, 1979.

Robert S. Cook,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 79-32974 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

federal register

Friday
October 26, 1979

Part III

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and Federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontrators 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. 224–70) 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 the Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage & Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Massachusetts	MA78–2081	September 22, 1978
Maine	ME78–2159	November 17, 1978
	ME79–2042	May 4, 1979
Michigan	MI79–2020	June 1, 1979
Montana	MT79–5129	August 17, 1979
	MT79–5106	July 27, 1979
New Hampshire	NH79–2041	May 11, 1979
Nevada	NV78–5124	September 15, 1978
Texas	TX79–4050	March 16, 1979
Utah	UT78–5128	October 6, 1978

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C. this 19th day of October 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. MA78-2081 - MOD. #3 (43 FR 43164 - September 22, 1978) Bristol County, Massachusetts					
Change: Electricians: Fall River, Freetown, Somerset, Swansea & Westport	$10.65	7%	3%+1.00	6%	½%
DECISION NO. ME78-2159 - MOD. #1 (43 FR 53959 - November 17, 1978) York County, Maine					
Change: Carpenters	$ 9.34	.65	.70		.03
Electricians	11.70	.75	3%+.25		.02
DECISION NO. ME79-2042 - MOD. #1 (44 FR 26434 - May 4, 1979) Cumberland County, Maine					
Change: Plumbers & Pipefitters	10.95	.55	1.00		.02

DECISION #MI79-2020 - MOD. #5
(44 FR 31842 - June 1, 1979)
Statewide, Michigan

CHANGE:

MICH-SWH-UTD

TRUCK DRIVERS: UNDERGROUND CONSTRUCTION-b	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 1 Wayne, Oakland, Macomb, Washtenaw, Monroe, St. Clair & Genesee Counties:					
CLASS 1	$10.31	33.50a	37.00a		
CLASS 2	10.44	33.50a	37.00a		
CLASS 3	10.64	33.50a	37.00a		
ZONE 2 Lapeer & Shiawassee Counties:					
CLASS 1	$10.21	33.50a	37.00a		
CLASS 2	10.34	33.50a	37.00a		
CLASS 3	10.54	33.50a	37.00a		
ZONE 3 Jackson, Lenawee & Hillsdale Counties:					
All Truck Drivers	$7.30	19.00a	22.00a		

CLASS 1 - Truck Driver (except dump trucks of 8 cubic yards capacity or over, Pole Trailers, Semis, Low Boys, Euclid, Double Bottom & Fuel Trucks).
CLASS 2 - Truck Driver on Dump Trucks of 8 cubic yards capacity or over, Pole Trailers, Semis & Fuel Trucks.
CLASS 3 - Low Boy, Euclid & Double Bottom Driver

FOOTNOTES:
a. Per Week; Per Employee
b. Underground Construction work shall be construed to mean any work which requires the excavation of earth, site excavation and preparation, land balancing, grading, sewers, utilities and improvements and also including but not limited to tunnels, underground piping and conduits and general excavation. Underground Construction work shall not include any structural modifications, alterations, additions and repairs to buildings or highway work, including roads, streets, bridge construction and parking lots or steel erection work.

DECISION NO. MT79-5129 - Mod. #1
(44 FR 48570 - August 17, 1979)
STATEWIDE, MONTANA

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS:					
Flathead, Lake, Lincoln, Mineral, Missoula and Sanders Counties	$14.28	.75	.70		.15
Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis and Clark, Madison, Park, Powell, Silver Bow and Sweetgrass Counties	14.05	.70	.85		.10
Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Golden Valley, Musselshell, Petroleum, Powder River, Prairie, Richland, Rosebud, Sheridan, Stillwater, Treasure, Wheatland, Wibaux and Yellowstone Counties	12.70	1.00	.90		.10

DECISION NO. MT79-5106 - Mod. #1
(44 FR 44408 - July 27, 1979)
Cascade, Deer Lodge, Gallatin, Glacier, Hill, Missoula, Silver Bow and Valley Counties, Montana

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS:					
Cascade, Glacier, Hill and Valley Counties	$13.85	.75	1.10		.15
Missoula County	14.28	.75	.70		.15
Remaining Counties	14.05	.70	.85		.10

Decision #NH79-2041 - Mod. #1
(44 FR 27882 - May 11, 1979)
Rockingham & Strafford Counties, New Hampshire

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters:					
Remainder of County:					
Carpenters & Soft Floor Layers	$9.34	.65	.70		.03
Electricians:					
Rockingham Co. Twps. of Exeter, Greenland, Hampton, Hampton Falls, Portsmouth, New Fields, Newington, New Market, Northwood, Nottingham, Rye, Seabrook Strathan & S. New Market	11.70	.75	3%+.25		.02
Strafford County	11.70	.75	3%+.25		.02

DECISION #NV78-5124 - Mod. #7
(43 FR 41351-September 15, 1978)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Statewide (does not include the Nevada Test Site and Tonopah Test Range, and highway construction in Douglas County), Nevada					
Change:					
Asbestos Workers:					
Remaining Counties	$14.00	$1.12	$1.30	$2.00	.11
Boilermakers	15.21	1.175	1.25	1.00	.04
Bricklayers; Stone-Masons:					
Clark, Esmeralda, Lincoln, Nye County (South of Hwy. #6)	13.87	.90	.60		.06
Remaining Counties and Nye County (north of Hwy. #6)	13.10	.95	.75		.01
Carpenters:					
Nye County (north of Hwy. #6, excluding City of Tonopah) and all Remaining Cos.:					
Carpenters	11.75	.95	1.51	1.00	.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators; Shingler	11.90	.95	1.15	1.00	.10
Piledrivermen	12.00	.95	1.51	1.00	.10
Millwrights	12.35	.95	1.51	1.00	.10
Cement Masons:					
Lake Tahoe Area:					
Cement Masons	11.65	.90	1.00	1.45	.05
Mastic, Magnesite and all Composition Masons	11.90	.90	1.00	1.45	.05
Troweling Machine; Grinder Operator and Kelly Float	12.15	.90	1.00	1.45	.05

DECISION NO. NV78-5124 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Remaining Counties:					
Cement Masons	$10.20	.90	$1.00	$1.45	.05
Mastic, Magnesite and all Composition Masons	10.45	.90	1.00	1.45	.05
Troweling Machine; Grinder Operator and Kelly Float	10.70	.90	1.00	1.45	.05
Clark, Lincoln, Nye Counties:					
Cement Masons	13.00	1.10	1.00		.13
Cement Floor Finishing Machine and Color Work	13.35	1.10	1.00		.13
Drywall Installers:					
Statewide except the Counties of Clark, Esmeralda County (south of Hwy. #6), Lincoln, Nye County (south of Hwy. #6, including City of Tonopah)	12.00	.95	1.51	1.00	.10
Electricians:					
Clark, Lincoln, Nye County (south of Mt. Diablo Base Line):					
Electricians; Technicians	15.71	.98	3%+1.80		.08
Cable Splicers	16.04	.98	3%+1.80		.08
Nye County (north of Mt. Diablo Base Line) and Remaining Counties excluding Lake Tahoe Area:					
Electricians; Technicians	15.63	.99	3%+1.37		.08
Cable Splicers	17.19	.99	3%+1.37		.08
Lake Tahoe Area:					
Electricians:					
Technicians	16.63	.99	3%+1.37		.08
Cable Splicers	18.19	.99	3%+1.37		.08

DECISION NO. NV78-5124 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Glaziers:					
Remaining Counties	$11.39	.81	$1.60	$1.39	
Ironworkers:					
Elko, Eureka, White Pine Counties:					
Fence Erectors; Machinery Movers; Ornamental; Reinforcing; Riggers; Structural	11.80	.75	1.35		.05
Remaining Counties:					
Fence Erector	11.51	1.39	2.82	1.90	.07
Ornamental; Reinforcing; Structural	12.50	1.39	2.82	1.90	.07
Laborers:					
Clark, Esmeralda, Lincoln, Nye County (south half):					
Group 1	10.80	.81	1.53		
Group 2	11.01	.81	1.53		
Group 3	11.11	.81	1.53		
Group 4	11.20	.81	1.53		
Group 5	11.30	.81	1.53		
Remaining Counties:					
Building Construction:					
Zone 1:					
Group 1	9.00	.95	1.20		.10
Group 2	9.10	.95	1.20		.10
Group 3	9.25	.95	1.20		.10
Group 4	9.50	.95	1.20		.10
Group 5	9.80	.95	1.20		.10
Group 6-A	9.80	.95	1.20		.10
Group 6-B	9.50	.95	1.20		.10
Group 6-C	9.15	.95	1.20		.10
Zone 2:					
Group 1	9.60	.95	1.20		.10
Group 2	9.70	.95	1.20		.10
Group 3	9.85	.95	1.20		.10
Group 4	10.10	.95	1.20		.10
Group 5	10.40	.95	1.20		.10
Group 6-A	10.40	.95	1.20		.10
Group 6-B	10.10	.95	1.20		.10
Group 6-C	9.75	.95	1.20		.10

DECISION NO. NV78-5124 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 3:					
Group 1	$ 9.80	.95	$1.20		.10
Group 2	9.90	.95	1.20		.10
Group 3	10.05	.95	1.20		.10
Group 4	10.30	.95	1.20		.10
Group 5	10.60	.95	1.20		.10
Group 6-A	10.60	.95	1.20		.10
Group 6-B	10.30	.95	1.20		.10
Group 6-C	9.95	.95	1.20		.10
Zone 4:					
Group 1	10.50	.95	1.20		.10
Group 2	10.60	.95	1.20		.10
Group 3	10.75	.95	1.20		.10
Group 4	11.00	.95	1.20		.10
Group 5	11.30	.95	1.20		.10
Group 6-A	11.30	.95	1.20		.10
Group 6-B	11.00	.95	1.20		.10
Group 6-C	10.65	.95	1.20		.10
Heavy and Highway Construction:					
(See attached)					
Lathers:					
Clark, Esmeralda, Lincoln and Nye Cos.	11.10	.80	1.00	1.20	.16
Line Construction Workers:					
Clark, Lincoln, Nye County (south half):					
Groundman	12.64	.98	3%		3/4%
Linemen	16.85	.98	3%		3/4%
Line Equipment Operators	15.17	.98	3%		3/4%
Cable Splicers	17.69	.98	3%		3/4%
Lake Tahoe Area:					
Lineman	16.63	.99	3%+1.27		.08
Line Equipment Operators	15.07	.99	3%+1.27		.08
Groundman	12.72	.99	3%+1.27		.08
Cable Splicers	18.19	.99	3%+1.27		.08

DECISION NO. NV78-5124 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Remaining Counties (excluding Lake Tahoe Area):					
Lineman	$15.63	.99	3%+1.27		.08
Line Equipment Operators	14.07	.99	3%+1.27		.08
Groundman	11.72	.99	3%+1.27		.08
Cable Splicers	17.19	.99	3%+1.27		.08
Marble Masons:					
Clark, Esmeralda, Lincoln, Nye County (south half)	13.87	.90	.60		.06
Remaining Counties and Nye County (north half)	12.75	.95	.75		.01
Painters:					
Clark, Esmeralda, Lincoln, Nye Counties:					
Brush; Roller Paperhangers; Spray; Steel; Swing Stage; Sandblasters; Sign; Tapers	14.24	.80	.70		.06
Buffing Steel; Sandblasters, structural steel	14.59	.80	.70		.06
Steeplejack	14.94	.80	.70		.06
Remaining Counties including Lake Tahoe Area:	15.74	.80	.70		.06
Brush and Roller	14.43	.70	.75		.02
Spray; Taper; Paperhangers	14.95	.70	.75		.02
Spray - swing stage up to 40 ft.; Spray-steel	15.20	.70	.75		.02
Brush - swing stage, up to 40 ft.; Brush-Steel; Sandblasters	14.70	.70	.75		.02
Sprinkler Fitters	16.72	.75	1.05		.08

DECISION NO. NV78-5124 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plaster Hod Carriers:					
Statewide excluding Clark, Esmeralda, Lincoln, Nye County (south half):					
Plaster Hod Carriers serving Plasterers	$11.95	.95	$1.20		
Plaster Hod Carriers working on any type of gun	12.55	.95	1.20		
Plasterers:					
Clark, Lincoln, Nye Counties	13.49	1.10	1.00		.13
Remaining Counties	12.52	.70	1.20		.03
Plumbers; Steamfitters:					
Clark, Esmeralda, Lincoln, Nye County (south half)	13.75	1.25	2.50	2.00	.08
Remaining Counties and Nye County (north half)	13.74	1.13	1.00	1.95	.20
Plumbers (Utility):					
Statewide except Clark, Esmeralda, Lincoln, Nye County (south half)	13.74	1.13	1.00	1.95	.10
Power Equipment Operator Operators:					
Clark, Esmeralda, Lincoln, Nye Counties					
Group 1	11.60	1.10	2.60	.85	.14
Group 2	11.88	1.10	2.60	.85	.14
Group 3	12.17	1.10	2.60	.85	.14
Group 4	12.31	1.10	2.60	.85	.14
Group 5	12.53	1.10	2.60	.85	.14
Group 6	12.64	1.10	2.60	.85	.14
Group 7	12.76	1.10	2.60	.85	.14
Group 8	12.93	1.10	2.60	.85	.14
Group 9	13.06	1.10	2.60	.85	.14
Except Piledriving and Steel Erection:					
Remaining Counties: Areas 1 and 2 (see attached)					

DECISION NO. NV78-5124 (Cont'd)

MODIFICATIONS P. 11

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Steel Erection:					
Remaining Counties:					
Group 1	$11.19	$1.98	$2.35	$1.67	.10
Group 2	11.60	1.98	2.35	1.67	.10
Group 3	12.72	1.98	2.35	1.67	.10
Group 4	12.88	1.98	2.35	1.67	.10
Group 4-A	13.21	1.98	2.35	1.67	.10
Group 5	13.76	1.98	2.35	1.67	.10
Group 6	14.23	1.98	2.35	1.67	.10
Group 6-A	14.88	1.98	2.35	1.67	.10
Group 7	16.03	1.98	2.35	1.67	.10
Piledriving:					
Remaining Counties:					
Group 1	10.68	1.98	2.35	1.67	.10
Group 1-A	11.05	1.98	2.35	1.67	.10
Group 1-B	11.28	1.98	2.35	1.67	.10
Group 2-A	11.28	1.98	2.35	1.67	.10
Group 2-B	12.10	1.98	2.35	1.67	.10
Group 3	12.43	1.98	2.35	1.67	.10
Group 3-A	12.90	1.98	2.35	1.67	.10
Group 4	13.50	1.98	2.35	1.67	.10
Group 5	13.69	1.98	2.35	1.67	.10
Group 6	14.93	1.98	2.35	1.67	.10
Roofers:					
Clark, Esmeralda, Lincoln, and Nye County (south half)	15.70	.80			
Remaining Counties and Nye County (north half)	13.92	.85	1.00		.05
Sheet Metal Workers:					
Clark, Esmeralda, Lincoln, Nye County (south half), White Pine Counties	14.00	1.14	1.62	2.00	.17
Remaining Counties and Nye County (north half)	12.22	1.14	2.13		.10
Soft Floor Layers:					
Clark, Esmeralda, Lincoln and Nye Cos.	13.87	.65			.15
Remaining Counties including Lake Tahoe Area	13.74	.70	.20	2.4%	.06
Terrazzo Workers: Tile Setters:					
Clark, Esmeralda, Lincoln and Nye County (south half)	13.87	.90	.60		.06
Remaining Counties and Nye County (north half)	12.75	.95	.75		.01

MODIFICATIONS P. 12

DECISION NO. NV79-5124 (Cont'd)

TRUCK DRIVERS* Remaining Counties	Basic Hourly Rates AREA 1	Basic Hourly Rates AREA 2	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
DUMP (single or multiple units including semis, double and transfer units); Dumpcrete and bulk cement spreaders:						
Under 4 yards	$10.49	$11.64	$1.00	.91		.05
4 yds. and under 8 yds.	10.71	11.86	1.00	.91		.05
8 yds. & under 18 yds.	10.92	12.07	1.00	.91		.05
18 yds. & under 35 yds.	11.09	12.24	1.00	.91		.05
35 yds. & under 60 yds.	11.36	12.51	1.00	.91		.05
60 yds. & under 75 yds.	11.53	12.68	1.00	.91		.05
75 yds. & under 100 yds.	11.69	12.84	1.00	.91		.05
100 yards and over	11.86	13.01	1.00	.91		.05
TRANSIT MIX:						
Under 8 yards	10.92	12.07	1.00	.91		.05
8 yds. & including 12 yds	11.03	12.18	1.00	.91		.05
Over 12 yards	11.25	12.40	1.00	.91		.05
WATER TRUCKS & JETTING TRUCKS:						
Up to 2,500 gallons	10.71	11.86	1.00	.91		.05
2,500 gallons and over	10.92	12.07	1.00	.91		.05
DW 20's and 21's and other similar Cat type; Terra Cobra, LeTourneau Pulls, Tournarocker, Euclid and similar type equipment when pulling Aqua/Pak; Water tank trailers, fuel and/or grease tank, or other misc. trailers (except as defined under dump trucks)	11.20	12.35	1.00	.91		.05
FLATRACK; Industrial Lift with Mechanical Tailgate:						
Single unit - 2 axle	10.71	11.86	1.00	.91		.05
Single unit - 3 axle	10.81	11.96	1.00	.91		.05

DECISION NO. NV78-5124 (Cont'd)

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA 1	AREA 2				
BUS and MANHAUL DRIVERS, Single unit; Pickup:						
Up to 18,000 pounds	$10.54	$11.69	$1.00	.91		.05
18,000 pounds and over	10.65	11.80	1.00	.91		.05
WINCH TRUCKS, A-Frame:						
Under 18,000 pounds	10.65	11.80	1.00	.91		.05
18,000 pounds and over	10.76	11.91	1.00	.91		.05
HEAVY DUTY TRANSPORT: (highbed); Heavy Duty Transport (Gooseneck Lowbed); Tiltbed or Flatbed pull Trailers	11.09	12.24	1.00	.91		.05
BOOTMAN, combination: Bootman and Road Oiler	10.98	12.13	1.00	.91		.05
ROAD OIL TRUCKS OR BOOTMEN; Fuel Drivers; Fuel Man and Fuel Island Man	10.65	11.80	1.00	.91		.05
HELICOPTER PILOT (when transporting men or materials)	11.53	12.68	1.00	.91		.05
LIFT JITNEYS and FORK LIFTS	10.76	11.91	1.00	.91		.05
TIRE REPAIRMAN	10.92	12.07	1.00	.91		.05
TRUCK REPAIRMAN	11.25	12.40	1.00	.91		.05

DECISION NO. NV78-5124 (Cont'd)

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA 1	AREA 2				
Laborers:						
Heavy and Highway Construction:						
Group 1	$9.00	$10.15	.95	$1.20		.10
Group 2	9.10	10.25	.95	1.20		.10
Group 3	9.25	10.40	.95	1.20		.10
Group 4	9.50	10.65	.95	1.20		.10
Group 5	9.80	10.95	.95	1.20		.10
Group 6-A	9.80	10.95	.95	1.20		.10
Group 6-B	9.50	10.65	.95	1.20		.10
Group 6-C	9.15	10.30	.95	1.20		.10
Power Equipment Operators: (Except Piledriving and Steel Erection): Remaining Counties:						
Group 1-A	10.18	11.33	1.98	2.35	1.67	.10
Group 2	10.58	11.73	1.98	2.35	1.67	.10
Group 3	10.79	11.94	1.98	2.35	1.67	.10
Group 4	11.35	12.50	1.98	2.35	1.67	.10
Group 5	11.58	12.73	1.98	2.35	1.67	.10
Group 6	11.71	12.86	1.98	2.35	1.67	.10
Group 7	11.90	13.05	1.98	2.35	1.67	.10
Group 8	12.35	13.50	1.98	2.35	1.67	.10
Group 9	12.59	13.74	1.98	2.35	1.67	.10
Group 10	12.86	14.01	1.98	2.35	1.67	.10
Group 10-A	13.00	14.15	1.98	2.35	1.67	.10
Group 11	13.19	14.34	1.98	2.35	1.67	.10
Group 11-A	14.43	15.58	1.98	2.35	1.67	.10

MODIFICATIONS P. 15

DECISION NO. NV78-5124 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Omit:					
Brick Hod Carriers:					
Statewide excluding Clark, Esmeralda, Lincoln, Nye County (south half):					
Zone A: 0-35 miles from Courthouse in Reno, Nevada	$ 9.60	.50	.90		.05
Zone B: 35-75 miles from Courthouse in Reno, Nevada	10.50	.50	.90		.05
Carpenters:					
Clark, Esmeralda County (south of Hwy. #6), Lincoln, Nve County (south of Hwy. #6, including City of Tonopah):					
Zone 1: Area within the City limits of Henderson, Nevada, and Boulder City, Nevada; area within a 10-mile radius of Las Vegas, Nevada; area within a 5-mile radius of Tonopah, Nevada; present fenced area of Nellis Air Force Base bounded on the north by the Nellis spur track and on the west by the train line of the Union Pacific Railroad:					
Carpenters	11.96	.85	1.10	1.00	.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	12.11	.85	1.10	1.00	.10

MODIFICATIONS P. 16

DECISION NO. NV78-5124 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Piledrivermen	$12.16	.85	$1.10	$1.00	.10
Millwrights	12.46	.85	1.10	1.00	.10
Zone 2: Area outside of Zone 1 and not more than 20 road miles from the communities described above:					
Carpenters	12.46	.85	1.10	1.00	.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	12.61	.85	1.10	1.00	.10
Piledrivermen	12.66	.85	1.10	1.00	.10
Millwrights	12.96	.85	1.10	1.00	.10
Zone 3: Area over 20 miles and not more than 40 miles from the communities described in Zone 1:					
Carpenters	12.71	.85	1.10	1.00	.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	12.86	.85	1.10	1.00	.10
Piledrivermen	12.91	.85	1.10	1.00	.10
Millwrights	13.21	.85	1.10	1.00	.10
Zone 4: Area over 40 miles from the communities described in Zone 1:					
Carpenters	13.96	.85	1.10	1.00	.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	14.11	.85	1.10	1.00	.10
Piledrivermen	14.16	.85	1.10	1.00	.10
Millwrights	14.46	.85	1.10	1.00	.10

DECISION NO. NV78-5124 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Drywall Installers:					
Clark, Esmeralda County (south of Hwy. #6), Lincoln, Nye County (south of Hwy. #6, including City of Tonopah):					
Zone 1: Area within the City limits of Henderson, Nevada, and Boulder City, Nevada; area within a 10 mile radius of Las Vegas, Nevada; Area within a 5 mile radius of Tonopah, Nevada; present fenced area of Nellis Air Force Base, as well as that area adjacent to Nellis Air Force Base bounded on the north by the Nellis spur track and on the west by the train line of the Union Pacific RR	$12.13	.85	$1.10	$1.00	.10
Zone 2: Area outside of Zone 1 and not more than 20 road miles from the communities described in Zone 1	12.63	.85	1.10	1.00	.10
Zone 3: Area over 20 miles and not more than 40 miles from the communities described in Zone 1	12.88	.85	1.10	1.00	.10
Zone 4: Area over 40 miles from the communities described in Zone 1	14.13	.85	1.10	1.00	.10

DECISION NO. NV78-5124 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Add:					
Brick Hod Carriers: Statewide excluding Clark, Esmeralda, Lincoln, Nye County (south half)	$10.80	.95	$1.20		.05
Carpenters: Clark, Esmeralda County (south of Hwy. #6), Lincoln, Nye County (south of Hwy. #6, including the City of Tonopah):					
Carpenters	14.21	.85	1.10		.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	14.36	.85	1.10		.10
Piledrivermen	14.41	.85	1.10		.10
Millwrights	15.11	.85	1.10		.10
Drywall Installers: Clark, Esmeralda Co. (south of Hwy. #6), Lincoln, Nye County (south of Hwy. #6, including City of Tonopah)	14.38	.85	1.10		.10

MODIFICATIONS P. 19

DECISION NO. TX79-4050 - MOD. #7
(44 FR 16334 - March 16, 1979)
Bell, Bosque, Coryell, Falls, Hill & McLennan Counties, Texas

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Building Construction:					
Painters - Group 1	$ 8.65				.04
Group 2	9.15				.04
Group 3	9.25				.04
Group 4	9.40				.04
Group 5	9.75				.04

MODIFICATIONS P. 20

DECISION #UT78-5128 - Mod. #7
(43 FR 46480 - October 6, 1978)
Statewide, Utah

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$12.61	.77	$1.37		
Boilermakers	13.41	1.175	1.25	$1.00	.04
Bricklayers	12.00	.60	.62		.10
Carpenters:					
Building Construction:					
Carpenters	11.25	.55	.65		.03
Saw Operators; Carpenters handling creosote materials	11.50	.55	.65		.03
Millwrights	12.10	.55	.65		.03
Piledrivermen	13.83	.55	.65		.03
Heavy and Highway Construction:					
Zone 1:					
Carpenters	11.25	.55	.65		.03
Saw Operators; Carpenters handling creosote materials	11.50	.55	.65		.03
Millwrights	12.10	.55	.65		.03
Piledrivermen	13.83	.55	.65		.03
Zone 2:					
Carpenters	12.25	.55	.65		.03
Saw Operators; Carpenters handling creosote materials	12.50	.55	.65		.03
Millwrights	12.10	.55	.65		.03
Piledrivermen	13.83	.55	.65		.03
Zone 3:					
Carpenters	13.25	.55	.65		.03
Saw Operators; Carpenters handling creosote materials	13.50	.55	.65		.03
Millwrights	12.10	.55	.65		.03
Piledrivermen	13.83	.55	.65		.03
Drywall Installers:					
Taping, finishing and texturing (hand or machine)	11.64	.51	.30		.03

DECISION NO. UT78-5128 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians:					
North section of Utah-Box Elder, Cache, Davis County (north of 41st Parallel), Morgan, Rich, Weber Counties:					
Zone 1:					
Electricians; Technicians	$12.50	.75	3%+.75		8/10%
Cable Splicers	12.75	.75	3%+.75		8/10%
Zone 2:					
Electricians; Technicians	13.00	.75	3%+.75		8/10%
Cable Splicers	13.25	.75	3%+.75		8/10%
Zone 3:					
Electricians; Technicians	13.50	.75	3%+.75		8/10%
Cable Splicers	13.75	.75	3%+.75		8/10%
Zone 3-A:					
Electricians; Technicians	13.50	.75	3%+.75		8/10%
Cable Splicers	13.75	.75	3%+.75		8/10%
Zone 4:					
Electricians; Technicians	15.75	.75	3%+.75		8/10%
Cable Splicers	16.00	.75	3%+.75		8/10%
South section of Utah-Remaining Counties:					
Zone 1:					
Area A:					
Electricians; Technicians	12.50	.75	3%+.75		8/10%
Cable Splicers	13.00	.75	3%+.75		8/10%
Area B:					
Electricians; Technicians	13.25	.75	3%+.75		8/10%
Cable Splicers	13.75	.75	3%+.75		8/10%
Ironworkers:					
Fence Erectors; Ornamental; Reinforcing; Structural	12.00	.75	1.35		.05
Marble Setters	11.57	.50	.45	.60	.02

[FR Doc. 79-32794 Filed 10-25-79; 8:45 am]

BILLING CODE 4510-27-C

DECISION NO. UT78-5128 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Box Elder, Cache, Rich Counties; and the following Counties north of an east-west line from the north boundary of Farmington: Davis, Morgan, Summit, Tooele and Weber Cos.:					
Brush; Roller Spray; Sandblast; Steeplejack; Brush, steel and bridge;	$10.22	.51	.50		.05
Brush (swing stage) Spray (swing stage); Sandblaster (swing Stage); Spray, steel and bridge	10.47	.51	.50		.05
	10.67	.51	.50		.05
Remaining part of State: Brush; Roller	10.70	.51	.30		.02
Brush (swing stage); Brush (steel and bridge); Spray, Sandblaster); Steeplejack	11.00	.51	.30		.02
Spray (swing stage); Spray (steel and bridge); Sandblaster (swing stage)	11.25	.51	.30		.02
Wallcovering Hanger	10.95	.51	.30		.02
Plumbers; Pipefitters	12.20	.81	1.10		.06
Refrigeration and Air Conditioning	12.20	.81	1.10		.06
Roofers	10.94	.57	.35		.05
Sheet Metal Workers	12.30	.75	.88		.12
Soft Floor Layers	9.98	.51	.27		
Sprinkler Fitters	12.04	.75	1.05		.08
Terrazzo Workers and Tile Layers	11.57	.50	.45	.60	.02

federal register

Friday
October 26, 1979

Part IV

Department of the Interior

Bureau of Land Management

Outer Continental Shelf, Central and Western Gulf of Mexico, Leasing Systems, Sale 58A and Oil and Gas Lease Sale No. 58A

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Outer Continental Shelf; Central and Western Gulf of Mexico; Leasing Systems, Sale 58A

Sec. 8(a)(8)(43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act, as amended, requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the Federal Register:

(A) identifying the bidding systems to be used and the reasons for such use; and

(B) designating the tracts to be offered under each bidding system and the reasons for such designation.

A. Bidding systems to be used. In OCS Lease Sale #58A, a system employing a cash bonus bid with a constant royalty fixed at 16 2/3% will be used on 74 tracts. This system is authorized by Sec. 8(a)(1)(A) of the OCS Lands Act, as amended. A system employing a cash bonus bid with a royalty established according to a semi-logarithmic sliding scale will be used on the remaining 51 tracts. This system is authorized by Sec. 8(a)(1)(C) of the OCS Lands Act, as amended. The use of the sliding scale royalty system was first introduced in OCS Lease Sale #43 and used again in the last seven OCS lease sales as part of the commitment by the Department of the Interior and the Department of Energy to develop and test new bidding systems.

The sliding scale is designed to establish higher royalty rates for larger reservoirs with higher production rates. In such cases, the expected bonus would be reduced. This may improve competition for leases. This would also tend to reduce the likelihood of production losses that could result if royalty rates are set by other means, such as royalty bidding, at levels so high that production is made uneconomic. These production losses are dependent upon the different exploration, development and production costs for the specific area. The formula provided for Sale #58A is based on the assumed costs for this area and is slightly different from that utilized in some recent sales, for example, Sale #49.

The sliding scale used in Sales #43 and #45 was linear in form. Although this form is easy to depict it has three disavantages which may affect the socially optimal level of production. At certain levels of production, a linear schedule causes erratic fluctuations in the royalty charged on increments in output which may lead producers to make socially non-optimal production decisions in order to minimize these royalty impacts or revenues. Marginal royalty rates also can reach very high levels even though average rates are low. In addition, because production costs are non-linear it can be shown that the royalty rate schedule should conform more closely to the functional form of these costs in order to minimize production losses.

The fixed sliding scale formula operates in the following way: when the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted

value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value is given by the formula

$$Rj = b(Ln\ (Vj/S))$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 10.0

Ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 2.5

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding

the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the "Survey of Current Business", by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64 and Sec. 6(b) of the lease form.

The form of the sliding scale royalty schedule is identical to that used in OCS Sale No. 51. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However this rate is applied to the unadjusted quarterly value of production to determine the royalty payment due.

The system employing cash bonus bids with a constant fixed royalty has been used extensively since the passage of the OCS Lands Act in 1953. Its use in Sale No. 58A will provide data to compare with the data from the use of sliding scale royalty system. The use of the two bidding systems in Sale No. 58A is consistent with the requirements of Sec. 8(a)(5)(B) of the OCS Lands Act, as amended.

B. Designation of Tracts. The following tracts are to be offered for bonus bidding with a fixed sliding scale royalty: 58A-3, 58A-4, 58A-6, 58A-9, 58A-12, 58A-13, 58A-14, 58A-15, 58A-17, 58A-27, 58A-28, 58A-30, 58A-31, 58A-33, 58A-39, 58A-47, 58A-48, 58A-49, 58A-50, 58A-51, 58A-55, 58A-56, 58A-57, 58A-58, 58A-61, 58A-62, 58A-67, 58A-68, 58A-69, 58A-70, 58A-78, 58A-86, 58A-87, 58A-88, 58A-89, 58A-93, 58A-94, 58A-95, 58A-100, 58A-101, 58A-107, 58A-108, 58A-109, 58A-110, 58A-111, 58A-112, 58A-113, 58A-114, 58A-120, 58A-122, and 58A-125.

Bids on the remaining tracts to be offered at this sale must be on a cash bonus basis with a fixed royalty of 16 2/3 percent.

The selection of tracts to be offered under the sliding scale royalty system was made for the following reasons:

1. A sufficient number of tracts was needed to provide data for valid statistical analysis while limiting the risk of losses caused by unforeseen problems which could arise in the use of any new bidding system. A sample size of approximately 40% (51 tracts) was determined to be approprate.

2. The range and distribution of the characteristics of sliding scale royalty tracts were to match as closely as possible, the range and distribution of the characterics of the tracts being offered in the sale. Such characteristics include estimated resources, water depth structure depth, favorable location of tracts on structures and the location of tracts across trends.

Ed Hastey,
Associate Director, Bureau of Land Management.

Approved: October 9, 1979.

James A. Joseph,
Under Secretary of the Interior.

[FR Doc. 79-32878 Filed 10-25-79; 8:45 am]
BILLING CODE 4310-84-C

Outer Continental Shelf; Western and Central Gulf of Mexico; Oil and Gas Lease, Sale No. 58A

1. Authority. This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended, and the regulations issued thereunder (43 CFR Part 3300).

2. Filing of Bids. Sealed bids will be received by the Manager, New Orleans Outer Continental Shelf (OCS) Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130. Bids may be delivered, either by mail or in person, to the above address until 4:15 p.m., c.s.t., November 26, 1979; or by personal delivery to the Grand Hotel, 1500 Canal Street, New Orleans, Louisiana, between the hours of 8:30 a.m., c.s.t., and 9:30 a.m., c.s.t., November 27, 1979. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., c.s.t., November 27, 1979. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in 44 FR __ October 19,1979.

3. Method of Bidding. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10 a.m., c.s.t., November 27, 1979", must be submitted for each tract. A suggested form appears in 43 CFR Part 3300 (44 FR 38289, June 29, 1979,) Appendix A. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, or certified check, payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 13 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR Subpart 3316. The suggested form for this statement to be used in joint bids appears in 43 CFR 3300 (44 FR 38289, June 29, 1979,) Appendix B. Other documents may be required of bidders under 43 CFR 3316.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bonus Bidding With a Fixed Sliding Scale Royalty. Bids on tracts 58A-3, 58A-4, 58A-6, 58A-9, 58A-12, 58A-13, 58A-14, 58A-15, 58A-17, 58A-27, 58A-28, 58A-30, 58A-31, 58A-33, 58A-39, 58A-47, 58A-48, 58A-49, 58A-50, 58A-51, 58A-55, 58A-56, 58A-57, 58A-58, 58A-61, 58A-62, 58A-67, 58A-68, 58A-69, 58A-70, 58A-78, 58A-86, 58A-87, 58A-88, 58A-89, 58A-93, 58A-94, 58A-95, 58A-100, 58A-101, 58A-107, 58A-108, 58A-109, 58A-110,

58A-111, 58A-112, 58A-113, 58A-114, 58A-120, 58A-122, and 58A-125, must be submitted on a cash bonus bid basis with the percent royalty due in amount or value of production saved, removed or sold fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the royalty percent due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64.

The fixed sliding scale formula operates in the following way: when the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b[Ln\ (Vj/S)]$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved removed or sold in quarter j

b = 10.0

Ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 2.5

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, Rj, the calculation will be carried to five decimal places (for example, 18.17612 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars).

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis,

Figure 1
Form of the Sliding Royalty Schedule

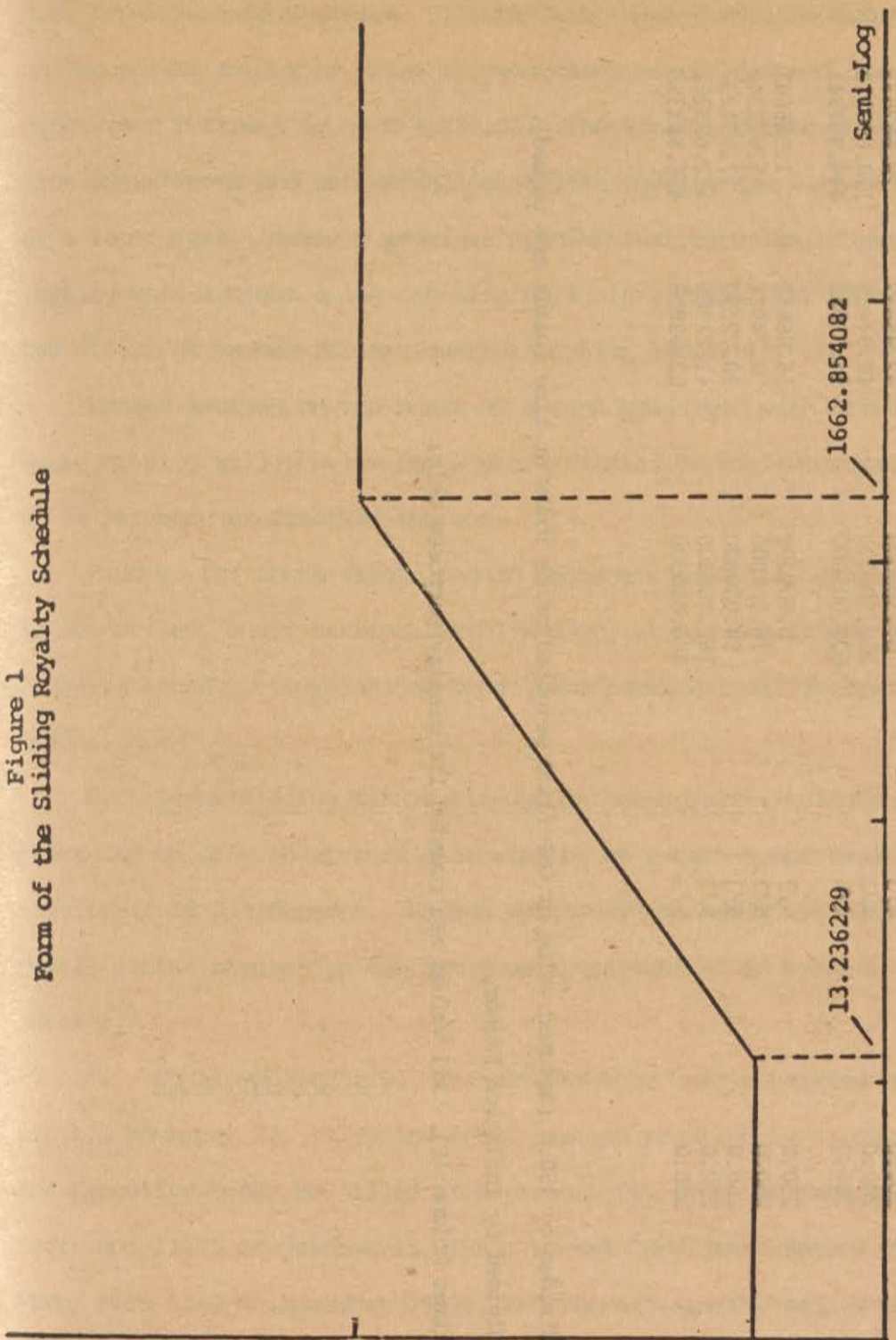


TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(A) Actual Value of Quarterly Production (Millions of Dollars)	(B) GNP Fixed Weighted Price Index	(C) Inflation Factor[1]	(D) Adjusted Value of Quarterly Production[2] (Vj, Millions of $)	(E) Percent Royalty Rate (Rj)	(F) Royalty Payment[3] (Millions of Dollars)
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	21.97225	6.591675
90.000000	200.0	4/3	67.500000	32.95837	29.662533
270.000000	200.0	4/3	202.500000	43.94449	118.650123
810.000000	200.0	4/3	607.500000	54.93061	444.937941
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	19.74081	5.922243
90.000000	250.0	5/3	54.000000	30.72693	27.654237
270.000000	250.0	5/3	162.000000	41.71306	112.625262
810.000000	250.0	5/3	486.000000	52.69918	426.863358

1 Column (B) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

2 Column (A) divided by Inflation Factor.

3 Column (A) times Column (E). All values are rounded for display purposes only.

U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

Leases awarded on the basis of a cash bonus bid with fixed sliding scale royalty will provide for a yearly rental or minimum royalty payment of $3 per acre or fraction thereof.

Bidders for these tracts should recognize that the Department of Energy is authorized, under Section 302(b) and (c) of the Department of Energy Organization Act, to establish production rates for all Federal oil and gas leases.

5. Bonus Bidding With a Fixed Constant Royalty. Bids on the remaining tracts to be offered at this sale must be on a cash bonus basis with a fixed royalty of 16 2/3 percent. Leases which may be issued will provide for a yearly rental payment or minimum royalty payment of $3 per acre or fraction thereof.

6. Equal Opportunity. Each bidder must have submitted by 9:30 a.m., c.s.t., November 27, 1979, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971).

7. Bid Opening. Bids will be opened on November 27, 1979, beginning at 10 a.m., c.s.t., at the address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, November 27, 1979, that bid will be returned unopened to the bidder, as soon thereafter as possible.

8. Deposit of Payment. Any cash, cashier's checks, certified checks or bank drafts, submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

9. Withdrawal of Tracts. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

10. Acceptance or Rejection of Bids. The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid cash bonus bid; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $25 or more per acre or fraction thereof.

11. Successful Bidders. Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR Subpart 3318 within the time provided in 43 CFR 3316.5.

12. Leasing Maps/Official Protraction Diagrams. Tracts offered for lease may be located on the following leasing maps/official protraction diagrams which are available from the Manager, New Orleans Outer Continental Shelf Office at the address stated in paragraph 2.

(a) Outer Continental Shelf Leasing Maps - Texas Nos. 1 through 8. These maps are arranged in two sets, Nos. 1 through 4 (7 maps), which sell for $5 per set; and Nos. 5 through 8 (9 maps), which sell for $7 per set.

(b) Outer Continental Shelf Leasing Maps - Louisiana Nos. 1 through 12. This is a set of 27 maps which sells for $17.

(c) Outer Continental Shelf Official Protraction Diagrams:
NH 15-12 Ewing Bank
NH 16-7 Viosca Knoll
NH 16-10 Mississippi Canyon
These sell for $2 each.

13. Tract Descriptions. The tracts offered for bid are as follows:

Note: There may be gaps in the numbers of the tracts listed. Some of the blocks identified in the final environmental statement may not be included in this notice. Some of the blocks are included in prior environmental statements rather than the environmental statement for this sale.

OCS LEASING MAP, SOUTH PADRE ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 1A
(Approved May 6, 1965)

Tract	Block	Description	Acreage
58A-1	A-43	All	5760
58A-2	A-54	All	5760

OCS LEASING MAP, NORTH PADRE ISLAND AREA, TEXAS MAP NO. 2
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58A-3	947	All	5760
58A-4	957	All	5760

OCS LEASING MAP, MUSTANG ISLAND AREA, TEXAS MAP NO. 3
(Approved July 16, 1954; Revised October 30, 1961)

Tract	Block	Description	Acreage
58A-5	759	All	5760

OCS LEASING MAP, MUSTANG ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 3A
(Approved January 23, 1967)

Tract	Block	Description	Acreage
58A-6	A-84	All	5760

OCS LEASING MAP, MATAGORDA ISLAND AREA, TEXAS MAP NO. 4
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58A-7	566	All	5760
58A-8	680	All	5760
58A-9	698	All	5760
58A-10	709	All	5760

OCS LEASING MAP, BRAZOS AREA, SOUTH ADDITION, TEXAS MAP NO. 5B
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-11	A-78	All	5760
58A-12	A-131	All	5760

OCS LEASING MAP, GALVESTON AREA, TEXAS MAP NO. 6
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58A-13	239	All	5760
58A-14	240	All	5760
58A-15	241	N1/2	2880
58A-16	424	All	5760

OCS LEASING MAP, GALVESTON AREA, SOUTH ADDITION, TEXAS MAP NO. 6A
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-17	A-128	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, TEXAS MAP NO. 7
(Approved July 16, 1954; Revised August, 1955)

Tract	Block	Description	Acreage
58A-18	154	S1/2	2880

OCS LEASING MAP, HIGH ISLAND AREA, SOUTH ADDITION, TEXAS MAP NO. 7B
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-19	A-495	All	5760
58A-20	A-514	All	5760
58A-21	A-515	All	5760
58A-22	A-541	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, SOUTH EXTENSION, TEXAS MAP NO. 7C
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-23	A-346	All	5760

OCS LEASING MAP, SABINE PASS AREA, LOUISIANA MAP NO. 12
(Approved March 7, 1977)

Tract	Block	Description	Acreage
58A-24	11	All	5000

OCS LEASING MAP, WEST CAMERON AREA, LOUISIANA MAP NO. 1
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
58A-25	29	1/	2816.35
58A-26	(30	1/	
	(31	1/	1405.70
58A-27	96	All	5000
58A-28	113	All	5000
58A-29	199	All	5000

OCS LEASING MAP, WEST CAMERON AREA, WEST ADDITION, LOUISIANA MAP NO. 1A
(Approved November 15, 1955; Revised January 30, 1957)

Tract	Block	Description	Acreage
58A-30	393	All	5000
58A-31	431	All	5000

OCS LEASING MAP, WEST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 1B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-32	446	All	5000
58A-33	491	All	5000
58A-34	575	All	5000
58A-35	618	All	5000
58A-36	631	All	5000
58A-37	636	All	5000

OCS LEASING MAP, EAST CAMERON AREA, LOUISIANA MAP NO. 2
(Approved June 8, 1954; Revised August 1, 1973)

Tract	Block	Description	Acreage
58A-38	25	All	5000
58A-39	90	All	5000
58A-40	105	All	5000
58A-41	130	All	5000

OCS LEASING MAP, EAST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 2A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-42	262	All	5000
58A-43	329	All	5000

OCS LEASING MAP, VERMILION AREA, LOUISIANA MAP NO. 3
(Approved June 8, 1954; Revised June 25, 1954; July 22, 1954)

Tract	Block	Description	Acreage
58A-44	27	E1/2[3/]	1697.006
58A-45	59	All	5000
58A-46	100	All	5000
58A-47	112	All	4958.96

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, LOUISIANA MAP NO. 3A
(Approved August 7, 1959)

Tract	Block	Description	Acreage
58A-48	18	All	5000
58A-49	26	All	5000

OCS LEASING MAP, VERMILION AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-50	273	All	5000
58A-51	289	All	5000
58A-52	311	All	4273.11
58A-53	315	All	5000
58A-54	381	All	5000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3C
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-55	82	All	5000
58A-56	83	All	5000
58A-57	90	All	5000
58A-58	91	All	5000
58A-59	119	All	3221.11
58A-60	123	All	5000
58A-61	156	All	5000
58A-62	157	All	5000

OCS LEASING MAP, EUGENE ISLAND AREA, LOUISIANA MAP NO. 4
(Approved June 8. 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
58A-67	46	All	5000
58A-68	49	All	5000
58A-69	135	All	5000
58A-70	155	All	5000

OCS LEASING MAP, EUGENE ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 4A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-71	297	All	5000
58A-72	303	All	5000
58A-73	375	All	5000

OCS LEASING MAP, SHIP SHOAL AREA, LOUISIANA MAP NO. 5
(Approved June 8, 1954)

Tract	Block	Description	Acreage
58A-74	133	All	5000
58A-75	156	All	5000
58A-76	157	All	5000
58A-77	181	All	5000
58A-78	189	All	5000

OCS LEASING MAP, SHIP SHOAL AREA, SOUTH ADDITION, LOUISIANA MAP NO. 5A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-79	245	All	5000
58A-80	250	All	5000

OCS LEASING MAP, SOUTH PELTO AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; December 9, 1954)

Tract	Block	Description	Acreage
58A-81	1	1/	1568.03

OCS LEASING MAP, SOUTH TIMBALIER AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; December 9, 1954)

Tract	Block	Description	Acreage
58A-82	16	1/	1564.65
58A-83	25	All	2148.46
58A-84	33	All	3772.18
58A-85	170	All	5000

OCS LEASING MAP, SOUTH TIMBALIER AREA, SOUTH ADDITION, LOUISIANA MAP NO. 6A
(Approved September 8, 1959; Revised July 22, 1968)

Tract	Block	Description	Acreage
58A-86	220	All	5000
58A-87	245	All	5000
58A-88	270	All	5000
58A-89	300	All	4480.52

OCS LEASING MAP, WEST DELTA AREA, LOUISIANA MAP NO. 8
(Approved June 8, 1954)

Tract	Block	Description	Acreage
58A-90	34	S1/2	2500
58A-91	49	All	5000
58A-92	76	All	5000
58A-93	86	S1/2	2500
58A-94	107	All	5000

OCS LEASING MAP, WEST DELTA AREA, SOUTH ADDITION, LOUISIANA MAP NO. 8A
(Approved September 8, 1959; Revised November 24, 1961)

Tract	Block	Description	Acreage
58A-95	118	All	5080.60

OCS LEASING MAP, SOUTH PASS AREA, LOUISIANA MAP NO. 9
(Approved June 8, 1954; Revised July 22, 1954; May 11, 1973)

Tract	Block	Description	Acreage
58A-96	36	1/	3525.40
58A-97	39	1/	619.17
58A-98	42	3/	256.82
58A-99	43	1/	4177.03

OCS LEASING MAP, SOUTH PASS AREA, SOUTH AND EAST ADDITION, LOUISIANA
MAP NO. 9A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-100	68	All	5000
58A-101	69	All	5000
58A-102	73	All	5000

OCS LEASING MAP, MAIN PASS AREA, LOUISIANA MAP NO. 10
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
58A-103	123	All	4994.55
58A-104	143	All	4994.55
58A-105	145	All	4994.55

OCS LEASING MAP, MAIN PASS AREA, SOUTH AND EAST ADDITION, LOUISIANA
MAP NO. 10A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-106	303	All	4999.96

OCS OFFICIAL PROTRACTION DIAGRAM, EWING BANK, NH 15-12
(Approved February 15, 1973; Revised December 2, 1976)

Tract	Block	Description	Acreage
58A-107	305	All	5214.74
58A-108	306	All	2459.43

OCS OFFICIAL PROTRACTION DIAGRAM, VIOSCA KNOLL, NH 16-7
(Approved October 10, 1972; Revised February 15, 1973; August 1, 1973; December 2, 1976)

Tract	Block	Description	Acreage
58A-109	989	All	5760
58A-110	990	All	5760

OCS OFFICIAL PROTRACTION DIAGRAM, MISSISSIPPI CANYON, NH 16-10
(Approved February 15, 1973; Revised December 2, 1976)

Tract	Block	Description	Acreage
58A-111	27	All	5760
58A-112	28	All	5760
58A-113	531	All	5760
58A-114	575	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, SOUTH EXTENSION, TEXAS MAP NO. 7C
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-115	A-374	All	5760

OCS LEASING MAP, BRAZOS AREA, TEXAS MAP NO. 5
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58A-116	436	All	5760

OCS LEASING MAP, GALVESTON AREA, TEXAS MAP NO. 6
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58A-117	389	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, SOUTH EXTENSION, TEXAS MAP NO. 7C
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-118	A-385	All	5760

OCS LEASING MAP, VERMILION AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-119	330	All	5000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3C
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-120	75	All	5000

OCS LEASING MAP, MAIN PASS AREA, LOUISIANA MAP NO. 10
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
58A-121	111	All	4994.55

OCS LEASING MAP, MAIN PASS AREA, SOUTH & EAST ADDITION, LOUISIANA
MAP 10A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-122	312	All	4999.96

OCS LEASING MAP, HIGH ISLAND AREA, TEXAS MAP NO. 7
(Approved July 16, 1954; Revised August 1955)

Tract	Block	Description	Acreage
58A-123	143	All	5760

OCS LEASING MAP, SOUTH TIMBALIER AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; December 9, 1954)

Tract	Block	Description	Acreage
58A-124	183	All	2148.46

OCS OFFICIAL PROTRACTION DIAGRAM, VIOSCA KNOLL NH 16-7
(Approved October 10, 1972; Revised February 15, 1973; August 1, 1973; December 2, 1976)

Tract	Block	Description	Acreage
58A-125	942	All	5231.5

OCS LEASING MAP, WEST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 1B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-126	648[2/]	All	5000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, NORTH ADDITION, LOUISIANA
MAP NO. 3D
(Approved April 16, 1971; Revised January 18, 1972)

Tract	Block	Description	Acreage
58A-127	220	4/	2288.53
58A-128	235	5/	3633.65
58A-129	243	6/	634.99

1/ That portion of the lease block which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13).

2/ This block was not included among those considered in the lease sale EIS. However, an Environmental Assessment Record (EAR) was completed on this tract and it was concluded that its inclusion in the proposed lease sale offering, in and of itself or in conjunction with the other tracts, does not constitute a major Federal action having a significant impact on the environment, requiring full EIS analysis.

3/ That portion of the lease block which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13), and/or that portion of the lease block which lies in Zone 2 as that Zone is defined in the Agreement (October 12, 1956) between the United States and the State of Louisiana, the landward boundary of the lease block being controlled by the Zone 2 line and/or the 1975 decree line, whichever line is more seaward.

4/ A portion of Block 220, OCS Official Leasing Map, South Marsh Island Area, North Addition, Louisiana, Map No. 3D, described as follows:

Beginning at the southeast corner of Block 220, the coordinates of which referred to the Louisiana (Lambert) Coordinate System (South Zone), are X=1,750,688.512 and Y=260,908.037;

From the initial corner,

Grid North	1,841.963 ft.	to	X=1,750,688.512	Y=262,750.00
Grid N.50°20'00"W.	10,182.94 ft.	to	X=1,742,850.00	Y=269,250.00
Grid N.69°48'26"W.	6,663.85 ft.	to	X=1,736,595.74	Y=271,550.23
True South	10,642.47 ft.	to	X=1,736,518.905	Y=260,908.037
Grid East	14,169.607 ft.	to the point of beginning.		

The position of the corners and direction of the grid lines are referred to the Louisiana (Lambert) Coordinate System (South Zone).

5/ A portion of Block 235, OCS Official Leasing Map, South Marsh Island Area, North Addition, Louisiana, Map No. 3D, described as follows:

Beginning at the northwest corner of Block 235, the coordinates of which referred to the Louisiana (Lambert) Coordinate System (South Zone), are X=1,765,446.562 and Y = 246,149.987;

From the initial corner,

South	8,033.742 ft.	to	X=1,765,446.562	Y=238,116.245
S.68°53'24"E.	15,214.20 ft.	to	X=1,780,204.612	Y=234,418.716
North	9,981.284 ft.	to	X=1,780,204.612	Y=244,400.00
N.56°36'22"W.	3,179.53 ft.	to	X=1,777,550.00	Y=246,149.987
West	12,103.483 ft.	to the point of beginning.		

The position of the corners and direction of the lines are referred to the Louisiana (Lambert) Coordinate System (South Zone).

6/ A portion of Block 243, OCS Official Leasing Map, South Marsh Island Area, North Addition, Louisiana, Map No. 3D, described as follows:

Beginning at a point on the east boundary of Block 243, the coordinates of which referred to the Louisiana (Lambert) Coordinate System (South Zone), are X=1,794,962.662 and Y=226,721.09;

From the initial point,

North	3,728.91 ft.	to	X=1,794,962.662	Y=230,450.00
N. 53°16'38"W.	1,575.30 ft.	to	X=1,793,700.00	Y=231,391.937
West	10,835.87 ft.	to	X=1,782,864.13	Y=231,391.937
S. 68°53'24"E.	12,968.86 ft.	to the point of beginning.		

The position of the corners and direction of the lines are referred to the Louisiana (Lambert) Coordinate System (South Zone).

14. Lease Terms and Stipulations. All leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form 3300-1 (September 1978), available from the Manager, New Orleans Outer Continental Shelf Office, at the address stated in paragraph 2. For leases resulting from this sale for tracts offered on a cash bonus basis with fixed sliding scale royalty, listed in paragraph 4, Form 3300-1 will be amended as follows:

> Sec. 6 Royalty on Production. (a) The lessee agrees to pay the lessor a royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b[Ln\ (Vj/S)]$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 10.0

Ln = natural logarithm.

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 2.5

> When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, Rj, the calculation will be carried to five decimal places (for example, 18.17612 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars). Gas of all kinds (except helium) is subject to royalty. The lessor shall determine whether production royalty shall be paid in amount or value.

Except as otherwise noted, the following stipulations will be included in each lease resulting from this proposed sale. In the following stipulations the term Supervisor refers to the Gulf of Mexico Area Oil and Gas Supervisor for Operations of the Geological Survey and the term Manager refers to the Manager of the New Orleans OCS Office of the Bureau of Land Management.

Stipulation No. 1

If the Supervisor, having reason to believe that a site, structure or object of historical or archaeological significance hereinafter referred to as "cultural resource", may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation", the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the Supervisor and to the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the Supervisor, either that such operation will not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the Supervisor and the Manager for review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its preservation.

The lessee agrees that if any site, structure or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its preservation.

Stipulation No. 2

(To be included only in the lease resulting from this proposed sale for Tract 58A-20).

Operations within the following aliquots shall be restricted as specified in either paragraph (a) or (b) below at the option of the lessee:

High Island Area, South Addition, Block A-514: W1/2E1/2NE1/4; W1/2NE1/4; NW1/4; N1/2SW1/4; SW1/4SW1/4; NW1/4SE1/4.

(a) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

(b) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration, development, and production operations on the biotic communities of the nearby banks:

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor, on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided by the Supervisor that surface disposal of drilling fluids or cuttings present no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in paragraph (a) above or other appropriate operational restrictions.

Stipulation No. 3

(To be included only in the lease resulting from this proposed sale for Tract 58A-37).

Operations within the circle with a radius of 8110 meters around point A, located by X = 1,366,160; Y = -276,160 (Louisiana Lambert System), shall be restricted as specified in either paragraph (a) or (b) below at the option of the lessee:

(a) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

(b) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration, development, and production operations on the biotic communities of the nearby banks:

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor, on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided by the Supervisor that surface disposal of drilling fluids or cuttings present no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in paragraph (a) above or other appropriate operational restrictions.

Stipulation No. 4

(To be included only in the lease resulting from this proposed sale for Tract 58A-89).

Operations within the circle with a radius of 6400 meters around point B, located by X = 2,205,050; Y = -209,485 (Louisiana Lambert System), shall be restricted as specified in either paragraph (a) or (b) below at the option of the lessee:

(a) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

(b) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration, development, and production operations on the biotic communities of the nearby banks:

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor, on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided by the Supervisor that surface disposal of drilling fluids or cuttings present no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in paragraph (a) above or other appropriate operational restrictions.

Stipulation No. 5

(To be included only in the lease resulting from this proposed sale for Tract 58A-115).

(a) No structures, drilling rigs, or pipelines will be allowed within the aliquots established for the East Flower Garden Bank as follows:

High Island Area, East Addition, South Extension, Block A-374: SW1/4NW1/4NW1/4; NW1/4SW1/4NW1/4; S1/2SW1/4NW1/4; SW1/4NE1/4SW1/4; W1/2SW1/4; W1/2SE1/4SW1/4; SE1/4SE1/4SW1/4.

(b) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom; however, if the shunting method is not adequate, as determined by the monitoring program proceedings outlined in this stipulation, to protect the unique character of the subject area, then the material must be transported a minimum of ten miles from any 50-meter isobath surrounding live reef-building coral before disposal. Disposal sites must be approved by the Supervisor.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration and development operations.

No drilling permits shall be issued by the Supervisor until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that exploration, development and production operations in the leased area will have no significant adverse affect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

As a part of the exploration plans and development and production plans, a reef monitoring program must be included. The monitoring program will be designed to assess the effects of oil and gas exploration, development, and production operations on the viability of the coral reefs and associated communities. The monitoring plan shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that program personnel and equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor, on a regular schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A-374: SW1/4SW1/4NE1/4; W1/2NE1/4NW1/4; SE1/4NE1/4NW1/4; N1/2NW1/4NW1/4; SE1/4NW1/4NW1/4; NE1/4SW1/4NW1/4; SE1/4NW1/4; N1/2NE1/4SW1/4; SE1/4NE1/4SW1/4; NE1/4SE1/4SW1/4; W1/2NW1/4SE1/4; SE1/4NW1/4SE1/4; SW1/4SE1/4; SW1/4SE1/4SE1/4.

(c) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration, development, and production operations.

No drilling permits shall be issued by the Supervisor until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that exploration, development, and production operations in the leased area will have no significant adverse affect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A-374: N1/2NE1/4; N1/2S1/2NE1/4; SE1/4SW1/4NE1/4; S1/2SE1/4NE1/4; NE1/4NE1/4NW1/4; NE1/4SE1/4; NE1/4NW1/4SE1/4; N1/2SE1/4SE1/4; SE1/4SE1/4SE1/4.

Stipulation No. 6

(To be included only in the lease resulting from this proposed sale for Tract 58A-118).

(a) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom; however, if the shunting method is not adequate, as determined by the monitoring program proceedings outlined in this stipulation, to protect the unique character of the subject area, then the material must be transported a minimum of ten miles from any 50-meter isobath surrounding live reef-building coral before disposal. Disposal site must be approved by the Supervisor.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration and development operations.

No drilling permits shall be issued by the Supervisor until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that exploration, development, and production operations in the leased area will have no significant adverse affect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

As a part of the exploration plans and development and production plans, a reef monitoring program must be included. The monitoring program will be designed to assess the effects of oil and gas exploration, development, and production operations on the viability of the coral reefs and associated communities. The monitoring plan shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that program personnel and equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor on a regular schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A-385: SW1/4NW1/4NW1/4; SW1/4NW1/4; W1/2SW1/4; W1/2E1/2SW1/4.

(b) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew boats, supply boats, pipelaying vessels) during exploration, development, and production operations.

No drilling permits shall be issued by the Supervisor until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that exploration, development, and production operations in the leased area will have no significant adverse effect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A-385:
E1/2; E1/2E1/2W1/2; W1/2E1/2NW1/4; E1/2NW1/4NW1/4; NW1/4NW1/4NW1/4.

Stipulation No. 7

(To be included in any leases resulting from this proposed sale for the sliding scale royalty tracts listed in paragraph 4 of this notice).

(a) The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.12 (e)). The Director, Geological Survey, may grant a reduction for only one year at a time and reduction of royalty rates will not be approved unless production has been underway for one year or more.

(b) Although the royalty rate specified in section 6(a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16 2/3 percent of the production saved, removed or sold from the lease area may be taken as royalty in amount, except as provided in Sec. 15(d); the royalty on any portion of the production saved, removed or sold from the lease in excess of 16 2/3 percent may only be taken in value of the production saved, removed or sold from the lease area.

Stipulation No. 8

(To be included in any leases resulting from this sale for tracts 58A-1, 58A-2, 58A-3, 58A-4, 58A-5, 58A-6, 58A-8, 58A-9, and 58A-10).

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf, to any persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of U.S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with the programs and activities of the Naval Air Training Command, Naval Air Station, Corpus Christi, Texas.

Notwithstanding any limitation of the lessee's liability in Sec. 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against, and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the appropriate onshore military installation, i.e., Naval Air Training Command, Naval Air Station, Corpus Christi, Texas, to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activites, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be affected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time, between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic into the individual designated warning areas shall enter into an agreement with the commander of the appropriate onshore militrary installation, i.e., Naval Air Training Command, Naval Air Station, Corpus Christi, Texas, utilizing an individual designated warning area prior to commencing such traffic. Such agreement will provide for positive control of boats and aircraft operating into the warning areas at all times.

Stipulation No. 9

(To be included only in any leases resulting from this sale for tracts: 58A-93; 58A-94; 58A-96; 58A-97; 58A-98; 58A-99; 58A-100; 58A-101; 58A-102; 58A-107; 58A-108; 58A-113; and 58A-114).

All or portions of this tract may be subject to mass movement of sediments related to unstable slopes, unconsolidated sediments, or gaseous sediments. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within the potentially unstable portions of this lease block unless or until the lessee has demonstrated to the Supervisor's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment in case such mass movement occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of unstable sediments, either within or outside of this lease block.

If exploratory drilling operations are allowed, site-specific surveys shall be conducted to determine the potential for slumping and mass movement of sediments. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas is allowed all slump blocks or mass movements of sediments in the lease block must be mapped.

15. Information to Lessees. The Department of the Interior will seek the advice of the States of Texas, Louisiana, Mississippi, Alabama, Florida, and other Federal agencies, to identify areas of special concern which might require appropriate protective measures for live bottom areas and areas which might contain cultural resources.

If it is determined that live bottom areas might be adversely impacted by the proposed activities then the Supervisor, in consultation with the Regional Director, Fish and Wildlife Service (FWS), the Manager, BLM and the States, will require the lessee to undertake any measures deemed economically, environmentally, and technologically feasible to protect live bottom areas.

On September 18, 1978, the OCS Lands Act Amendments of 1978 was enacted (Pub. L. 95-372, 92 Stat. 629). Some sections of current regulations applicable to OCS leasing operations are inconsistent with this new legislation and the legislation requires the issuance of some new regulations. The inconsistencies will be corrected by rulemakings and the new regulations will be issued as soon as possible. Nevertheless, bidders are notified that provisions of the new OCS Lands Act Amendments shall apply to all leases offered at this lease sale and shall supersede all inconsistent provisions in current regulations applicable to OCS leasing operations.

Some of the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes. Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or

temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the Outer Continental Shelf Lands Act of 1953, as amended.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

Bidders are also advised that in accordance with Sec. 16 of each lease offered at this sale, the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a royalty rate based on a sliding scale.

Bidders also are advised that the National Oceanic and Atmospheric Adminstration (NOAA) is considering whether to propose the designation of a marine sanctuary, pursuant to Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434, in the area of the Flower Garden Banks in the Gulf of Mexico. Proposed regulations describing the boundaries of the possible sanctuary and possible restrictions which NOAA might impose on oil and gas operations within the sanctuary, were published on April 13, 1979 (see 44 Fed. Reg. 22081). Tracts offered in this Sale that are within the boundaries of the marine sanctuary under consideration include 58A-115 and 58A-118. While a final decision has not been made by NOAA concerning restrictions in the sanctuary, the restrictions under consideration by NOAA for tracts within the sanctuary may be more stringent than those restrictions included by lease stipulation in

this Notice of Sale.

Bidders on tracts 58A-115 and 58A-118 are also advised that the Environmental Protection Agency has expressed its intention to require lessees within the boundaries of the Flower Garden Banks Marine Sanctuary under consideration by NOAA to obtain National Pollution Discharge Elimination System (NPDES) permits, pursuant to its authority under Section 402 of the Clean Water Act (P.L. No. 95-217), containing ocean discharge restrictions and other conditions which may be more stringent than those imposed through lease stipulation or Interior regulation.

The Department of the Interior has informed both agencies that it does not agree with the proposed restrictions on oil and gas operations.

16. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

Ed Hastey,
Associate Director, Bureau of Land Management.

Dated: October 9, 1979.

Approved:

James A. Joseph,
Under Secretary of the Interior.

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Federal Register

Friday
October 26, 1979

Part V

Department of the Interior

Bureau of Indian Affairs

Indian School Equalization Program

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 31h

Indian School Equalization Program

AGENCY: Bureau of Indian Affairs, Department of Interior.

ACTION: Final rule.

SUMMARY: Beginning on page 29842 of the May 22, 1979, **Federal Register** (44 FR 29842), there was published a notice of proposed rulemaking to add a new Part 31h to Chapter I, Subchapter E, of title 25 of the Code of Regulations. These rules are to implement sections 1128 and 1129 of the Education Amendments of 1978 (92 Stat. 2143, 2320 and 2321, Pub. L. 95–561), by: (a) establishing a uniform direct funding formula for allocating Bureau of Indian Affairs educational funds to schools for elementary and secondary education; and (b) establishing separate categorical funds for (1) contingencies, (2) school board training, (3) student transportation, (4) administration, (5) maintenance and minor repair of school facilities, (6) pre-kindergarten programs, and (7) operation and maintenance of contract schools.

EFFECTIVE DATE: These regulations shall become effective not less than 45 days from the date of publication. (See section 431 of the General Education Provisions Act (20 U.S.C. 1232) and 25 U.S.C. 2018). To determine the effective date contact the person below. The Bureau will publish a document confirming the effective date of this regulation at a later date.

FOR FURTHER INFORMATION CONTACT: Rick C. Lavis, Deputy Assistant Secretary—Indian Affairs, Department of Interior, 18th and C Streets, N.W., Room 6352, Washington, D.C. 20240, (202) 343–7163.

SUPPLEMENTARY INFORMATION: The authority for issuing these rules is sections 1128 and 1129 of the Education Amendments of 1978 Pub. L. 95–561, also referred to in this document as "the Act"). This notice is published in exercise of authority delegated by the Secretary of Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

On May 22, 1979 the Bureau of Indian Affairs published a proposed rule on the Indian School Equalization Program (ISEP) to govern the allocation of funds for the education of Indian children to BIA operated and tribally operated contract schools and, in the case of administration, to Central, Area and Agency Offices. The public was invited to offer comments on the proposed rule on or before June 21, 1979. Numerous public comments were received. Each of the comments was carefully considered by Task Force No. 5 on Allotment Formula which was constituted by the Assistant Secretary—Indian Affairs to oversee the preparation of these regulations, and was either adopted or not adopted according to the evaluation made by the Task Force.

The following responses to comments have been organized by subpart. Each comment is listed according to the section of the proposed regulations to which that comment was addressed. Some responses necessitated the deletion of sections or subsections of the proposed regulations and the insertion of new sections or subsections. In several instances these changes required renumbering of subsequent sections. For the purposes of consistency, all section numbers in the comments and responses refer to the proposed regulation as published in the **Federal Register**, except where they are designated as new sections.

Comments and Responses; Subpart A

A. Comments Adopted

1. (§ 31h.1) One commentor brought to our attention that the terms "funding component", "program", and "cost account" are used with unclear distinctions in the rule. Response: A frequency count revealed that "funding component" is used twice, "program" is used 69 times, not including its use in titles, and "cost account" is used 5 times. It was determined that the term "cost account" was used fully consistently with its definition, and that "program" was used either in accord with its definition, or in a context where its meaning was sufficiently clear. The suggested term in the comment, "level", did not appear to offer any real improvement, so no general revision was attempted. Some editing has been done to remove needless synonyms.

2. (§ 31h.2) Two commentors expressed concern that regulation terminology regarding "grades" and "grade level" might preclude Bureau funding of schools which depart from the traditional grade-oriented program patterns, or might subtly promote such patterns in Bureau-funded schools. Response: A number of language changes have been made in the rule to de-emphasize "grades" and "grade levels", including a definition of these terms which permits their use as funding categories only, without effect upon the grouping of students for delivery of services.

3. (§ 31h.2) Two commentors recommended use of the same definition of "Agency" as used in § 31g.2(a). Response: This recommendation has been adopted in final regulation wording.

4. (§ 31h.2) One commentor objected to the term "qualified Indian", as undefined. Response: The term has been replaced with "eligible student" which is already defined in § 31h.2(j).

5. (§ 31h.2) Two commentors pointed out that the definition of "Average Daily Membership" is inconsistent with procedures in § 31h.32 of the rule. Response: Procedures in § 31h.32 have been changed to conform to the definition, as originally intended.

6. (§ 31h.2) Two commentors suggested that the definition of "Local School Board" is not sufficiently specific. It does not refer to the identifying purpose of such a board, only to its manner of election. Response: The definition has been amended to include the purpose of the Board.

B. Comments Not Adopted

1. (§ 31h.1) Two commentors expressed objections to the inclusion of Contract schools in the same formula system with Bureau operated schools. Response: Section 1128(a) of the Act requires "a formula" for both, and does not authorize the provision of completely separate means of funding both types of Bureau-funded schools. Separate procedures have been provided in several sections of this rule where required by existing regulations governing financial planning and allotments to Contract schools under Pub. L. 93–638.

2. (§ 31h.2) One commentor objects to lack of standardized meanings of terms between major sections of the rule, and suggests standardization of definitions of all terms used in more than one section. Response: It is agreed in principle that such standardization, where possible, is desirable. However, full completion of implementing regulations for the Act will not take place for more than a year, because of time schedules in the Act for development of various portions of these rules. The process of standardization will have to be delayed until such time as all of these parts are in place, and comparisons can be made to determine which terms can be used with standard definitions, and which terms require special definition in more than one place.

3. (§ 31h.2) Two commentors recommended limiting membership of Agency school boards to persons appointed not only by, but from, local school boards. Response: This recommendation has been rejected as contrary to Indian control provisions of

Section 1130 of the Act, which imply that the decision as to whom to appoint should be made by the local school board without this limitation.

4. (§ 31h.2) Two commentors recommended that the definition of Indian be changed to conform to that used in 25 CFR 271. Response: The definition of "Indian" contained in this rule is consistent with the definition mandated in Pub. L. 95–561, and therefore the recommendation must be rejected.

5. (§ 31h.2) One commentor recommended that the definition of "school board" contain provisions whereby the members would be elected from parents of children enrolled in the school, by nomination of the Tribal governing bodies involved. Response: This recommendation is rejected as unneeded, since the Tribal governing bodies may determine provisions for nomination and election of school board members, as desired, through tribal law under existing definitions.

6. (§ 31h.2) One commentor objected to the absence of a definition of "public school boards of which a majority are Indian", for public schools located on a reservation, especially in reference to eligibility for school board training funds under the ISEP. Response: Appropriations for Bureau of Indian Affairs operated and funded schools cannot properly be used in support of public school programs for which States are responsible. The need for Federal support for public schools which serve Indian students has been recognized for many years in the Johnson-O'Malley Act, as revised, and this is the proper setting in which to address these needs. The definition in this rule specifically excludes public school boards from eligibility for funding under any part of the ISEP.

7. (§ 31h.3) One commentor recommends that Tribal governments be authorized to transfer up to 10% of the funds allocated to schools serving the Tribe from one school to another, in the interests of flexibility, with the agreement of the school boards. Response: This comment was seriously considered and a determination was made that to include such language in the regulations would be contrary to the intent of the law. For instance, the law specifies that through the formula, funds are generated to provide for the special education needs of the student and therefore, the dollars generated by each student remain at that school. However, this action does not prohibit the local school board and school supervisor from transferring funds up to 10% to another school for any purpose.

Subpart B

A. Comments Adopted

1. (§ 31h.11) Several commentors noted the inconsistency between the 175 days minimum in definitions of "grades", and the 180 days minimum in § 31g.11 of the personnel regulations. Response: The 175-day figure has been changed to 180 days.

2. (§ 31h.11) A number of commentors objected to the five hour day and 2½ hour half-day minimums set for Kindergarten operation in the definition of "Kindergarten", as in conflict with present Bureau policy, and with proposed policy regulations requiring the Bureau to respect and defend the integrity of the Indian family. Response: Minimum hours for Kindergarten have been reduced to 4 hours for a full day, and 2 hours for half-day programs, in keeping with current policy.

3. (§ 31h.11) A number of commentors expressed concern that the definition of "Intense Bilingual, K–3" is too inclusive, and "weak", and may result in allotment of funds to schools which are not actually providing services to meet the student need identified. Others objected to grade-level limitations. Response: The definition has been revised to read: "Intense Bilingual" means a weighted program for a student who is present during the count week, whose primary language is not English, and who is receiving academic instruction daily through oral and/or written forms of an Indian or Alaskan Native language, as well as specialized instruction in English for non-native speakers of English, under resources of the ISEP.

4. (§ 31h.11) One commenter objected to perceived non-Indian ethnocentricity of the definitions of intensive residential guidance and exceptional child program presenting problems. Particular objections were expressed to the inclusion of sickle-cell anemia and reference made to "cultural . . . disadvantage." Response: Sickle-cell anemia has been removed from the list of health-impairments, but the reference to cultural disadvantage was incorporated in the rule as a limitation upon applications of the term "learning disability" and has been retained as necessary. The rule in no way implies that being Indian is, in itself, a "cultural disadvantage", but it accepts that particular Indian students may be culturally disadvantaged in one way or another—possibly by virtue of having been alienated from their Native American heritage and tradition through schooling—and simply prevents such a disadvantage from being labeled a "specific learning disability", for purposes of funding school programs.

The general charge of ethnocentricity of thinking is accepted as probably true, and as a current limitation of the Western cultural institution called schooling, of which the Bureau education system is a part. School reform is a long and difficult process, and is encouraged by these regulations wherever possible, through the decisions of local Indian people at the School Board level. Nothing in this rule prevents the use of Native American people's traditional mental health practices as the basis for treatment programs to serve the needs of students in the areas addressed. Additional informative and positive input in auditably defining Indian students' special education need conditions will be solicited as these regulations are refined and revised over time, but we have to begin somewhere if there is to be anything to improve upon.

5. (§ 31h.11) Several commentors objected that the definition of "intensive residential guidance" is too restrictive, and may limit needed services to some students whose placement in the residential program does not meet definition criteria. Many requested inclusion of a social worker referral category. Response: Regulations language has been modified to include referral by a Psychiatric Social Worker in this definition.

6. (§ 31h.11) A commentor suggested that the regulations be amended to provide that funds generated by the formula for special education should be earmarked to be spent on handicapped students. Response: Section 31h.62(d), which sets forth minimum requirements for the financial plan, has been amended to add language establishing such a requirement.

7. (§ 31h.11) Two commentors objected to the requirement that residential students must be in residence for four days and four nights during each count week to be counted in this category, on the basis that, for those students who routinely go home on the weekend, this requires perfect attendance during the count week, whereas in the instruction counts the student needs to be present only once during the count week. Response: The definition has been rewritten to provide other assurances that the student is a bona-fide resident in the dormitory.

8. (§ 31h.12) Two commentors objected to the general level of funding of residential care needs as higher than that afforded in the ISEP for instructional needs. Concern was expressed that this will provide incentives for conversion or transfer of students from day student status to residential status, in order to increase

institutional funding levels. Response: Preliminary analysis of comparative funding levels of day and residential schools under present funding systems and under the ISEP do not support the conclusion that there is any more incentive in the ISEP for residential placement than there is in the present funding system. However, language has been introduced in the Rule to require the development of Bureauwide policy criteria for placement of students in day and/or residential schools, and to govern the attendance boundaries of each Bureau school, in order to respond to the legitimate concerns of these commentors that schools may seek to place students, or recruit them, primarily for the financial benefit of the school instead of in the best educational interests of the student.

9. (§ 31h.12) Several commentors requested inclusion of funds for special services to handicapped students in dormitory and residential care programs of boarding schools, as a separate component of instructional services for these students. Response: Language has been introduced into this rulemaking to provide for such services in the residential care of these students, as part of the Bureau's mandate to maintain its program level of effort in education of the handicapped.

10. (§ 31h.12) One commentor objected to the labeling of handicapped students involved in the categorical funding system in the ISEP based upon handicapping condition definitions. Response: In general, we agree with the view expressed by this commentor. However, the Bureau has not, as yet, adopted a policy which provides for distribution of funds, with sufficient accountability limitations to assure that these funds are actually used to benefit handicapped students, other than the one used in this formula. The Bureau's Division of Special Education is in the process of developing such a policy that will provide for services to handicapped students with a minimum use of lables. When these policy decisions have been made and service definitions which provide assurances of accountability have been developed, this question will be reviewed, along with other questions of standards and policy impacting the ISEP, under procedures described in § 31h.20. An appropriately amended formula for distributing Bureau funds for the education of handicapped students may then be incorporated in a formal revision of the ISEP under a new Notice of Proposed Rulemaking. While it was not possible to incorporate an exceptional education weighting system based totally on service levels and program content, some changes were made in the exceptional child program definitions in § 31h.11.

11. (§ 31h.13) Several commentors objected to the inclusion of a weighting of 1.40 for Kindergarten student residential care in dormitories and residential schools on grounds that it is contrary to present Bureau policy which discourages placement of such young students in dormitory facilities, by placing an incentive weighting on their heads. Response: The weighted student unit factor for kindergarteners in residential facilities has been modified to restrict the factor for use in fiscal year 1980 only and deleted entirely in subsequent fiscal years. The funding of kindergarteners for residential purposes contradicts the Bureau's policy "to avoid enrollment of beginners and small children where any other suitable plans can be made for them", (62 IAM 2.5 Federal Boarding Schools).

12. (§ 31h.17) One commentor objected to linkage of Bureau funding of schools with state funding levels. Another commentor objected that no provision had been made in the ISEP for funding of Bureau schools on a comparable basis with the academic services provided in the States in which they are located. Response: The first of these objections appears to be to Section 1128(b) of the Act which requires that the Bureau provide at least the same amount per Indian child to any Bureau funded school which is received per Indian child from other Federal funding sources by the Public School district in which the Bureau funded school is located. The second refers to the fact that this and another similar section of the Act were provided no implementing regulation in the proposed rule. Implementing provisions have been added in the final rule.

13. (§ 31h.19–21) Two commentors expressed misgivings regarding the lack of formal safeguards for decision making regarding weighted programs in these sections. Response: Section 19 provided for normal procedures for publication and revision of Bureau Manuals of procedure and policy. It remains unchanged, except for language changes introduced in response to other comments. Sections 20 and 21 are completely rewritten to provide such safeguards.

14. (§ 31h.21) One commentor requested inclusion of procedures for authorizing new school programs, program expansions into new age-groups levels, and similar actions which may increase the populations for which the Bureau is obligated to provide funds through the ISEP. Response: Time constraints did not permit the publication of such a system with this rulemaking. However, a new section has been introduced, establishing a time frame and procedures for its development.

15. (§ 31h.22) Several commentors recommended that the Director's review of the question of adjustment of the ISEP to account for contract schools' receipt of supplemental funds should be subject to publication and public comment, prior to implementation. Response: We agree with this comment, and have amended the rule accordingly.

B. Comments Not Adopted

1. (§ 31h.11) Two commentors expressed concern that present bilingual instructional principles, concepts, and practices may be inappropriate within tribal value systems, and should not be imposed upon school boards as a condition of receipt of funds. Other commentors objected that the level of funding provided in the ISEP for bilingual programming is insufficient to meet costs. Response: The intense bilingual weighting in the ISEP is established to provide additional resources only to those schools with populations of students unable fully to profit from schooling which is delivered in the English language, because those students are primarily speakers of a Native American language. It is assumed in the ISEP that meeting these needs is critical to any future school success of such students and that such students are not uniformly distributed throughout the BIA school system. Consequently, additional funds are distributed to those schools which enroll such students and provide programs to meet their needs, at the expense of other schools which do not have them. Nothing in this provision restricts the principles, concepts, and practices used in providing services to meet these needs, other than that they must include academic instruction daily in the native language, and specialized instruction to overcome student limitations as nonnative speakers of English. School boards are encouraged to integrate such program elements with those of their "basic" program into a single, comprehensive instructional program in order to secure maximum benefits for students. Nothing in this rule restricts the use of funds for these purposes to only those which are received under the bilingual "add on" weight.

We further expect that Tribal standards of program quality, including the use of multicultural and multilingual instruction where these approaches are favored by the tribe(s) served, will be addressed in the local educational program. The local school supervisor

and school board have full responsibility for meeting such standards, and other standards such as those to be published by the Bureau at a later date and any expressed or implied in law or court decisions, within the limits of the funds appropriated. For this reason, the majority of funds distributed in the ISEP are deliberately left undesignated in the dollar value of the "base". This is intended to give the local school supervisor and school board as much flexibility in their use as possible.

2. (§ 31h.11) One commentor questioned whether the length of school day in definitions of "grades" refers to instruction periods, or to non-instructional activities as well. Response: The length of school days applies to total or gross hours in school, including meals, recess, and other non-instructional periods.

3. (§ 31h.11) One commentor questioned the inclusion of the upper age limit of 21 years in the definition of "grades 9–12". Response: The purpose of the ISEP is funding basic elementary and secondary level schooling. Students over the age of 21, who have not completed such schooling, are eligible for adult and other continuing education programs for which the Bureau has separate funds and means of distribution. The limitation at age 21 has been set to assure that school operations funds of the Bureau are used in the school programs for which they are appropriated.

4. (§ 31h.11) One commentor objected to the requirement of individualized treatment plans in the definition of intensive residential guidance as requiring too much administrative paperwork. Response: Such plans are not a paperwork exercise, but a requirement that specific decisions be made and recorded, and then followed in treatment of those student problems which are addressed in this subsection. The requirement has been retained as part of the rule.

5. (§ 31h.11) Several commentors requested inclusion of provisions for gifted and talented students in the Exceptional Child Programs in the ISEP, in both the definitions section, and in 31h.12, provisions for weighted student unit factors. Response: No other single question was given greater consideration and effort by the Task Force in drafting this rule than this one. However, auditable definitions of giftedness and talent, which successfully distinguish between such students and other Indian students in a way which will justify providing more funds to some schools at the expense of other schools, so as to serve the special needs of such students, are still not available. It is the intent of the Bureau to incorporate such provisions in the ISEP at the earliest feasible time.

Meanwhile, the ISEP places all of the Bureau's school operations funds directly in the control of local Indian school boards, equitably distributed on the basis of other special needs, and of general educational needs of students. Any funds which the ISEP could have distributed for the gifted and talented among these students are included in the general educational funds, and are available at the local level for school boards to use for meeting these needs as they may be defined locally.

6. (§ 31h.11) A number of commentors objected to the omission of administrative costs as a separate factor in the ISEP, both in Bureau operated schools and as overhead costs of operating contract schools. Response: No such factor has been included, because it is assumed that such needs are relatively evenly distributed throughout the school system, and may be provided for even in small schools through shared services at the Agency level if left in the "base" and not earmarked for unequal distribution as a formula factor.

Overhead costs for contract schools, identified in the Act as one of the factors to be considered in establishing the formula, are to be identified "under existing procedures" of the Bureau which require establishment of an indirect cost rate by the cognitive Audit agency of the Indian contractor. And indirect costs are to be paid from the Indian Contract Support fund (Activity 3200) rather than from the School Operations fund (Activity 3100) which is distributed through the ISEP. These procedures are consistent with the intent of the Congress expressed in the Conference Report on Title XI of the Act.

7. (§ 31h.11) One commentor expressed concern that the reference in this sub-section to the Handicapped Act incorporates HEW Bureau of Education for the Handicapped (BEH) program requirements, such as limitations on the percentage of the student body served that can be included in handicapped student services. Response: The reference in this section incorporates only BEH requirements for the identification of students to be served, such as the development of Individualized Educational Programs, and observance of due process procedures. Any program requirements or constraints to be followed in the use of Bureau school operations funds for education of the handicapped will be developed as a result of standards to be published by the Bureau under section 1121 of the Act.

8. (§ 31h.12) A number of commentors objected that the weight provided for Kindergarten students is insufficient to provide needed services, asserting the special importance of this age group, and the fact that present Bureau policy restricts class size for this group to smaller numbers than permissible in older classes. Responses: Current enrollment history indicates that actual Kindergarten class size does not vary widely from the sizes of classes for older children, which rarely approximate the maximums allowed. Funds provided by the current weighting allow up to approximately $36,000 for a full Kindergarten classroom, which appears to be adequate funding. The weight has been retained at its original level.

9. (§ 31h.12) One commentor requested an increase in the weight provided for grades 4–8 on grounds that these are the years during which students begin to fall behind, and drop out, and that ESEA Title I funds are not sufficient for the remedial work needed. Response: Weights in the total formula were all set relative to this group (see the definition of the "base" in Section 31h.11(a). The problem of insufficient funding for basic needs of the base group in the educational system will have to be tackled by Indian educators working together to achieve greater output for the costs, and to secure increased funding for the total system. The weight has been retained at its original level.

10. (§ 31h.12) Several commentors requested that grades 7 and 8 be separated from grades 4 through 6, and removed from the base group, on grounds that programs for these grades are more similar to high school level programs than they are to the middle grades, and are the cause of critical dropout problems at these grade levels. Response: Some school program configurations at the middle school or junior high levels do resemble high school programs in terms of departmentalization and special subject matter courses. However, these similarities do not include the particularly high cost of high school level career-oriented and vocational training programs, and extra-curricular activities, which are the major justifcations for higher weights for high school programs. By contrast, several other commentors requested increased weighting for high schools with these requests being justified by patterns of differential funding between grade and high schools in certain States. Others

made similar requests, with statements of the importance of related program areas, for increases in the weights for every single group given separate treatment in the ISEP, except grades 1 through 3.

Since there is still the same amount of money available for distribution through the ISEP, regardless of the number of weights created by inflating the formula, no real advantage is gained by anyone in giving everyone a "raise" in their formula weight. Consequently, only where there are compelling reasons for changing the relative importance of a particular need when compared with all other needs, have any changes been made in formula weights.

11. (§ 31h.12) A significant number of commentors proposed introducing additional cost accounts into the ISEP as weighted factors. Among such factors were alternative program development, vocational education, multicultural education, native language maintenance and revival, summer school programs, day care services, extra-curricular activities of a wide variety, student health care, curriculum design-research-development, accreditation costs, community school concept programs, substitute teacher pay, and many more. Response: In past school operations funding patterns, BIA funds for these and similar costs have been inequitably distributed among schools and students as the result of school supervisor, Agency or Area Office official, or Tribal success at negotiating separate budgets from them as line items at the school, Agency, Area, or sometimes Central Office levels. All funds which were previously distributed in this manner have been pooled. There is just as much money for such services as there ever was. But it is now to be distributed equitably to each student throughout the entire system, as part of the "base" dollar value, without being earmarked for any single purpose.

Those schools and Areas or Agencies which have previously been highly successful at negotiating special funding for such activities will probably have less under the ISEP than before, because they will be forced to share these funds with others who have not had them to date. On the other hand, those which have not had such "special" funding in the past will probably experience increased funding under the ISEP. In either case, the ISEP does not identify the particular activities for which these funds are to be used since, under the Act, decisions as to which special activities are to be carried out are the prerogative of the local school supervisor and school board, in developing the local financial plan.

In reviewing commentor arguments, it became especially clear that many commentors have confused the ISEP with an appropriations request procedure, and felt that the Bureau was not "asking for funds to meet particular special needs" because no special formula weight had been introduced to respond to that special need separately from all other needs. It must be understood by anyone who wishes to make effective changes in the ISEP that this is not its nature or purpose. The purpose of the ISEP is to distribute available funds as equitably as possible, while preserving local school board options to decide how they are to be used within very broad limitations. Every special category of funding introduced as a formula weight will eventually have to be accounted for to assure that the local school is not just "using" the special need for funds as a money-raising device, and then spending the money for something else.

Administrators and school boards should be assured that there is money in their allocation, under the ISEP, for every legitimate educational program need they have. All they need to do is to plan and budget to meet that need. They must also understand that there is only so much money, and that when their fair share is used up, it is gone, and no amount of special pleading can create any more.

12. (§ 31h.12) One commentor from a day-school complained that the present ISEP formula will reduce funds for her or his own school, while increasing funding for a nearby cooperative boarding school, recommending that implementation be delayed while further studies are conducted to prevent such increases in inequity. Response: The Bureau has no choice regarding the time schedule for implementing the ISEP, which has been set by Congressional mandate. There may be real inequities the first year, but every effort is being made to prevent them. The possibility of the "double funding" of some cooperative school students, once from Bureau sources, and again from State Public School sources, is one of the problems which will continue to be addressed, on a case-by-case basis if necessary, during the implementation process.

13. (§ 31h.12) One commentor expressed concern that school operations funds (Element 11) should not continue to be used in the future for Agency, Area, or Central Office administrative costs (Element 10), and requested some regulation language preventing this. Response: Current language is sufficient to assure this, since it provides for the distribution of all Element 11 funds to schools, to be used in accordance with a local financial plan controlled by the school board. Further restriction might prevent a particular school board from using some of its funds to secure otherwise unavailable administrative services by cooperative arrangement with other school boards, at the Agency or Area levels.

14. (§ 31h.12) One commentator requested provisions for adjustment of school allocations where facility configurations or conditions create additional program costs. Response: In the absence of any comprehensive data on what kinds of costs are associated with which facility configurations and conditions, and where these configurations and conditions are to be found, there was no way that this rulemaking could deal with this issue. The potential validity for the argument presented is not denied. Field personnel in schools where it can be documented that such factors create additional operating costs, are encouraged to begin local costs studies and documentation against the formula review which is required in § 31h.21.

15. (§ 31h.12) Several commentors suggested that the weighting for intense residential guidance is too low, and does not provide sufficient funds for the services required. Response: Commentors are referred to the response to comment 8 above which gives valid reasoning for declining to increase this weight, as well.

16. (§ 31h.12) One commentor expressed concern that the full-time and part-time classifications in the handicapped student weightings require the use of specific service delivery patterns, and preclude the use of itinerant teachers, or development of home or hospital bound services. Response: Particular service delivery patterns to be used are to be determined by the local school administrator and school board in development of the local financial plan. No limitation, other than as expressed in the definitions of full-time and part-time for frequency and intensity of services, is expressed or implied by the use of these terms.

17. (§ 31h.12) One commentor expressed concern that weightings under part-time classifications for handicapped students are insufficient to pay for the normal classroom program of students who are in a "mainstream" program. Response: Funds for the normal classroom portion of a handicapped student's mainstream program are provided in the base weight assigned the student under his grade

level classification. This is true of all students who receive "add on" weightings in the formula. Nothing in these rules prohibits the use of any portion of this base funding for special services, but language has been introduced to require that a minimum of 80% of the add-on funds received for handicapped students under the ISEP be spent on documented special services to meet these students' handicap-related needs.

18. (§ 31h.12) Two commentors expressed concern that the full-time and part-time weightings in the ISEP for handicapped students may result in schools classifying these students as full-time, in order to get more money, when their handicapping condition and related needs really require that they be placed in a part-time or mainstream type program. One commentor recommended that all handicapped students be given full-time weights to eliminate the problem. Response: Section 31h.11(h) requires that the student's services be developed in accordance with the due process and Individualized Educational Program (IEP) requirements of the Handicapped Act. These constraints are sufficient to prevent mis-classification of the student, since the development of the IEP will determine whether the student is to receive full or part-time services.

Distinctions between full-time and part-time weights are retained in the ISEP because of the radically different costs of these service levels for many handicapping conditons.

19. (§ 31h.12) Comments were received from several commentors indicating that the ISEP will not generate sufficient funds either for off-reservation residential schools or for most of the peripheral dormitory programs to meet costs of operation. A considerable volume of documentation was included with comments received which was intended to substantiate the assertions made by the commentors. Response: Preliminary studies of funding patterns in the Bureau's education system have revealed that both of these types of institutions have had a much higher level of per-pupil funding than has been experienced by other Bureau institutions providing similar educational and domiciliary services.

The documentation submitted indicated that these institutions have incorporated into their programs certain activities and functions, which may be manifestly worthy and laudable, but are services which similar institutions could not afford under the previously inequitable system of allocation of funding. It was anticipated that a system of equitable distribution of a fixed amount of appropriated dollars would require a re-prioritization of program budget elements for those schools who have fared more favorably under the former funding system.

In the development of the ISEP, an in-depth analysis was made of program elements that would be justifiably associated with operation of the two types of institutions under consideration. Weights and special consideration were given wherever it was demonstrably apparent that justifiable costs were being incurred—i.e. residential student transportation costs and intensive residential guidance weights.

Much of the documentation received dealt with size of campus and number of buildings. The commentors are reminded that additional costs associated with these factors are relevant to Budget Activity 3500 funding, and are not affected by the provisions of these Rules and Regulations.

Peripheral dormitories which have been providing tutorial instructional programs under residential care funding in the past, which cannot continue to fund such services under amounts generated by the ISEP, are urged to seek supplementary ESEA Title I and Johnson-O'Malley support for these services under provisions of these programs.

20. (§ 31h.12) Two commentors objected to distribution of Bureau for the Education of the Handicapped funds through the ISEP, to provide services to handicapped students in BIA operated or funded schools. Response: An earlier plan to integrate funding of education of the handicapped in Bureau schools by distributing funds of both the BIA and BEH under the ISEP has been abandoned. Only BIA school operations funds are distributed to handicapped students in the ISEP, in amounts estimated to be equal to the Bureau's past commitments to education of the handicapped.

21. (§ 31h.13) One commentor suggested that off-reservation residential schools should receive more funds than on-reservation residential schools, because students in on-reservation residential schools often go home on weekends. Response: There is not sufficient data to date, including that presented by the commentor, to calculate any real saving from students going home on the weekends. Some students always remain, and no reduction in total staffing, or other basic costs, would result from the other students being gone.

22. (§ 31h.14) Several commentors expressed the view that the small school adjustment did not generate sufficient funds for the needs of very small schools. Response: Review of tentative allotments under the ISEP indicate that very small schools (fewer than 25 students) tend to experience a reduction in funding compared to previous levels. The isolation factor, which is scheduled for future development and implementation, will serve in most cases to alleviate the adverse impact indicated.

Also, it is noted in reviewing tentative allotments that every small school under ISEP is tentatively scheduled to receive at least $40,000.00 in Fiscal Year 1980. It is considered reasonable to expect that a school with 20 students or less in average daily membership (ADM) should be able to provide an adequate educational program with that level of funding.

23. (§ 31h.15) A number of commentors inquired concerning the issue of a post differential cost allowance for areas where inordinately high living cost factors exist due to severe isolation, extreme housing shortages, and other extraordinary circumstances. Response: Provision is made for a post differential cost allowance under rules and regulations pertaining to the Personnel Section of the Act—25 CFR, Part 31g.5 Basic Compensation—for educators and education positions. It must be noted, however, that in those cases where a post differential is granted by the BIA education office Director, provision must be made for the adjustments in the school's educational financial plans, and funding must come from the normal entitlement under the allotment formula. In no case will approval of a post differential cost adjustment result in increased funding for any given school.

24. (§ 31h.15) A number of commentors state that the 25% add-on for Alaskan schools was not adequate. They cited such factors as isolation, personnel transportation costs, need to compete with State schools for teachers, high freight costs, and increased needs for school board and staff training. Response: Tentative allotments under the formula have been compared with Fiscal Year 1979 funding levels for Alaskan schools, and no radical departures from previous funding patterns were indicated. The commentors are apprised that only educational operations and maintenance funding will continue to flow according to the budgeting procedures of the BIA Division of Facilities Engineering.

The law mandates inclusion of the 25% differential to every phase of funding for Alaskan educational costs within the scope of authority of the ISEP.

25. (§ 31h.16) One commentor requested clarification on what is included in the base, since in FY 1979 a number of services have been provided on a shared basis at Agency or Area levels. Response: Except for those specific functions or categorical funds set aside in Subparts F, G, H, I, and J of this rule, the base includes all school operations funds of the Bureau which have, in the past, been identified as Budget Activity 3100. Funds for any services to local schools previously provided at the Agency or Area levels out of 3100 funds have been pooled and re-distributed in the ISEP to local schools. Schools which wish to share funds for joint services at the Agency or Area levels may do so as part of the local financial plan of each school which so desires. Administrative services to schools at the Area and Agency levels are provided for in Subpart J.

26. (§ 31h.17) One commentor expressed concern that continuous monitoring of the processes by which final allocations are made will result in unpredictably timed changes in school allotments, and requested guarantees that funding changes will occur only at the prescribed times. Response: Provisions in 31h.78 for use of a formula implementation set-aside as a source of funds, to adjust allotments upward due to changes in student ADM count, contain a final deadline for such changes, after which unused funds are to be distributed. To the extent possible, such changes will be made without reducing any allotments of other schools. If all goes well the only schools that face any reduction will be those whose October and November ADM counts are subject to audit exceptions, and these exceptions are sustained.

27. (§ 31h.17) Another commentor expressed concern that Section 31h.17 might sanction unilateral contract amount adjustments for contract schools by the Bureau. Response: No sanction for unilateral reduction of dollar amounts already committed by a Federal Contracting Officer is either expressed or implied in this rule. The possibility of a gratuitous unilateral increase does exist, but it is hard to imagine how it could be a problem to the contract school receiving it.

28. (§ 31h.18) One commentor spotted the increasing availability of funds over the period of the phase-in, because of decreasing limits on the amounts which schools may "lose" under the formula, from their FY 1979 funding levels, over this period, and requested these funds to be "earmarked" for schools with athletic programs, Boy Scouts, and other extra-curricular activities, as they become available. Response: the commentor is referred to the response to comment 11 under 31h.12 above, which includes valid reasoning for refusal to make this provision.

29. (§ 31h.18) One commentor requested provisions for budget increases during the school year, in cases of substantial increase of enrollment after the count weeks. Response: Under the time constraints imposed by the Congress for implementing the ISEP, this level of sophistication in response to school level changes is, while ideally desirable, beyond our capacity to establish procedures for.

30. (§ 31h.18) Several commentors recommended raising the protection levels in the phase-in procedure from a 20% limit on losses the first year to a 10% limit. Several others recommended lowering the limit on gains for their schools. Response: It is impossible to do both without radically lowering the base fundings for all schools. However, Congress has passed a technical amendment to the Law, setting these limits in the language of the Act.

The rule, as proposed, provided a reasonable level of maximum gain and loss which we believe can be absorbed without seriously disrupting the system. The Congressional phase-in requirement reduces the basic per student allocation by approximately $110 and ameliorates the impact of the ISEP on the subject institutions in FY 1980. Paragraph 31h.19 incorporates the Congressional phase-in limits. These changes were made in order to comply with the Congressional mandate, not as a result of a decision by the Task Force.

31. (§ 31h.22) Several commentors presented positions concerning Title IV of the Indian Education Act and Johnson-O'Malley Act funds available to contract schools but not available to Bureau operated schools, and provisions in the Rule for review by the Director of possible adjustment of the ISEP formula to account for this fact.

Three positions were taken, with variations of each. Some felt that these funds should not be considered in the application of the formula to the contract schools, because they are supplemental funds from another source under other Federal legislation. Some felt that it was unfair for Contract schools to receive such funds in addition to 3100 funds, and that the 3100 funds should be adjusted downward to reflect Contract school receipt of these supplemental funds. Some felt that Bureau schools ought to become eligible for receipt of the supplemental funds, too. Response: The existence of these positions was the reason the Task Force recommended review in a formal, responsible manner by the Director.

Subpart C

A. Comments Adopted

1. (§ 31h.31) A commentor stated that the Department of Interior may not withhold funds or services from Indian children, due to the actions or inaction of Federal officials. It was argued that Indian children have the right to educational services, as affirmed by the United States Supreme Court, and determined in various treaties, Federal statutes, and Executive Orders. Response: We agree that withholding of funds is inappropriate. Provisions for withholding of funds from Indian schools have been deleted from the Regulation, as they were published in proposed form, and replaced with appropriate provisions for discipline of Federal employees, and sanctions against contractors, where essential to the operation of the ISEP.

2. (§ 31h.32) Several commentors had problems with the definition of ADM as being either ambiguous or not the same as the one appearing earlier and with student absences during the count week. Response: The language has been changed to read: "For each count week all those students eligible under the definition in Section 31h.(f) shall be counted by student program classification. An average for the two count weeks shall be computed to two decimal places for each student program classification as separately provided for in the funding formula."

B. Comments Not Adopted

1. (§ 31h.30) One commentor feels that the October and November ADM (counts) seem to be late in determining entitlements for the existing year. This would create a real problem for schools in Alaska who needs to order supplies early for shipment. Response: The tentative allotments are made available to schools in the spring. This permits schools to plan their budgets for the following school year.

2. (§ 31h.30) A commentor stated that a BIA non-education employee the regulations reek of self interest. Why are the count weeks specified if not to allow educators to pad counts? Wouldn't unannounced visits more accurately reflect the count? Response: The objective of the law is more local control for Indian Education. The weeks are specified so that timely counts can be reported for projecting school entitlements. There will be unannounced visits and audits made for counts as well as use of funding. Audits

revealing inaccurate counts will result in adjustments and/or disciplinary action where necessary.

3. (§ 31h.31) A commentor interprets the regulations as descriminating against contract schools in general and younger contract schools in particular, thus creating disincentives to contract for school operations. Response: The commentor appears to be responding to § 31h.31, condition of eligibility for funding. The requirement that day schools, boarding schools and dormitories meet minimum eligibility standards apply to both BIA operated and tribally operated (contract) schools. Tribally operated institutions however, need to meet the requirements of tribal review and endorsement as prescribed by Pub. L. 93–638 guidelines.

4. (§ 31.32) A commentor suggested that the formula should allow for adjustment in funding after count week if a school experiences significant enrollment increases. Response: Large increases in membership are not often expected to occur after the fall count weeks. In those cases where they do, the greatest increase in costs would be associated with added staff costs. It is probably possible that a fairly large increase could be absorbed by temporarily increasing class size.

5. (§ 31h.32) One commentor urged that the count date for handicapped students occur in December, which would coincide with the Pub. L. 94–142 child count date. The rationale for the request is that schools often have not been able to complete the identification, evaluation and placement of handicapped children early in the school year; thus, the proposed count dates would not accurately reflect the number of handicapped children being served and could act as a disincentive to identify and serve children after the count dates. Response: The October and November dates are the latest dates when counts could be taken and still allow for timely notice of final allotments. Most Bureau funded schools are now concentrating their efforts on identifying handicapped children and developing necessary IEP's in order to meet the count deadlines.

6. (§ 31h.37) A commentor states that the uniform accounting methods requirement of 31h.37 is in conflict with 14h.70 of 25 CFR 271. Response: The uniform accounting methods would address the minimum requirement for reporting expenditure of funds by cost categories. This does not amend the procurement regulations as covered in 14h.70 of 25 CFR 271.

7. (§ 31h.38) A commentor feels that the application of § 31h.38 is a punitive measure that impacts children, not managers, but it also appears to potentially effect contract schools more severely than BIA schools because it conflicts with the Bureau's legal mandate to provide educational services. Response: The Bureau's responsibility for the education of Indian children is not affected by the law but is reenforced by providing equitable funding for each child. The process and the minimum requirements are necessary to arrive at an equitable entitlement.

8. (§ 31h.38) A commentor wishes to know whose fault it is when failure to comply with conditions for receipt of allotment is determined. Is it an individual's or the School Board's and will the school itself be penalized? Response: The determination of a school's entitlement is based on the reported ADM so the school suffers if there is no basis for arriving at the funding level. The local school board should identify the party responsible for reporting and meeting requirements.

Subpart D

A. Comments Adopted

1. (§ 31h.50) One commentor, in referring to the designation of the Agency Superintendent of Education by a school board decision of record or by contract, states that the use of the word "contract" is unclear and may be confused with Pub. L. 93–638 contracts. The commentor suggests that since it appears that the word "contract" refers to two party written agreements regarding the designation, the language be changed to be more specific. Response: The wording in § 31h.50(e) has been changed. Substituted for the word "contract" is the phrase "a written agreement signed by both parties."

2. (§ 31h.50) A commentor feels that §§ 31h.50(e) and 31h.55 have the effect of forcing Bureau organization policy on contract school boards, who may wish to choose alternative organizational plans or processes. Response: It was not intended that §§ 31h.50(e) and 31h.55 apply to contract schools. Therefore, § 31h.50(e) is being changed to read as follows: "Responsible Fiscal Agent means the local school supervisor of a Bureau-operated school . . ."

3. (§ 31h.51) Two commentors are concerned that there be timely notification of the next school year's funding. Contract schools will need to know prior to the end of the current school year to begin the contract negotiation process under Pub. L. 93–638 guidelines. Alaskan villages also begin summer activities soon after school is out. Response: Section 31h.51 has been changed to provide that all schools and boards will be notified of their tentative allotment of funds no later than April 15 preceding the fiscal year for which the allotment is made. This is the earliest possible time schools could be notified after the March student count.

4. (§ 31h.52) A number of commentors objected to the quarterly allotment procedure as unrealistic, a reflection of past Bureau practices, and unacceptable under Indian control provisions of the Act. Others argued that there are adequate existing procedures, under Pub. L. 93–638 and 25 CFR 271, for management of fund transfer to and cash flow of contract schools. Response: Sections 31h.52 and 31h.53 have been revised to reflect these comments.

5. (§ 31h.53) A commentor is concerned about the quarterly authority to obligate because of procurement timelines. Response: The quarterly authority to obligate procedures have been eliminated.

6. (§ 31h.54) A commentor questioned why contract schools are required to deal with the Agency Superintendent of Education or a designee whereas Bureau operated schools deal with the Director of Indian Education Programs for the Bureau of Indian Affairs. Response: Law and regulations require that the allotment of funds and any adjustments thereto can only be made to a Federal official, i.e., the Superintendent of Education, or as otherwise provided by the Director. The entitlement of funds for each school, including contract schools, is determined by the Director. The administrative process of effecting a contract document is the responsibility of an Area Office as provided in 25 CFR 271.66. The Area Office may complete a contract based on a tentative allotment and insert language in the contract such as "subject to availability of funds as determined in the allotment." This section is being changed to include the reference to 25 CFR 271.66.

7. (§ 31h.54) Two commentors stated the language of § 31h.54(b) is contrary to the specific intent of Pub. L. 93–638 regulations, § 271.66. Response: Section 31h.54(b) has been amended as follows: "The Agency Superintendent of Education, or another agent as designated by the Director shall be responsible through the contracting officer in accordance with 25 CFR 271.66 for effecting and adjusting contracts with tribally operated schools."

8. (§ 31h.56) A commentor suggested that expenditure of allotments be allowed in accordance with tribally-developed comprehensive education plans. Response: Section 1129(b) of Pub. L. 95–561 clearly states that expenditures of allotment are to be made on the basis of local financial

plans which are ratified by the local school board. There is no provision, however, that would prohibit the local school board from incorporating, at their discretion, applicable provisions of tribally developed education plans into the local educational financial plan. Section 31h.56(a) of this subpart is revised to clarify this point.

B. Comments Not Adopted

1. (§ 31h.50) A commentor suggested the addition of a subsection (g) to 31h.50 for dealing with the HEW "flow thru" funds such as ESEA Title I, etc; and delineating how these funds would be distributed to the schools. The schools must know exactly how all funding will be distributed, including sources of these funds in order to adequately prepare budgets. Response: These regulations are not intended to address or change those administrative procedures in any way, since those procedures do not fall within the scope of these regulations.

2. (§ 31h.50) A commentor felt that local school supervisors (Principals) and school boards must be made aware of possible fluctuations and, where possible, be kept well informed ahead of time about changes in allotments. Response: The objective of the regulations is to provide timely notice for effecting changes in allotments as ADM fluctuations are experienced. The display of the formula, showing how the funding entitlement is calculated on each notice, also allows for a local school supervisor or school board to project the final entitlement.

3. (§ 31h.50) Two commentors are of the opinion that the concept of apportionment schedules is irrelevant to contract schools which operate according to Pub. L. 93–638 contracting procedures (i.e., cost reimbursable contracts). Response: Apportionment schedules are prepared on a quarterly basis to provide the Treasury Department the required outlay of cash to meet obligations. While it may be true that Pub. L. 93–638 contracts are negotiated at full amount, the outlay of cash requirements is not 100% at the outset but an estimate is made of the quarterly projection. The quarterly authority to obligate is a control measure for implementing adjustments to schools that may have over or under reported ADM.

4. (§ 31h.51) The commentor suggested that the Director notify rural schools of tentative allotments by telephone or radio telephone as well as by mailing them because of frequent problems with weather conditions. Response: The comment makes a great deal of sense and has been drawn to the attention of the appropriate Bureau officials.

5. (§ 31h.52) A commentor is concerned with equalized funding to support operation and maintenance of school facilities. Is the Bureau or Department doing anything? Response: The BIA is currently in the process of conducting a study and inventory of all BIA facilities. This will be the basis for an equalization formula for funding all school facilities operation and maintenance.

6. (§ 31h.52) A commentor stated that there is no reason for contract amounts to be funded to the agency, but rather, initial allotments will be made, since such notification is dependent upon the enactment of the appropriation act which is not expected until fall. The alternate language suggested by the commentor cannot be accepted since law and regulation provide that allotments can be made only to a Federal official, i.e., the Agency Superintendent of Education or as otherwise provided by the Director.

7. (§ 31h.52) A commentor suggested that in the event it becomes necessary to adjust a school's allocation by virtue of either increased or decreased ADM, the Director should have flexibility to negotiate the adjustment so as to minimize adverse effects on the affected school or school system. It was suggested that consideration should be given to: (1) Maximum allowable adjustment, (2) budget categories to be adjusted, (3) allowance of significant leeway until a firm enrollment trend is established and (4) how to minimize personnel (contract) difficulties. Response: The regulations permit schools to average the fall ADM count with the ADM count of the previous spring to reduce the effects on the budget in the case of declining enrollment if the decline in the school's ADM exceeds ten percent (10%) in any given school year. One intent of Pub. L. 95–561 was to eliminate the negotiated budget process by establishing formula funding.

8. (§ 31h.53) A commentor recommended further consideration should be given to adjustments in funding levels between tentative and actual allotments. Response: The October student count alone would not generate a new entitlement for the school. Section 31h.32 requires that an average of the October and November counts be calculated. If this average were different from the February 1979 count, the school's entitlement would be affected, since the formula is based upon weighted pupil units. The funds available are redistributed among all schools based upon the new total ADM and weighted pupil units some time after the November count. We believe this provision is sufficient.

9. (§ 31h.53) A commentor states that the provision in § 31h.53(a) is grossly inadequate and would sharply reduce the funding now available to Bureau schools at the beginning of a school year; as well as contract schools encountering delay in the transmittal of funding. An initial apportionment of 75% is recommended with adjustments due to final enrollment being made in payment of the balance in three installments. Response: The quarterly apportionment is a process for estimating what the cash outlay will be for the Treasury Department. The suggested schedule is to allow for some control over schools spending more than their entitlement. In the absence of knowing what the transportation formula would yield, the quarterly apportionments for the first year have to be adjusted for a higher rate in the first quarter.

10. (§ 31h.53) A commentor suggested that a provision be added for early release of funds against the second quarter entitlements in cases where ADM increases 10% over the previous year. Response: Within the development of the total financial plan for the year, the local school supervisor has the flexibility to adjust the plan to provide for the contingencies mentioned.

11. (§ 31h.53) A commentor suggested further delineation of exactly who the local school supervisor is and/or who the school's responsible fiscal agent will be. Response: The term "local school supervisor" is defined in § 31h.2(s). For Bureau operated schools, the responsible fiscal agent normally would be the local school supervisor who would be held responsible in the event of inappropriate expenditures.

12. (§ 31h.54) Three commentors are concerned that the authority granted to an Agency Superintendent of Education in § 31h.54(b) to "effect and adjust" contracts is unnecessarily vague and is also in conflict with Pub. L. 93–638 contracting procedure. Response: The allotment of federal funds can be made only to a federal employee and therefore the Agency Superintendent of Education is proposed as the designated Federal agent responsible for those duties identified with the Agency Superintendent or Area Director. The adjustments include decreases or increases. Audits are completed to verify the actual entitlement of a school or the addition of available supplementary funds.

13. (§ 31h.55) A commentor stated that ratification of the financial plan is a tribal government function rather than a

school board function. Response: The law is specific in giving authority to local school boards. Tribal governments determine qualifications for school board members and the manner in which they are elected or appointed.

14. (§ 31h.55) A commentor is concerned that the new law increases the responsibilities and workload of a local school supervisor (principal). Response: The school equalization plan in its equitable distribution of funds could provide additional funds for clerical support in carrying out some of the added workload. There is also the option of designating the Agency Superintendent of Education as the Responsible Fiscal Agent.

15. (§ 31h.55) A commentor suggests who the responsible fiscal agent shall be and also specifies his or her responsibility to spend funds within the limitations and guidelines of Federal regulations. Response: The commentor is referred to § 31h.50(e) which provides the definition and selection process of the responsible fiscal agent. The applicability of Federal regulations governing expenditure of Federal funds is covered in § 31h.56(a).

16. (§ 31h.55) A commentor feels that the responsibilities and authorities granted to the "responsible local fiscal agent" directly conflict with tribal policy. Response: The local school board by decision of record or by contract may designate the responsible fiscal officer. The requirements as written in the rulemaking are guidelines for insuring the use of Federal funds in accordance with approved financial plans, Federal regulations and accepted tribal procedures (a requirement of Pub. L. 93–638).

17. (§ 31h.55) A commentor recommends that allowance be provided for a responsible fiscal agent to account for a group of Agency schools. Response: Administrative support services cost-sharing by several schools is encouraged. This leaves less overhead cost and provides more funds for serving students.

18. (§ 31h.56) A commentor suggests timely review of the implementation of paragraph (b) of § 31h.56 so that it does not become a long drawn out effort. Response: Proper financial planning and review should keep to a minimum disagreements in the use of funds.

19. (§ 31h.56) A commentor expressed a desire for assurance that technical assistance will be provided and that funds for technical assistance will be available. Response: Subpart g, paragraphs 31h.90 and 31h.91 provide school board training and technical assistance. Technical assistance to contract school boards is also provided under Pub. L. 93–638.

Subpart E

A. Comments Adopted

1. (§ 31h.61) A commentor pointed out that language in this section regarding the tentative allotment procedure states that the notification of the tentative allotment will be received on May 1, whereas § 31h.51 states that the Director shall notify school administrators and boards of tentative allotments no later than May 1. Response: It was not intended to introduce an apparent contradiction into the language in § 31h.51. Hence, a change in § 31h.61 is indicated.

2. (§ 31h.62) A commentor recommended that a budget and program plan be submittee to the Agency Office for concurrence. Response: This recommendation has been addressed by requiring that the financial plan be referred to the Agency Office for review (See § 31h.63(f)).

3. (§ 31h.62) A commentor suggests that § 31h.62 (e) and (f) may not apply to contract schools. Response: An exclusion has been incorporated in paragraph (f).

4. (§ 31h.63) One commentor expressed concern that school boards are given insufficient authority, because proposed regulations left it optional for the school supervisor to involve school board members in the development of the financial plan. Additional commentors expressed concern that the members of the board have no authority as individuals, and should only be consulted when meeting as a board. Others expressed concern that the procedure for approval of the financial plan was too detailed and restrictive. A proposed revision of this section was submitted as a comment by the Bureau's Task Force on school boards, which contained changes reflecting similar concerns. Response: The Task Force consulted at length with representatives of the school boards' Task Force, and has completely rewritten this portion of the rule to reflect these comments and concerns.

5. (§ 31h.63) Paragraph 31h.63(c) deals with the lack of action on the financial plan by the school board which results in an automatic appeal to the Agency Superintendent of Education. A commentor is concerned that in the case of an automatic appeal there is no written statement of the disagreement or reason for lack of action by the school board. Response: In proposing the language of § 31h.63(c), the Task Force intended that an approved plan should include two signatures. In the absence of the signature of the chief board officer, it was intended that the plan be referred to the Agency Superintendent of Education after the time allowed for action of the school board. It was felt that the lack of action would most likely not be due to disagreement, but rather to failure to meet in quorum in the time allowed. The confusion in the language is evidently due to the usage of the word "appeal" which has been changed to "referral for approval."

6. (§ 31h.63) Three commentors feel that action on the financial plan should be completed before July 31, the date provided in paragraph (c). Response: Section 31h.51 has been changed to provide an earlier notice of tentative allotments. This will permit earlier completion of the plan by the local school supervisor and earlier final action by the school board.

7. (§ 31h.64) A commentor is concerned that the school board's authority will be limited, that the principal would be the one who would handle the accounts and budget, and that the Agency Superintendent should have some central control to resolve conflict. Response: Although it is true that the local school supervisor or responsible fiscal agent has the authority to sign documents, obligate funds, and make payments, § 31h.55(a) requires that such authorities shall be carried out "solely in accordance with the local educational financial plan, as ratified or amended by the local school board . . ." It is true that in the event of a disagreement between the local school supervisor of a Bureau operated school and the local school board, the Agency Superintendent of Education may be called in if the board's decision is appealed by the local school supervisor. New language has been incorporated in the final regulations which provide the board broader authority in the appeal process.

B. Comments Not Adopted

1. (§ 31h.60) Two commentors object that this subpart appears to require new and specific accounting procedures which would be time-consuming and costly. Response: Section 31h.62 sets forth the requirements for a cost accounting system in paragraph (c). The requirement provides that the system be uniform among all schools. It is felt that there is merit to a uniform system from the standpoint of accountability in accordance with need categories reflected in the formula and for reporting to the Congress on expenditure of appropriations. While it is desirable that all funds generated by the formula for discrete programs be spent on these programs, there is no requirement that

such be the case except for exceptional child programs where a requirement of not less than 80% is established.

2. (§ 31h.60) A commentor is concerned that little guidance is given as to the makeup of the financial plan and suggests that more detail be supplied concerning the plan. Response: The specifics of the financial plan and the planning system should be an administrative determination rather than regulatory. For the first year an interim system is being developed. This interim system will provide guidelines, instructions, formats and exhibits in some detail.

3. (§ 31h.60) One commentor speaks of the importance of training for the school board and local school supervisor and the shortage of time left for training and recommends that the regulations not become effective until the local school board and principals are ready to assume the new responsibilities. Another commentor asks about examples and technical assistance. Response: The Bureau is presently developing training materials that deal with financial planning responsibilities. Area-wide workshops were held in August and September. These workshops and subsequent technical assistance should be helpful to local school supervisors and school boards in their assumption of the new responsibilities.

4. (§ 31h.60) Two commentors ask that school boards be given the authority to procure goods from other sources when the price appears to be out of line. Response: This is an administrative procedure and is not appropriate for regulations.

5. (§ 31h.60) A commentor suggests that two or more schools should work together to purchase services in order to prevent unnecessary duplication. Response: This process could be worked out administratively and need not be provided for in these regulations.

6. (§ 31h.60) A commentor stated that the time available for implementation of these Rules and Regulations is unrealistic. The commentor further stated that there was no specific time set for training members of school boards and no funds provided for such training prior to Fiscal Year 1980. Response: The Bureau is planning an interim program of training for school board members.

7. (§ 31h.61) A commentor recommends that schools be permitted to retain income generated by the school. Response: Although it is not necessary to provide for this by regulation, an interim financial planning system, to be issued in early August, includes the procedure recommended by the commentor.

8. (§ 31h.62) Three commentors are concerned that the financial planning requirements are too rigid, narrow and restrictive, not permitting the flexibility to meet needs based upon assessments. Response: A narrow restricted concept of planning is not intended. Although the funds for a school are generated by discrete groups of students who have certain needs, the regulations do not require that 100% of the funds generated by that group be spent on that group. Paragraph (d) requires only that for all discrete programs except exceptional child programs, the percentage planned to be spent be shown on the financial plan. For exceptional child programs a minimum expenditure requirement of 80% is established.

Since the allotment to the school is generated by students who have special or discrete needs, it is believed that there should be some relationship between the source of funds and the programming of the funds. The commentor appears to agree that the needs would be met but that this programming should not be identified on the plan. Such a requirement does not infringe on the flexibility of the local school supervisor in developing programs. Therefore, we cannot agree with the recommended language.

9. (§ 31h.63) A commentor apparently believes that this section limits the power of local school boards of Bureau operated schools compared to tribally controlled schools. Response: Such limitation is not expressed or implied. The section applies equally to Bureau operated and contract schools.

10. (§ 31h.63) A commentor requests that paragraph (a) be changed to provide for mandatory consultation between the school board and local school supervisor in the drafting of the plan. Response: Subsection (d) provides for the mandatory discussion of the plan, which should satisfy the commentor.

11. (§ 31h.63) A commentor recommends the inclusion of language to provide that the Tribal Department of Education shall have the function and authority to oversee and coordinate all educational entities on the reservation, including school boards. Response: For those tribes which have Tribal Departments of Education, it would seem to be a matter for the tribal government to decide the organizational and functional relationships between its Department of Education and the school board or boards on the reservation. Nothing in these regulations is intended to preclude the relationship recommended by the commentor.

12. (§ 31h.64) A commentor is concerned that the time frame for appeals of the financial plan is too long and will delay the delivery of supplies and materials to distant points in Alaska for a year. Another commentor believes the long process will discourage appeals. Response: The final regulations have been revised (§ 31h.51) to provide for earlier notification of tentative allotments to the school. This will have the effect of moving up final action on the financial plan and any appeals. In addition, funds to be expended under the financial plan being appealed are not available for expenditure until October 1 of the fiscal year, which would seem to indicate that sufficient time should be available, after the appeal is decided, to gear up for the preparation of purchase orders by October 1.

Regarding the belief that the lengthy process will discourage appeals, the regulations are in line with other Federal appeal procedures. To shorten the time frame may risk the appellants' right of the due process.

13. (§ 31h.64) A commentor questioned wording in § 31h.64(e) of the regulations. Response: The question refers to the contents of an early draft. Paragraph 31h.64(e) was deleted when the proposed regulations were published in the Federal Register.

Subpart F

A. Comments Adopted

1. (§ 31h.73) A commentor suggested that the purposes of the Disaster Contingency Fund should be extended to include unforeseen and deliberate acts of vandalism. The commentor pointed out that such acts have the same effect on a school's program as if they were a natural disaster (acts of God). Response: Language is added to the section to include under Purposes "Acts of massive and catastrophic vandalism."

2. (§ 31h.73) A commentor requested clarification of the term "reasonable" as applied in § 31h.73(b)(1) in reference to commuting distance. Response: Language is added at end of subsection cited: "Reasonable commuting distance will be determined under existing policies or by the Director."

B. Comments Not Adopted

1. (§ 31h.71) Several commentors suggested that disaster contingency funds should also cover employee losses of personal property, especially in remote, rural areas where householders' insurance is not available. Response: Federal policies require that employees suffering losses in the manner indicated must file claims through the appropriate

procedures established under the Tort Claims Act or the Employees Claims Act.

2. (§ 31h.72) A commentor's inquiry on resources of emergency construction and repairs, pointed out that the $750,000 indicated for FY 1980 might not be sufficient in the event of large scale disasters, inflationary conditions and high-cost-of-living factors in Alaska. Response: Reference is made to § 31h.77, which provides for the Director to request transfer of funds from funds appropriated for school construction to school Disaster Contingency Fund, if such an action becomes necessary.

3. (§ 31h.73) A commentor asked how soon could construction of permanent structures replacing those destroyed in a disaster be expected, pointing out that support facilities, such as warehouses, are critical to school operations. Response: Construction of permanent facilities is governed by policies and procedures of the BIA Division of Facilities Engineering under a separate appropriation so the subject cannot be addressed in these Rules and Regulations.

4. (§ 31h.73) A commentor inquired concerning disposition of temporary structures, once permanent structures are in place. Response: Disposition of Government property is regulated by Federal procurement regulations, and the subject cannot be addressed in these Rules and Regulations.

5. (§ 31h.73) A commentor suggested that allowing replacement of students' clothing and personal supplies would conflict with the Tort Claims and Employees Claims Acts. Response: The Disaster Contingency Fund is intended to provide immediate response to those needs required for the rapid resumption of normal and orderly school operations. The claims avenues cited by the commentor would not provide the speedy response needed to meet the exigencies of situations addressed by this subpart. The Bureau of Indian Affairs at present has the authority to purchase clothing and personal supplies for students.

6. (§ 31h.76) A commentor inquired if references to "instructional materials and audiovisual centers" refers to buildings only—and not contents. Response: Reference is to buildings only, and does not include contents.

7. (§ 31h.76) A commentor suggested elimination of the subsection on prohibition of expenditures, "except for state subguidelines." Response: State law cannot be used as a means of control of Federal programs under existing Federal law and regulations. The prohibitions upon expenditure were introduced here in order to assure that these funds are used only for bona-fide emergencies, and only to the extent necessary to get the affected school back in operation.

8. (§ 31h.76) A commentor stated that a prohibition against use of Disaster Contingency Funds for start-up costs for new or expanding school programs is contrary to the intent and purpose of Pub. L. 93–638. Response: This subpart states a prohibition on use of Disaster Contingency Funds, but does not constitute a denial of funding within the Bureau's budgeting and appropriations request procedures for funding of start-up and school expansion programs, which are not related to a disaster. See also § 31h.78 for further clarification.

Subpart G

A. Comments Adopted

None.

B. Comments Not Adopted

1. (§ 31h.90) Several commentors suggested that school board training funds be made available to public schools which have a majority of Indian students and are located on Indian reservations. Response: Monies allocated under the formula established in these Rules and Regulations are appropriated for Bureau operated and funded schools only. Such funds cannot be made available for training of school boards of public schools.

2. (§ 31h.90) A commentor suggested that training should also be provided to school principals. Response: Training required for principals may be provided by inclusion in the school's financial plans.

3. (§ 31h.90) A commentor expressed a belief that $5,000 was not enough to cover training needs of each school board. Response: Attention is directed to § 31h.91, in which responsibility of the Director to assure adequate technical assistance and training services to school boards is stated. The intent of the $5,000 figure was to establish a minimal base figure which must be spent for school board training. In the development of its educational financial plan, a school board may elect to establish as a priority additional funding for school board training.

4. (§ 31h.90) A commentor stated that funding should be available for in-service staff training, especially for teachers at isolated schools. Response: The Bureau of Indian Affairs is considering an interim financial procedure followed with training to be provided for key people from each area. These key people will conduct area training. Also, each school may, at its discretion, include a component for in-service training in its educational financial plan.

5. (§ 31h.91) A commentor stated that by allowing school boards from contract schools to receive additional technical assistance and training, a duplication of effort and waste of money will occur. Response: The last sentence of subpart G, § 31h.91 refers to contract schools operated under the provisions of Pub. L. 93–638, which mandates technical assistance to meet the special needs of tribes wishing to contract. The rules and regulations promulgated under Pub. L. 95–561 cannot, and should not, take precedence over responsibilities to tribes which were established in separate legislation.

6. (§ 31h.91) Two commentors suggested that school board members should be bonded and technical assistance given to them in financial matters. Response: School board members, either as members of tribal school boards or as members of Bureau school boards, can be bonded at the option of each school board by including cost of bonding in the school's financial plan. Intensive training for school board members is provided under the provisions of these Rules and Regulations. Also the Director will continue to bear responsibility for providing technical assistance to Indian school boards.

7. (§ 31h.91) A commentor suggested that "a discretionary fund be established for added costs that may occur because of the recommended training requirements." Response: This suggested activity is addressed under the provisions of § 31h.91.

8. (§ 31h.92) A commentor inquired concerning a method for getting the Director's approval for "other training activities which school boards deem appropriate." Response: The request for approval, outlining type of training requested and justification for request, should be forwarded directly to the Director. The Director may also from time to time, and as new training needs arise and are brought to his attention, issue memoranda to schools authorizing new training areas.

9. (§ 31h.92) One commentor suggested that training activities for school boards should include the education of handicapped children. Response: The regulations do not prohibit the use of school board training funds for training in the education of handicapped children. This type of training would be included under special curriculum areas.

10. (§ 31h.92) A commentor supported the regulations on the following two items: (1) The need for school board training in school board responsibilities.

which include financial management; and (2) the $5,000 per school board for promoting involvement of school boards elected by the community they serve. The commentor also asked if it would be possible to use the designated school board training funds to develop a community school program for adult education once the school board became well trained. Response: The school board has the responsibility for planning use of the training funds for the allowable purposes stated herein. It is suggested that the commentor consider Element 13, Adult Education Funds, for the type of project that he suggests.

11. (§ 31h.93) A commentor suggested that funds for travel and per diem be provided for school board members. Response: Coverage of travel and per diem expenses for school board members while attending training sessions is provided for in § 31h.93(c). Travel costs for other purposes should be covered through a separate provision in the school's financial plan.

12. (§ 31h.96) A commentor suggested that a flat figure of $5,000 is not calculated fairly, and should be a percentage of the total allocation for each school. [Comment relates more directly to § 31h.90.] Response: The intent of this provision was to establish a basic minimal figure guaranteeing a training effort for all school boards. Training needs are essentially the same for board members of small schools as for board members of large schools. Adjustment by the Director is intended to allow increased funding as costs rise, so that the guaranteed minimal training effort will not diminish the coming years.

13. (§ 31h.97) A commentor inquired concerning the functions of the Agency school board and the necessity for having such an entity. Response: The Task Force on School Boards is developing proposed rules and regulations in which the roles and responsibilities of Agency school boards will be clearly defined.

Subpart H

A. Comments Adopted

1. (§ 31h.100) One commentor requested that the term "school bus" be defined. Response: A definition of school bus has been added to § 31h.100.

2. (§ 31h.100) Six commentors expressed concern over basing the day student transportation allocation on a loaded bus mile concept and defining distance as "distance to the farthest student on the bus route." These commentors stated that the proposed system penalized schools which were unable to run loop bus routes due to road systems and the location of students.

Also, six commentors believed that the one mile restriction on transportable students was unrealistic, given geographic and weather conditions in some areas as well as the concern that local school boards should determine policy with regard to day school transportation guidelines. Response: In response to these comments, the definitions of and any reference to loaded bus miles, farthest student, and transportable students were deleted from Sections 31h.100 and 31h.102. The factors used in the day school transportation formula in § 31h.1023(a)(1) were changed. These parameters were determined by an empirical analysis of the actual cost of day student transportation at 88 Bureau funded schools.

3. (§ 31h.102) One commentor noted the inequity between the day student and residential student transportation, stating that there was no requirement that funds generated for residential student transportation be used for transporting these students to and from school. Response: Subparagraph 102(b)(6) was added to the regulations requiring that at least 80% of the funds generated by paragraphs 102, 103, 104, and 105 be used for student travel between home and school.

4. (§ 31h.102) Two commentors stated that the twenty-five mile limitation on boarding and dormitory student transportation should be changed to one mile. Response: Based on the Task Force decision to amend the regulations (new § 31h.20) to require the Director to develop policy guidelines for the placement of students in boarding schools and dormitories, 25 miles was changed to one mile in § 31h.102(b)(1).

5. (§ 31h.102) A review should be made to determine the adequacy of the transportation formula based on experience. Response: Paragraph 31h.103 was added to the regulations requiring an annual review of transportation allotment factors.

B. Comments Not Adopted

1. (§ 31h.100) Two commentors stated that transportation funding should include a special provision for the additional cost of transporting handicapped children. Response: The funds generated by the special education weight factors in § 31h.12 are believed adequate for the provision of services required by the special needs of handicapped students.

2. (§ 31h.101) Four commentors stated that funds for extracurricular transportation costs should be included in the transportation formula. Response: The inclusion of the cost of extra-curricular travel was considered prior to publication of the proposed regulations. A decision was made not to include these costs in the transportation formula because including these costs would increase the transportation funds at the expense of the weighted student formula funds. The local school board has the option of programming funds for extra-curricular travel in its financial plan.

3. (§ 31h.102) Two commentors requested inclusion of provisions for shifts of students from day to residential status, and back again, for schools which board students when seasonal weather conditions do not permit them to be bused reliably from home. Response: This comment was given very serious consideration, but assuming that such schools already have dormitory facilities to accommodate such students, the additional costs of boarding a relatively small additional number of students as necessitated by seasonal weather conditions should be largely offset by the corresponding savings in transportation costs. Note that schools will receive transportation funding throughout the year at a rate established on the basis of an average count of students transported during the fall count period. It is much simpler for schools to transfer transportation funds to boarding functions as necessary within their own budgets than it would be to institute a complicated accounting system to adjust the allocation on a seasonal basis.

4. (§ 31h.102) One commentor detailed the situation of a boarding school where the residential facility is separated from the instructional facility by 35 miles. Concern was raised whether the day school transportation formula would generate funds for transportation between the two facilities. Response: The day school transportation formula would generate funds for daily transportation of students between two Bureau-funded facilities if these facilities are located on separate campuses.

5. (§ 31h.102) One commentor requested that additional funds be provided to schools whose students have to travel over unimproved roads. Response: The day school transportation formula is based on the analysis of data on transportation costs, road conditions, number of miles required for transportation and number of students transported. This information was submitted to the Task Force by 88 schools which provide day student transportation. The analysis showed no statistically significant correlation between road conditions and

transportation costs. Therefore, it was decided not to include a factor for road conditions.

6. (§ 31h.102) Two commentors stated that the transportation formula did not include vehicle replacement and GSA lease costs. Response: These factors were included in the total cost for the data of the 88 schools which was analyzed to determine the transportation formula.

7. (§ 31h.102) Two commentors asked for an explanation for the different mileage rates for transportation. Response: The mileage rates are based on an analysis of actual cost of transportation of boarding and dormitory students. The mileage rates according to distance criteria were based on an assumption that the closer the boarding school or dormitory is to the student's residence, the more often the student would go home for weekends.

Subpart I

A. Comments Adopted

1. (§ 31h.110 and § 31h.111) A commentor suggested that a "subject to availability of funds" clause should be repeated at least once in each separate section of the rule. Response: We agree that all funds to be distributed through the ISEP are subject to availability through appropriation. However, we do not agree that such a fact needs to be announced quite so often. § 31h.3(b) was added to the regulations. This subparagraph specifies that each expenditure of funds authorized in part 31h is subject to the availability of funds.

B. Comments Not Adopted

1. (§ 31h.110) A commentor is concerned that very little could be accomplished with the small amount per school provided by this fund and suggests that for greater efficiency the total responsibility be shifted to the Facility Management organization and that working procedures between the two organizations be established. The commentor is further concerned that the respective responsibilities of Plant Management and Education are not defined. Response: It is believed that even though the fund may provide just a few hundred dollars to the smallest schools and only a few thousand dollars to the larger schools, these amounts can have significant impact when dealing with nagging or small emergency situations. Such immediate attention has not been possible until now because of the necessity of dealing with another organization on an interdepartmental work order basis.

Although limits of responsibilities are not defined between Education and Financial Management, the proposed regulations require that these funds be used only to meet minor problem situations requiring immediate attention. It may also be true that if the plant management organization were relieved of dealing with these minor problems, greater efficiency would result, since that organization would have to deal only with the larger issues. In either case, it would be worthwhile for administrative procedures to be developed to insure adequate and timely receipt of maintenance and repair services not covered in this subpart.

2. (§ 31h.110) A commentor apparently interprets the proposed regulations as requiring that Tribes contract for interim repair and maintenance services stating that some will prefer that the BIA continue to operate schools. The commentor also states that some Tribes do not have the necessary trained personnel to contract successfully. Response: We cannot see where any of the proposed subpart I would lead to such an interpretation, especially § 31h.114 specifically states that nothing in this provision shall be interpreted as relieving the BIA from continuing to provide maintenance and repair services to schools through existing procedures.

3. (§ 31h.112) Two commentors are concerned that other factors in addition to square footage should be used to distribute interim maintenance and minor repair funds. Factors mentioned include age of building, condition, type of construction, location and local conditions. Response: The regulations provide for only a temporary formula for maintenance and minor repair which gives each school a modest amount of money for this purpose. More information is needed to develop a fair formula for the distribution of operation, maintenance and repair funds to schools.

A facilities study that includes the collection of data on building age, type of construction, and condition is now underway and the report should be completed in October 1979. When this information is available, formula development for the distribution of additional repair and maintenance funds will begin and should be ready for FY 1981.

4. (§ 31h.113) A commentor asks if "minor" modifies "maintenance" as well as "repair" and is concerned that the small amount of money each school will receive will be almost useless. Response: Even though the fund provides just a few hundred dollars to the smallest school and only a few thousand dollars to the largest, those amounts can be significant when dealing with persistent or small emergency situations. Such immediate attention until now has not been possible because of the necessity of dealing with another organization on an inter-departmental work order basis.

It is agreed that major maintenance programs carried out on a periodic basis could not be funded. It can be construed from the last sentence in § 31h.111 that "minor" modifies "maintenance" also. We do not consider the point of sufficient significance to change the position of the modifier in all instances where the phrase occurs in these regulations.

5. (§ 31h.114) A commentor asks if staff quarters are covered under this section and if the Bureau is getting away from maintaining employee quarters furnished by the Government. Response: The Branch of Facilities Management will not be relieved of any responsibility for continuing to provide maintenance and repair services for employee quarters which belong to the Bureau. However, square footage of employee quarters may not be used in the computation of funds earned by a school under the Interim Maintenance and Minor Repair Fund (see § 31h.112(a)).

Subpart J

A. Comments Adopted

1. (§ 31h.123) Two commentors stated that the Office of Indian Education Programs should not be funded at the same level in FY 1980 as in FY 1979, but should receive reduced funding. Response: It was decided to fund the Office of Indian Education Programs at its FY 1979 level for FY 1980 to allow the Director flexibility in reorganizing his staff based on the regulations on functions. However, to assure that the funds allocated to the Office of Indian Education Programs are used for education administration, the Task Force added a sentence to new § 31h.124(a) stipulating that any unused salary lapse occurring in the Office of Indian Education Programs as of August 1, 1980 shall be apportioned to the schools through the formula.

2. (§ 31h.123) Three commentors questioned whether the funds for Johnson-O'Malley administration would come from Johnson-O'Malley funds. Response: The intent of the Task Force in the proposed regulations was to fund Johnson-O'Malley administration from the total available for allotment for administrative costs. The wording of new § 31h.124(b)(1) was changed to provide clarification of this intent.

3. (31h.123) Two commentors cited the statutory requirement for a 25% Alaska

salary supplement and noted that this supplement was not included in the computation of administrative costs. Response: A new § 31h.124(3) was added to the regulations which includes a .25 factor for the Juneau area education administration funds.

4. (§ 31h.125) Two commentors recommended that Agency Education offices receive their administrative allotments from the Director and not from the Area Education Office. Response: The total amount for allotment within each geographic area is computed according to § 31h.123. However, Agency education administration funds will not flow through Area offices. This was set out in § 31h.125(b). A definition section (§31h.121) was added to Subpart J to clarify the terminology used in the formula computation.

5. (§ 31h.125) Four commentors stated that the Agency Education offices should not be required to absorb more of a funding cut than the Area Education offices. Response: In new paragraph § 31h.126(a) "90%" was changed to "85%".

6. (§ 31h.125) Three commentors requested clarification on the approval of education administrative financial plans at Agencies having no schools and therefore, no school boards. Response: The wording of new § 31h.126(b) was changed giving the Director approval authority for the agency financial plans in those cases where no school boards exist. Also, a new § 31h.126(d) was added requiring the Director to establish procedures for approval of Area and Agency financial plans.

7. (§ 31h.123) One commentor was concerned that the Office of Indian Education Programs was not going to receive an increased allotment in FY 1980. No special education administrative positions were supported with FY 1979 OIEP funds and no allowance was made in the proposed regulations for the funding of special education coordinators in Area and Agency Education Offices. The commentor believed these positions should be included for FY 1980. Response: OIEP evidenced a salary lapse in FY 1979 which could be used by the Director to fund special education administrative positions in FY 1980. However, in order to meet the requirements of the Bureau's Pub. L. 94–142 state plan, $700,000 is to be distributed to Areas based on the number of handicapped students in average daily membership. These funds are to be used to provide exceptional education coordination and centralized services.

B. Comments Not Adopted

1. (§ 31h.120) One commentor felt that the amount of funds for administration was too high and should be limited to 10% of the total education budget. Response: The administrative funds to be distributed through the interim administrative cost formula amount to less than 7% of the total budget for school operations and less than 5% of the total Bureau education budget including JOM, higher education and continuing education. Therefore, funding of administration is already well under 10% of the total education budget.

2. (§ 31h.122) Several commentors objeced to giving the Director authority to terminate Pub. L. 93–638 contracts funded from element 10. Response: The intent of the Task Force was not to give the Director blanket authority in contract termination, but to provide a mechanism for a rational review of the contracts funded from element 10. Some of these contracts are not Pub. L. 93–638 contracts to provide start-up costs of new schools which will be funded elsewhere under the ISEF.

3. (§ 31h.123) One commentor questioned the amount of funds allotted to Area and Agency offices. The commentor recommended that administrative allotments be reduced as the overall level of self-determination increases. Response: The administrative formula included in the regulations is an interim measure. New § 31h.124(a)(ii) allocates funds based on the number of schools within the Area, with contract schools weighted at .6 and Bureau operated schools at 1.0. Therefore, there is a differential for contract school administration. In addition, the funds allotted under this formula are not only for the administration of school operations at Area and Agency levels, but also include administration of JOM, higher education, and continuing education.

4. (§ 31h.125) Two commentors expressed concern that this section could permit funding of activities excluded by the intent of Pub. L. 95–561. Response: Paragraph 31h.120 specifies that funds allotted under the interim administrative cost formula are for the administration of Bureau education programs. Section 31h.125 specifies that these funds will be distributed by the Director based on financial plans and that the Director may transfer administrative positions for the purpose of implementing direct line authority. The intent of the regulation language is to fund Area education offices based on functions while allowing the Director some leeway in reorganizing education administration during the first year of implementation of Pub. L. 95–561.

5. (§ 31h.125) Three commentors requested a provision or weighted formula for Agency administrative costs for multi-tribal Agencies and for multi-tribal Agency administration of contract programs. Response: These Agencies are already included in § 31h.125. Funding for multi-tribal Agency functions will be based on financial plans and the total amount of funds available for Agency education office funding as generated by the interim administrative cost formula. The interim administrative cost formula allows the Director to distribute funds to Agencies within Areas based on differential need.

Subpart K

A. Comments Adopted

1. (§ 31h.130–131) Thirteen commentors expressed concern over the lack of a weight factor or any set-aside fund in the funding formula for ongoing pre-kindergarten programs that have been funded by Bureau education funds in previous years. These commentors also stated that these programs should be included in order to meet the requirements of the regulations on Bureau Education Policies. Reponse: The Task Force realizes the need for and utility of pre-kindergarten programs. Funding limitations precluded the addition of these programs on a Bureauwide basis in FY 1980. However, the Task Force did not want to discontinue ongoing pre-kindergarten programs which have been funded by Bureau education funds in previous years. Therefore, Subpart K was added to the regulations. This subpart provides for the funding in FY 1980 and FY 1981 of all pre-kindergarten programs funded by Bureau education funds in FY 1979. This subpart also requires that cost factors be developed for pre-kindergarten programs and included in the funding formula in FY 1982. FY 1982 was determined to be the first year that these programs could be included on a system-wide basis in the Bureau's education budget because of the two-year appropriations request cycle.

B. Comments Not Adopted

None.

Subpart L

A. Comments Adopted

1. (§ 31h.140–143) Three commentors are concerned that certain tribally controlled schools which were not formerly operated by the Bureau and referred to as "previously private" have not received repair and maintenance funds in the past and will receive very

little under these regulations. Also, there are some previously Bureau schools which are not receiving these funds or services. It was recommended that a provision be made in the formula for more adequate funding from budget activity 3500. Response: Based on an analysis of cost information supplied by contract schools, an interim operation and maintenance fund for these schools has been established. Subpart L was added to the regulations detailing the establishment and distribution of this fund.

B. Comments Not Adopted

None.

General

A. Comments Adopted

None.

B. Comments Not Adopted

1. A commentor recommended that a provision to carry over unexpended funds into the next fiscal year be inserted into the regulations. It was felt that such a carryover of funds would result in better planning, efficiency in operation and better services being provided. Response: Carryover authority can only be granted by the Congress. Regulations are not the proper forum for authorizing carryover of funds. However, carryover of funds is permitted for contract schools under Pub. L. 93–638.

2. A commentor suggested that the Bureau should develop implementation requirements appropriate and considerate of school administrations' workloads. The commentor based his suggestion on the vast increase of responsibilities and reports required on the part of school administrators under the provisions of these Rules and Regulations. Response: The Bureau is considering an Interim Financial Procedure with report formats, pending the completion of a new Management Information System.

3. A commentor suggested that a copy of these Rules and Regulations be translated into the Yupik Eskimo language so that Yupik Eskimo school boards will understand the provisions and requirements set forth therein. Response: It is suggested that at least one bilingual member of each school board, where school board members are not adequately competent in English, should be intensively trained in the provisions and requirements of these Rules and Regulations so that he or she can translate and interpret the Rules and Regulations to the remaining board members. School board training is provided for under subpart G. Should no bilingual member be available on a given school board, then the board should utilize the person who normally translates other matter and data for them.

Other Information

These rules will govern the allocation of funds for the education of Indian children into BIA-operated and tribally-operated contract schools (referred to in these rules as contract schools); and, in the case of administration, to Central, Area and Agency Offices. These rules include provisions which are designed (a) to equalize educational allocations in accordance with individual student needs, (b) to provide uniform direct funding to BIA and contract schools in relation to their students' needs, and (c) to establish managerial and fiscal systems for receipt and expenditure of educational funds.

Because of the potential impact of Title XI of the Education Amendments of 1978 (Pub. L. 95–561) on the education of Indian children, the Bureau of Indian Affairs invited Task Forces which were broadly representative of Indian populations and programs to participate in the development of regulations pertaining to the various sections of the law.

The Task Force on the Allotment Formula is composed of sixteen members (9 members are Indian, 7 are non-Indian; 6 members are Bureau employees, 10 members are not, including 5 contract school representatives).

To meet the time constraints imposed by law requiring the formula allocation of FY 1980 funds, the Task Force met during the winter, spring and summer of 1979. The Task Force, as a working group, was organized into subgroups to address the numerous issues related to uniform direct funding. The Task Force developed the following components of the Indian Schood Equalization Program in order to serve the needs of Indian children and to comply with the Congressional mandates expressed in Title XI of the Education Amendments of 1978 (Pub. L. 95–561).

Overview of the Indian School Equalization Program

The Indian School Equalization Program (ISEP) consists of a number of funding components:

(a) The Indian School Equalization Formula (ISEF);

(b) Administrative provisions for implementing formula funding;

(c) Contingency funds for school disaster and formula implementation;

(d) A school board training categorical fund;

(e) Student transportation supplements;

(f) An interim school maintenance and minor repair fund;

(g) An interim administrative cost formula for Agency, Area and Central services;

(h) Pre-kindergarten programs; and

(i) Operation and maintenance funds for contract schools. Each of these seven components is summarized below:

1. Indian School Equalization Formula (ISEF). The major portion of BIA educational funds will be distributed by the Indian School Equalization Formula. Funds for instruction and residential care of students are earned by each school based on the average daily membership (ADM) each school is serving. Students in different special programs or in different grade levels are counted on weighted differently based on average cost differences necessary to provide for quality programs. Different weights are assigned for different instructional and residential programs to create weighted student units. These units are increased in the case of small schools and Alaskan schools to produce a number of supplemental student units for each school. The number of units is then multiplied by a base dollar figure to determine each school's entitlement under the ISEF.

It is the intent of the Bureau to provide an opportunity for most Bureau operated or funded schools to begin operations budgeting in fiscal year 1980 without any phase-in adjustments. However, a limited phase-in must occur to facilitate the implementation of formula funding. In some situations, too rapid growth in school income, even if justified under the formula, can be better managed if the growth is extended in increments over several years. Even more difficult is the management of declining revenues, however equitable they may be. Therefore, for a limited number of schools that will experience extreme fluctuations in their total budgets, strict application of the formula will be gradually phased in over the next two year period. It is the intent that all Bureau-funded schools will be operating entirely under the funding formula beginning with the 1982 fiscal year.

2. Administrative Provisions for Implementing Formula Funding. A number of critical management procedures are covered by the rules, which include provisions for direct funding, calculating student unit entitlements, the disbursement and local management of formula earnings, compliance requirements, and phase-in provisions.

3. Contingency Funds. Two separate and distinct contingency funds have

been established for the following purposes:

(a) To reimburse schools for the costs incurred due to unforeseen disasters; and

(b) To facilitate the implementation of the Indian School Equalization Formula in order to maximize stability in school entitlements.

4. School Board Training Categorical Fund. A flat amount has been earmarked for each school board to use in meeting its own training needs.

5. Student Transportation Supplements. To offset the varying costs of transporting students to and from school, a transportation formula supplement is established.

6. Interim Maintenance and Minor Repair Fund. It is the intent of the Bureau of Indian Affairs to place responsibility and authority for operation and maintenance of school facilities in the hands of local school administrators and local school boards. This first requires completion of an evaluation of all BIA and contract school facilities. This study is now in progress. As an interim measure, a small amount of funds for maintenance and minor repair will be placed under direct control of school administrators and school boards.

7. Interim Administrative Cost Formula. Costs for administration of educational programs at the Central Office, Area office , and Agency office levels have been budgeted in the past in no direct relationship to the size or nature of the services administered, and have included a number of actual services of a non-administrative nature. In order to create a direct relationship between administrative resource and services administered, a formula for distribution of these resources based on size of special programs, number of students and number of schools and institutions, is established.

As a consequence of Pub. L. 95–561 educational administration functions are under reorganization, with many functions to be shifted from one level to another. Therefore, the funding formula set forth in these regulations is an interim measure until the reorganization is completed and a more permanent formula can be developed.

8. Pre-kindergarten Programs. Existing pre-kindergarten programs are funded for two years at their FY 1979 level until a clear Bureau policy on creating new pre-kindergarten programs is established and until new appropriations are requested and received for that purpose.

9. Contract School Operation and Maintenance Funds. In the past, BIA-operated schools and most previously Federal contract schools have received plant operation and maintenance services for which previously private and some previously Federal contract schools were ineligible. Funds, based on FY 1979 expenditure levels, are provided for this purpose.

It has been determined that these regulations are not a major Federal action within the scope of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c).

The Department of Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The primary author of this document was the Bureau of Indian Affairs Task Force on the Allotment Formula. Donald Antone and David Mack, co-chairmen of the Task Force, may be contacted through the Director of the Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, Washington, D.C., (202) 343-2175.

With above changes and technical amendments made to conform the regulations to legal requirements, Part 31h to Subchapter E, Chapter 1 of Title 2 of the Code of Federal Regulations is adopted as set forth below:

PART 31h—THE INDIAN SCHOOL EQUALIZATION PROGRAM

Subpart A—General

Sec.

31h.1 Purpose and scope.
31h.2 Definitions.
31h.3 General provisions.

Subpart B—The Indian School Equalization Formula

31h.10 Establishment of the formula.
31h.11 Definitions.
31h.12 Entitlement for instructional purposes.
31h.13 Entitlement for residential purposes.
31h.14 Entitlement for small schools.
31h.15 Alaskan school cost supplements.
31h.16 Computation of school entitlements.
31h.17 Comparability with public schools.
31h.18 Recomputations of current year entitlements.
31h.19 Phase-in provisions.
31h.20 Development of uniform, objective and auditable student weighted area placement criteria and guidelines.
31h.21 Future consideration for weighted programs.
31h.22 Authorization of new program development and termination of programs.
31h.23 Review of contract schools' supplemental funds.

Subpart C—Formula Funding Administrative Procedures

31h.30 Definitions.
31h.31 Condition of eligibility for funding.
Sec.
31h.32 Annual computation of average daily membership.
31h.33 Special education unduplicated count provision.
31h.34 Substitution of a count week.
31h.35 Computation of average daily membership for tentative allotment.
31h.36 Declining enrollment provision.
31h.37 Auditing of student counts.
31h.38 Failure to provide timely and accurate student counts.
31h.39 Delays in submission of ADM counts.

Subpart D—Direct Allotment of Formula Entitlements

31h.50 Definitions.
31h.51 Notice of tentative allotments.
31h.52 Initial allotments.
31h.53 Obligation of funds.
31h.54 Apportionment of entitlements to schools.
31h.55 Responsible local fiscal agent.
31h.56 Financial records.
31h.57 Access to and retention of local educational financial records.
31h.58 Expenditure limitations for Bureau-operated schools.

Subpart E—Local Educational Financial Plan

31h.60 Definitions.
31h.61 Development of local educational financial plans.
31h.62 Minimum requirements.
31h.63 Procedures for development of the plan.
31h.64 Procedures for financial plan appeals.

Subpart F—Contingency Funds

31h.70 Definitions.
31h.71 Establishment of the School Disaster Contingency Fund.
31h.72 Continuing and cumulative provisions.
31h.73 Purposes.
31h.74 Application procedures.
31h.75 Disbursement procedures.
31h.76 Prohibitions of expenditures.
31h.77 Transfer of funds from facilities management for other contingencies.
31h.78 Establishment of a formula implementation set-aside fund.
31h.79 Prohibitions.

Subpart G—School Board Training

31h.90 Establishment of a school board training fund.
31h.91 Other technical assistance and training.
31h.92 Training activities.
31h.93 Allowable expenditures.
31h.94 Prohibition of expenditures.
31h.95 Reporting of expenditures.
31h.96 Provision for annual adjustment for inflation.
31h.97 Training for agency school board.

Subpart H—Transportation

31h.100 Definitions.
31h.101 Purpose and scope.
31h.102 Allocation of transportation funds.
31h.103 Annual transportation formula adjustment.

Subpart I—Interim Maintenance and Minor Repair Fund

Sec.
31h.110 Establishment and funding of a Interim Maintenance and Minor Repair Fund.
31h.111 Conditions for distribution.
31h.112 Allocation.
31h.113 Use of funds.
31h.114 Limitations.

Subpart J—Interim Administrative Cost Formula

31h.120 Purpose and scope.
31h.121 Definitions.
31h.122 Accounting.
31h.123 Determination of present costs levels.
31h.124 Allotment of educational administrative funds.
31h.125 Allotment exceptions.
31h.126 Distribution of administrative funds within area.
31h.127 Exceptional education services at Area and Agency Education Offices.
31h.128 Provision for administrative cost formula based on administrative functions.

Subpart K—Prekindergarten Programs

31h.130 Interim FY 1980 and 1981 funding for pre-kindergarten programs previously funded by the Bureau.
31h.131 Addition of pre-kindergarten as a weight factor to the Indian School Equalization Formula in FY 1982.

Subpart L—Contract School Operation and Maintenance Funds

31h.140 Definitions.
31h.141 Establishment of an interim FY 1980 operation and maintenance fund for contract schools.
31h.142 Distribution of funds.
31h.143 Future consideration of contract school operation and maintenance funding.

Authority: Sec. 1128 of Title XI of the Education Amendments of 1978, (92 Stat. 2320, 25 U.S.C. 2008).

Subpart A—General

§ 31h.1 Purpose and scope.

The purpose of this rule is to provide for the uniform direct funding of BIA operated and tribally operated day schools, boarding schools, and dormitories. These rules apply to all schools and dormitories and administrative units which are funded through the Indian School Equalization Program of the Bureau of Indian Affairs.

§ 31h.2. Definitions.

Assistance under this rule is subject to the following definitions and requirements relating to fiscal and administrative matters. Definitions of terms that are used throughout the part are included in this subpart. As used in this part, the term:

(a) "Agency" means an organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes. The term includes Bureau Area Offices only with respect to off-reservation boarding schools administered directly by such Offices.

(b) "Agency school board" means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Director in consultation with the affected tribes, except that, in Agencies serving a single school, the school board of such school shall fulfill these duties.

(c) "Agency Superintendent of Education" or "Superintendent" means the Bureau official in charge of Bureau education programs and functions in an Agency who reports to the Director.

(d) "Area Director for Education" means the Bureau official in charge of Bureau Education programs and functions in a Bureau Area Office and who reports to the Director.

(e) "Assistant Secretary" means the Assistant Secretary of Indian Affairs, Department of the Interior, or his or her designee.

(f) "Average daily membership" or "ADM" means the average of the actual membership in the school, for each student classification given separate weightings in the formula. Only those eligible students shall be counted as members who are:

(1) Listed on the current roll of the school counting them during the count week;

(2) Not listed as enrolled in any other school during the same period; and

(3) In actual attendance at the school counting them at least one full day during the count week in which they are counted.

(g) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(h) "Decision of record" means a formal written confirmation of a voted action by a school board during a formally constituted school board meeting.

(i) "Director" means the Director of the Office of Indian Education Programs for the Bureau of Indian Affairs, or his or her designee.

(j) "Eligible student" means an Indian student properly enrolled in a Bureau school or dormitory, or a tribally operated school or dormitory funded by the Bureau, who meets the applicable entry criteria for the program(s) in which he or she is enrolled.

(k) "Entitlement" means that amount of funds generated by the Indian School Equalization Formula for the operational support of each school.

(l) "Advice of allotment" means the formula written document advising a school or an administrative office of its entitlement under the formula. The advice of allotment conveys legal authority to obligate and expend funds in a given fiscal year.

(m) "Allotment" means the amount of the obligational authority conveyed to a given school or Bureau administrative office by its advice of allotment in a given fiscal year.

(n) "Indian" means a person who is a member of an Indian tribe.

(o) "Indian Tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(p) "Program" means each or any subset of the Indian School Equalization Program (ISEP), but not the ISEP itself, for which a separately computable dollar amount may be generated by a school. Each program classification is a cost account in an accounting system. The following accounting programs are those established by this part:

(1) Instructional costs;
(2) Boarding costs;
(3) Dormitory costs;
(4) Bilingual instruction costs;
(5) Exceptional child education costs;
(6) Intense residential guidance costs;
(7) Student transportation fund costs;
(8) School maintenance and repair fund costs;
(9) School board training fund costs;
(10) Pre-kindergarten costs; and
(11) Previously private contract school operation and maintenance costs.

(q) "School" means an educational or residential center operated by or under contract with the Bureau of Indian Affairs offering services to Indian students under the authority of a local school board and the direction of a local school supervisor. A school may be located on more than one physical site. The term "school", unless otherwise specified, is meant to encompass day schools, boarding schools, previously private schools, cooperative schools, contract schools and dormitories as those terms are commonly used.

(r) "Local School Board," (usually referred to as "school board") including off-reservation boarding school boards and dormitory school boards, when used with respect to a Bureau school, means a body chosen to exercise the functions of a school board with respect to a particular Bureau operated or funded

school, in accordance with the laws of the tribe to be served or, in the absence of such laws, elected for similar purpose by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected; and the number of such members shall be determined by the Director in consultation with the affected tribes.

(s) "Supervisor" or "local school supervisor" means the individual in the position of ultimate authority at any Bureau administered or tribally operated contract school.

(t) "Tribally operated contract school" or "contract school" means a school (other than a public school) which is financially assisted under a contract with the Bureau.

(u) "Weighted student unit (WSU)" means the measure of student membership adjusted by the weights or ratios used as factors in the Indian School Equalization Formula established in § 31h.10 below. The term weighted student unit also describes the measure by which supplements to the weighted student count at any school are augmented as the result of the application of small school supplements or Alaskan school supplements.

§ 31h.3 General provisions.

(a) All funds appropriated by the Congress for the support and administration of Bureau operated or contracted elementary and secondary educational purposes and programs shall be allocated in accordance with, and be distributed through, the Indian School Equalization Program, unless a specific amount of funds are added or reduced for a particular class of schools through the budget and appropriations process.

(b) Each expenditure of funds authorized in part 31h is without exception subject to the availability of funds.

Subpart B—The Indian School Equalization Formula

§ 31h.10 Establishment of the formula.

There is hereby established the Indian School Equalization Formula (ISEF).

Funds for the instruction and residential care of Indian children shall be earned as an entitlement by each local school according to a weighted student unit formula. The funds allocated through the formula shall be computed as follows:

(a) The basic instructional average daily membership (ADM) shall be counted at each school location as provided for in Subpart C of this part. From the application of ratios or weights as provided in these rules a weighted student unit (WSU) value for each school location is derived by multiplying the student count for each program area by the weights.

(b) If the school is a boarding school or a dormitory, the residential students will produce program units which will, by the application of weights, produce additional WSU's.

(c) The ADM count of eligible small schools or dormitories may generate additional unit supplements.

(d) All Alaskan schools are eligible under the formula to generate supplemental units.

(e) The total weighted student unit count for each school location is then multiplied by a base unit value to derive the estimated dollar entitlement to each school(s).

The total amount is made available to each school(s), under the rules related to administrative provisions provided in subparts C and D of this part.

§ 31h.11 Definitions.

Assistance to approved school(s) under this subpart is subject to the definitions established in § 31h.2 and to the following definitions for determining student counts in the various weighted areas. As used in the subpart, the term:

(a) "Base" or "base unit" means both the weight or ratio of 1.0 and the dollar value annually established for that weight or ratio which represents students in grades 4 through 8 in a typical instructional program.

(b) "Basic program" means the instructional program provided all students at any age level exclusive of any supplemental programs which are not provided to all students in day or boarding schools.

(c) "Grade" or "Grade Level", followed in most cases by "K" or a number, means a classroom grouping ordinarily determined by student age and successful completion of a criterion number of years of previous schoolwork. The use of this term does not preclude ISEP funding of programs in which instruction is "non-graded" or "individualized", or which otherwise depart from grade-level school structure. For purposes of funding under the ISEP, students in such programs shall be counted as "in the grade level" to which they would ordinarily be assigned based on their chronological age and number of years of schooling completed.

(d) "Grades 1–3" means a weighted program for a student who is present during the count week (see § 31h.30(b)) in grades 1 through 3 who is at least 6 years old by December 31 of the fall of the school year during which the count occurs and is a member of an educational program approved by the board which is conducted at least six gross hours daily during at least 180 days per school year. Gross hours means from the start of the school day to the end of the school day including all activities.

(e) "Grades 4–8" and "grades 9–12" means a weighted program for a student who is present during the count week (see § 31h.30(b)) in either of the programs encompassing grades 4 through 12 who is a member of an educational program approved by the school(s) at least six gross hours daily during at least 180 days per school year and shall not have achieved the age of 21 nor have received a high school diploma or its equivalent.

(f) "Kindergarten" means a weighted program for a student who is present during the count week (see § 31h.30(b)) who is at least 5 years old by December 31 of the fall of the school year during which the count occurs and a member of an educational program approved by the school(s) conducted at least four gross hours daily during at least 180 days per school year. Otherwise eligible students who are in a program conducted less than four hours daily, but at least two gross hours daily are eligible as "half-time kindergarten" students.

(g) "Intense Bilingual" means a weighted program for a student who is present during the count week, whose primary language is not English, and who is receiving academic instruction daily through oral and/or written forms of an Indian or Alaskan Native language, as well as specialized instruction in English for non native speakers of English, under resources of the ISEP.

(h) "Intensive residential guidance" means the weighted program for a resident student that needs special residential services due to one or more of the problems identified below, and that appropriate documentation is in that student's file as follows:

(1) Presenting problem:

(i) Court of juvenile authority request for placement resulting from a pattern of infractions of the law.

(ii) Explusion from previous school under due process.

(iii) Referral by a licensed psychologist, psychiatrist or certified psychiatric social worker as an emotionally disturbed student.

(iv) History of truancy more than 50 days in the last school year or a pattern of extreme disruptive behavior.

(2) Documentation required:

(i) Written request signed by officer of court or juvenile authority;

(ii) Certification by expelling school;
(iii) Psychologist, certified psychiatric social worker, or psychiatrist report; or
(iv) Attendance and behavior data from records of prior school, court records, or from social agency records and a written documentation summarizing such data. For all students placed in intensive residential guidance programs, there shall be further documentation of a diagnostic workup, a placement decision by a minimum of three staff members, and a record of an individualized treatment plan for each student that specifies service objectives.
(v) No student shall be classified under "Intense residential guidance" who is eligible for services at a full-time or part-time service level because of a handicapping condition as defined under Exceptional Child programs below.
(i) "Exceptional Child Program" means weighted programs for students who are receiving special education and related services, consistent with the identification, evaluation and provisions of a free appropriate public education required by Part B of the Education of the Handicapped Act (20 U.S.C. 1401 et seq.; 45 CFR 121 a.) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 45 CFR 84) and who have the following diagnosed impairments:
(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.
(2) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.
(3) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.
(4) "Severely Multi-handicapped" means concomitant impairments (such as mentally retarded-blind; mentally retarded-deaf) the combination of which causes such severe educational problems that they cannot be accommodated in regular educational programs or in special education programs solely for one of the impairments. The term includes deaf-blind children.
(5) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).
(6) "Other health impaired" means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, hemophelia, epilepsy, lead poisoning, leukemia, or diabetes or the existence of a physical or mental impairment which substantially limits one or more major life activities, but which is not covered in paragraphs (i) (1)–(12) of this section.
(7) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a significant degree, which adversely affects educational performance and requires small group instruction, supervision, and group counseling:
(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;
(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers:
(iii) Inappropriate types of behavior or feelings under normal circumstances;
(iv) A general pervasive mood of unhappiness or depression; or
(v) A tendency to develop physical symptoms or fears associated with personal or school problems.
(8) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an inability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of vision, hearing, or motor handicaps, or mental retardation, or of environmental, cultural, or economic disadvantage.
(9) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, or a voice impairment, which adversely affects a child's educational performance.
(10) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes partially seeing, but not fully blind, children.
(11) "Severely emotionally disturbed" means a condition such as schizophrenia, autism or the presence of the following characteristics over a prolonged period of time and to a marked degree, which seriously affects educational performance and requires intensive individual therapy (which may be conducted either in or out of the school setting), individual instruction, and supervision:
(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;
(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers:
(iii) Inappropriate types of behavior or feelings under normal circumstances;
(iv) A general pervasive mood of unhappiness or depression; or
(v) A tendency to develop physical symptoms or fears associated with personal or school problems.
(12) "Severely and profoundly retarded" means a degree of mental retardation (as defined in paragraph (3) above) which severely restricts and delays major aspects of intellectual functioning so as to require intensive small group instruction and supervision.
(13) "Students requiring home/hospital based instruction" means students provided a program of instruction in a home or hospital setting because in the judgement of a physician a student cannot receive instruction in a regular public school facility without endangering the health or safety of the student or of other students.
(14) "Multihandicapped" means concomitant impairments (such as mentally retarded with a minor additional handicap such as speech impaired) the combination of which causes educational problems that can not be accommodated in regular education programs or in part-time special education programs.
(15) "Blind" means the possession of a central vision acuity of 20/200 or less in the better eye with correcting glasses or a peripheral field of vision so contracted that its widest diameter is less than 20%.
(16) "Full-time—High Service Level" means a program of special education and related services provided to an exceptional student which consists of fifteen or more hours per week (or 60% or more of the total instructional time) of instruction and/or required related services (as described in the students individualized education program), provided outside of the regular classroom. In geographically isolated, smaller schools where facilities are limited, a full time program may consist

of fifteen or more hours per week (or 60% or more of the total instructional time) of specialized individual or small group instruction or required related services regardless of where the services are actually provided (including the regular classroom).

(17) "Part-time—Moderate Service Level" means any program of regular education modified to provide specialized instruction and/or required related services (as described in the student's individualized education program) which does not provide at least the number of hours in the definition of "Full-time—High Service Level Exceptional Child Program" set forth in paragraph (i)(14) above.

(18) Classification of a student in full or part-time service levels in residential care programs shall be based upon prior classification of the student in an instructional program serving his/her handicapping condition.

(j) "Resident" means a student officially enrolled in the residential care program of a Bureau operated or funded school and actually receiving supplemental services provided to all students who are provided room and board in a boarding school or a dormitory during those weeks when student membership counts are conducted. Such students must be members of the instructional program in the same boarding school in which they are counted as residents. To be counted as dormitory residents, students must be enrolled in and be current members of a public school in the community in which they reside.

§ 31h.12 Entitlement for instructional purposes.

BIA educational funds for the instruction of elementary and secondary Indian children shall be computed according to the following weighted student unit factors:

Basic Programs	*Base Weights*
Kindergarten	1.00
Grades 1 to 3	1.20
Grades 4 to 8	1.00
Grades 9 to 12	1.30
Supplemental Program	*Add-on Weight*
Intense bilingual	.20
Exceptional Child Programs	
Full time—high service level:	
Deaf	3.00
Blind	3.00
Severely multihandicapped	3.00
Severely and profoundly retarded	3.00
Students requiring hospital/homebound instruction	3.00
Severely emotionally disturbed	3.00
Severely emotionally disturbed (nonsevere)	1.00
Specific learning disabled	1.00
Mentally retarded	1.00
Part time—modertate service level:	
Emotionally disturbed	.50
Specific learning disabled	.50
Mentally retarded	.50
Multihandicapped	.50
Exceptional Child Programs	
Hard of hearing	.25
Visually handicapped	.25
Orthopedically impaired	.25
Other health impaired	.25
Speech inpaired	.25

§ 31h.13 Entitlement for residential purposes.

Basic funds for student residential purposes shall be computed according to the following weighted student unit factors:

Basic Programs	*Add-on Weight*
Kindergarten (For FY 80 only, 0 factor thereafter)	1.40
Grades 1 to 3	1.40
Grades 4 to 8	1.25
Grades 9 to 12	1.25
Exceptional Child Programs	*Add-on Weight*
All full-time handicapped students	.50
Part time:	
Orthopedically impaired	.25
Other health impaired	.25
Emotionally disturbed	.25
Mentally retarded	.25
Multihandicapped	.25
Intense Residential Guidance	.50

§ 31h.14 Entitlements for small schools.

To compensate for the additional costs of operating small schools, qualified schools shall receive the following adjustments:

(a) Instructional programs in day and boarding schools. For each separate small school having an instructional average daily membership count (called x) of less than 100 students, the formula [(100–x) divided by 200] times x shall be used to generate add-on weighted pupil units for each such school.

(b) *Boarding school residential programs.* For each separate small boarding school having a resident average daily membership count (called y) of less than 100 students, the formula [(100−y) divided by 200] times y shall be used to generate add-on weighted pupil units for each such boarding school.

(c) *Dormitory residential programs serving public schools.* For each small dormitory program having an average daily membership count (called z) of less than 100 students, the formula [(100−z) divided by 200] times z shall be used to generate add-on weighted pupil units for each dormitory.

§ 31h.15 Alaskan school cost supplements.

To meet the statutory requirements for a salary supplement for Alaskan educational staff, and add-on weight of .25 will be used as a factor by which all pupil program-generated weighted students shall be supplemented. Such generated Alaskan cost supplements will be added to the weighted pupil units generated by each school in the same manner as small school units.

§ 31h.16 Computation of school entitlements.

The sum of all weighted student units, including any small school and any Alaskan school cost supplements shall be computed for each school under the management of the Director. The total number of units generated by each approved school shall be multiplied by a base dollar value which is equivalent to a base weight of 1.0 in the formula. This base value shall be computed annually by the Director by dividing the total of all weighted students (WSU) generated by all approved schools into the total amount appropriated for distribution through the Indian School Equalization Formula.

§ 31h.17 Comparability with public schools.

(a) In no case shall a Bureau or contract school attended by an Indian student receive less under these regulations than the average payment from the Federal funds received per Indian student, under other provisions of law, by the public school district in which the student resides. Any school which is funded at a lower level per student under the ISEP than either the average daily expenditure per student for instructional costs in the public schools in the State in which it is located, or the amount per Indian student which the local public school district in which it is located receives from all Federal funding sources, shall present documentation of this fact to the Director of the Office of Indian Education Programs.

(b) Upon verification that comparisons in the documentation received cover comparative expenditures, and that the inequity indeed exists, the Director shall adjust the school's allocation to equal the payment per-Indian student of the public school district or State involved.

(c) Funds for such adjustment shall be taken from the Formula Implementation Set Aside established under § 31h.78 of these regulations.

§ 31h.18 Recomputations of current year entitlements.

The Director shall continuously monitor the processes by which the final allocation of each school's entitlement is made. When changes occur either in the total amount of funds available for the operations of schools or in the total number of weighted student units for all schools due to a change in the number of weighted student units reported or altered by auditing, the Director shall consider whether adjustments are necessary in order that the full available appropriations are fairly allocated to the

schools, and that all funds are fully allotted to schools.

§ 31h.19 Phase-in provisions.

(a) *Limits on excess gains.* No school shall receive a percentage increase in its total fund entitlement, over the comparable budget amount per school in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

(1) In FY 80—20%

(2) In FY 81—70%

(b) *Limits on excess losses.* No school shall receive a percentage decrease in its total fund entitlement, below the comparable budget amount in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

(1) In FY 80—10%

(2) In FY 81—30%

(c) *Effects of limits on losses and gains.* Local school gains in excess of the above percentage limits for each of the limited years shall be returned to the common base for all schools and distributed through the formula. Funds to limit losses in excess of the above limits shall be withdrawn from the common base for all schools and distributed to the schools subject to such excess losses.

(d) *Transfer of fiscal accountability.* To allow time for developing fiscal accountability, knowledge, skill and responsibility at the local school level and in order to support accountability by responsible Fiscal Agents under section 3679 of the Revised Statutes (the Anti-Deficiency Act), a period of one year (FY 1980) shall be used during which the legal allottee for each Bureau-operated school shall be the Education Superintendent of the Agency within which the school is located. In the case of off-reservation boarding schools and other Bureau-operated schools not served by an Agency Education Office, the Area Education Director shall be the legal allottee. Further allocation of funds under this rule shall be fully in accordance with the Indian School Equalization Program and Formula, and expenditures shall be made in accordance with the financial planning provisions of section E of this rule.

(e) Beginning in FY 1981, the allottee shall be as otherwise determined in this rule.

§ 31h.20 Development of uniform, objective and auditable student weighted area placement criteria and guidelines.

The Director shall develop: (a) Uniform, objective and auditable placement criteria and guidelines for placement of students in dormitories and residential care programs of boarding schools and in special weighted program areas which expand upon the definitions in this part; and (b) a uniform and auditable system of enrollment criteria and attendance boundaries for each school in the Bureau educational program. The Director shall publish these criteria and guidelines in the Bureau Manual (BIAM) and widely disseminate them to each school prior to September 1, 1980, so that appropriate student placments can occur before the FY 1981 October student count.

§ 31h.21 Future considerations for weighted programs.

(a) Within twelve months of the final publication of this rule, the Director shall review the following factors in depth, and determine whether to incorporate each into the weighted pupil formula:

(1) A rural isolation adjustment.

(2) A staff cost adjustment.

(3) A gifted and talented student program.

(4) A vocational education program.

(5) A facilities operation and maintenance program.

(6) Additional institutional size factors.

(b) The Director may also recommend incorporation of other factors, based upon the Bureau's experience in the first year's operation of the ISEP, and upon the Standards to be developed under Section 1121 of the Act.

(c) The Director shall also review the adequacy of the weighted factors, procedures, criteria and definitions now in this rule, throughout Part 31h. On the basis of this review, the Director shall present a comprehensive report of findings, with recommendations for amendment of this rule, to the Secretary, who shall incorporate them in a Notice of Proposed Rulemaking to include a minimum of sixty (60) days for public comment.

§ 31h.22 Authorization of new program development, and termination of programs.

(a) Within one year of the final publication of this rule, the Secretary shall develop uniform procedures and criteria for the authorization of new schools where no Bureau funded or operated school program has previously existed, and for authorization of expansions of existing Bureau funded or operated school programs to serve additional age groups not previously served. These procedures and criteria shall be published as amendments to this rule under a new Notice of Proposed Rulemaking, which shall contain provisions for a minimum of sixty (60) days of public review and comment prior to final publication.

(b) Procedures and criteria developed under this section shall be integrated with existing procedures under 25 CFR 271 for determining contractable functions of the Bureau, in order to produce a coherent system for authorization of Tribally initiated program development under contracting procedures of Pub. L. 93-638, which is compatible with Bureau initiated program development.

(c) Procedures and criteria developed under this rule shall also contain provisions for making decisions regarding closing schools and terminating Bureau programs of education. These shall provide for full consultation with the Indian persons and Tribes served by the programs and schools involved in any such decisions.

§ 31h.23 Review of contract schools supplemental funds.

Before the end of formula phase-in, the Director shall consider the impact on equalization of supplemental funds appropriated for aid to schools under the Johnson O'Malley Act and under Title IV of the Indian Education Act, which are available to contract schools but not to Bureau schools, and determine appropriate adjustments, if any. Any adjustments in the ISEP which results from this review shall be effected by formal revision of this rule, under a Notice of Intended Rulemaking published in the **Federal Register**, and shall be subject to public comment for a minimum of sixty (60) days prior to final rulemaking.

Subpart C—Formula Funding Administrative Procedures

§ 31h.30 Definitions.

As used in this subpart, the term:

(a) "Certifying the validity of student counts" means that counts of student ADM have been accurately recorded in compliance with specifications of these rules, and that the Agency Superintendent of Schools, the local school supervisor, and local school board chairperson, where a school board exists, testify to and confirm the correctness of this count.

(b) "Count weeks" mean the first full school week in October and the first full school week in November for recording student ADM for the purposes of calculating allotments, and the first full school week in February and the first full school week in March for recording student ADM for purposes of calculating tentative allotments.

(c) "Cumulative total" means the sum of all daily student ADM counts during count weeks.

(d) "Student classification" means any special need area of students which receives a separate weighting through the Indian School Equalization Formula.

§ 31h.31 Conditions of eligibility for funding.

(a) To be eligible for direct formula funding as established in subpart B of this part, a day school, boarding school, or dormitory must meet minimum standards, or, failing to do so, must include in its financial plan steps acceptable to the Director for taking corrective action to meet the standards to be prescribed pursuant to section 1121 of the Education Amendments of 1978 (Pub. L. 95-561; 25 U.S.C. 2001). Until such standards are prescribed, the Director shall determine eligibility for funding in accordance with established procedures for authorizing Bureau operated schools.

(b) To be eligible for direct formula funding, a tribally operated day or boarding school or dormitory must meet the requirements of part 271 of this chapter (25 CFR 271) for receipt of Bureau Education funds under contracts for school operation.

§ 31h.32 Annual computation of average daily membership.

(a) Average daily membership (ADM) as defined in § 31h.1(f) shall be determined during the first full school week in October and the first full school work week in November of the school year. For each count week all those students eligible under the definition in § 31h.1(f) shall be counted by student program classification. An average for the two count weeks shall be computed to two decimal places for each student program classification as separately provided for in the funding formula.

(b) The Director shall direct the receipt and management of information necessary to obtain timely ADM reports from schools. Agency education offices, and, in the case of off-reservation boarding schools, Area education offices, together with each school's supervisor and school board chairperson where a board exists, shall be responsible for certifying the validity of each school's student counts. The October and November ADM will be used to determine final entitlements for the school year.

§ 31h.33 Special education unduplicated count provision.

In counting special education ADM with the exception of speech therapy, no child shall be counted or funded twice for participation in more than one special education program.

§ 31h.34 Substitution of a count week.

A school may petition the Director to substitute another week in the same month for the specified count week if it can be established that to use the specified count week would result in grossly inaccurate student counts. Where tribal ceremonial days are known in advance, such a petition shall be submitted in advance of the determined count week.

§ 31h.35 Computation of average daily membership (ADM) for tentative allotments.

Tentative allotments for each future year's funding shall be based on the average daily membership for the first full school week in February and the first full school week in March of the school year. Procedures for computation shall be the same as those of the annual computation in October and November.

§ 31h.36 Declining enrollment provision.

If the decline of a school's average daily membership exceeds ten percent in any given school year, the school may elect to request funding based on the average ADM for February and March of the previous year and October and November of the current year.

§ 31h.37 Auditing of student counts.

The Secretary shall provide for auditors as required to assure timeliness and validity in reporting student counts for formula funding.

§ 31h.38 Failure to provide timely and accurate student counts.

(a) Responsible Bureau school, Agency, Area, and Central Office administrators may be dismissed for cause, or otherwise penalized, for submission of invalid or fraudulent annual student ADM counts or willfully inaccurate counts of student participation in weighed program areas. A person who knowingly submits or causes to be submitted to a Federal official or employee false information upon which the expenditure of Federal funds is based, may be subject to criminal prosecution under provisions such as sections 286, 287, 371, or 1001 of Title 18, U.S. Code.

(b) Failure of responsible Federal officials to perform administrative operations which are essential to the ISEP, on a timely basis, shall result in swift disciplinary action by Bureau supervisory personnel, under existing procedures. Failure or refusal of Bureau supervisory personnel to take disciplinary action shall result in disciplinary action against them by higher level supervisors.

§ 31h.39 Delays in submission of ADM counts.

(a) If a Bureau operated or funded school delays submission of an ADM count, by more than (2) weeks beyond the final count week in November, for that school, the Director shall set aside an amount equal to the tentative allotment for that school out of the funds available for allotment, and shall proceed to compute the initial allotments for all other schools in the Bureau school system, based upon remaining funds available for allotment. The allotment for the school which has failed to submit a timely ADM count shall be computed when the ADM count is received, but shall not exceed the amount set aside therefore. Any amount remaining in the set-aside fund, after computation of the allotment, shall be transferred into the Formula Implementation Set-Aside Fund, and distributed in accordance with provisions of § 31h.78 below.

(b) In no case shall the Director delay the computation of initial allotments for schools which have submitted timely ADM counts while waiting for those schools which have failed to submit.

Subpart D—Direct Allotment of Formula Entitlements

§ 31h.50 Definitions.

As used in this subpart, the term:

(a) "Apportionment" means that part of a school's allotment received each quarter as an authorization to obligate funds.

(b) "Approved apportionment schedules" means that approval given for the quarterly obligation of funds for a given appropriation of funds for the Bureau.

(c) "Authorization to obligate" means that approval given to a school to incur obligations of funds against a given appropriation.

(d) "Initial allotments" means that notice given to schools of their entitlements to funds based on October and November student counts through the Indian School Equilization Formula based on a final appropriation, prior to any adjustments due to fluctuating student counts.

(e) "Responsible fiscal agent" means the local school supervisor of a Bureau operated school except where such authority is designated to the Agency Superintendent of Education by a school board decision of record or by a written agreement signed by both parties. For contract schools, the responsible fiscal agent shall be designated in an action of record by the contractor.

(f) "Tentative allotments" means that notice given to schools of their

entitlements to funds based on February and March student counts as computed through the Indian School Equilization Formula based on a proposed appropriations in the President's budget for the next fiscal year.

§ 31h.51 Notice of tentative allotments.

The Director shall notify school administrators and boards of tentative allotments of funds based on the February and March ADM counts established under Subpart B of this Part no later than April 15, preceding the year for which the allotment is to be made as authorized by Pub. L. 95–561, section 1129, Title XI.

§ 31h.52 Initial allotments.

The Assistant Secretary—Indian Affairs, as requested by the Director, shall make initial allotments to Bureau operated schools, Agency Education Offices, and Central and Area Offices. The Assistant Secretary—Indian Affairs shall make initial allotments for tribally operated schools to appropriate Agency Superintendents of Education, or as otherwise provided by the Director.

§ 31h.53 Obligation of funds.

(a) Authority to obligate funds in the Bureau operated schools shall be governed by provisions of the Bureau Manual (42 BIAM).

(b) Authority to obligate funds in tribally operated contract schools shall be governed by contracting procedures of 25 CFR 271.

(c) Authority to obligate funds in all Bureau funded and operated schools shall be based upon the tentative allotment (§ 31h.51) for the period beginning October 1 of any fiscal year. The tentative allotment as restricted by a continuing resolution, if applicable, would govern until computation and notification of initial allotments as described in this sub-part, as adjusted by the Director in accordance with §§ 31h.75, 31h.78, 31h.90, 31h.102 and 31h.111.

§ 31h.54 Apportionment of entitlements to schools.

(a) *Bureau operated schools.* The Director shall make quarterly apportionments directly to the local school supervisor or to the school's responsible fiscal agent as specifically delegated in accordance with § 31h.55 of this part. Such quarterly apportionments will be made as determined in § 31h.53 of this part.

(b) *Contract schools.* The Agency Superintendent of Education, or another agent as designated by the Director, shall be responsible through the contracting officer in accordance with 25 CFR 271 for effecting and adjusting contracts with tribally operated schools.

§ 31h.55 Responsible local fiscal agent.

The responsible fiscal agent shall:

(a) Expend funds solely in accordance with the local educational financial plan, as ratified or amended by the local school board, unless in the case of Bureau operated schools, this plan has been overturned under the appeal process prescribed in these rules, in which case expenditures shall be made in accordance with the local educational financial plan as determined by the Agency Superintendent of Education.

(b) Sign all documents required for the obligation and or payment of funds and documentation of receipt of goods and services.

(c) Report at least quarterly to the local school board on the amounts expended, amounts obligated and amounts currently remaining in funds budgeted for each program of services in the local financial plan.

(d) Recommend changes in budget amounts, as required for effective management of resources to carry out the local financial plan, and incorporate such changes in the budget as are ratified by the local school board, subject to provisions for appeal and overturn.

§ 31h.56 Financial records.

Each responsible fiscal agent receiving funds under the ISEP shall maintain expenditure records in accordance with financial planning system procedures as required herein.

§ 31h.57 Access to and retention of local educational financial records.

The Comptroller General, the Assistant Secretary, the Director, or any of their duly authorized representatives shall have access for audit and examination purposes to any of the local schools' accounts, documents, papers and records which are related or pertinent to the school's operation. The provisions of 25 CFR 271.47 will be applicable in the case of tribally contracted schools.

§ 31h.58 Expenditure limitations for Bureau operated schools.

(a) Expenditure of allotments shall be made in accordance with applicable federal regulations and local education financial plans, as defined in § 31h.60(b), below.

(b) Where there is disagreement between the Area or Agency support service staff and the responsible fiscal agent regarding the propriety of the obligation or disbursement of funds, appeal shall be made to the Director.

Subpart E—Local Educational Financial Plan

§ 31h.60 Definitions.

As used in this subpart, the term:

(a) "Consultation" means soliciting and recording the opinions of school boards regarding each element in the local financial plan, as set forth below, and incorporating those opinions to the greatest degree feasible in the development of the local educational financial plan at each stage thereof.

(b) "Local educational financial plan" means that plan which programs dollars for educational services for a particular Bureau operated or funded school which has been ratified in an action of record by the local school board, or determined by the superintendent under the appeal process set forth in this subpart.

(c) "Budget" means that element in the local educational financial plan which shows all costs of the plan by discrete programs and sub-cost categories thereunder.

§ 31h.61 Development of local educational financial plans.

A local educational financial plan shall be developed by the local school supervisor, in active consultation with the local school board, based on the tentative allotment received as provided in § 31h.51.

§ 31h.62 Minimum requirements.

The local financial plan shall include, at a minimum, each of the following elements:

(a) Separate programing of funds for each group of Indian students for whom a discrete program of services is to be provided. This must include at a minimum each program for which funds are allotted to the school through the Indian School Equalization Program;

(b) A brief description, or outline, of the program of student services to be provided for each group identified;

(c) A budget showing the costs projected for each program, as determined by the Director through the development of a uniform cost accounting system related to the Indian School Equalization Program;

(d) A statement of the percentage relationship between the total of the anticipated costs for each program and the amount the students served by that program will generate under the Indian School Equalization Formula. Beginning in FY 1981, there shall also be included a statement of the cost incurred for each program in the preceding fiscal year and the amount received for each such program as the result of the Indian School Equalization Formula. For exceptional child programs the plan

must provide that at least 80% of the funds generated by students served by the program be spent on those students;

(e) A provision for certification by the chairman of the school board that the plan as shown, or as amended, has been ratified in an action of record by the school board; or

(f) Except in the case of contract schools, a provision for certification by the Agency Superintendent of Education that he or she has approved the plan as shown, or as amended, in an action overturning the rejection or amendment of the plan by the school board.

§ 31h.63 Procedures for development of the plan.

(a)(1) Within thirty (30) days after receipt of the tentative allotment for the coming school year, the school supervisor shall meet and consult with the local school board on the local financial plan.

(2) The school supervisor shall discuss at this meeting the present program of the school and any proposed changes he or she wishes to recommend. The school board members shall be given every opportunity to express their own ideas as well as their views on the supervisor's recommendations. Subsequently the school supervisor shall present a draft plan to the school board with recommendations concerning each of the elements outlined in this sub-part.

(b) Within sixty (60) days of receipt of the tentative allotment, the school board shall review the local financial plan as prepared by the school supervisor and, by a quorum vote, shall have the authority to ratify, reject or amend such financial plan.

(c) The school board shall have the authority, at any time following the ratification of the financial plan on its own determination or in response to the supervisor, to revise such plan to meet needs not foreseen at the time of preparation of the plan.

(d) If the supervisor does not wish to file an appeal, he or she shall transmit a copy of the approved local financial plan within two weeks of the school board action, along with the official documentation of the school board action, to the office of the Agency Superintendent of Education. Later revisions to the financial plan must be transmitted in the same manner.

(e) In the event that the school board does not act within the prescribed deadline, the financial plan shall be referred to the Agency Superintendent of Education for ratification, subject to subsequent amendment by the school board in accordance with paragraph (c) above.

(f) The Agency Superintendent of Education will review the local financial plan for compliance with prescribed laws and regulations or may refer the plan to the Solicitor's Office for legal review. If the Superintendent notes any problem with the plan, he or she shall notify the local board and local supervisor of the problem within two weeks of receipt of the local financial plan and shall make arrangements to assist the local school supervisor and board to correct the problem. If the Superintendent is not able to correct the problem, it shall be referred to the Director of the Office of Indian Education.

§ 31h.64 Procedure for financial plan appeals.

(a) If the supervisor of a school finds an action of the local school board, in rejecting or amending the local financial plan, to be unacceptable in his or her judgment as a professional educator, the supervisor may appeal to the Agency Superintendent of Education under the following procedures and conditions:

(1) The appeal must be presented in writing, within ten (10) consecutive days of the supervisor's receipt of the school board decision which is appealed.

(2) The written appeal shall contain, at a minimum, the following information and documentation:

(i) All descriptive information concerning the element(s) in the local financial plan being appealed, substantially as presented to the school board prior to its decision.

(ii) Official documentation of the school board's decision amending or rejecting the element(s) being appealed.

(iii) A statement of the school supervisor's reasons for appealing the board's actions.

(iv) Signed certification by the supervisor that his/her reason for appeal has been presented to the chairperson of the school board, and that the school board has been offered full opportunity to submit a counter statement to the Superintendent.

(3) If the supervisor of the school is also the Superintendent, the appeal shall be made following the above procedures to the Director, who shall follow procedures set forth below, as acting Superintendent for the appeal.

(b) Within ten (10) consecutive days of receiving the appeal, the Agency Superintendent of Education shall review the appeal documents to determine if they are complete according to the criteria established in this subpart, and if so shall notify both the school supervisor and the school board of a date for an informal conference.

(c) Within twenty-five (25) consecutive days of receiving the referral for approval, the Superintendent shall:

(1) Hear any arguments on either or both sides of the appeal issue(s) at the option of either the supervisor of the school board involved.

(2) Following the informal conference, either sustain or reject the appeal for good cause, which the Superintendent shall set out in writing to both the supervisor and school board.

(d) Nothing in this subsection shall be construed as enabling the supervisor of a tribally operated school to appeal decisions of a contract school board to the Agency Superintendent for Education, nor as empowering the Agency Superintendent for Education to overturn any action of a contract school board under this appeal process as established in Pub. L. 93–638.

(e) Within 180 days after the effective date of this subpart, the Assistant Secretary shall develop and publish in the **Federal Register** procedures for a formal hearing process which shall be available to school boards who believe their decisions regarding the financial plan have been overturned for other than good cause.

Subpart F—Contingency Funds

§ 31h.70 Definitions.

As used in this Subpart, the term:

(a) "Cumulative total" means the sum of all funds carried over from the previous fiscal year(s) as unobligated and the amount for the current year.

(b) "Temporary replacement" means the substitution of a structure on a temporary basis in lieu of the original permanent structure that has been lost to use. The temporary use will expire at the time that arrangements are completed for the availability of a structure similar to the original.

§ 31h.71 Establishment of the School Disaster Contingency Fund.

The Bureau's annual budget justifications shall identify an amount for a separate budget account entitled the School Disaster Contingency Fund (SDCF). All schools and dormitories receiving support under the provisions of subparts B and C of this part are eligible for disaster aid from this contingency fund.

§ 31h.72 Continuing and cumulative provisions.

Unobligated funds from the School Disaster Contingency Fund shall be continued over at the end of a fiscal year in the same account for the next year, except when otherwise provided in appropriations acts. New funds shall be

added when appropriated but the Fund should not exceed a $1.5 million cumulative total unless otherwise determined by the Assistant Secretary.

§ 31h.73 Purposes.

Disbursements from the School Disaster Contingency Fund shall be for the following purposes:

(a) Costs of replacement of items in the following categories including shipment and installation, in the event of their destruction by earthquake, fire, flood, storm, or other "acts of God," and acts of massive and catastrophic vandalism where such costs are not already covered in an insurance policy in force at the time of destruction and where such destruction could not have been prevented by prudent action by the officials responsible for the care of such items:

(1) Educational materials and supplies.

(2) Equipment and furnishings.

(3) Dormitory materials and supplies, for student use, and dormitory equipment and furnishings, including those necessary for staff living space, if integral to the dormitory operation.

(4) Food services supplies, furnishings and equipment not a fixed part of structures.

(5) Office supplies and equipment for minimum essential administrative operations.

(6) Janitorial supplies and cleaning equipment.

(7) Student clothing and personal supplies if destroyed along with a school facility.

(8) Fuel supplies, tanks, lines, connections, meters, etc.

(9) Transportation equipment not otherwise provided for through the General Services Administration.

(10) Costs of repair of utility systems or components thereof, as necessary to restore utility services.

(b) Costs of temporary replacement of school facilities in the event of their destruction by earthquake, fire, flood, storm or other "acts of God," until they can be reconstructed. These costs may include purchase of or movement of portable structures, including costs of delivery, installation, and connection to utility systems. They may also include costs of any fixed equipment which is integral to such structures. Structure types for which such temporary replacement costs may be paid or reimbursed are as follows:

(1) Employee quarters, if required for employee housing due to the isolation of the duty station, and on other housing is available within a reasonable commuting distance. Reasonable commuting distance will be determined under existing policies or by the Director.

(2) Dormitories, including employee apartment space if integral to the operation of the dormitory.

(3) Offices required for minimum essential administrative operations at the local school level.

(4) Academic facilities, including classrooms, kindergartens, libraries and special instructional spaces such as vocational shops and home economics rooms.

(5) Kitchens and dining facilities, including laundry and multipurpose spaces.

(6) Infirmaries, clinics and health service spaces, in school locations in which such services are not otherwise available.

(7) Separate restroom facilities, if none are otherwise available for operation of instructional and dormitory programs.

§ 31h.74 Application procedures.

Application for disbursement from the School Disaster Contingency Fund shall be made to the Director of the Office of Indian Education Programs, through the Agency Superintendent of Education for the school affected. Applications shall be subject to review and comment by the Superintendent, and the Area Director for Education of the Area in which the school is located, but shall not require the approval of these officers. Such review and comment activities shall be carried out concurrently with the Director's processing of the application so that there are no delays in the transmission of the application to the Director. The Director shall develop such application forms and requests for information and documentation as are necessary to prove both loss and the fact that replacement costs are outside the normal budgetary capacity of the school operation at either the local school, Agency or Area levels.

§ 31h.75 Disbursement procedures.

Disbursements from the SDCF shall be made only on the direct authorization of the Director, on the merits of each such application received, on a first come, first served basis and in amounts determined at the Director's discretion in accordance with the purposes and expenditure prohibitions set forth in this section.

§ 31h.76 Prohibitions of expenditures.

(a) The following costs shall not be reimbursed or paid under the SDCF:

(1) Capital expenditures for construction of permanent facilities.

(2) Capital expenditures for reconstruction or refurbishment of facilities no longer in use except where such expenditure is the most cost effective way of temporarily replacing other destroyed facilities.

(3) Temporary replacement of facilities or replacement of equipment which has simply become outmoded and obsolete, or which has been "condemned" or declared unserviceable by administrative procedures, which is either still in existence or has been razed or destroyed as the result of an administrative decision.

(4) Costs of continued normal program operations which are not increased by a disaster.

(5) Personnel costs, except for temporary personnel hired to meet an emergency situation.

(6) Start-up costs for new or expanding school programs.

(7) Costs of repairs necessitated by neglect, or failure to provide routine scheduled maintenance and minor repair.

(8) Replacement costs of personal property of school employees, regardless of value or circumstances of destruction.

(9) General budgetary shortfalls due to improper fiscal management.

(10) Budgetary shortfalls from a past fiscal period, after funds have been carried forward in the SDCF to a new fiscal period.

(11) Costs of replacement of items stolen or destroyed by deliberate vandalism, neglect, or abandonment.

(12) Costs of items, services or activities for which budgetary provisions are made in other budget categories of the Bureau not subject to distribution under the Indian School Equalization Program.

(b) Temporary replacement costs for the following structure types shall not be paid or reimbursed from the SDCF:

(1) Recreational structures, such as auditoriums, field houses, clubs, canteens, chapels, student centers, grandstands, gymnasiums, etc.

(2) Auxiliary buildings not used in student instructional or dormitory programs, such as warehouses, storage sheds, garages, firehouses, maintenance shops, law enforcement centers, instructional materials and audio-visual centers, and employees' clubs.

(3) Temporary replacement costs shall be paid or reimbursed only to the extent necessary to permit expeditious continued operation of the school dormitory care programs affected by the destruction of facilities.

§ 31h.77 Transfer of funds from Facilities Engineering for other contingencies.

In order to reimburse schools for the costs of unforeseen and extraordinary

procurement costs and for major repairs of reconstruction resulting from the disaster, the Director may request a transfer of funds from funds appropriated for Bureau Facilities Engineering to the School Disaster Contingency Fund for such purposes. When a separate formula is established by regulation for school maintenance and operations, an appropriate separate contingency fund shall be established to cover such costs.

§ 31h.78 Establishment of a formula implementation set-aside fund.

There shall be set aside an amount not to exceed $2 million dollars to be used during fiscal year 1980 by the Director to facilitate the implementation of formula funding under this part. The fund is to provide the means of adjusting particular local school entitlements which are allocated in error due to underprojections, data error, misclassification of students, and similar reporting errors, or to provide for the initial funding of new schools under the formula, which have been started after the spring ADM counts, without reducing allotments made for other schools. Balances in this set-aside fund shall be apportioned through the formula during the first week in April by the Director or at such earlier time as he or she deems that significant ADM reporting fluctuations have ceased.

§ 31h.79 Prohibition.

The formula implementation set-aside fund shall not be used as a discretionary fund by the Director for any purpose, and it shall be allocated solely through the Indian School Equalization Formula.

Subpart G—School Board Training

§ 31h.90 Establishment of a school board training categorical fund.

An amount shall be set aside annually for the purpose of providing training for school board members as authorized by Pub. L. 95–561, section 1129(d). Each school board shall receive a flat sum, initially for FY 1980 to be set at $5,000, with Alaska and off-reservation boarding schools to receive an additional 25 percent of this flat sum amount per annum.

§ 31h.91 Other technical assistance and training.

The provision of funds under § 31h.90 above does not relieve the Director of the responsibility for assuring that adequate technical assistance and training services are provided to school boards to the greatest extent possible. The provision of assistance under this subpart does not preclude a school board or its trial governing body from receiving financial or other assistance from the Bureau under the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; Pub. L. 93–638; 25 U.S.C. 450 et seq.).

§ 31h.92 Training activities.

Training funds provided under this part may be used for training in the following subject areas:

(a) Educational philosophy;
(b) Community school programs;
(c) Legal aspects of being a school board member;
(d) School board operations and procedures;
(e) Fiscal management;
(f) Formula funding;
(g) Personnel matters;
(h) Union negotiations;
(i) Contracting procedures and obligations;
(j) Special curriculum areas;
(k) Students' rights and responsibilities;
(l) Education agency relations;
(m) Alternative sources of Federal grants;
(n) Juvenile justice;
(o) Teachers training and inservice options;
(p) Needs assessment, program development, proposal writing; and
(q) Other training activities school boards deem appropriate and applicable to their situation and which are approved by the Director.

§ 31h.93 Allowable expenditures.

Allowable expenditures under this subpart are limited to:

(a) Contracting with individuals and organizations for training services,
(b) Membership fees in school boards' associations and purchase of their materials and publications,
(c) Membership reimbursement for subsistence and travel expenses incurred while participating in training activities; and
(d) Cooperative contracts with other school boards for joint training or technical assistance activities.

§ 31h.94 Limitations on expenditures.

(a) No expenditure may be authorized except in accordance with a decision of record by the school board and each payment shall be made under written authorization of the board chairperson.

(b) Expenditures under this subpart may not be made for school board members' stipends or honorariums associated with participation in training activities. Payments for such may, however, come from the school's operational budget, if so designated and approved in the school's operational budget, if so designated and approved in the school's local educational finance plan. The maximum amounts of such payments shall be determined in accordance with the laws or regulations of the tribe involved and shall be subject to approval by the Director. In the absence of such tribal laws or regulations, such maximums shall be determined by the Director in consultation with the school board. Payments under this subpart may not be made to any employee of a school served by the school board being trained or assisted.

§ 31h.95 Reporting of expenditures.

An accounting of all expenditures of school board training funds shall be maintained as a supplement to each school's public accounting records.

§ 31h.96 Provision for annual adjustment.

The allocation of $5,000 per school may be annually adjusted by the Director.

§ 31h.97 Training for agency school board.

Provisions for training agency school board members, except as they may also be members of local school boards, are not included in these local school board training funds. If required, such provision shall be incorporated in agency or area office educational administration training plans and budgets.

Subpart H—Student Transportation

§ 31h.100 Definitions.

As used in this subpart, the term:

(a) "Basic transportation miles" means the daily average of all bus miles logged for round trip home-to-school transportation of day students.

(b) "Transported student" means the average number of students transported to school on a daily basis.

(c) "School bus" means a passenger vehicle, operated by an operator in the employ of, or under contract to, a Bureau operated or funded school, who is qualified to operate such a vehicle under State or Federal regulations governing the transportation of students; which vehicle is used to transport day students to and/or from home and the school.

§ 31h.101 Purpose and scope.

The purpose of this section is to provide funds to each school for the round trip transportation of students between home and the school site.

§ 31h.102 Allocation of transportation funds.

Transportation funds for FY 1980 shall be allocated to each school as follows:

(a) *Day students.* Funds shall be allocated to each school which provides daily transportation of students between the student's residence and the school site by the following formula:

(1) 180 × ($.85 per basic transportation mile + $.61 per transported student).

(2) The allocation shall be based on the daily average of transported students and basic transportation miles computed during the October and November count periods.

(3) This formula shall not apply to any dormitory which provides daily transportation between dormitory and the public school which the dormitory student attends.

(b) *Boarding school and dormitory students.* Funds shall be allocated to each boarding school and dormitory for the transportation of resident students according to the following criteria:

(1) For each student whose home is more than 1 mile and no more than 100 miles from the boarding school or dormitory, the school shall receive $3.20 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(2) For each student whose home is more than 100 and no more than 350 miles from the boarding school or dormitory, the school shall receive $1.60 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(3) For each student whose home is more than 350 miles from the boarding school or dormitory, the school shall receive $.48 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home agency to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(4) For each student whose home is more than 350 miles from the boarding school or dormitory and for whom it is necessary to provide airplane transportation, the school shall receive $.60 per mile per student flown per year. The miles per student shall be the actual one way air miles between the airport closest to the school site and the closest to the student's home. Airplane transportation shall be provided only when ground transportation is unavailable or not cost-effective.

(5) For each student attending Mt. Edgecumbe Boarding School, Sitka, Alaska, who requires airplane transportation, the school shall receive $1.05 per mile per student flown per year. The miles per student shall be the one way air miles between the Sitka, Alaska airport and the airport nearest the student's home.

(6) At least 80% of the funds received by the school under 3, 4, and 5 above must be used for student travel between home and school.

§ 31h.103 Annual Transportation Formula Adjustment.

The Director will review transportation allotment factors each year and make changes in factors based on changes in transportation costs.

Subpart I—Interim Maintenance and Minor Repair Fund

§ 31h.110 Establishment and funding of an Interim Maintenance and Minor Repair Fund.

There is established in the Division of Facilities Management a separate temporary fund entitled the Interim Maintenance and Minor Repair Fund. The Assistant Secretary shall cause the distribution of an amount of $1 million, under the FY 1980 Appropriation for the Bureau, from budget activity 3500, "General Management and Facilities Operation", to the direct use of schools, and shall create an appropriate account or subaccount for the Interim Maintenance and Minor Repair Fund and credit these funds thereto.

§ 31h.111 Conditions for distribution.

Funds from the Interim Maintenance and Minor Repair Fund shall be distributed to Bureau operated and funded schools and shall be separately earmarked in local school financial plans solely for expenditure at the discretion of the school supervisor for cost of school facility maintenance and minor repair. These funds shall be used to meet immediate minor repair and maintenance needs.

§ 31h.112 Allocation.

(a) Interim Maintenance and Minor Repair funds shall be allocated to all Bureau operated and contract schools based on the number of square feet of floor space used for that school's educational program, for student residence and for support facilities. Staff quarters shall be specifically excluded from the computation.

(b) Square footage figures used in determining school allocations shall be taken from the facilities inventory maintained by the Division of Facilities Engineering.

(c) In those cases, such as contract schools, where square footage figures are not now available, it shall be the responsibility of the Bureau's Division of Facilities Engineering to correct the information.

(d) Schools in Alaska shall receive a 25% cost adjustment increase in the computation of their allocation.

§ 31h.113 Use of funds.

Funds allocated under this provision for maintenance and minor repair shall be used for no other purpose.

§ 31h.114 Limitations.

Nothing in this provision shall be interpreted as relieving the Bureau branch of Facilities Management or its field offices of any responsibility for continuing to provide maintenance and repair service to schools through existing procedures.

Subpart J—Interim Administrative Cost Formula

§ 31h.120 Purposes and scope.

The purpose of this subpart is to provide funds at the Office of Indian Education Programs and the area and agency education offices for FY 1980 for administration of all Bureau of Indian Affairs education functions, including school operations, continuing education, and Johnson O'Malley programs.

§ 31h.121 Definitions.

(a) "Area Education Office" means the office responsible for Bureau education programs and functions in a Bureau Area Office.

(b) "Area" means the Area Education Office and all agency education offices within the geographic area.

§ 31h.122 Accounting.

A separate education administrative cost account element will be established in the Bureau's education funds accounting system beginning in FY 1980.

§ 31h.123 Determination of present cost levels.

In previous years element 10 ("Education and Training-General,") funds have included special program contracts as well as direct administrative costs. To determine what portion of element 10 constituted actual direct administrative costs for each area in FY 1979, the Director, in consultation with the Area Director for Education of the Area where the contract is now held, will review each of these element 10 contracts for FY 1979 and determine the

appropriate status of each according to the following criteria:

(a) All contracts for non-administrative services shall be deleted from the computation of current and future administrative cost figures.

(b) Contracts for services which will be funded elsewhere under the Indian School Equalization Program shall be terminated as of September 30, 1979.

(c) All such contracts which provide unique educational services which are not funded elsewhere under the Indian School Equalization Program are to be reviewed on a contract by contract basis and a determination made by the Director whether each shall be continued or terminated. Those contracts which are continued shall be placed under an appropriate non-administrative education cost account. Funds equal to the FY 1979 contract amount shall be transferred to this account from the FY 1980 element 10 appropriation.

§ 31h.124 Allotment of educational administrative funds.

The FY 1980 total budget for educational administration shall be allotted to the Director and to officials in the Area and Agency Education Offices designated by the Director. The total amount to be allotted shall be equal to the amount budgeted for element 10 in the FY 1980 budget appropriations request, less the amounts which were spent in FY 1979 for non-administrative contract programs and services (as determined in section 31h.123) and less any reduction due to appropriation of less than the requested amount of a reprogramming approved by the Congressional Appropriation Committees. This total shall be called the "total available for allotment" and shall be distributed to the various BIA educational administration offices as follows:

(a) The Office of the Indian Education Programs allotment shall be $4,353,400, which is equal to the FY 1979 element 10 budget. This amount shall be used to fund salaries and personal services, general office overhead, and management improvement projects. None of these funds shall be used to fund special projects. Any unused salary lapse occurring in the Office of Indian Education Programs as of August 1, 1980 shall be apportioned to the schools through the formula.

(b) Each area shall receive for both Area and Agency Education Office administration a share of the balance in the total available allotment, after funds for the office of Indian Education Programs have been allotted, which shall be computed as follows:

(1) The Area's share for administration of Johnson O'Malley (JOM) and Higher Education and Adult Education programs shall be equal to 2% of the total of JOM and Higher Education and Adult Education funds for programs administered in and by the Area. This sum shall be computed and alloted to the Area from the total available for allotment prior to computation of any additional amounts for the Area.

(2) The funds remaining in the total available for allotment shall be allocated for the general administration of educational functions in all Area and Agency Education Offices to be apportioned as follows:

(i) Twenty percent of the remaining total available for allotment shall be apportioned on the basis of each area's percentage of Indian students in average daily membership in Bureau operated and funded schools in the area compared to the national total of such membership.

(ii) The remaining 80 percent shall be apportioned on the basis of number of Bureau operated or funded schools and institutions located within the area. These funds shall be apportioned across areas based on a weighting factor .6 times the number of schools tribally operated under contract or other conveyance and a weight of 1.0 times the number of schools which are Bureau operated.

(3) To meet the statutory requirements for a salary supplement for Alaskan educational staff, an add-on weight of .25 will be used as a factor in determining the amount for distribution within the Juneau area under § 31h.124b (1) and (2).

§ 31h.125 Allotment exceptions.

Notwithstanding the provisions above, no Area shall receive less than 85% of the amount allotted to that Area for education administration in element 10 in FY 1979, excluding the sum spent on non-administrative contracts in FY 1979.

§ 31h.126 Distribution of administrative funds within area.

Within each Area, funds allotted to that Area shall be distributed to the Area and Agency Education Offices as follows:

(a) No Area Education Office shall receive an amount in excess of 85% of the element 10 allotments which that office received in FY 1979 exclusive of non-administrative contracts, except with the consent of the Director.

(b) Remaining funds in the Area after allotment to the Area Education Office shall be allotted by the Director to agency education offices on the basis of financial plans approved by Agency School Boards, where such boards exist, and in those cases where no school boards exist approved by the Director.

(c) In cases where the Director must during the course of the fiscal year make administrative transfers of Area or Agency administrative positions for the purpose of implementing policy decisions on direct line authority, the budgeted amounts for salary and other direct costs associated with those positions shall be transferred with them.

(d) Within 120 days of the effective date of this Part, the Director shall establish procedures to provide for Agency and Area school board approval of Area and Agency financial plans, where such boards are established.

(e) In developing such procedures, he or she shall consult all affected tribal governments of each area or agency.

§ 31h.127 Exceptional education services at Area and Agency Offices.

An amount of $700,000 shall be distributed to the Areas based on the Area's proportion of the number of exceptional education students in average daily membership in all Bureau funded schools. These funds shall be used only for exceptional education services and program coordination.

§ 31h.128 Provision for administrative cost formula based on administrative functions.

The Director shall propose amendments to these regulations to provide a formula system for distribution of administrative funds to Area and Agency Education Offices based on education functions to be performed at each location. This system of distribution shall be implemented for FY 1981, to reflect the education functions to be performed at each administrative level.

Subpart K—Prekindergarten Programs

§ 31h.130 Interim fiscal year 1980 and fiscal year 1981 funding for pre-kindergarten programs previously funded by the Bureau.

Those schools having pre-kindergarten programs funded fully or in part from Bureau education funds in fiscal year 1979 shall be funded from Bureau education funds by the Director in fiscal year 1980 and fiscal year 1981 at their fiscal year 1979 Bureau education funding levels. The fiscal year 1979 pre-kindergarten Bureau funding amount for each Bureau funded school shall be deducted from the school's fiscal year 1979 Bureau Education Budget amount prior to application of

the phase-in provision detailed in § 31h.19.

§ 31h.131 Addition of pre-kindergarten as a weight factor to the Indian School Equalization Formula in fiscal year 1982.

The Director, in consultation with the tribes and school boards, shall determine appropriate weight factors needed to include pre-kindergarten programs in the Indian School Equalization Formula in fiscal year 1982. Based on a needs assessment, to be completed by January 1, 1980, pre-kindergarten programs shall be included in the Bureau's education request for fiscal year 1982.

Subpart L—Contract School Operation and Maintenance Fund

§ 31h.140 Definitions.

Contract school operation and maintenance costs for fiscal year 1979 means the sum of costs for custodial salaries and fringe benefits, related supplies and equipment and equipment repair, insurance, and school operation utilities costs, where such costs are not paid by the Division of Facilities Management or other noneducation Bureau sources.

§ 31h.141 Establishment of an interim fiscal year 1980 operation and maintenance fund for contract schools.

There is established in the Division of Facilities Management a separate fund entitled the Contract School Operation and Maintenance Fund. The Secretary shall cause the distribution of an amount of $2.5 million, under the fiscal year 1980 appropriation for the Bureau, from budget activity 3500. "General Management and Facilities Operations", to the schools through this fund and shall create an appropriate account or subaccount for the Contract School Operation and Maintenance Fund.

§ 31h.142 Distribution of funds.

(a) Each contract school shall receive in fiscal year 1980 a portion of the Contract School Operation and Maintenance Fund determined by the percentage share which that school's fiscal year 1979 operation and maintenance cost represents in the total fiscal year 1979 operation and maintenance cost for all such schools.

(b) To be eligible for these funds, a contract school shall submit a detailed report of actual operation and maintenance costs for fiscal year 1979 to the Director by November 23, 1979. These cost figures will be subject to verification by the Director to assure their accuracy prior to the allotment of any funds under this subpart.

(c) Any funds generated under this subpart shall be included in the computation of the phase-in amount as set forth in § 31h.19 if supplemental operation and maintenance funds were included in a school's fiscal year 1979 3100 contract funds.

§ 31h.143 Future consideration of contract school operation and maintenance funding.

The Assistant Secretary shall arrange for full funding for operation and maintenance of contract schools by fiscal year 1981.

October 18, 1979.

Forrest J. Gerard,

Assistant Secretary, Indian Affairs.

[FR Doc. 79-33070 Filed 10-25-79; 8:45 am]

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Federal Register

Friday
October 26, 1979

Part VI

Department of the Interior

Bureau of Land Management

Sale of Public Lands

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Group 2700

Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Secretary of the Interior is authorized by section 203 of the Federal Land Policy and Management Act of 1976 to sell tracts of public land, except lands in units of the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails where such action is indicated as a result of land use planning and specific criteria set forth in the Act are met. This proposed rulemaking sets forth the procedure for sales of public land.

DATE: Comments by: December 26, 1979.

ADDRESS: Send comments to: Director (650), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review in Room 5555 of the above address from 7:45 a.m. to 4:15 p.m. on regular work days.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen H. Spector, (202) 343-8731; or Mr. Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (43 U.S.C. 1701) declares in Section 102(a)(1) that it shall be the policy of the United States that "the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest." Section 203(a) provides for such disposals by authorizing the sale of a tract of public lands, where, as a result of land use planning, the Secretary determines that the sale of such a tract meets specific disposal criteria. This proposed rulemaking sets forth the rules and procedures under which the Secretary of the Interior proposes to carry out this authority.

The procedure outlined in this proposed rulemaking utilizes the Bureau of Land Management's land use planning system to the maximum extent possible for determining which tracts of public land meet the disposal criteria. In the Federal Land Policy and Management Act, Congress expressed its desire that future disposals be subject to land use planning and public participation. The procedure outlined in the draft proposed rulemaking provides for Bureau initiated actions, with public and individual input coming during the planning process.

Proposals from the public nominating tracts of public lands for disposal through sale can be considered by the authorized officer either as a step in the planning process, in the context of an existing plan or as a revision or amendment to an existing land use plan.

Many specific procedures for the sale of land are prescribed in the statute. Other procedures in the proposed rulemaking were adopted or modified from former sales procedures.

The Act authorizes modified or noncompetitive bidding but does not mandate any specific procedure. The proposed rulemaking allows the authorized officer, usually the District Manager, discretion in determining when to deviate from competitive bidding and what type bidding method to employ. These bidding procedure decisions and justifications will be published prior to the sale.

The principal author of this proposed rulemaking is Stepen H. Spector, Division of Land Resources and Realty, Bureau of Land Management assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 43332(2)(C)) is required.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 44.

Under the authority of sections 203 and 310 of the Federal Land Policy and Management Act (43 U.S.C. 1713, 1740), it is proposed to amend Group 2700, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations as set forth below:

1. Part 2710 is revised as follows:

Group 2700—Disposition—Sales

PART 2710—SALES—FEDERAL LAND POLICY AND MANAGEMENT ACT

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Authority: 43 U.S.C. 1713, 1740.

Subpart 2710—Sales—General provisions

§ 2710.0-1 Purpose.

The regulations in this part implement the sale authority of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713).

§ 2710.0-2 Objective.

The objective is to provide for the orderly disposition at not less than fair market value of public lands identified for sale as part of the land use planning process.

§ 2710.0-3 Authority.

(a) The Secretary of the Interior is authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), to sell public lands where, as a result of land use planning, it is determined that the sale of such tract meets the following disposal criteria:

(1) Such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(2) Disposal of such tract shall serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on lands other than public lands and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership; or

(3) Such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.

(b) The Secretary of the Interior is authorized by section 310 of the Federal

Land Policy and Management Act (43 U.S.C. 1740) to promulgate rules and regulations to carry out the purpose of the Act.

§ 2710.0-5 Definitions.

As used in this part, the term

(a) "Public lands" means any lands and interest in lands owned by the United States and administered by the Secretary through the Bureau of Land Management, except:

(1) Lands located on the Outer Continental Shelf;

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(d) "Act" means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701).

(e) "Family sized farm" means the unit of public lands determined to be chiefly valuable for agriculture, that is sufficient to provide an anticipated adequate return and main source of income for the farm family. The determination of the smallest practical size is an economic decision to be made on a local area basis considering, but not limited to, factors such as: climatic conditions, soil character, availability of irrigation water, topography, usual crop(s) of the locale, marketability of the crop(s), production and development costs, and other physical characteristics which shall give reasonable assurance of continued production under proper conservation management.

§ 2710.0-6 Policy.

(a) Sales under this part shall be made only in implementation of an approved land use plan or analysis in accordance with part 1600 of this title.

(b) Public lands determined to be suitable for sale shall be offered only on the initiative of the Bureau of Land Management. Indications of interest to have specific tracts of public lands offered for sale shall be accomplished through public input to the land use planning process. (See §§ 1601.1-1 and 1601.8 of this title).

(c) Sales of public lands shall generally be through competitive bidding procedures provided for in § 2711.3-1 of this title.

(d) Sales of public lands determined to be chiefly valuable for agriculture shall be no larger than necessary to support a family-sized farm.

(e) The sale of family-sized farm units shall be limited to one unit per bidder and one unit per family. The limit of one unit per family is not to be construed as limiting children eighteen years or older from bidding in their own right.

(f) Sales under this part shall not be made at less than fair market value. Such value is to be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the *Uniform Appraisal Standards for Federal Land Acquisitions*. Technical review and approval for conformance with the appraisal standards shall be conducted by the authorized officer.

(g) Constraint and discretion shall be used with regard to the terms, covenants, conditions and reservations authorized by section 208 of the act that are to be in sales patents and other conveyance documents, except where inclusion of such provisions is required by law or for protection of valid existing rights.

§ 2710.0-8 Lands subject to sale.

All public lands, as defined by § 2710.0-5 of this title, are subject to sale pursuant to this part, except:

(a) Those public lands within the revested Oregon California Railroad and reconveyed Coos Bay Wagon Road grants which are more suitable for management and administration for permanent forest protection and other purposes as provided for in the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181(a)); May 24, 1939 (53 Stat. 753); and section 701(b) of the act.

(b) Public lands in units of the National Wilderness Preservation System, National Wild and Scenic Rivers System and National System of Trails.

Subpart 2711—Sales—Procedures

§ 2711.1 Initiation of sale.

§ 2711.1-1 Identification of tracts by land use planning.

(a) Tracts of public lands shall only be offered for sale in implementation of land use planning prepared and/or approved in accordance with subpart 1601 of this title.

(b) Public input proposing tracts of public lands for disposal through sale as part of the land use planning process may be made in accordance with §§ 1601.3, 1601.6-3 or 1601.8 of this title.

§ 2711.1-2 Notice of realty action.

(a) A notice of realty action offering for sale a tract or tracts of public lands identified for disposal by sale shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the sale. The notice shall include the terms, covenants, conditions and reservations which are to be included in the conveyance document and the method of sale. The notice shall also provide for the right of comment by the public and interested parties to the appropriate official as provided in the review procedures of part 2400 of this title within 30 days after issuance under applicable regulations. Such right of comment shall extend only to discretionary land use factors and is not subject to the right of appeal pursuant to part 4 of this title.

(b) The notice shall be sent to the Governor of the State within which the public lands are located and the head of the governing body of any political subdivision having zoning or other land use regulatory responsibilities in the geographical area within which the public lands are located not less than 60 days prior to the sale. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current or past land users.

(c) The notice shall be published in the **Federal Register** on the first Wednesday of the month and weekly thereafter for three weeks in a newspaper of general circulation in the vicinity of the public lands being sold.

(d) For tracts of public lands in excess of 2,500 acres, the notice shall be submitted to the Senate and the House of Representatives not less than the 90 days prescribed by section 203 of the act (43 U.S.C. 1713(c)) prior to the date of sale. The sale may not be held prior to the completion of the congressional notice period unless such period is waived by Congress.

§ 2711.1-3 Sales requiring grazing permit or lease cancellations.

When the sale of a tract, as identified, requires the cancellation of a grazing permit or lease, notice shall be given the permittee or lessee 2 years prior to disposal except in cases of emergency. A permittee or lessee may unconditionally waive the 2-year notice (See 43 CFR 4110.4-2(b)).

§ 2711.2 Qualified conveyees.

Tracts sold under this part may only be conveyed to:

(a) a citizen of the United States 1 years of age or over;

(b) a corporation subject to the law of any State or of the United States; or

(c) a State, State instrumentality or political subdivision authorized to hold property.

§ 2711.3 Procedures for sale.

§ 2711.3-1 Sales through competitive bidding.

When public lands are offered through competitive bidding:

(a) The date, time, place and manner for submitting bids shall be specified in the notice required by § 2711.1-2 of this title.

(b) Bids may be made by a principal or a duly qualified agent.

(c) Sealed bids shall be considered only if received at the place of sale prior to the hour fixed in the notice and are made for at least the fair market value. Each bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing.

(d) The highest qualifying sealed bid received shall be publicly declared by the authorized officer. If the notice published pursuant to § 2711.1-2 of this title provides for oral bids, such bids, in increments specified by the authorized officer, shall then be invited. After oral bids, if any, are received, the highest qualifying bid shall be declared by the authorized officer. The person declared to have entered the highest qualifying oral bid shall submit payment by cash, personal check, bank draft, money order, or any combination for not less than one-fifth of the amount of the bid immediately following the close of the sale. The successful bidder shall submit the remainder of the full bid price within 30 days of the sale. Failure to submit the full bid price within 30 days shall result in cancellation of the sale of the specific parcel and the deposit shall be forfeited and disposed of as other receipts of sale. In the event the authorized officer rejects the highest qualified bid or releases the bidder from it, the authorized officer shall determine whether the public lands shall be withdrawn from the market or be reoffered.

(e) If the public lands are not sold pursuant to the notice issued under § 2711.1-2 of this title, they may remain available for sale on a continuing basis until sold as specified in the notice.

(f) The acceptance or rejection of any offer to purchase shall be in writing no later than 30 days after receipt of such offer unless the offerer waives his right to a decision within such 30-day period. Prior to the expiration of such periods the authorized officer may refuse to accept any offer or may withdraw any tract from sale if he determines that:

(1) Consummation of the sale would be inconsistent with the provisions of any existing law; or

(2) Collusive or other activities have hindered or restrained free and open bidding; or

(3) Consummation of the sale would encourage or promote speculation in public lands.

(g) Until the acceptance of the offer and payment of the purchase price, the bidder has no contractual or other rights against the United States, and no action taken shall create any contractual or other obligations of the United States.

§ 2711.3-2 Sale by other than competitive bidding.

(a) Public lands may be offered for sale utilizing modified competitive bidding procedures when the authorized officer determines it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies.

(1) Modified competitive bidding includes, but is not limited to:

(i) Offering to designated bidders the right of refusal to meet the highest bid price; or

(ii) A limitation of persons permitted to bid on a specific tract of land offered for sale.

(2) Factors that shall be considered in determining when modified competitive bidding procedures shall be used, include but are not limited to: needs of State and/or local government, adjoining landowners, historical users, and other needs for the tract. A description of the method of modified competitive bidding to be used and a statement indicating the purpose or objective of the bidding procedure selected shall be specified in the notice of realty action required in § 2711.1-2 of this title.

(b) Noncompetitive sales may be utilized when, in the opinion of the authorized officer the public interest would best be served by a direct sale. Examples include, but are not limited to: (1) a tract identified for transfer to State or local government; (2) a tract identified for sale that is an integral part of a project of public importance and speculative bidding would jeopardize the timely completion and economic viability of the project; or (3) there is a need to recognize authorized use, for example, when an existing business would be threatened if the tract were purchased by other than the authorized user.

(c) Once the method of modified competitive or noncompetitive sale is determined and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be by the same instruments as authorized in § 2711.3-1(c) of this title.

§ 2711.4 Compensation for authorized improvements.

§ 2711.4-1 Grazing improvements.

No public lands in a grazing lease or permit may be conveyed until the provisions of part 4100 of this title concerning compensation for any authorized grazing improvements have been met.

§ 2711.4-2 Other private improvements.

Where public lands to be sold under this part contain authorized private improvements, other than those identified in § 2711.4-1 of this title or those subject to a patent reservation, the owner of such improvements shall be given an opportunity to remove them, or the prospective purchaser may compensate the owner of such authorized private improvements and submit proof of compensation to the authorized officer.

§ 2711.5 Conveyance documents.

§ 2711.5-1 Mineral reservation.

Patents and other conveyance documents issued under this part shall contain a reservation to the United States of all minerals. Such minerals shall be subject to the right to explore, prospect for, mine, and remove under applicable law and such regulations as the Secretary may prescribe. However, upon the filing of an application as provided in part 2720 of this title, the Secretary may convey the mineral interest if all requirements of the law are met.

§ 2711.5-2 Terms, convenants, conditions, and reservations.

Patents or other conveyance documents issued under this part may contain such terms, convenants, conditions, and reservations as the authorized officer determines are necessary in the public interest to insure proper land use and protection of the public interest.

§ 2711.5-3 Notice of conveyance.

The authorized officer shall immediately notify the Governor and the heads of local government of the issuance of conveyance documents for public lands within their respective jurisdiction.

2. Group 2700 is further revised by the deletion of the following parts.

PART 2730 [DELETED]

(a) Part 2730 is deleted. However, this Part will remain applicable to existing Small Tract Act leases and their renewal or sale pursuant to subpart 2913 by reference in that subpart.

PART 2750 [DELETED]

(b) Part 2750 is deleted.

PART 2760 [AMENDED]

(c) Part 2760, except subparts 2764 and 2765 are retained.

Guy R. Martin,

Assistant Secretary of the Interior.

October 23, 1979.

[FR Doc. 79-33094 Filed 10-25-79; 8:45 am]

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Friday
October 26, 1979

Part VII

Department of the Interior

Geological Survey

Outer Continental Shelf; Oil and Gas and Sulphur Operations

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Final rule.

SUMMARY: This rule incorporates the modifications of 30 CFR Part 250 required to conform to the Outer Continental Shelf Lands Act Amendments of 1978, 92 Stat. 629 (herein referred to as the "Act"). A proposed rule was published on March 12, 1979, in the **Federal Register** (44 FR 13527). This rule describes new procedures and, to the extent required, modifications of existing practices and procedures that govern oil and gas and sulphur operations in the Outer Continental Shelf (OCS). The more important changes are: (1) The establishment of a "Remedies and Penalties" procedure which implements the civil penalty requirements of section 24 of the Act; and (2) the revision of the provisions of section 250.12 to incorporate the new lease suspension and cancellation provisions of sections 5, 11, and 25 of the Act. Part 250, as modified, also contains changes designed to make it more readable as directed by Executive Order 12044 and 43 CFR Part 14.

DATE: This rule shall become effective December 13, 1979.

ADDRESSES: A copy of this final rule may be obtained from the following offices of the Geological Survey:

Chief, Conservation Division, U.S. Geological Survey, National Center—Mail Stop 620, Reston, Virginia 22092.

Conservation Manager—Eastern Region, U.S. Geological Survey, 1725 K Street, N.W., Suite 204, Washington, D.C. 20006.

Conservation Manager—Gulf of Mexico Region, U.S. Geological Survey, 336 Imperial Office Building, P.O. Box 7944, Metairie, Louisiana 70010.

Conservation Manager—Western Region, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025.

Area Oil and Gas Supervisor—Pacific Area, U.S. Geological Survey, 1340 West Sixth Street, Room 160, Los Angeles, California 90017.

Area Oil and Gas Supervisor—Alaska Area, U.S. Geological Survey, 800 "A" Street, Suite 109, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Branch of Marine Oil and Gas Operations, Conservation Division, U.S. Geological Survey, National Center—Mail Stop 620, Reston, Virginia 22092 (703) 860-7531.

SUPPLEMENTARY INFORMATION:

Background. On September 18, 1978, the Act was signed into law. Certain provisions of the Act supersede the existing practices and procedures and necessitate their revision. In addition, on March 23, 1978, the President issued Executive Order 12044 directing executive Agencies to make regulations as simple and clear as possible. By **Federal Register** notice of March 12, 1979 (44 FR 13527), the Department of the Interior published proposed revisions to 30 CFR Part 250, Oil and Gas and Sulphur Operations in the OCS. The notice explained that most of the proposed changes were designed to eliminate unnecessary and redundant provisions, to reorganize Part 250 into a more coherent program, and to assure that the provisions of the regulations are written in clear English.

Comments. A total of 22 sets of comments and recommendations were timely submitted in response to the invitation contained in the notice of proposed rule published March 12, 1979. The comments and recommendations varied widely in their nature, scope, and content. They presented the views of 2 environmental organizations, 5 State and Federal Government Agencies, and 15 oil and gas companies and trade organzations.

Public Hearings. Oral testimony relating to the proposed revision of 30 CFR Part 250 was also taken at a public hearing held in Washington, D.C., on May 8, 1979.

Differences Between Proposed Rule and Final Rule. The differences between the provisions of the final rule published today and the proposed rule are the result of the Department's efforts to incorporate the comments of the public, to make the provisions of the final rule clearer, and to insure conformance with the Act.

Discussion of Major Comments

General Comments

Dual regulation. Several respondents commented that a clearer identification of the administrative responsibilities of the Geological Survey and other Agencies, both within and outside the Department of the Interior, is needed. The regulations issued by this notice apply only to those responsibilities and authorities of the Secretary of the Interior under the Act and other laws applicable to oil and gas and sulphur activities on the OSC, which the Geological Survey administers. The Act and other statutes applicable to the OCS establish responsibilities and authorities for Agencies other than the Department of the Interior. For example, section 22(a) of the Act requires the Secretary of the Interior, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of the Army to enforce safety and environmental regulations pursuant to the Act. These regulations are not intended to duplicate, and are not inconsistent with, the regulations of other Agencies. In fact, section 21(f)(1) of the Act requires that the Secretary of the Interior consult with the heads of other appropriate Departments and Agencies to assure that inconsistent or duplicative requirements are not imposed. We do not believe, however, that these regulations should delineate the OCS-related responsibilities of any Agency except the Geological Survey.

Need for regulatory analysis. Several respondents indicated that implementation of the regulations, as proposed, represents a significant regulatory action and, pursuant to Executive Order 12044, requires preparation of a regulatory analysis. Prior to the publication of the proposed modifications of 30 CFR Part 250, the Geological Survey prepared a Negative Declaration and Regulatory Analysis. The document examined the criteria for determining whether the proposed revisions to the regulations constituted a significant regulatory action. The review resulted in a determination that the proposed revision of 30 CFR Part 250 to implement the Act did not constitute a significant regulatory action.

A review of that determination, in light of the comments of respondents, failed to show any basis for changing this determination. We therefore reject the contention that a regulatory analysis is called for by the criteria set out in Executive Order 12044.

Identity of official to administer regulations. Several respondents expressed concern over the designation of the Director of the Geological Survey as the responsible official for administering the regulations in 30 CFR Part 250. Current regulations identify the Supervisor as the responsible official. Respondents indicated that the proposed change would tend to create delays and confusion, and would disrupt the present system which has worked well for many years. We have not adopted the suggestion to designate the Supervisor as the Geological Survey official administering these regulations. However, the change incorporated into these regulations will not appreciably alter present practices and procedures under which the Area Oil and Gas Supervisors and District Supervisors administer the provisions of 30 CFR Part

250. Most of the authorities previously delegated to the Supervisor through the regulations will be delegated to the Supervisor or a comparable officer through a Delegation of Authority from the Director. This approach anticipates a pending reorganization of the Conservation Division which will modify the organizational structure of offices at the Region, Area, and District levels.

Effective date of rule. One respondent noted that the notice of proposed rule gave on effective date for the final rule. This notice identifies the effective date of these regulations as December 13, 1979, because this is the date the regulations in section 250.34 of this part will be effective.

Section-By-Section Discussion

General Provisions

Section 250.1 Purpose and authority

Two respondents suggested minor language changes to indicate that the revised regulations will be applicable to leases issued after the effective date for the revised regulations. This recommendation was not adopted. The regulations in this Part are applicable to all operations conducted under a lease issued or maintained under the Act. Therefore, the regulations are applicable to all leases issued under section 8 or validated under section 6 of the Act. The establishment of a December 13, 1979, effective date addresses the need for leadtime to make required procedural changes.

Section 250.2 Definitions

Several respondents recommended that the term "affected State" be defined more precisely. Adoption of the definition of "affected State" proposed by notice in the **Federal Register** of June 7, 1978 (43 FR 24710), was recommended by some respondents. We have not adopted this recommendation. Whether a State is an affected State under the criteria established under section 201(f) of the Act depends on the proposed OCS activities and the location and significance of onshore activities relating to those OCS activities. No further action will be taken on the notice published June 7, 1978 (43 FR 24710), which tentatively identified "affected States." For purposes of the regulations in Part 250, the identification of "affected States" will be made on a case-by-case basis by the Director or the Director's designee.

A number of respondents requested the development of a definition for "affected local government" and a revision in the proposed definition of "area adjacent to a State."

The new definition of "affected local government" reflects the congressional intent to provide Governors of affected States with a degree of discretion in the identification of affected local governments. The new definition of "area adjacent to a State" was taken from paragraph 4(a)(2) of the OCS Lands Act.

Several respondents suggested revisions to the proposed definition of "correlative rights." One suggestion was to delay publishing a definition of correlative rights until revisions to the regulations governing unitization, pooling, and drilling agreements are published. These recomendations have been rejected. There appears to be confusion over what is meant by "correlative rights." The term "correlative rights" does not indicate an ownership of the minerals in place. Instead, it applies to the lessee's rights to explore for and to develop and produce oil and gas from the leasehold. As long as these rights are not unfairly restricted, as compared to the rights of lessees on adjacent leaseholds, the lessee's correlative rights have been protected. One means for protecting correlative rights is the limitation of the number of wells that can be drilled in a field, pool, or like area, i.e., well-spacing. The responsibility and authority for placing limitations on the number of wells drilled to a given reservoir are found in § 250.17 and OCS Order No. 11.

A number of respondents recommended that the definition of "drilling operations" be broadened to include such things as waiting for severe weather to subside or moving off location. These recommendations have not been adopted. Instead, the definition of "drilling operations" have been modified to clearly indicate that the physical penetration of the seafloor, in preparation to create a borehole, is required.

One respondent recommended that the proposed definition of "exploration" be expanded to include onshore support and administrative activities necessitated by offshore exploration. This recommendation has not been adopted. The onshore support and administration activities relating to the offshore exploration activities of a lessee were not viewed by Congress as a proper element to be included in the definition of exploration activities. [See section 2(k) of the Act (43 U.S.C. 1333).]

One respondent indicated that the definition of "fair market value" is insufficient and that guidelines should be included to indicate how the Secretary will make "fair market value" determinations. We have rejected this recommendation. Although the definition used has been modified to make the language more clear, it is similar to the definition found in section 201 of the Act. Also, the guidelines used by the Director to make value determinations are contained in a different section of the regulations (i.e., § 250.64).

After reviewing the comments on § 250.80 (i.e., "Remedies and Penalties"), we decided to change the title "Hearing Officer" to "Reviewing Officer" because we feel that that title more precisely reflects the role these individuals will play in the process outlined in § 250.80. Also, we decided to include a definition of "Reviewing Officer" in § 250.2.

A number of respondents recommended the deletion of the proposed definition of "knowingly and willfully." They argued that this term is well defined in case law and that it is unnecessary for the Department to attempt a refinement of the standard administratively. We agree and have deleted the definition from the final rule.

The definition of "minerals" has been modified to conform to the definition of minerals in 43 CFR 3300.0–5 published in the **Federal Register** on June 29, 1979 (44 FR 38277).

One respondent suggested that the proposed definition of "production" be shortened by deleting the statement that the definition of production depends on the context in which the term is used. This suggestion has not been adopted. The meaning of the term "production" varies as to the context in which it is used. Thus, it is appropriate for the definition of "production" to state that the specific meaning depends on the context in which the word is used.

One respondent recommended that the proposed definition of "violation" be expanded to cover violations of acts other than the Act and the regulations promulgated under the Act. This recommendation has not been adopted. Section 24 of the Act explicitly states that the Secretary is empowered to enforce "* * * any provison of *this Act*, any regulation or order issued under *this Act*, or any term of a lease, license, or permit issued pursuant to *this Act*."

A number of respondents recommended the expansion of the proposed definition of "waste of oil and gas" to include the "production of oil or gas in excess of transportation facilities" because this language is contained in existing regulations. This recommendation has not been adopted. The language in question was not used in the proposed rule because the current and predicted shortages of domestically produced oil and gas make it

unnecessary. We continue to believe that the language is not needed.

One respondent recommended changes in the proposed definition of "well reworking operations." The definition has been refined to indicate more clearly that work needed to increase the capability of a service well to perform a needed service, and work which is related to cleanout operations to increase or restore production also constitute well reworking operations.

Section 250.3 Data and information to be made available to the public.

This section appeared as § 250.97 in the proposed rule. It has been moved to § 250.3 in the final rule because we believe that the contents of the section more properly fall under the "General Provisions" portion of the regulations in Part 250.

Section 250.4 Privileged and proprietary data and information to be made available to affected States.

The provisions of this section have been added to implement the provisions of section 8(g) of the Act.

Section 250.5 Effect of regulations on provisions of section 6 leases.

This section appeared as § 250.100 in the proposed rule. It has been moved to § 250.5 in the final rule because we believe that the contents of the section more properly fall under the "General Provisions" portion of the regulations in Part 250.

Jurisdiction and Functions of the Director

Section 250.10 Jurisdiction.

Several recommendations were received with reference to this section. Two respondents suggested that language be added to make it clear that the Director's jurisdiction covers activities conducted pursuant to a lease. We adopted this recommendation because there are activities, such as fishing within the area covered by a leasehold, that are not subject to the jurisdiction of the Director.

Section 250.11 Functions.

Several respondents recommended changes in the proposed provisions describing the functions of the Director. Some suggested the elimination of language which they felt created an imbalance between protection of the environment and orderly energy resource development. Still others recommended broadening the functions by making a specific reference to the need to protect marine sanctuary and fishery resources. We have rejected these recommendations. The functions listed have been derived from the provisions of the Act, and any effort to constrict or expand these functions would be inconsistent with the provisions of the Act. Section 250.11(a)(5) has been expanded to indicate that the Director's consultation process may also include executives of affected local governments and other interested parties. We view the phrase "other interested parties" as including lessees and permittees whose interests may be affected by an action of the Director.

Section 250.12 Suspension of operations and lease cancellation.

Several respondents submitted comments and recommendations for the reorganization of this section and its modification to make the provisions more logical and readable. To the maximum extent practicable, these comments and recommendations have been adopted.

While these modifications incorporate many changes suggested by respondents, some were rejected. For example, the suggestions that the lease term be suspended while exploration plans are processed under § 250.34–1 or while development and production plans are being processed pursuant to § 250.34–2 have not been adopted. It is the Department's view that it is the lessee's responsibility to assure that comprehensive exploration plans are submitted and carried out early enough in the initial term of a lease to allow for the discovery and delineation of hydrocarbon accumulations, and to prepare and submit a schedule for the expeditious initiation of production. Similarly, we rejected the recommendation that a suspension not become effective until 30 days following the lessee's receipt of notice of the suspension. Suspensions, particularly suspensions for protection of the environment, are designed to meet special situations which may demand immediate action.

Several respondents commented upon the proposed provisions of § 250.12(d)(2)(i) [now § 250.12(d)(1)], which spelled out the Director's authority to require a lessee to conduct site-specific studies to identify and evaluate the cause(s) of the hazard(s) generating a suspension, the potential damage from the hazard(s), and the mitigating measures for the hazard(s). Some supported this provision, but many opposed it for varying reasons. As a result of these comments, the text of § 250.12(d)(1) has been modified to indicate that cost of the studies will be borne by the lessee unless the Director arranges for the cost to be borne by a party other than the lessee. We did not adopt the recommendation that the Director's report, which is to be made to the Secretary on the basis of the study conducted under § 250.12(d)(1), be made available for public comment prior to being finalized and forwarded to the Secretary. This approach, however, does not preclude the Director from inviting public comment on the report.

Several respondents questioned the provision of § 250.12(d)(2)(iv) of the proposed rule which limited suspensions to 5 years. This provision has been dropped from the final rule, and language from section 5(a)(2)(A) and (B) of the Act has been incorporated as § 250.12(e).

One respondent recommended that the hearing procedures to be followed before a lease is cancelled be described in detail in these regulations. This suggestion has not been adopted because hearing procedures are clearly spelled out in other regulations of the Department (see: 43 CFR Part 4). Since any effort to cancel a lease would be taken by an authorized representative of the Secretary, the action would be subject to appeal pursuant to Department regulations. Then, depending on the facts of the case, the lease may be cancelled administratively subject to judicial review in a U.S. District Court, or cancelled through the initiation of cancellation proceedings in the U.S. District Court.

Several respondents recommended that the provisions of § 250.12 recognize, where appropriate, the ability to cancel a lease pursuant to subsection (5)(a)(2) of the Act. This suggestion has been adopted and has had a significant bearing on the overall organization of the section.

Several respondents recommended that provisions relating to the cancellation of leases for failure to submit a development and production plan provide an exemption for leases in the western Gulf of Mexico. We believe the Act allows the Department to continue to require the submission of development and production plans for leases in the western Gulf of Mexico and that such an exemption would, therefore, be inappropriate.

Section 250.13 Temporary approvals.

Two respondents suggested that temporary approvals are really advance approvals and that the title of the section should be changed accordingly. We did not adopt this recommendation. The approvals granted under this section are *temporary* because they are contingent upon subsequent official confirmation. We also rejected the

recommendation that temporary approvals be granted only after public review, because the whole purpose of this section is to give the Geological Survey the administrative flexibility it needs to promptly and efficiently deal with a wide variety of day-to-day circumstances.

Section 250.15 Drilling and abandonment of wells.

A number of respondents suggested dropping the phrase "no longer used" from § 250.14(a). They pointed out that wells that are not being used may still be useful and should, therefore, not be abandoned. We have adopted the recommended change. Also, the language of § 250.15(a) has been modified to make it clear that the Director must determine that an unused well is no longer useful before requiring a lessee to abandon it. The language has also been modified to make it clear that drilling and other operations pursuant to a lease must be conducted in accordance with a plan approved or prescribed by the Director in accordance with the regulations in 30 CFR Part 250.

Section 250.16 Well potentials and permissible flow.

and

Section 250.17 Well spacing.

The recommendation that environmental considerations be incorporated in these provisions has not been adopted. The regulations in these sections are directed to the proper development and production of oil and gas accumulations by wells on the OCS. Environmental considerations that are applicable to these wells are addressed in other sections of the regulations in this Part.

Section 250.18 Right of use and eastment.

One respondent pointed out that §§ 250.18 and 250.19 (Platforms and Pipelines) ignore the environmental protection requirements of section 5(e) of the Act. As the respondent points out, section 5(e) of the Act relates to "rights-of-way" through the OCS. What the respondent apparently did not recognize is that the provisions of §§ 250.18 and 250.19 relate to grants of "rights of use and easements" and not grants of "rights-of-way." Rights of use and easements for pipelines are addressed in section 5(f) of the Act and not section 5(e). However, platforms and pipelines clearly involve the application of technologies which, if they failed, would have a significant effect on safety, health, or the environment. For this reason, they are subject to the provisions of section 21(b) of the Act. We have, therefore, added language to make it clear that the best available and safest technologies, as defined by section 21(b) of the Act, must be used.

Several respondents suggested modification of § 250.18(c) to include, as one of the uses for which pipelines can be constructed on the OCS, the delivery of production to a point of transfer. This recommendation has not been adopted. *Instead, we have incorporated* the specific language of section 5(f)(2) of the Act to describe the pipelines under the Geological Survey's jurisdiction. The recommendation that the Director's authority be expanded to include grants of rights of use and easement to State lessees has not been adopted. Rights of use and easements can only be granted to Federal lessees. State lessees wishing to obtain a right-of-way across the OCS must apply for a grant from the Bureau of Land Management. Finally, the recommendation that § 250.18(b)(3) be modified to permit a lessee a period of 30 days to comment on an application submitted by another lessee has not been adopted. However, as now written, the lessee of any land affected by a grant of a right of use and easement must be notified and given an opportunity to comment on the application for a right of use and easement.

Section 250.19 Access to platforms.

The recommendation that this section be modified to recognize that the best available and safest technologies must be applied to platforms and pipelines has been adopted through the modifications made in § 250.18. Section 250.19 has been revised and renamed to limit the scope of its provisions to the Department's access to platforms.

Section 250.21 Reduction of royalty or net profit share.

Several respondents recommended that one criterion for granting a royalty reduction should be continued production. This recommendation has not been adopted. However, if a well is in danger of being abandoned because of an uneconomic rate of production, the lessee should be able to demonstate that the continuance of that well in production would actually represent an increase in production when compared with the volume of production that would come from the lease if the well were abandoned. Thus, a reduction in royalty could be granted to "increase production" if the Director determines that such a reduction is justified.

One respondent recommended that a lessee should not be required to show full informaton regarding carved out interests. This recommendation has not been adopted. We believe that requests for reductions in royalty or net profit share should be justified by a full disclosure of all information relevant to the request.

Requirements for Lessees

Subsection 250.30 Lease terms, regulations, waste, damage, and safety.

One respondent suggested that making oral orders effective when issued deprived lessees of an opportunity to comment on the order. The circumstances under which oral orders are issued are usually such that there is no time for notice or comment. We have, therefore, decided to maintain the language contained in the proposed rule.

Three respondents recommended that the threat of harm or damage referred to in subsection 250.30(b) should be qualified by incorporating language which appears in section 5(a)(1)(B) of the Act (i.e., that there must be a serious, irreparable, or immediate threat). We have not adopted the qualifying language. Section 5(a)(1)(B) relates to circumstances under which a lease must be suspended, whereas this provision deals with the degree of protection lessees are required to provide on a day-to-day basis. We believe that a lessee's daily activities on a leasehold must provide a level of protection that is well above the level of protection which would result in a lease suspension under section 5(a)(1)(B).

Section 250.33 Drilling and production obligations.

Several respondents argued that the Secretary does not have the authority to require the lessee to drill a well. We disagree with this argument. Section 5 of the Outer Continental Shelf Lands Act of 1953 provides the Secretary with the authority and this has been strengthened by the language in the Act. Implicit in this mandate is the authority to require the submission of plans because wells must be drilled in accordance with an approved plan.

Section 250.34 Exploration, development, and production plans.

Regulations in this section were published as a final rule on September 14, 1979, in the **Federal Register**. They will be effective December 13, 1979.

Section 250.35 Effect of drilling or well reworking on lease term.

Several respondents expressed concern that the proposed language of § 250.35 failed to recognize a situation where a lease was beyond its primary

term when production ceases. Language has been added to subsection 250.35(a) to make it clear that, when a lease is beyond its primary term and production ceases, the lease will not expire if drilling or well reworking operations are started within 90 days after production ceases.

Section 250.37 Marking platforms, structures, and wells.

The recommendation that the lessee's name not be required on each well on a platform has been adopted.

Section 250.38 Well records.

The recommendation that the regulation state that the Director show cause for requiring reports or records that are not customarily required from all lessees has not been adopted. Although there are specific records and reports which the Director requires of all lessees, there are reports and records that are only required under specific or unusual circumstances. If a lessee believes that the Director should be denied access to records or reports not customarily required from all lessees, the lessee can appeal for relief pursuant to 30 CFR Part 290.

Section 250.39 Tests, surveys, and samples.

A number of respondents recommended that the tests, surveys, and samples referred to in this section should be performed "when required by the Director." This language appears in existing regulations, but was dropped in the proposed rule. The lessee is responsible for designing and carrying out *adequate* sampling, testing, and surveying programs which are essential for safe and efficient operations. Given the mandates of the Act, we believe that the mandatory language is appropriate and reasonable and have, therefore, rejected this recommendation. This is also the rationale for rejecting the recommendation that the lessee be given some sort of veto power over whether or not the samples, tests, and surveys are performed. When, in the Director's opinion, the sampling, testing, and surveying programs of the lessee are inadequate, the Director has the authority to require the lessee to initiate and conduct the sampling, testing, and surveying activities necessary to assure the adequacy of the programs.

Section 250.40 Directional survey.

One respondent recommended that the regulations specify an interval between test points in drilling wells. This recommendation was not adopted because an interval is already specified in the OCS Order No. 2.

Section 250.42 Treatment of production.

Two respondents recommended that this section be modified to recognize that certain bidding systems provided for in section 205 the Act do not call for the payment of royalty. We have not adopted this recommendation because all of the bidding systems currently in use require the payment of royalty, and we believe it is understood that if and when a system is used which does not require the payment of royalty, then no royalty would be due under § 250.42.

Section 250.43 Pollution and waste disposal.

One respondent recommended that § 250.43(b) be modified to limit the lessee's responsibility for control and cleanup of pollution to something less than "total" because the respondent believed the provision is unreasonable. This recommendation has not been adopted. The provision, as written, conforms to the provisions of section 304 of Title III of the Act. Also, two respondents recommended deleting language that indicates that the cleanup shall be at the expense of the lessee because others might legitimately be responsible for some of the costs. Once again, this recommendation was rejected because it is inconsistent with the provision of section 304 of Title III of the Act.

Section 250.44 Borehole abandonment.

Two respondents recommended that a specific requirement be added to the regulations that the wellheads of abandoned wells be removed to a sufficient depth to prevent obstructions to commercial fishing in the area. This recommendation has not been adopted because the specific details for well abandonment are contained in OCS Order No. 3, which prohibits leaving obstructions which may interfere with commercial fishing operations.

Section 250.45 Accidents, fires, and malfunctions.

Several respondents recommended that the scope of the Director's jurisdiction, as compared to that of other agencies having parallel jurisdictions (e.g., the Coast Guard), be clarified. Language has been adopted to indicate that the accidents, fires, and malfunctions referred to in this section relate to activities associated with operations pursuant to a lease.

Section 250.47 Sales contracts.

This section has been clarified to indicate that the term "all contracts" includes all contract modifications such as amendments and terminations.

Section 250.49 Royalty, net profit share, and rental payments.

This section has had clarifying language added to indicate that the payments of rentals, royalties, and net profit shares may be made by "electronic transfer of funds." The section has also been clarified to show that interest is due and payable on the late payments of rentals, royalties, or net profit shares. The amount of interest specified is that specified in section 304(g)(2) of Title III of the Act.

Section 250.54 Marking of equipment.

Several respondents requested the addition of clarifying language to require the marking of equipment that is "of such a nature" as to interfere with commercial fishing. This suggestion has been adopted. Language has also been added to indicate that the manner in which materials, tools, containers, etc., are marked must be approved or prescribed by the Director.

Section 250.56 Fishermen's Contingency Fund.

One respondent recommended that "geophysical permits" be exempt from the payment of money into the Fishermen's Contingeny Fund. This recommendation has been rejected because section 402(c) of Title IV of the Act makes specific reference to the holders of permits in identifying those who must contribute to the Fishermen's Contingency Fund.

Measurement of Production and Computation of Royalties

Section 250.61 Measurement of gas.

One respondent recommended the use of a standard pressure base of 14.73 pounds per square inch absolute, 60° Fahrenheit, and corrected for deviation from Boyle's Law. This recommendation has not been adopted. The system of contracts and conversion practices presently being used by operators would be unnecessarily disrupted by a change of this base. However, it should also be noted that the language of the provision allows adequate flexibility for the use of other standards.

Section 250.63 Quantity basis for substances extracted from gas.

Two respondents recommended that the definition of net output of a plant be limited to substances produced "for sale." We have rejected this suggestion. We regard the net output of a plant to include all of the substances produced by the plant without regard to the ultimate disposition of those substances.

Section 250.64 Value basis for computing royalties.

The suggestion that the "Director" rather than the "Secretary" establish the reasonable unit value has been rejected. The reasonable unit value, when established by the Secretary, serves as a floor value. The value that the Director uses to compute royalties due the United States under § 250.64 may not be less than "reasonable unit value" established by the Secretary, if the Secretary establishes such a value.

Section 250.65 Royalty on oil.

Several respondents objected to including oil used as fuel in the computation of royalty. Since this question currently is the subject of litigation [*Amoco Production Co. v Andrus No. 77–3351–C(E.D. La.)*], they recommended that the language in the existing regulations not be changed pending a decision by the court. Since regulations implement administration policy as well as statutory mandates, we believe it is appropriate for the language of the final rule to be consistent with the Department's policy on this matter, and have, therefore, rejected this recommendation.

Section 250.66 Royalty on unprocessed gas.

This section has been modified to make it clear that the value of wet gas and entrained liquids may be established by using a Btu or some other appropriate adjustment factor to adjust the value of the gas without the entrained liquids. This provision is consistent with the Department's current policy on this matter.

Remedies and Penalties

Section 250.80 Remedies and penalties.

Several respondents submitted extensive comments and recommendations regarding the provisions of § 250.80.

Before discussing the changes made in this section, two points must be made about the overall approach envisioned in the requirements contained in this section. First, the provisions conform to the recommendations adopted by the Administratative Conference of the United States on June 8, 1979. (See: Recommendation 79–3: "Agency Assessment and Mitigation of Civil Money Penalties.") Second, as pointed out in the preamble of the proposed rule, practices and procedures being adopted parallel those under which the U.S. Coast Guard carries out its responsibilities for assessing and collecting civil penalties.

Several respondents argued that the person responsible for the initial handling of a case following the issuance of a citation for an alleged violation should be an impartial party. Some suggested the use of Administrative Law Judges instead of Geological Survey designated Reviewing Officers (formerly Hearing Officers). We agree that the Reviewing Officer must be an impartial party and have incorporated language indicating that the Reviewing Officer is to have no part in the prosecution as well as the investigation of the alleged violation. We do not agree, however, with the implication that a Geological Survey employee is incapable of conducting an impartial inquiry. Section 24 of the Act does not alter existing enforcement procedures. Instead, it expands them to include the assessment of civil penalties. Since existing enforcement procedures are conducted by Geological Survey personnel, we feel it is appropriate that the initial handling of cases following the issuance of a citation for an alleged violation be conducted by a Geological Survey employee. It should be noted that any appeal from a decision of the Director, U.S. Geological Survey, will be handled by Administrative Judges of the Board of Land Appeals.

Numerous respondents recommended that alleged violators be provided with an early notice of the alleged violation. We agree and have included language in § 250.70, "Reports and Investigations of Apparent Violations," indicating that alleged violators will be notified of the matters under investigation.

Several respondents suggested that the alleged violator should be given a copy of the report on the alleged violation that is transmitted from the Director's designee to the Reviewing Officer. We have rejected this suggestion. In order to protect against frivolous claims (a concern expressed by one of the respondents), we have incorporated a number of reviews of the evidence before further action is taken on any alleged violation. One of these reviews is conducted by the Reviewing Officer when the report is first forwarded by the Director's designee. If the Reviewing Officer's preliminary examination confirms that an alleged violation may have occurred, then the Reviewing Officer will notify the party of the allegation and its right to examine the material in the case file.

Some respondents questioned whether the transmission of the alleged violator's prior record would prejudice the Reviewing Officer's evaluation of the evidence that the alleged violation occurred, and one respondent recommended that the alleged violator's prior record should only be used in the consideration of the size of the penalty to assess. We understand the concern expressed and have decided to modify the final rule to indicate that the party's prior record will not be forwarded until the determination that a violation has occurred, and that the prior record shall be used to determine the amount of the penalty to assess.

One respondent recommended that the Geological Survey should limit its investigations to alleged violations of rules under its jurisdiction. This respondent appears to be confused over the provisions of the proposed rule. Under both the proposed and final rule, authorized representatives of the Survey, the Coast Guard, and the Corps of Engineers will continue to enforce their own rules and issue citations in accordance with their own regulations. Those citations which call for the consideration of imposing a civil or criminal penalty under the Act will be forwarded to the Director's designee for further action. This approach is consistent with the requirements of the provisions of section 24 of the Act, and it insures the efficient handling of enforcement actions.

A number of respondents objected to the provisions which protect the identity of confidential informants. They argued that the accused should be afforded the opportunity to confront the accuser. We have decided to maintain this provision, but have modified it to indicate that the protection of confidential informants is limited to the civil proceedings outlined in § 250.80–1. This provision is designed to protect an employee of the party under investigation from retaliation for reporting an alleged violation.

One respondent recommended that the public be notified of the proceedings under § 250.80–1 and that interested parties be allowed to intervene in the proceedings. We have rejected these recommendations. The proceeding contemplated under § 250.80–1 is an extension of the Geological Survey's existing enforcement functions, and is designed to insure that cases are handled in an expeditious fashion with due regard for the protection of the party's legal rights. However, any person or group that is involved in the report of the alleged violation will be notified of the initiation of proceedings.

Some respondents suggested that the Geological Survey require that a verbatim transcript be kept of all hearings. In the interest of efficiency and economy, we do not believe that such a requirement is necessary. However, a party in the proceeding can arrange for a verbatim transcript, at the

party's expense, to be made of the proceeding.

Specific Changes in Section 250.80

The changes made in § 250.80 are primarily organizational in nature and have been made to clarify the provisions. We have moved the content of § 250.80(a) and divided it into two new §§ 250.70 and 250.71. These new sections are entitled "Investigations" and "Report on investigations." Subsections 250.80 (r) and (s) have been combined as § 250.80–2.

Subsection 250.80(q) has been moved and made into a new § 250.72, "Knowing and Willful Violations." This provision follows the language of subsection 24(a) of the Act. The language of the final rule also makes it clear that in those instances where a knowing and willful violation may have occurred, the case will be referred immediately to the Department of Justice.

Other refinements have been made in the text of § 250.80 to make it clear that determinations under the provisions of the section will be subject to the appeals process described in 30 CFR Part 290.

One respondent objected to the interest provision found in § 250.80(p). In response to that objection, § 250.80(p) has been modified by deleting the flat 12% interest charge and by substituting a requirement to pay the average highest commercial interest rate for the period during which interest is due. This new language follows the language of the Act [see: paragraph 304(g)(2)]

Authors. Thomas McCloskey, Office of the Assistant Secretary—Energy and Minerals, U.S. Department of the Interior (202/343–4457); Douglas Fant, Office of the Solicitor, U.S. Department of the Interior (202/343–4325); and Gerald D. Rhodes, Geological Survey, U.S. Department of the Interior (703/860–7531).

Environmental Impact and Regulatory Analysis. The Department of the Interior has determined that the revision of the regulations in 30 CFR Part 250, in accordance with this notice, is not a major Federal action significantly affecting the quality of the human environment and will not require preparation of an Environmental Impact Statement. The Department has also determined that this notice of final rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and implementing regulations 43 CFR Part 2.

Dated: October 23, 1979.

Joan M. Davenport,

Assistant Secretary of the Interior.

30 CFR Part 250 is revised in its entirety with the exception of § 250.34 which was revised and published on Sept. 14, 1979 to read as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

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250.45 Accidents, fires, and malfunctions.
250.46 Safe and workmanlike operations.
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250.49 Royalty, net profits share, and rental payments.
250.50 Unitization, pooling, and drilling agreements. [Reserved]
250.51 Unitization. [Reserved]
250.52 Pooling or drilling agreements.
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Measurement of Production and Computation of Royalties

Sec.

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250.61 Measurement of gas.
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250.70 Investigations.
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250.80 Remedies and penalties.
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Reports To Be Made by All Lessees (Including Operators)

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250.95 Well completion or recompletion report and log.
250.96 Special forms or reports.

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq., as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. § 4332 et seq. (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1451 et seq.

Cross Reference: For other regulations pertaining to the issuance and recognition of mineral leases covering submerged lands in the Outer Continental Shelf, see 43 CFR Part 3300.

General Provisions

§ 250.1 Purpose and authority.

The Act authorizes the Secretary to prescribe rules and regulations necessary to carry out the provisions of the Act. The Secretary is authorized to prescribe and amend regulations that the Secretary determines to be necessary and proper in order to provide for the prevention of waste and the conservation of the natural resources of the Outer Continental Shelf (OCS) and the protection of correlative rights therein, and these rules and regulations apply as of their effective date to all operations conducted under a lease issued or maintained under the provisions of the Act. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary is authorized to cooperate with other relevant Departments and Agencies of the Federal Government and of affected States. Subject to the supervisory authority of the Secretary, and unless otherwise specified, the

regulations in this Part shall be administered by the Director of the Geological Survey.

§ 250.2 Definitions.

When used in the regulations in this Part, the following terms shall have the meanings given below:

(a) "Act" means the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.).

(b) "Affected local government" means the principal governing body of a locality which is in an affected State and is identified by the Governor of that State as a locality which will be significantly affected by oil and gas activities on the OCS.

(c) "Affected State" means, with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are declared, pursuant to section 4(a)(2)(A) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artifical island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving or, in accordance with the proposed activity, will receive oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment or a State in which there will be significant changes in the social, governmental, or economic infrastructure resulting from the exploration, development, and production of oil and gas anywhere in the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

(d) "Analyzed geological information" means data collected under a permit or a lease which have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluids, and descriptions of hydrocarbon encounters or hazardous conditions.

(e) "Area adjacent to a State" means that portion of the OCS which would be within the area of a State if the State's boundaries were extended seaward to the outer margin of the OCS.

(f) "Coastal environment" means the physical, atmospheric, and biolgical components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

(g) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shoreline to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be indentified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act.

(h) "Coastal Zone Management Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 et seq.).

(i) "Correlative rights," when used with respect to lessees of adjacent tracts, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, oil or gas, or both, from a common source.

(j) "Cultural resource" means a site, structure, or object of historical or archeological significance.

(k) "Data" means facts and statistics or samples which have not been analyzed or processed.

(l) "Development" means those activities which take place following discovery of minerals in paying quantities, including but not limited to geophysical activity, drilling, platform construction, and operation of all directly related onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered.

(m) "Directional drilling" means the deviation of a borehole from the vertical or from its normal course in an intended predetermined direction or course with respect to the points of the compass. Directional drilling shall not include deviations made for the purpose of straightening a hole that has become crooked in a normal course of drilling or deviations made at random, without regard to compass direction, in an attempt to sidetrack a portion of the hole on account of mechanical difficulty in drilling.

(n) "Director" means the Director of the Geological Survey of the U.S. Department of the Interior or a subordinate authorized to act on the Director's behalf.

(o) "Drilling operations" means actual operations including the physical penetration of the seafloor for the purpose of creating a borehole, testing activities to demonstrate the capability of a well to produce oil or gas, and the completion operations needed to make a well physically able to produce oil or gas, or both.

(p) "Eastern Gulf of Mexico" means all OCS areas in the Gulf of Mexico deemed by the Director to be adjacent to the State of Florida.

(q) "Exploration" means the process of searching for minerals. Exploration activities include but are not limited to: (1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals and (2) any drilling, whether on or off a known geological structure. Exploration also includes the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional well, after a discovery, which is needed to delineate a reservoir and to enable the lessee to determine whether to proceed with development and production.

(r) "Fair Market Value" means the value of any mineral computed at a unit price equivalent to the average unit price at which the mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to the lease. If the Secretary finds that there were no sales or there were an insufficient number of sales to equitably determine the value, computed at the average unit price at which the mineral was sold pursuant to other leases in the same region of the OCS during the period, or if the Secretary finds there were no sales of the mineral from the region during the period or there were an insufficient number of sales to equitably determine the value, fair market value shall be computed at an appropriate price determined by the Secretary.

(s) "Gas" means any fluid, either combustible or noncombustible, which

is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(t) "Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to a Governor pursuant to the Act.

(u) "Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

(v) "Information," when used without a qualifying adjective, includes analyzed geological information, processed geophysical information, interpreted geological information, and interpreted geophysical information.

(w) "Interpreted geological information" means knowledge often in the form of schematic cross sections and maps, developed by determining the geological significance of data and analyzed geological information.

(x) "Interpreted geophysical information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

(y) "Lease" means (1) any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, minerals, or (2) the area covered by that authorization, whichever is required by the context.

(z) "Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this Part. The term includes all parties holding that authority by or through the lessee.

(aa) "Major Federal Action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act (i.e., an action which will have a significant impact upon the quality of the human environment requiring preparation of an Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act).

(bb) "Marine environment" means the physical, atomspheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

(cc) "Minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are disposable under mineral laws applicable to the public lands.

(dd) "National Environmental Policy Act" means the National Environmental Policy Act of 1969 (42 U.S.C. 4332 et seq.).

(ee) "OCS Order" means a formal numbered Order, issued by the Director, that implements the regulations in this Part and specifically applies to operations in an area identified in the Order.

(ff) "Oil" means any fluid hydrocarbon substance other than gas which is extracted in a fluid state from a reservoir and which exists in a fluid state under the existing temperature and pressure conditions of the reservoir. Oil includes liquefiable hydrocarbon substances such as drip gasoline or other natural condensates recovered or recoverable in a liquid state from produced gas.

(gg) "Operator" means the individual, partnership, firm, or corporation having control or management of operations on the leased area or a portion thereof. The operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

(hh) "Outer Continental Shelf (OCS)" 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 (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(ii) "Party," when used in § 250.80, means the person alleged to have violated any provision of the act, or any term of a lease, license, or permit issued pursuant to the Act, or any regulation or order issued under the Act, and includes an individual or a public or private corporation, partnership or other association, or a government entity.

(jj) "Permittee" means the party authorized by a permit issued pursuant to Part 251 of this Chapter to conduct activities on the OCS.

(kk) "Processed geophysical information" means data collected under a permit or a lease which have been processed. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

(ll) "Pollution contingency plan" means the National Multi-Agency Oil and Hazardous Materials Pollution Contingency Plan or any successor plan thereto.

(mm) "Production" means those activities which take place after the successful completion of any means for the removal of minerals. Production includes removal of minerals, field operations, transfer of minerals to shore, operation monitoring, maintenance, and/or workover drilling, and depends upon the context in which the term is used.

(nn) "Reviewing Officer" means an employee of the Geological Survey who is delegated the authority to assess civil penalties and, when appropriate, to recommend the initiation of criminal proceedings.

(oo) "Secretary" means the Secretary of the Interior or a subordinate authorized to act on the Secretary's behalf.

(pp) "Violation" means a failure to comply with any provision of the Act, or of a regulation or order issued under the Act, or any term of a lease, license, or permit issued pursuant to the Act.

(qq) "Waste of oil and gas" means: (1) The physical waste of oil and gas; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of, reservoir energy; (3) the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and (4) the inefficient storage of oil.

(rr) "Well reworking operations" means physical activities designed to restore the capability of a well to produce oil or gas, or both, in paying quantities, or to increase the capability of a service well (e.g., an injection well, a water source well, or a disposal well) to perform the needed function. Reworking operations include, but are not limited to, efforts to clean out, recomplete a well in a different formation, and the physical penetration of formations to relocate the borehole of a well to a more advantageous drainage point within the same formation.

(ss) "Western Gulf of Mexico" means all OCS areas of the Gulf of Mexico except those deemed by the Director to be adjacent to the State of Florida.

§ 250.3 Data and information to be made available to the public.

(a) Except as provided in (c) of this section or in § 252.7 of this Chapter, geophysical data, processed geophysical information, and interpreted geological and geophysical information, submitted pursuant to the requirements of this Part, shall not be available for public inspection without the 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 Director determines that earlier release of such information is necessary for the proper development of the field or area.

(b) Except as provided in (c) of this section or in § 252.7 of this Chapter, geological data and analyzed geological information, submitted pursuant to the requirements of this Part, shall not be 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 Director determines that earlier release of such information is necessary for the proper development of the field or area.

(c) Geophysical data, processed geophysical information and interpreted geophysical information collected on a lease with high resolution systems (including, but not limited to, bathymetry, side-scan sonar, subbottom profiler and magnetometer) in compliance with stipulations or orders concerning protection of environmental aspects of the lease may be made available to the public 60 days after submittal to the Director. However, unless the lessee can demonstrate to the satisfaction of the Director that release of the information or data would unduly damage the lessee's competitive position, the Director may release the information and data at an earlier time if the Director determines it is needed by affected States to make determinations under § 250.34 of this Part.

§ 250.4 Privileged and proprietary data and information to be available to affected States.

(a)(1) At the time of soliciting nominations for the leasing of lands within 3 geographic miles of the seaward boundary of any coastal State, the Director, in coordination with the Director of the Bureau of Land Management, shall provide the Governor of the State with:

(i) An identification and schedule of the areas and regions proposed to be offered for leasing;

(ii) All information on the geographical, geological, and ecological characteristics of the areas and regions proposed to be offered for leasing;

(iii) An estimate of the oil and gas reserves in the areas proposed for leasing; and

(iv) An identification of any field, geological structure, or trap located within 3 miles of the seaward boundary of the State.

(2) The manner and form in which the information described in paragraph (a)(1) of this section shall be transmitted to the State shall be determined on a case-by-case basis in discussions between the Director, the Director of the Bureau of Land Management, and the Governor of the State.

(b) After the receipt of nominations for any area of the OCS within 3 geographic miles of the seaward boundary of any coastal State and tentative tract selection in accordance with the provisions of 43 CFR Parts 3313 and 3314, the Director shall, in consultation with the Governor of the State or a duly authorized agent of the Governor, determine whether any tracts being given further consideration for leasing may contain one or more oil or gas reservoirs underlying both the OCS and lands subject to the jurisdiction of the State.

(c) Knowledge obtained by a State official who receives information or data under (a) and (b) of this section shall be subject to the requirements and limitations of the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2), the Act, the regulations contained in this Part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf), the regulations in 30 CFR Part 251 (Geological and Geophysical Explorations of the Outer Continental Shelf), and the regulations contained in 30 CFR Part 252 (Outer Continental Shelf Oil and Gas Information Program).

§ 250.5 Effect of regulations on provisions of section 6 leases.

(a) As provided in subsection 6(b) of the Act, the regulations in this Part supersede the provisions of any lease which is determined to meet the requirements of subsection 6(a) of the Act, to the extent that they cover the same subject matter, with the following exceptions: the provisions of the lease as to area, rentals, and minerals covered; the royalties payable under the lease (subject to the provisions of paragraphs 6(a)(8) and 6(a)(9) of the Act); and the term of the lease [subject to the provisions of paragraph 6(a)(10) of the Act and, as to sulphur, subject to the provisions of paragraph 6(b)(2) of the Act] shall continue in effect and, in the event of any conflict or inconsistency, shall take precedence over the regulations in this Part.

(b) A lease that meets the requirements of subsection 6(a) of the Act shall also be subject to the mineral leasing regulations applicable to the OCS as well as the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way in the OCS to the extent that those regulations are not contrary to or inconsistent with the provisions of the lease relating to the area covered, the minerals covered, the rentals payable, the royalties payable, and the term of the lease.

Jurisdiction and Functions

§ 250.10 Jurisdiction.

(a) Subject to the supervisory authority of the Secretary, drilling and production operations; handling and measurement of production; determination and collection of rental, royalty, and net profit shares; and, in general, all operations and activities conducted pursuant to a lease by or on behalf of a lessee are subject to the regulations in this Part and are under the jurisdiction of the Director.

(b) In the exercise of that jurisdiction, the Director is authorized and directed to act upon the requests, applications, and notices submitted under the regulations in this Part, and to require compliance with applicable laws, regulations, lease terms, and OCS Orders so that all operations are conducted in a manner which will protect the natural resources of the OCS. The Director may issue OCS Orders to implement the requirements of the regulations in this Part. The Director may issue other orders, either written or oral, to govern lease operations. Oral orders shall be confirmed in writing as promptly as possible. The Director may issue other orders and field rules to govern the development and method of production of a pool, field, or area. Prior to the issuance of OCS Orders and other orders and field rules, the Director may consult with, and receive comments from, lessees, operators, and other interested parties. Before permitting operations on the leased area, the Director may require evidence that a lease is in good standing, that the lessee is authorized to conduct operations, and that an acceptable bond has been filed.

§ 250.11 Functions.

(a) The Director, in accordance with the regulations in this Part, shall:

(1) Regulate all operations conducted under a lease or permit and shall issue and amend OCS Orders and other orders and field rules as may be

necessary and proper in order to supervise operations and to prevent harm or damage to, or waste of, any natural resource (including any mineral deposits in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(2) Require on all new and, whenever practicable, existing drilling and production operations (including the construction and operation of platforms and pipelines) the use of the best available and safest technologies which the Director determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Director determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

(3) Schedule an onsite inspection, at least once a year, of each facility on the OCS which is subject to any environmental or safety regulations promulgated pursuant to the Act. The inspection shall include all environmental protection equipment and all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents. A lessee shall, on request by the Director, furnish food, quarters, and transportation for Federal representatives to inspect its facilities. Upon request, the lessee will be reimbursed by the United States for the actual costs which it incurs as a result of its providing food, quarters, and transportation for a Federal representative's stay of more than 10 hours.

(4) Conduct periodic onsite inspections without advance notice to the operator of such facility to assure compliance with applicable regulations.

(5) Cooperate with and, when in the Director's judgment it is necessary, consult with or solicit advice from relevant Departments and Agencies of the Federal Government and affected States, executives of affected local governments, and other interested parties.

(b) The Director may prescribe or approve, in writing or orally with subsequent written confirmation, departures from the requirements of OCS Orders and other orders and field rules issued pursuant to paragraph (a) of this section, when such departures are necessary for the proper control of a well, the facilitation of the proper development of a lease, the conservation of natural resources, the protection of life (including fish and other aquatic life) property, or the marine, coastal or human environment.

§ 250.12 Suspension of operations and lease cancellation.

(a)(1)(i) The Director may suspend or temporarily prohibit production or any other operation or activity when the lessee fails to comply with a provision of the Act or any other applicable law, a provision of a lease or permit, a provision of these and other applicable regulations, OCS Orders, or any other written orders or field rules including orders for the filing of reports and well records or logs within the time specified.

(ii) The Director may suspend or temporarily prohibit production or any other operation or activity pursuant to any lease issued or maintained under the Act when the Director determines that there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment.

(iii) The Director may, pursuant to the provisions of subsections 5(a) and 12 (c) and (d) of the Act, suspend or temporarily prohibit production or any other operations or activities when such action is in the interest of national security or defense.

(iv) The Director may suspend or temporarily prohibit production or any other operation or activity to facilitate the preparation of an environmental impact statement or environmental analysis, or for any other purpose necessary for the implementation of the National Environmental Policy Act.

(2) The Director may suspend or temporarily prohibit production or any other operation or activity separately as to oil or gas, or as to any other mineral designated in the suspension order as to all or any portion of the leasehold.

(3) The Director shall issue orders of suspension or temporary prohibition pursuant to this subsection either in writing or orally with subsequent written confirmation.

(b)(1) Upon the request of a lessee, the Director may suspend or temporarily prohibit production or any other operation or activity pursuant to a lease when the Director determines that the suspension or temporary prohibition is in the national interest and will (i) facilitate proper development of a lease, (ii) allow for the construction of, or for the negotiation for the use of, transportation facilities, or (iii) facilitate the installation of equipment the Director determines is necessary for safety or environmental reasons.

(2) The lessee must submit, with a request for a suspension, the reasons for requesting the suspension, a schedule of work leading to the expeditious initiation or restoration of production or any other operation or activity, and any other information the Director may require.

(3) In determining whether a suspension of production or any other operation or activity is in the national interest, the Director shall consider:

(i) All known significant national benefits and national costs;

(ii) Whether environmental problems or other unforeseen conditions necessitate a significant halt in production or any other operation or activity; and

(iii) Whether, during the primary term, the lessee has been prompt and efficient in the exploration of the lease.

(4) A suspension of production or any other operation or activity may be granted under this subsection for periods of time each of which must not exceed 5 years.

(c)(1) When the Director suspends or temporarily prohibits production or any other operation or activity pursuant to subsections (a) or (b) of this section, the term of the lease shall be extended for a period of time equivalent to the period that the suspension or prohibition is in effect. However, no lease shall be extended pursuant to this subsection when the Director's suspension or temporary prohibition is the result of the lessee's or permittee's gross negligence or of a knowing and willful violation of a provision of the Act, of the regulations, or of a lease or permit.

(2) Any suspension may be terminated at any time when the Director determines that the circumstances which justified the granting of the suspension no longer exist. When the Director terminates a suspension prior to the end of the period of time for which the suspension was originally granted, the Director shall specify in the notice of termination the reason(s) for the termination and the effective date for the termination of the suspension.

(3) Any suspension shall terminate automatically upon the commencement of production or any other suspended operation or activity.

(d)(1) When the Director suspends or temporarily prohibits production or any other operation or activity pursuant to paragraph (a)(1)(ii) of this section, the Director may require the lessee to conduct (a) site-specific study or studies to identify and evaluate the cause(s) of the hazard(s) generating the suspension, the potential damage from the hazard(s), and the measures available for mitigating the hazard(s). The content and scope of the study or studies shall be approved or prescribed by the Director. Prior to approval of a study program, the Director may invite

comments and recommendations, on an informal basis, from interested Federal Departments and Agencies, affected States and local governments, and other interested parties. The lessee shall furnish copies and all results of the study or studies to the Director. The cost of the study or studies shall be borne by the lessee unless the Director arranges for the cost of the study or studies to be borne by a party other than the lessee. The Director shall make such results available to intereted parties and to the public.

(2) On the basis of the results of the study or studies conducted in accordance with paragraph (d)(1) of this section and other information available to and identified by the Director, the Director will submit a report to the Secretary. The report shall indicate the damage or threat of damage being avoided and shall recommend mitigating measures, if any, that may successfully alleviate such damage or threat of damage. On the basis of the Director's report and recommendations, and other information or advice the Secretary deems and identifies as relevant, the Secretary shall require the lessee to take appropriate measures to mitigate or avoid the damage or potential damage, which resulted in the suspension or temporary prohibition of production or of any other operation or activity, as a condition for permitting the resumption of exploration, development, or production activities on the lease. The lessee shall submit, when deemed appropriate by the Director, a revised exploration plan or a revised development and production plan in accordance with § 250.34 of this Part. The revised plan shall incorporate the mitigating measures required by the Secretary. In choosing between alternative mitigating measures, the Secretary will balance the cost of the required measures against the reduction or potential reduction in damage or threat of damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment.

(3) If the lessee cannot comply with the conditions established by the Secretary for ending the suspension or temporary prohibition of production or any other operation or activity on the lease, or if the Secretary determines that adequate protection from serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment will not be provided by the mitigating measures, the Secretary shall leave the suspension in effect.

(4) The Secretary may terminate a suspension and cancel a lease in accordance with the provisions of this subsection when:

(i) Continued activity pursuant to the lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing the lease or permit in force.

(5) Cancellation of a lease pursuant to this subsection is in the Secretary's discretion, but cannot occur until the operation or activity in question under the lease or permit has been under suspension or temporary prohibition, with due extension of the term of the lease, continuously for a period of 5 years or, upon the request of the lessee, for a lesser period of time. If a lease is cancelled under this section, the lessee shall be entitled to compensation pursuant to the provisions of subsection (g) of this section.

(6) Cancellation of a lease pursuant to this subsection will become effective only after the affected lessee has been given notice and an opportunity for a hearing.

(e) Whenever an exploration plan is disapproved because the Director determines that approval of the activities called for in the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment, and the proposed activity cannot be modified to avoid these dangers, the Secretary may, once the primary lease term has been extended continously for a period of 5 years following the disapproval, or, upon request of the lessee, at an earlier time, terminate the suspension or temporary prohibition and cancel the lease, and the lessee shall be entitled to compensation pursuant to subsection (g) of this section.

(f)(1) Where a development and production plan is submitted before the subsequent approval of a coastal zone management program for an affected State, pursuant to the Coastal Zone Management Act, and the plan is disapproved because the lessee does not receive concurrence by such State pursuant to section 307(c)(3)(B) (i) or (ii) of the Coastal Zone Management Act, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act; or if the Secretary makes findings pursuant to § 250.34–2(g)(2)(iii)(C):

(i) The term of the lease shall be duly extended and, at any time within 5 years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Director shall approve, disapprove, or require modification of the plan in accordance with the provisions of 30 CFR § 250.34–2; and

(ii) Upon expiration of the 5-year period described in paragraph (f)(1)(i) of this section or, at the Secretary's discretion, at an earlier time upon request of the lessee, if the Director has not approved a plan, the Secretary shall cancel the lease and the lessee shall be entitled to compensation pursuant to subsection (g) of this section.

(iii) The Secretary may, at any time within the 5-year period described in paragraph (f)(1)(i) of this section, require the lessee to submit a development and production plan for approval, disapproval, or modification. If the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been prompt and efficient in pursuing obligations under the lease, and, notwithstanding the provisions of subparagraph (f)(1)(i) of this section, the Secretary shall immediately initiate procedures to cancel the lease under the provisions of subsection 5(c) of the Act, and the lessee shall not be entitled to compensation.

(2) Where a development and production plan is submitted after approval of a State's coastal zone management program pursuant to the Coastal Zone Management Act, and the plan is disapproved because the lessee does not receive concurrence by the State pursuant to section 307(c)(3)(B) (i) or (ii) of the Coastal Zone Management Act, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act, the lessee shall not be entitled to compensation when the lease expires.

(3) Whenever the owner of a lease fails to submit a development and production plan in accordance with 30 CFR 250.34–2, or fails to comply with an approved plan, the lease may be cancelled in accordance with sections 5(c) or (d) of the Act. Cancellation of a lease because of failure to submit a plan

or to comply with an approved plan, including required modifications or revisions, shall not entitle the lessee to any compensation.

(4) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of the Act, or of the lease, or of the regulations issued under the Act, and the default continues for a period of 30 days after the mailing of a notice by registered letter to the lease owner, the Secretary may cancel the lease pursuant to subsection 5(c) of the Act, and the lessee shall not be entitled to compensation.

(5) Whenever the owner of any producing lease fails to comply with any of the provisions of the Act, of the lease, or of the regulations issued under the Act, the Secretary may cancel the lease pursuant to subsection 5(d) of the Act, and the lessee shall not be entitled to compensation.

(6) Whenever a development and production plan is disapproved because of a failure to demonstrate compliance with the requirements of the Act or other applicable Federal law, including the air quality regulations prescribed by the Secretary pursuant to section 5(a)(8) of the Act, the lessee shall not be entitled to compensation when the lease expires.

(g) Cancellation of a lease under subsections (d) and (e) and subparagraph f(1)(ii) of this section shall entitle the lessee to receive such compensation as the lessee shows the Director as being equal to the lesser of:

(1) The fair value of the cancelled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oilspill, and all other costs reasonably anticipated on the lease; or

(2) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of the lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on this consideration and expenditures from date of payment to date of reimbursement), except that:

(i) With respect to leases issued before enactment of the Act, compensation shall be equal to the amount specified in paragraph (g)(1) of this section; and

(ii) In the case of jointly held leases which are cancelled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for losses from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question.

§ 250.13 Temporary approvals.

The Director may give temporary oral approvals whenever the regulations in this Part, other than those contained in § 250.34, require a lessee to obtain the Director's approval before commencing an operation or activity. Oral approvals shall be confirmed immediately in the manner otherwise required by the regulations in this Part.

§ 250.15 Drilling and abandonment of wells.

(a) The Director shall require that drilling and any other operation or activity pursuant to a lease be conducted in accordance with a plan prescribed or approved by the Director in accordance with the regulations in this Part. Whenever practicable, the Director shall require the plugging and abandonment of any well which the Director determines is no longer useful.

(b) Upon failure to secure compliance with the requirements of subsection (a) of this section, the Director may perform the work at the expense of the lessee.

§ 250.16 Well potentials and permissible flow.

The lessee shall produce any oil or gas obtained pursuant to an approved development and production plan, at rates consistent with any applicable rule or order.

§ 250.17 Well spacing.

The Director is authorized to approve well spacing programs necessary for the proper development of a lease giving consideration to, among other factors, the following: the location of drilling platforms; the geological and other reservoir characteristics of the field; the number of wells that can be economically drilled; the protection of correlative rights; and minimizing the unreasonable interference with other uses of the OCS.

§ 250.18 Right of use and easement.

(a)(1) In addition to the rights and privileges granted to a lessee under any lease issued or maintained under the Act, the Director may grant a lessee, subject to conditions prescribed by the Director, a right of use and easement to construct and maintain platforms, artificial islands, and all installations and other devices which are permanently or temporarily attached to the seabed on the OCS, and which are used for carrying out exploration, development, and production activities, including but not limited to drilling, producing, treating, handling, and storing production, and the housing of personnel engaged not only in operations and activities on the lease on which the platform, artificial island, or installation or other device is situated, but for the conduct of operations on any other lease.

(2) A right of use and easement shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee under a lease.

(3) A right of use and easement shall be exercised in a manner which assures protection of the environment through the use of the best available and safest technologies pursuant to subsection 21(b) of the Act.

(4) A right of use and easement, if on an area subject to any lease issued or maintained under the Act, shall be granted only after the holder of the lease has been notified by the applicant and afforded an opportunity to comment on the application.

(b)(1) In addition to the rights and privileges granted to a Federal lessee under any lease issued or maintained under the Act, the Director may grant a lessee, subject to conditions prescribed by the Director, a right of use and easement to construct and maintain pipelines on the OCS which are constructed, owned, and maintained by the lessee, and feed into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed.

(2) Subject to the limitations of section 5(e) of the Act, the Director is authorized to approve a location for the facility described in paragraph (b)(1) of this section.

(3) Any right of use and easement that is granted by the Director for a pipeline across a leased area shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee under the lease.

(4) A right of use and an easement shall be exercised in a manner which assures protection of the environment through the use of the best available and safest technologies pursuant to subsection 21(b) of the Act.

(5) The right of use and easement for a pipeline across an area covered by a lease issued or maintained under the Act shall be granted only after the holder of the lease has been notified by the applicant and afforded an opportunity to comment on the application.

(6) A right of use and easement granted by the Director shall not apply to pipelines which are proposed to be

used for transporting oil, gas, or other production after its custody has been transferred to a purchaser or carrier as provided for in subsection 5(e) of the Act and regulations in 43 CFR Part 3300.

(7) Unless exempted by the Federal Energy Regulatory Commission, any right of use and easement or other grant of authority for a pipeline to be built after September 18, 1978, and used for the transportation of oil or gas on or across the OCS shall require that the pipeline be operated in accordance with the following competitive principles:

(i) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers; and

(ii) Upon the specific request of one or more owner or nonowner shippers who are able to provide a guaranteed level of throughput and on the condition that the shipper or shippers requesting expansion shall be responsible for bearing their proportionate share of the costs and risks related thereto, the Federal Energy Regulatory Commission may order a subsequent expansion of the throughput capacity of the pipeline, if the commission finds, after a full hearing with due notice thereof to the interested parties, that such expansion is technologically and economically feasible. However, the requirements of this subparagraph shall not apply to any grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

(c) The Director may approve the design, fabrication, and plan of installation of all platforms, artificial islands, and installations, and other devices permanently or temporarily attached to the seabed on the OCS and all pipelines as a condition of the granting of a right of use and easement under subsection (a) and (b) of this Section, or as authorized under any lease issued or maintained under the Act.

(d) Once a right of use and easement has been exercised, the right shall continue, even beyond the termination of any lease on which it may be situated, as long as the Director determines that the right of use and easement is maintained by the holder of the right and serves the purpose specified in the grant. If the grant extends beyond the termination of any lease on which the right of use and easement may be situated, the rights of all subsequent lessees shall be subject to such right of use and easement.

(e) Upon termination by the Director of a right of use and easement, the grantee shall place in condition, remove, or otherwise dispose of all platforms, artificial islands, and all installations and other devices permanently or temporarily attached to the seabed on the OCS, and pipelines, and restore the premises to the satisfaction of the Director. However, a pipeline or other facility may be abandoned in place as long as the Director determines that it does not constitute a hazard to navigation or commercial fishing. The abandonment of a pipeline or other facility is to be performed in accordance with a plan prescribed or approved by the Director.

§ 250.19 Access to platforms.

The Director is authorized to require that lessees maintaining platforms, artificial islands, and installations and other devices permanently or temporarily attached to the seabed on the OCS which are equipped with helicopter landing sites and refueling facilities, provide the use of those facilities for helicopters employed by the Department of the Interior in the supervision of operations on the OCS. The lessee shall be reimbursed for costs which the Director determines were justifiably incurred in connection with the use of those facilities.

§ 250.21 Reduction of royalty or net profit share.

(a) In order to promote increased production on the lease area through direct, secondary, or tertiary recovery means, the Director may reduce or eliminate any royalty or net profit share on the entire leasehold, or on any deposit, tract, or portion thereof that is segregated for royalty purposes.

(b) An application for relief under subsection (a) of this section must contain: the serial number of the lease; the name of the titleholder of record; a description of the area included in the lease; the number, location, and status of each well that has been drilled; and a tabulated statement for each month, covering a period of not less than 6 months prior to the date of filing the application, of the aggregate amount of minerals subject to royalty or net profit share computed in accordance with the lease and applicable regulations. Every application must also contain a detailed statement of: The cost of operating the entire lease; the income from the sale of any products from the lease; and all other facts tending to show whether the wells can be successfully operated under the royalty or net profit share fixed in the lease. Full information shall be furnished as to whether royalties or payments our to production are paid to anyone other than the United States, the amounts paid, and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of royalty holders to a reduction of all other royalties from the leasehold to an aggregate not in excess of one half the revised Government royalty or net profit share that would result if the request for a reduction were allowed.

(c) An application for relief under subsection (a) of this section shall be filed in triplicate with the Director.

Requirements for Lessees

§ 250.30 Lease provisions, regulations, waste, damage, and safety.

(a) The lessee shall comply with the provisions of applicable laws, regulations, the lease, OCS Orders, and other written or oral orders of the Director. All oral orders shall be effective when issed and will be confirmed in writing as promptly as possible.

(b) The lessee shall conduct operations on a lease in a manner that does not, in the opinion of the Director, cause or threaten to cause waste or threaten or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment, and the lessee shall take all necessary precautions to prevent waste, harm, or damage.

(c) The lessee shall use, on all new drilling and production operations and, whenever practicable, on existing operations, the best available and safest technologies that the Director determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, unless the Director determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

§ 250.31 Designation of operator.

In all cases where operations are not conducted by the owner of record, but are conducted under authority of an unapproved operating agreement, assignment, or other arrangement, a "designation of operator" shall be submitted to the Director, prior to the commencement of operations, in a manner and form approved by the Director. This designation will be accepted as authority for the operator, or the operator's local representative, to act on behalf of the lessee and to fulfill the lessee's obligations under the Act and the regulations in this Part. All changes of address and any termination of the authority of the operator shall be reported immediately, in writing, to the Director. In case of a termination or in the event of a controversy between the lessee and the designated operator, both

the lessee and the operator will be required to protect the interests of the lessor.

§ 250.32 Local agent.

When required by the Director, the lessee shall designate a representative empowered to receive notices and comply with orders of the Director issued pursuant to the regulations in this Part.

§ 250.33 Drilling and producing obligations.

(a) The lessee shall file all plans and drill and produce all wells that the Director may require in order to insure the prompt and efficient exploration for, and development and production of, oil and gas from the lease.

(b) The lessee shall drill and produce the wells the Director determines are necessary to protect the lessor from loss by reason of production on other properties, or, with the consent of the Director, shall pay a sum determined by the Director as adequate to compensate the lessor for the lessee's failure to drill and produce any well. Payment of that sum shall be considered as the equivalent of production in paying quantities for the purpose of extending the lease term.

(c) The lessee shall pay the rental and the amount or value of production determined by the Director as accruing to the lessor as royalty or net profit share.

§ 250.34 Exploration, development, and production plans.

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§ 250.35 Effect of drilling or well reworking on lease term.

(a) Drilling or well reworking operations on a leased area, which have been approved pursuant to the regulations in this Part, shall continue the lease in effect so long as the drilling or well reworking operations are conducted no more than 90 days before the expiration of the primary term. A lease continued beyond its primary term by production or by drilling or well reworking operations shall be continued in effect by production or by drilling or well reworking operations which are commenced on or before the 90th day after the date of last production or on or before the 90th day after the date of the completion of the last drilling or well reworking operations. No time lapse in drilling or well reworking activities of greater than 90 days shall be deemed to be prompt and efficient unless operations on the lease have been suspended pursuant to § 250.12 of this Part.

(b) The provisions of this section do not affect the lessee's obligation to obtain the Director's prior approval of a plan of exploration, or a plan of development and production under § 250.34 of this Part, or of a notice of intention to drill or rework a well under § 250.36 of this Part, or of complying with the other provisions of the regulations in this Part.

§ 250.36 Applications for permit to drill, deepen, or plug back.

(a) Applications for permits to drill, deepen, or plug back wells must be filed on Form 9–331C. The Director shall advise the lessee concerning the number of copies of Form 9–331C to be submitted. Written approval must be received from the Director prior to commencing operations.

(b)(1) An application for a permit to drill must include the following: the surface location and projected bottom-hole location of the well(s), in feet, from the lease boundaries; the elevation of the derrick floor; the water depth; the estimated depth to which the well will be drilled; the estimated depths to the top of significant marker formations; the estimated depths at which encounters with water, oil, gas, and mineral deposits are expected; the proposed blowout-prevention and casing programs including the size, weight, grade, and setting depth of casing and the pressure rating of blowout prevention equipment; the estimated quantity of cement that will be used; and all other information specified on Form 9–331C. Information shall also be furnished relative to: plans for drilling other wells from the same platform; plans for coring at specified depths; plans for electrical and other logging operations; and such other information as may be required by the Director.

(2) At least two copies of the application shall be accompanied by a certified plat, drawn to a scale of 2,000 feet to the inch, showing the surface and subsurface location of the well(s) to be drilled and all the wells previously drilled in the vicinity for which information is available.

(c) An application for a permit to deepen or plug back must include the following: the present status of the well, including the production string or last string of casing; the well depth; the present productive zones and productive capability; and all other information specified on Form 9–331C. The application must be accompanied by a justification for and details of the proposed work.

§ 250.37 Marking platforms, structures, and wells.

(a) The lessee shall mark each drilling platform or structure. All Markings shall include the name of the lessee or operator, the name of the area, the block number, and the platform or structure designation. Letters and figures not less than 12 inches in height are to be used and the markings are to be placed on the diagonal corners of the platform or structure.

(b) Each well must be clearly identified by a sign containing the well number and the OCS lease number.

(c) The lessee shall preserve these markings and signs in good repair.

§ 250.38 Well records.

(a) The lessee shall keep at its field headquarters, or at other locations conveniently available to the Director, accurate and complete records for each well and of all well operations, including: Production, drilling, logging, directional well surveys, casing, perforating, safety devices, redrilling, deepening, repairing, cementing, alterations to casing, plugging, and abandoning. The records shall contain: a description of any unusual malfunction, condition, or problem; all the formations penetrated; the content and character of oil, gas, and other mineral deposits and water in each formation; the kind, weight, size, grade, and setting depth of casing; and all other information required by the Director.

(b)(1) Upon request by the Director, the lessee shall immediately transmit copies of the records of any of the well operations specified in paragraph (a) of this section. In any event, the lessee shall, within 30 days after completion of any well, transmit to the Director duplicate copies of the records of all operations on, or attached to, Form 9–330 (*see* section 250.95 of this Part). When operations are suspended, or temporarily prohibited, the lessee shall, within 30 days after the suspension or temporary prohibition or completion of any further operations, transmit to the Director duplicate copies of the records of all operations conducted during the suspension or temporary prohibition on, or attached to, Form 9–330 or Form 9–331 (*see* §§ 250.92 and 250.95 of this Part), as appropriate.

(2) Upon request by the Director, the lessee shall submit paleontological reports identifying microscopic fossils by depth unless washed samples of drill cuttings, normally maintained by the lessee for paleontological determinations, are made available to the Director for inspection.

(3) Upon request by the Director, the lessee shall furnish copies, in a manner

and form prescribed by the Director, of the daily drilling report and a plat showing the location, designation, and status of all wells on the leased lands.

(4) Upon request by the Director, the lessee shall furnish legible, exact copies of service company reports on cementing, perforating, acidizing, analyses of cores, or other similar services.

(c) If the Director determines that circumstances warrant, the lessee shall submit any other reports and records of operations, in the manner and form prescribed by the Director.

§ 250.39 Tests, surveys, and samples.

(a) The lessee shall make adequate tests or surveys, in a manner acceptable to the Director and without cost to the lessor, to determine: the reservoir energy; the presence, quantity, and quality of oil, gas, sulphur, other mineral deposits, or water; the amount and direction of deviation of any well from the vertical; and the formation, casing, tubing, and other pressures.

(b) The lessee shall take formation samples or cores to determine the identity, fluid content, and character of any formation, in accordance with requirements prescribed by the Director in the approval of the notice to drill or redrill any well.

§ 250.40 Directional survey.

(a) An angular deviation and directional survey shall be made from the surface to the total depth of each well.

(b) The Director, at the request of an owner of an adjoining lease, may furnish a copy of the directional survey to the owner of an adjoining lease.

§ 250.41 Control of wells.

(a)(1) The lessee shall take all necessary precautions to keep its wells under control at all times. The lessee shall only utilize personnel who are trained and competent of drill and operate wells, and shall utilize and maintain materials and properly designed pressure fittings and equipment necessary to assure the safety of operating conditions and procedures. Casing, cementing, drilling mud, and blowout prevention programs for well drilling operations shall take into account the depths at which various fluid- or mineral-bearing formations are expected to be penetrated, the formation fracture gradients and pressures expected to be encountered, and other pertinent geologic and engineering information and data about the area.

(2) The lessee shall case and cement all wells with a sufficient number of strings of casing in a manner necessary to: prevent release of fluids from any stratum through the well bore (directly or indirectly) into the sea; prevent communication between separate hydrocarbon-bearing strata (except strata approved for commingling) and between hydrocarbon-and water-bearing strata; protect freshwater strata from contamination; support unconsolidated sediments; and otherwise provide a means of control of the formation pressures and fluids. The lessee shall install casing strong enough to withstand collapse, bursting, tensile and other stresses. The casing shall be cemented in a manner which will anchor and support the casing. Safety factors in the casing program design shall be of sufficient magnitude to provide optimum well control during drilling and to assure safe operations for the life of the well. The lessee shall install structural or drive casing to provide hole stability for the initial drilling operation. A conductor string of casing (the first string run other than any structural or drive casing) must be cemented with a volume of cement sufficient to circulate back to the seafloor; however, if authorized by the Director, cement may be washed out or displaced to a specified depth below the seafloor to facilitate casing removal upon well abandonment. All subsequent strings must be securely cemented.

(3) The lessee shall maintain, readily accessible for use, quantities of drilling mud sufficient to assure well control. The lessee's testing procedures, characteristics, and use of drilling mud and conduct of related drilling procedures shall prevent blowouts or other loss of well control. Mud testing equipment and mud volume measuring devices shall be maintained in an operable condition at all times, and mud tests shall be performed frequently and recorded on the driller's log.

(4) The lessee shall install, use, and test blowout preventers and related well-control equipment in a manner necessary to prevent blowouts. In no event shall the lessee conduct drilling below the conductor string of casing until the installation of at least one remotely controlled blowout preventer and equipment for circulating drilling fluid to the drilling structure or vessel. Blowout preventers and related well-control equipment shall be pressure tested when installed, after each string of casing is cemented and at other times prescribed by the Director. Blowout preventers shall be activated frequently to test for proper functioning. All blowout-preventer tests shall be recorded on the driller's log.

(b) After wells are completed, the lessee shall take all necessary steps to prevent blowouts, and the lessee shall immediately take whatever action is required to bring under control any well over which control has been lost. For wells capable of flowing oil, gas, or formation fluids, the lessee shall install and maintain in operating condition subsurface-safety devices. For all producing wells including wells not capable of flowing oil, gas, or formation fluids, the lessee shall install and maintain surface safety valves with automatic shutdown controls and shall conduct tests or surveys designed to determine the effects of corrosive or erosive substances on well and production equipment. The lessee shall, as prescribed by the Director, periodically test and inspect all devices and equipment, and shall record the results of all tests.

§ 250.42 Treatment of production.

The lessee shall put into marketable condition, if commercially feasible, all products produced from the leased land. In calculating the royalty payment, the lessee may not deduct the costs of treatment.

§ 250.43 Pollution and waste disposal.

(a)(1) The lessee shall not pollute the land or water, harm or damage fish and other aquatic life, or allow extraneous matter to enter and damage any mineral- or water-bearing formation.

(2) The lessee shall dispose of all waste materials in a manner approved by the Director.

(3) All spills or leakage of oil or waste materials shall be recorded by the lessee and shall be reported to the Director. All spills or leakage of oil or waste materials of a size or quantity specified by the appropriate agent of the Federal Government under the pollution-contingency plan shall be reported also by the lessee, without delay, to the agent specified in the plan.

(b)(1) When pollution occurs as a result of operations conducted by or on behalf of the lessee, and the pollution damages or threatens to damage life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment, the control and total removal of the pollution shall be at the expense of the lessee.

(2) Upon failure of the lessee to control and remove the pollution, the Director, in cooperation with other appropriate agencies of Federal, State, and local governments, or in cooperation with the lessee, or both, shall have the right to control and

remove the pollution in accordance with any established pollution-contingency plan for combating oil spills, or by other means, at the expense of the lessee. Such action shall not relieve the lessee of any responsibility provided for in the pollution-contingency plan or otherwise provided by law.

(c) The lessee's liability shall be governed by applicable law, including the Offshore Oil Spill Pollution Fund provisions of Title III of the Act.

§ 250.44 Borehole abandonment.

The lessee shall promptly plug and abandon any borehole on the leased land that the Director determines is no longer useful. However, no well shall be abandoned until its lack of capacity for further profitable production of oil, gas, or sulphur has been demonstrated to the satisfaction of the Director. Before abandoning a well that has been capable of producing oil or gas in paying quantities, the lessee shall submit to the Director a statement containing the reasons for abandonment and detailed plans for carrying out the necessary work (*see* § 250.92 of this Part). A well may be abandoned only after receipt of written approval by the Director. No well shall be plugged if the plugging operation would jeopardize safe and economic operations of nearby wells. The manner and method of plugging must be approved or prescribed by the Director. Equipment shall be removed, and premises at the site properly conditioned immediately after plugging operations are completed.

Drilling equipment shall not be removed from any suspended drilling operation without taking adequate measures, as approved or prescribed by the Director, to protect life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), and the marine, coastal, or human environment.

§ 250.45 Accidents, fires, and malfunctions.

(a)(1) In the conduct of all its operations, the lessee shall take all steps necessary to prevent accidents and fires. The lessee shall immediately notify the Director of all serious accidents, any death or serious injury, and all fires connected with any activity or operation pursuant to the lease. For the purpose of this section, a serious injury is one resulting in absence from work for four or more hours.

(2) Within 10 days of all serious accidents, the lessee shall submit a written report on any death or serious injury and on all fires connected with any activity or operation pursuant to the lease.

(b) The lessee shall notify the Director of any other unusual condition, problem, or malfunction connected with any activity or operation pursuant to the lease within 24 hours of its occurrence.

§ 250.46 Safe and workmanlike operations.

(a) The lessee shall perform all operations in a safe and workmanlike manner and shall maintain all equipment in a safe condition for the protection of the lease and associated facilities, for the health and safety of all persons, and for the preservation and conservation of property and the environment.

(b) The lessee shall immediately take all necessary precautions to control, remove, or otherwise correct any hazardous oil and gas accumulation or other health, safety, or fire hazard.

§ 250.47 Sales contracts.

The lessee shall file with the Director, within 30 days after their effective date, a copy of all contracts, including all contract modifications (e.g., amendments and terminations), for the disposal of lease products. Nothing in any such contract shall be construed or accepted as modifying any of the provisions of the lease.

§ 250.49 Royalty, net profits share, and rental payments.

As specified under the provisions of the lease, the lessee shall pay all rental when due, and shall pay in value or deliver in production all royalties and net profit shares in the amounts of value or production determined by the Director to be due. Payments of rentals, royalties, and net profit shares in value shall be by electronic transfer of funds or by check or draft on a solvent bank or by money order drawn to the order of the U.S. Geological Survey. Failure to make timely payment of rental, royalty, or net profit share will result in the collection of the amount due plus interest from the date due until the date of payment. Interest shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days incurred within the period for which interest is due. Such failure may also result in the initiation of enforcement proceedings.

§ 250.50 Unitization, pooling, and drilling agreements. [Reserved]

§ 250.51 Unitization. [Reserved]

§ 250.52 Pooling or drilling agreements.

Pooling or drilling agreements may be made between lessees for the purposes of utilizing a common pipeline or drilling platform to develop adjoining leases. Approval of such an agreement by the Director will be granted in conjunction with a development and production plan approved pursuant to the provisions of § 250.34–2 of this Part.

§ 250.53 Subsurface storage of oil or gas.

(a)(1) The Director may authorize the subsurface storage of oil or gas in the OCS when it can be shown that no undue interference with operations under existing leases will result.

(2) In each case, the authorization will provide for the payment of an adequate storage fee or rental on the stored oil or gas. When stored oil or gas is removed from storage in conjunction with oil or gas not previously produced, a royalty may be charged on the value or amount of stored oil or gas removed from storage in lieu of a fixed storage fee or rental. Any lease of an area used for the storage of oil or gas shall expire during the storage period unless oil or gas not previously produced on the lease is being produced in paying quantities or drilling or well reworking operations approved by the Secretary are underway.

(b) Applications for subsurface storage of oil or gas shall be filed with the Director, in triplicate, and shall include: the ownership of interests in the area involved; the parties involved, including lessees of other mineral interests; the storage fee, rental, or royalty offered to be paid for the right of storage; and all essential information showing the necessity for such storage. The storage agreement, signed by the parties involved, shall be submitted to the Director for approval, together with five copies for retention by the Department after approval.

§ 250.54 Marking of equipment.

Whenever practicable, all materials, equipment, tools, containers, and items used on the OCS are to be properly color-coded, stamped, or labeled with the owner's identification, as approved or prescribed by the Director, prior to actual use. For oil and gas operations, this means that the owner's identification is to be placed upon all materials, cable, equipment, tools, containers, and other objects which could be freed and lost overboard from rigs, platforms, or supply vessels, and which are of sufficient size or are of such a nature that they could be expected to interfere with commercial fishing gear if lost overboard.

§ 250.55 Flaring and venting of natural gas.

The lessee shall not flare or vent natural gas from any well without prior

approval from the Director. Such approval will not be granted unless the Director finds that there is no practicable way to complete production of such gas, or the Director finds that flaring or venting is necessary to alleviate a temporary emergency situation or to conduct authorized testing or workover operations.

§ 250.56 Fishermen's Contingency Fund.

Upon the establishment of an account under the Fishermen's Contingency Fund, pursuant to subsection 402(b) of the Act, for any area of the OCS, any holder of a lease, issued or maintained under the Act, for any tract in the area covered by the account, and any holder of an exploration permit or of an easement or right-of-way for the construction of a pipeline, in the area covered by the account, shall pay an amount specified by the Secretary of Commerce for the purpose of the establishment and maintenance of the account for the area. The Director shall collect the amount specified and deposit it in the Fund to the credit of the appropriate area account.

§ 250.57 Air quality. [Reserved]

Measurement of Production and Computation of Royalties

§ 250.60 Measurement of oil.

The lessee shall measure, record, store, and transfer all oil produced in accordance with practices and procedures approved or prescribed by the Director. The quantity and quality of all oil production shall be determined and reported in accordance with the standard practices, procedures, and specifications generally used by the industry and approved by the Director.

§ 250.61 Measurement of gas.

The lessee shall measure all gas production, including gas vented or flared, in accordance with methods approved by the Director. The measured volumes shall be adjusted to a standard pressure base of 10 ounces above the atmospheric pressure of 14.4 pounds per square inch; to a standard temperature of 60 degrees Fahrenheit; and allow for deviation from Boyle's Law. If gas is being disposed of at a different pressure base, the Director may require that gas volumes be adjusted to conform to this base.

§ 250.63 Quantity basis for substances extracted from gas.

(a) The primary basis for computing the quantity of casinghead or natural gasoline, butane, propane, or other substances extracted from gas is the monthly net output of the plant at which the substances are manufactured. For purposes of this section, "net output" is the quantity of each substance that the plant produces.

(b)(1) When the net output of a plant is derived from the gas obtained from only one lease, the quantity of substances on which computations of royalty and net profit shares for the lease are based is the net output of the plant.

(2) When the net output of a substance from a plant is derived from gas obtained from several leases producing gas of uniform content, the proportion of net output of the substance allocable to each lease as a basis for computing royalty and net profit shares will be determined by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a substance from a plant is derived from gas obtained from several leases producing gas of diverse content, the proportion of net output of the substance allocable to each lease as a basis for computing royalty and net profit shares will be determined by multiplying the amount of gas delivered to the plant from the lease by the substance content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant.

§ 250.64 Value basis for computing royalties.

The value of production shall never be less than the fair market value. The value used in the computation of royalty shall be determined by the Director. In establishing the value, the Director shall consider: (a) The highest price paid for a part or for a majority of like-quality products produced from the field or area; (b) the price received by the lessee; (c) posted prices; (d) regulated prices; and (e) other relevant matters. Under no circumstances shall the value of production be less than the gross proceeds accruing to the lessee from the disposition of the produced substances or less than the value computed on the reasonable unit value established by the Secretary.

§ 250.65 Royalty on oil.

(a) The royalty on crude oil, including condensates separated from gas without the necessity of a manufacturing process, shall be a percentage of the value or amount of the crude oil produced from the leased area. The percentage shall be established by statute, regulation, or the provisions of the lease. No deduction shall be made for actual or theoretical transportation losses.

(b) Royalty is due on all oil removed from a reservoir. The royalty on oil may be based on production as products are moved from the lease. When conditions warrant, the Director may require royalty to be based on actual monthly production, including products remaining on the leased area. Evidence of all shipments shall be filed with the Director within 5 days (or a longer period when approved by the Director) after the oil has been shipped by pipeline or by other means of transportation. That evidence shall be signed by representatives of the lessee and by representatives of the purchaser or the transporter who witnessed the measurement reported. That evidence shall also note determinations of the gravity and temperature of the oil and the percentage of impurities contained in the oil.

§ 250.66 Royalty on unprocessed gas.

Royalty is due on all gas removed from a reservoir. When gas is sold without processing for the recovery of constituent products, the royalty thereon shall be a percentage, established by the terms of the lease, of the value or amount of the gas and constituent products removed from the reservoir. The value of wet gas and entrained liquids may be established by adjusting the value of the gas less entrained liquids using a British thermal unit (Btu) or other appropriate adjustment factor. The value shall not be less than that which would accrue by computing royalty in accordance with subsections 250.67 (a) through (d) of this Part.

§ 250.67 Royalty on processed gas and constituent products.

(a) When gas is processed for the recovery of constituent products, a royalty established by the terms of the lease will accrue on the value or amount of:

(1) All residue gas remaining after processing, and

(2) All natural gasoline, butane, propane, or other substances extracted from the gas. A reasonable allowance, determined by the Director and based upon regional plant practices and actual plant costs and other pertinent factors, may be made for the cost of processing and may be deducted from the royalty payment due on said constituent substances. However, the reasonable allowance shall not exceed two-thirds of the value of the substances extracted unless the Director determines that a greater allowance is in the national interest.

(b) Under no circumstances shall the amount of royalty on the residue gas and extracted substances be less than the amount which the Director determines would be payable if the gas had been sold without processing.

(c) In determining the value of natural gasoline, the volume of such gasoline shall be adjusted to a set standard, by a method approved or prescribed by the Director, when such adjustments are necessary to account for the volumetric differences between natural gasolines of various specifications.

(d) No allowance shall be made for boosting residue gas or other expenses incidental to marketing.

(e) The lessee, with the approval of the Director, may establish a gross value per unit of 1,000 cubic feet of gas on the lease or at the wellhead for the purpose of computing royalty on gas processed for the recovery of constituent substances. When a gross value is so established, it shall be high enough to insure that the royalty due the United States is not less than that which would accrue by computing royalties in accordance with the provisions of (a) through (d) of this section.

§ 250.68 Commingling production.

Subject to such conditions as the Director may prescribe for the measurement and allocation of production, the Director may authorize the lessee to move production from the leased area to a central point for purposes of treating, measuring, and storing. In moving such production, the lessee may commingle the production from different wells, leased areas, pools, and fields which it operates with production from other operators. The central point may be at any convenient place approved or prescribed by the Director.

§ 250.69 Measurement of sulphur.

For the purpose of computing royalty, the measurement of sulphur shall be on such basis and shall conform to such standards as the Director may approve or prescribe.

Investigations

§ 250.70 Reports and investigations of apparent violations.

Any person may report an apparent violation or failure to comply with any provision of the Act, or any provision of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation or order issued under the Act. When a report of an apparent violation has been received, or when an apparent violation has been detected by Geological Survey personnel, the matter will be investigated and the party will be advised of the matter under investigation.

§ 250.71 Reports on investigations.

(a) Reports of the results of any investigation conducted by the Geological Survey, or received from any other Agency, which indicate that a violation under the Act may have occurred, must be forwarded to the official of the Geological Survey designated by the Director (referred to in this and subsequent sections as the "Director's designee"). The Director's designee shall review the reports.

(b) If the Director's designee determines that there is insufficient evidence to indicate that a violation probably occurred, the case will be returned to the originating office for further investigation or the case will be closed. The case will be closed when: (1) The Director's designee's review establishes that a violation did not occur; (2) the violator cannot be identified; or (3) although there is sufficient evidence to indicate that a violation occurred, there appears to be little likelihood of discovering additional relevant facts to justify further investigation.

(c) If the Director's designee determines that there is sufficient evidence to indicate that a violation probably occurred, a case file will be prepared and forwarded to a Reviewing Officer for further action.

§ 250.72 Knowing and willful violations.

When the Director's designee determines that there is sufficient evidence to indicate that a knowing and willful violation may have occurred, the Director's designee will prepare a case file and forward it through the office of the Solicitor to the Department of Justice.

Remedies and Penalties

§ 250.80 Remedies and penalties.

§ 250.80-1 Remedies.

(a)(1) The Director shall designate one or more senior employees of the Conservation Division, U.S. Geological Survey, to act as Reviewing Officer(s).

(2) The Reviewing Officer shall have no other responsibility, direct or supervisory, for the investigation or prosecution of cases.

(3) The Reviewing Officer shall decide each case on the basis of the evidence in the case file and shall have no prior connection with the case. The Reviewing Officer will be solely responsible for the decision made in each case.

(4) The Reviewing Officer is authorized to administer oaths and issue subpoenas, to the extent provided by the Act, necessary to conduct a hearing.

(5) The Reviewing Officer is authorized to assess civil penalties and, when appropriate, to recommend the initiation of criminal proceedings.

(b)(1) When a case file is received, the Reviewing Officer shall make a preliminary examination of the material submitted.

(2) If, on the basis of the preliminary examination of the evidence in a case file, the Reviewing Officer determines that there is insufficient evidence or that there is any other reason which would make further action inappropriate, the Reviewing Officer shall return the case to the Director's designee with a written statement indicating the reason for this action. The Director's designee may close the case or cause a further investigation of the alleged violation to be conducted with a view toward resubmittal of the case to the Reviewing Officer.

(3) If, on the basis of the preliminary examination of the case file, the Reviewing Officer confirms that the evidence indicates that a violation may have occurred, the Reviewing Officer shall notify the party, in writing, of:

(i) The alleged violation citing the applicable provision of the Act, or the applicable term of a lease, license, or permit issued pursuant to the Act, or the applicable provision of a regulation or order issued under the Act upon which the action is based;

(ii) The general nature of the procedures that will be followed for evaluating the party's responsibility for the alleged violation and for assessing and collecting a penalty should it be determined that the party is responsible for the violation;

(iii) The amount of penalty that appears would be appropriate in the event it is determined that the party is responsible for the alleged violation, based upon the material then available to the Reviewing Officer;

(iv) The party's right to examine the material in the case file and to have a copy of all written documents provided upon request, except those which would, in a civil proceeding, disclose or lead to the disclosure of a confidential informant; and

(v) The fact that, subject to the provisions of paragraph (d)(2) of this section, the party has a right to a hearing before the Reviewing Officer prior to any finding of fact regarding the alleged violation.

(4) If, at any time, the Reviewing Officer determines that the addition of another person to the proceedings is necessary or desirable, the Reviewing Officer shall notify and provide the

additional party with the information described in paragraph (b)(3) of this section.

(c) A party has the right to be represented by counsel, qualified to practice before the Department under 43 CFR Part 1, at all stages of the proceeding. After receiving notification that a party is represented by counsel, the Reviewing Officer shall direct all further communications to the counsel.

(d)(1) Within 30 working days after receipt of a notice pursuant to paragraph (b)(3) of this section, the party, or counsel for the party, may: (i) Request a hearing before the Reviewing Officer; (ii) provide any written evidence and arguments in lieu of a hearing; or (iii) pay the amount specified in the notice. A request for a hearing before the Reviewing Officer must be in writing, and must specify the particular issues which are in dispute. Failure to specify a nonjurisdictional issue will preclude its consideration.

(2) The right to a hearing before the Reviewing Officer shall be waived if the party does not submit a request for a hearing to the Reviewing Officer within 30 working days after receiving the notice described in paragraph (b)(3) of this section unless the Reviewing Officer grants the party additional time to submit a request for a hearing.

(3) The Reviewing Officer shall promptly schedule all hearings which are requested. The Reviewing Officer shall grant any delays or continuances which the Reviewing Officer determines to be necessary or desirable in the interest of obtaining a fair resolution of the case.

(4) A party requesting a hearing before a Reviewing Officer may amend the specification of the nonjurisdictional issues in dispute at any time up to 10 working days before the scheduled hearing. Nonjurisdictional issues raised less than 10 working days before the scheduled hearing date may be presented only at the discretion of the Reviewing Officer.

(e) Prior to a hearing, the party or counsel for the party may examine all the written evidence in the case file, except material that would, in a civil proceeding, disclose or lead to the disclosure of the identity of a confidential informant. Other evidence or material, such as blueprints, sound or videotapes, oil samples, and photographs may also be examined in the Reviewing Officer's office. However, the Revewing Officer may provide for examination or testing of the evidence at other locations, if there are adequate safeguards to prevent loss or tampering with the evidence.

(f)(1) In addition to information treated as confidential under (d) of this section, confidential treatment shall be accorded to all or a portion of any document at the request of the person supplying the information if the information is:

(i) Confidential financial information, trade secrets, or other material exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552);

(ii) Information required to be held in confidence by the regulations in this Chapter II or 18 U.S.C. 1905; or

(iii) Information that is otherwise exempt by law from disclosure.

(2) The person desiring confidential treatment for information must submit a written request to the Reviewing Officer stating the reasons justifying nondisclosure. Failure to make a request at the time a document is submitted may result in the document being considered as nonconfidential and subject to release.

(3) Confidential material will not be considered by the Reviewing Officer in reaching a decision unless:

(i) It has been furnished by a party, or

(ii) It has been furnished pursuant to a subpoena.

(g)(1) When a hearing is requested in accordance with (d)(1) of this section, the hearing will be held in the office of the Reviewing Officer, or at some other convenient location selected or approved by the Reviewing Officer.

(2) A party requesting a hearing in accordance with (d)(1) of this section may request that the Director's designee transfer the case to another Reviewing Officer, or that the hearing be held at a location other than the office of the Reviewing Officer. The request must be in writing and state the reasons why the requested action is necessary or desirable. Action on a request for the transfer of a case to a different Reviewing Officer is subject to the discretion of the Director's designee.

(h)(1) The testimony of any witness may be presented either through a personal appearance or through a written statement. The Reviewing Officer, upon request of a party, may assist in obtaining the testimony of a witness by personal appearance. A request for such assistance must be in writing and must state the reasons why a written statement by the witness would be inadequate, the issue or issues to which the testimony would be relevant, and the substance of the expected testimony. If the Reviewing Officer determines that the personal appearance of the witness will materially aid in the decision on the case, the Reviewing Officer will seek to obtain the personal appearance of the witness.

(i)(A) The Reviewing Officer is authorized to issue subpoenas requiring the attendance of witnesses at hearings or for the taking of depositions.

(B) Subpoenas will be issued in a manner and format approved by the Director.

(C) The application for a subpoena shall be filed in the office of the Reviewing Officer.

(D) The original subpoena, bearing a certificate of service, shall be filed with the Reviewing Officer.

(E) A witness may be required to attend a hearing or deposition at a place not more than 100 miles from the place of service.

(ii)(A) Witnesses subpoenaed by any party shall be paid the same fees and mileage paid for similar services in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose insistence the witness appears.

(B) Any witness who attends a hearing or the taking of a deposition at the request of the party, without having been subpoenaed to do so, shall be entitled to the same mileage and attendance fees paid to a subpoenaed witness. The witness fees and mileage shall be paid by the party at whose insistence the witness appears. The provisions of this paragraph are not applicable to Federal Government employees who are called as witnesses by the Federal Government.

(2) In cases where an individual cannot be required to appear as a witness, the Reviewing Officer may move the hearing to the location of the desired witness, accept a written statement, or accept a stipulation in lieu of testimony.

(i)(1) The Reviewing Officer must conduct a fair and impartial proceeding in which the party is given a full opportunity to be heard.

(i) At the outset of the hearing, the Reviewing Officer shall insure that the party is aware of the nature of the proceedings and of the alleged violation.

(ii) Material in the case file which is pertinent to the issues, shall be presented. The party has the right to respond to or rebut this material. The party may offer any facts, statements, explanation, documents, sworn or unsworn testimony, or other exculpatory items which bear on the issues or which may be relevant to the amount of the penalty to be assessed if the party is found to be guilty of the alleged violation. The Reviewing Officer may require the authentication of any written exhibit or statement.

(iii) After the evidence in the case file has been presented, the party may present argument on the issues in the case. The party may request an opportunity to submit additional written testimony for consideration by the Reviewing Officer. The Reviewing Officer shall allow a reasonable time for submission of additional written testimony and shall specify the date by which it must be received. If the statement is not received within the time prescribed or within the limits of any extension of time granted by the Reviewing Officer, the Reviewing Officer shall render a decision on the basis of the record in the case file.

(iv) At the close of the party's presentation of evidence, the Reviewing Officer shall allow the introduction of rebuttal evidence. The Reviewing Officer shall allow the party an opportunity to respond to any rebuttal evidence that is submitted.

(v) The Reviewing Officer may take notice of matters which are subject to a high degree of indisputability and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking notice of a matter, the Reviewing Officer shall give the party an opportunity to show why notice should not be taken. In any case in which such notice is taken, the Reviewing Officer shall place in the record a written statement on the matters to which notice was taken and the basis for taking such notice. The Reviewing Officer's statement shall indicate that the party consented to notice being taken or shall include a summary of the party's objections to notice being taken of a specific matter.

(2) In reviewing evidence, the Reviewing Officer is not bound by strict rules of evidence. In evaluating the evidence presented, the Reviewing Officer shall give due consideration to the reliability and relevance of each item of evidence.

(j)(1) A verbatim transcript of hearings before a Reviewing Officer will not normally be prepared. The Reviewing Officer shall prepare notes on the material and points raised by the party in sufficient detail to permit a full and fair review and resolution of the case, should it be appealed.

(2) A party may, at its own expense, cause a verbatim transcript to be made by a court reporter. If a verbatim transcript is made, and the Reviewing Officer's decision is appealed, the party shall submit two copies of the verbatim transcript with the appeal to the Director's designee. The verbatim transcript will be included in the case record.

(k)(1) The decision called for in subparagraph (j)(1)(iii) of this section shall be issued in writing, and shall include:

(i) The Reviewing Officer's conclusions and the basis for those conclusions; and

(ii) The appropriate rule, order, sanction, relief, or denial thereof.

Any decision to assess a penalty shall be based upon substantial evidence in the record. If the Reviewing Officer finds that there is not substantial evidence in the record establishing that the alleged violation probably occurred, the Reviewing Officer shall dismiss the case and remand it to the Director's designee. A dismissal is without prejudice to the Director's designee's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(2) In assessing a penalty, the Reviewing Officer shall review the record of any prior violations by the party. The Reviewing Officer's decision shall contain a statement advising the party of the right to an administrative appeal to the Director pursuant to Part 290 of this Chapter. The party shall be advised that a failure to submit an appeal within the prescribed time will bar its consideration, and that failure to appeal on the basis of a particular issue will constitute a waiver of that issue in any subsequent proceeding. An appeal from any interim ruling of the Reviewing Officer shall be reserved and considered only at the time of and as part of an appeal from the Reviewing Officer's final decision.

(l)(1) Any appeal from the decision of the Reviewing Officer and any supporting argument must be submitted by a party to the Reviewing Officer within 30 days from the date of receipt of the decision. The appellant shall provide copies of the notice of appeal and supporting brief to the Director. The only issues which will be considered on appeal are those issues specified in the notice of appeal which were properly raised before the Reviewing Officer and jurisdictional questions.

(2) The failure to file a notice of appeal within the prescribed time limit shall result in the action of the Reviewing Officer becoming the final action of the U.S. Department of the Interior in the case.

(m)(1) The appeal of a decision of the Reviewing Officer and supporting brief, and any comments which the Reviewing Officer desires to submit regarding the appeal must be forwarded to the Director within 30 working days following receipt of the notice of appeal and any supporting brief. The Reviewing Officer shall have a longer period of time to submit comments regarding an appeal when the appellant requests that the Director grant additional time for submitting supporting arguments. The Reviewing Officer shall provide the appellant with a copy of all comments submitted to the Director.

(2)(i) The Director may affirm, reverse, or modify the Reviewing Officer's decision, or remand the case for new or additional proceedings.

(ii) The Director may increase, remit, mitigate, or suspend, in whole or in part, any penalty assessed by the Reviewing Officer.

(iii) When the action of the Director includes the increase, remission, mitigation, or suspension, in whole or in part, of a penalty assessed by the Reviewing Officer, the appellant and the Reviewing Officer shall be advised of any conditions placed upon that action.

(iv) The Director shall issue a written decision in each case. Copies of the Director's decision are to be provided to the appellant and the Reviewing Officer.

(v) In the absence of an appeal from the Director's decision pursuant to 30 CFR Part 290, the Director's decision on an appeal shall be final.

(n)(1) At any time prior to final Geological Survey action in a civil penalty case, a party may petition to reopen the hearing on the basis of newly discovered evidence.

(2) Petitions to reopen a case must be in writing. Petitions shall describe the newly found evidence and state why the evidence would probably produce a different result favorable to the petitioner. The petitioner must state whether the evidence was known to the petitioner at the time of the hearing and, if not, why the newly found evidence could not have been discovered during the original proceedings. The party must submit the petition to the Reviewing Officer and provide a copy to the Director's designee.

(3) The Director's designee may file comments in opposition to the petition. If the Director's designee files comments, a copy of the comments shall be provided to the petitioner.

(4) The Reviewing Officer will consider a petition to reopen a case unless an appeal has been filed or the time period for filing an appeal has expired and no appeal was filed. In those cases where an appeal has been timely filed, a petition to reopen a case will be considered by the Director.

(5) The Reviewing Officer's decision on a petition to reopen a case will be decided on the basis of the current case record, the contents of the petition, and the comments, if any, submitted by the

Director's designee pursuant to paragraph (n)(3) of this section.

(6) A petition to reopen a case will be granted only when the Reviewing Officer determines that newly found evidence, that would have a direct and material bearing on the issue(s) of the case, is described in the petition and when the petitioner provides a valid explanation as to why the new evidence was not and could not have been produced previously. A decision on a petition to reopen a case shall be rendered in writing.

(7) The denial of a petition to reopen a case shall be final and may not be appealed in an action separate from the appeal of the case pursuant to subsection (m) of this section or Part 290 of this Chapter.

(o)(1) The Director's designee shall collect civil penalties assessed by a Reviewing Officer, the Director, or the Department of the Interior's Board of Land Appeals.

(2) Payment of a civil penalty may be made by check or postal money order payable to the U.S. Geological Survey.

(3) Within 30 calendar days after the issuance of the Reviewing Officer's decision in a case, the party must submit payment of any assessed penalty to the Director's designee. Payment is to be made even though an appeal is pending. Failure to make timely payment will result in the collection of the amount assessed plus interest from the date of assessment until the date of payment. Interest shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days included within the period for which interest is due. Such failure may also result in the initiation of additional enforcement proceedings, including, if appropriate, cancellation of the lease or permit under § 250.12 of this Part.

§ 250.80-2 Penalties.

(a)(1) Pursuant to subsection 24(b) of the Act, any person who fails to comply with any provision of the Act or any term of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation or order issued under the Act, shall be liable for a civil penalty of not more than $10,000 for each day of continuance of such failure. The Director may assess, collect, and compromise a civil penalty after notice of the failure and the passage of a reasonable period of time to allow for corrective action. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing pursuant to § 250.80 of this Part.

(2)(i) Pursuant to subsection 24(c) of the Act, the penalties set forth in § 250.83(a)(2)(ii) will be assessed on any party, upon conviction, who knowingly and willfully:

(A) Violates any provision of the Act, any term of a lease, license, or permit issued pursuant to the Act, or any regulation or order issued under the authority of the Act designed to protect health, safety, and environment, or to conserve natural resources;

(B) Makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under the Act;

(C) Falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under the Act; or

(D) Reveals any data or information required to be kept confidential by the Act.

(ii) Any person convicted of a violation described in subparagraphs (a)(2)(i) (A), (B), (C), or (D) shall be punished by a fine of not more than $100,000 or by imprisonment of not more than 10 years, or both.

(iii) For each day that a violation described under subparagraph (a)(2)(i)(A) of this section continues, or for each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in subparagraph (a)(2)(i)(C) of this section, there shall be a separate violation.

(3) Whenever a corporation or other entity is subject to prosecution for a violation described under subparagraphs (a)(2)(i) (A), (B), (C), or (D) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subparagraph (a)(2)(ii) of this section.

(4)(i) If a violation of law or regulation is subject to both a civil and a criminal penalty, the Director's designee is authorized to decide whether to institute civil penalty proceedings or to recommend referral of the case through the Office of the Solicitor to the Department of Justice for the institution of an enforcement action in the appropriate Federal Court, or both.

(ii) The Director's designee shall decide, within 30 working days of an apparent violation or within 30 working days of a decision to refile or resubmit a case, whether the apparent violation will be referred through the Office of the Solicitor to the Department of Justice for investigation into whether criminal proceedings should be initiated. When a case is referred through the Office of the Solicitor to the Department of Justice, the Director's designee shall advise the alleged violator of that action and shall warn the alleged violator that, regardless of the outcome of any criminal proceedings, civil penalty proceedings may be initiated.

(6) A decision by the Department of Justice not to institute criminal proceedings in the appropriate Federal Court shall not preclude the Director's designee from initiating or continuing the conduct of civil penalty proceedings in the case.

(7) The remedies and penalties prescribed in this section shall be concurrent and cumulative, and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this section shall be in addition to any other remedies and penalties afforded by any other law or regulation.

§ 250.81 Appeals.

OCS Orders, other orders, or decisions issued under the regulations in this Part may be appealed in accordance with the provisions of Part 290 of this chapter. The filing of an appeal shall not suspend the requirement for compliance with an order or decision.

§ 250.82 Judicial review.

Nothing contained in this Part shall be construed to prevent any interested party from seeking judicial review as authorized by law.

Reports To Be Made by All Lessees (Including Operators)

§ 250.90 General requirements.

Information, required to be submitted pursuant to the regulations in this Part, shall be furnished in the manner and form prescribed in the regulations in this Part or as ordered by the Director. Copies of forms can be obtained from the Director and must be filled out completely and filed punctually with the Director.

§ 250.92 Sundry notices and reports on wells.

(a) All notices of the lessee's intention to fracture, treat, acidize, repair, multiple complete, abandon, change plans, or to engage in similar activities, and all subsequent reports pertaining to such operations shall be submitted on Form 9–331 in accordance with paragraph 250.38(b)(1) of this Part. The Director will advise the lessee concerning the number of copies of Form 9–331 that are to be submitted. Prior to commencing such operations, written

approval must be received from the Director.

(b) Form 9–331 shall contain:

(1) A detailed statement of the proposed work for repairing (other than work incidental to ordinary well operation), acidizing, or stimulating production by other methods, perforating, sidetracking, squeezing with mud or cement, or commencing any operations (other than those covered by § 250.36 of this Part) that will materially change the approved program for drilling a well or will alter the condition of a completed well.

(2) A detailed report of all the work done and the results obtained. The report shall set forth the amount and rate of production of oil, gas, and water before and after the completion of work and shall include a complete statement describing the methods used and giving the dates on which the work was accomplished.

(3) A detailed statement of the proposed work for abandonment of any well. For all wells, the statement shall describe the proposed work (including, by depths, the kind, location, and length of plugs), and plans for mudding, cementing, shooting, testing, and removing casing, and other pertinent information. The statement as to a producible well shall set forth the reasons for abandonment and the amount and date of last production.

(4) A detailed report describing the manner in which the abandonment or plugging work was accomplished, including the nature and quantities of materials used in the plugging and the location and extent, by depths, of casing left in the well, and the volume of mud fluid used. If an attempt was made to cut and pull any casing string, a description of the methods used and results obtained must be included.

(C) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42–R1424).

§ 250.93 Monthly report of operations.

(a) A separate report of operations for each lease must be made on Form 9–152 for each calendar month, beginning with the month in which drilling operations are commenced, and must be filed in duplicate with the Director on or before the 20th day of the succeeding month, unless an extension of time for the filing of the report is granted by the Director. The report must be submitted each month until the lease is terminated or until the Director authorizes discontinuance of the report.

(b) The report on Form 9–152 shall disclose accurately:

(1) All operations conducted on each well during each month;

(2) The status of operations on the last day of the month; and

(3) A general summary of the status of operations on the leased area.

(c) The report shall show for each calendar month:

(1) Each well, listed separately;

(2) The number of days each active well produced, the nature of production (whether oil or gas) and the number of days each input well was used for injection service;

(3) The quantity of oil, condensate, gas, and water produced;

(4) The total depth of each active or suspended well;

(5) The name, character, and depth of each formation drilled during the month, the date each depth was reached, (special attention should be given to the names and depths of important formation changes and the contents of formations), and the dates and results of any tests, such as production or water shutoff;

(6) The amount, grade, and size of any casing run since the last report; and

(7) The date and reason for every shutdown and all other noteworthy information on operations not specifically provided for in the form.

(d) If no runs or sales were made during the calendar month, this must be stated on the report.

(e) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42–R1236).

§ 250.94 Statement of oil and gas runs and royalties.

(a) When required by the Director, a monthly report shall be submitted on Form 9–153, showing: each run of oil; all transfers of gas and other lease products; and the royalty accruing therefrom to the lessor. Form 9–153 shall be submitted on or before the last day of the calendar month which follows the calendar month in which the production is obtained.

(b) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42–R1237).

§ 250.95 Well completion or recompletion report and log.

(a) All reports and logs of well completions or recompletions shall be submitted in duplicate on or attached to Form 9–330 in accordance with paragraph 250.38(b)(1) of this Part. The form shall contain: a complete and accurate log and report of all operations on the well as specified on the form; geologic markers and all important zones of porosity and contents thereof; cored intervals and all drill-stem tests including depth interval tested, cushion used, and the time the tool was open; flowing and shut-in pressures; and recoveries. Duplicate copies of logs compiled for geologic information from core or formation samples shall be filed in addition to the regular log. If not previously furnished, duplicate copies of composites of multiple runs of all well bore surveys, including electric, radioactive, and other logs, temperature surveys, and directional surveys shall be attached. (Such copies are in addition to field prints filed pursuant to § 250.38(b)(3) of this Part.)

(b) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (42–R0355).

§ 250.96 Special forms or reports.

When special forms or reports, other than those referred to in the regulations in this Part, are deemed necessary, instructions for the filing of such forms or reports will be given by the Director.

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Friday
October 26, 1979

Part VIII

Department of the Interior

Fish and Wildlife Service

Endangered Species Determinations for *Arctostaphylos hookeri* ssp. *ravenii* (Raven's manzanita) and *Mirabilis macfarlanei* (MacFarlane's four o'clock)

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Determination That Arctostaphylos hookeri ssp. ravenii Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines that *Arctostaphylos hookeri* ssp. *ravenii*, the Raven's manzanita, is an Endangered species. Only a single individual of this plant is known to remain in the wild and it is potentially under threat from horticultural collecting, vandalism, or changes in land use. The present action will afford it the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rule takes effect on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 203/235–2771.

SUPPLEMENTARY INFORMATION:

Background

The Service published a proposal in the June 16, 1976, **Federal Register** advising that sufficient evidence was then on file to support determinations that 1783 plant taxa, including Raven's manzanita (*Arctostaphylos hookeri* D. Don ssp. *ravenii* Wells), were Endangered species as defined by the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). That proposal indicated that each of the included species was threatened with extinction over all or a significant portion of its range by one or more of the factors set forth in section 4(a) of the Act as appropriate grounds for a determination of Endangered or Threatened status; specified the prohibitions which would be applicable if such a determination were made; and solicited comments, suggestions, objections and factual information from all interested persons. A public hearing regarding the proposal was held on July 22, 1976, in El Segundo, California. Notification of the proposal and a solicitation for comments or suggestions were sent on July 1, 1976, to the Governor of California, and other interested parties.

In the June 24, 1977 **Federal Register**, the Service published a final rule (42 FR 32373–32381, codified at 50 CFR 17.61–17.73) detailing regulations to protect Endangered and Threatened plant species. The rule established prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

Summary of Comments and Recommendations

Section 4 (b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the **Federal Register** prior to adding any species to the List of Endangered and Threatened Wildlife and Plants.

The State of California's general comments were summarized in the August 11, 1977 **Federal Register** (42 FR 40682–40685). The State made no specific comments concerning Raven's manzanita.

All public comments received during the period from June 16, 1976 to August 1, 1979 were considered. Comments of a general nature relating to this proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17910–17916).

Mr. John P. Swaley, Timberlands Manager for the Western Woodlands division of Masonite Corporation, listed a number of taxa from California, among them *Arctostaphylos hookeri* ssp. *ravenii* which, although they had been proposed for Endangered status, were not treated in standard floristic works for the region. This apparent inconsistency is explained by the fact that the taxon has only been recognized as distinct recently because of its having been confused with *A. franciscana* (itself a rare species now extinct in the wild).

Similarly, Mr. Fred Landenberger, of the California Forest Protective Association, commented that *Arctostaphylos hookeri* ssp. *ravenii* had not been included in the Inventory of Rare and Endangered Vascular Plants of California, published by the California Native Plant Society (CNPS) in 1974.

In response to an inquiry, CNPS has informed the Service that this subspecies is currently under consideration for inclusion in a revised version of the Inventory, and was initially overlooked because it had been published such a short time before the appearance of the original Inventory.

A status report on Raven's manzanita, prepared by CNPS in cooperation with the U.S. Forest Service, was solicited by the Service after the official comment period, and contained information which, together with data available at the time of proposal, was used in preparing this rule. The status report gives: (1) Synonymy and history of scientific name; (2) distribution; (3) description, including differences from close relatives; (4) habitat; (5) endangerment factors; (6) management suggestions; and (7) references. Factual data derived from this report concerning distribution, habitat and endangerment factors are included in the conclusion which follows.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that Raven's manzanita (*Arctostaphylos hookeri* D. Don. ssp. *ravenii* P. V. Wells) is in danger of becoming extinct throughout all of its range due to four of the factors described in Section 4(a) of the Act.

The following review amplifies and substantiates the applicability to this plant of the five factors described in section 4(a) of the Act.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* First described in 1968, this subspecies now occurs as a single plant on the Presidio (U.S. Army), San Francisco County, California. It is believed that Raven's manzanita once occurred at three other locations in San Francisco County and that those populations were destroyed by housing development. This last remaining individual in the wild could be destroyed by a single inadvertent action.

In addition to potential development, competition with nonnative plants poses a serious threat to native plants on the Presidio. Particularly aggressive competitors are Monterey cypress (*Cupressus macrocarpa*), eucalypts or gums (*Eucalyptus* spp.), and ice-plants (*Mesembryanthemum* spp.).

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Native plant gardens in California often include various species of manzanita. An overzealous collector could remove or seriously harm the last wild plant. This subspecies is maintained in at least one local botanic garden which could serve as a source of supply to rare plant fanciers.

3. *Disease or predation*—Not known to affect this species.

4. *The inadequacy of regulatory mechanisms.*—California has legislation to protect native endangered plants and Raven's manzanita is listed as Endangered by the State. However, Federal listing as Endangered will reinforce the protection now available to this plant. Because it grows on land controlled by a U.S. Government agency, section 7 of the Act will be important in assuring its preservation.

5. *Other natural or manmade factors affecting its continued survival.* Members of the genus *Arctostaphylos* are pollinated by large bees (e.g. *Bombus* [Bombidae] and

Anthophora [Anthophoridae]). Populations of native insects in San Francisco have been seriously reduced, and it is important to the recovery of Raven's manzanita that healthy populations of pollinators be maintained in a natural state in the vicinity of this plant.

Effect of the Rulemaking

Section 7(a) of the Act, as amended, provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for interagency cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. The present rule requires Federal agencies to satisfy these statutory and regulatory obligations with respect to *Arctostaphylos Hookeri* ssp. *ravenii*. Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered species of plants are found at Section 17.61–17.63 (42 FR 32373–32381).

With respect to this plant, all pertinent prohibitions of Section 9(a)(2) of the Act, as implemented by 50 CFR Part 17.61 would apply. These prohibitions, in general, make it illegal for any person subject to the jurisdiction of the United States to import or export Endangered plants; deliver, receive, carry, transport, or ship them in interstate commerce in the course of a commercial activity; or to sell or offer them for sale in interstate or foreign commerce.

Section 10 of the Act and the regulations referred to above provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Effect Internationally

In addition to the protection provided by the Act, the Service will review this plant to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention or whether it should be considered under other appropriate international agreements.

National Environmental Policy Act

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

At the time any such regulation [to determine a species to be Endangered or Threatened] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Arctosaphylos hookeri ssp. *ravenii* is presently known from a single locality and may be reduced in the wild to a single individual. Species of this genus are sometimes taken from the wild as garden subjects. Its extreme vulnerability to vandalism or horticultural collecting could be increased by the notoriety attached to its listing as Endangered. Critical Habitat designation would publicly identify the locality of the last known wild plant of the subspecies and could lead to its destruction. Furthermore, since the Department of the Army has been advised of the plant's location and of that Department's responsibilities under section 7 of the Act, determining Critical Habitat would not provide any additional benefit to this species. Accordingly, the Service is not designating critical habitat for Raven's manzanita in this rule.

The primary authors of this rule are Drs. Paul A. Opler and John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/231–1975).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order, by family, genus, and species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Ericaceae—Health Family:						
Arctostaphylos hookeri ssp. *ravenii*	Raven's manzanita	U.S.A.(CA)	Entire	E	63	N/A

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33146 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Determination that *Mirabilis macfarlanei* is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Mirabilis macfarlanei* (MacFarlane's four o'clock) to be an Endangered species. This species occurs in Idaho and Oregon. This plant is known only from three populations with a total of 20–25 individual plants. Two populations occur on Forest Service land; one occurs on Bureau of Land Management land. One population occurs adjacent to a main hiking trail along the Snake River. Recreational use of this area will increase since the area has been designated a National Recreation Area. Taking would be a serious threat for the continued existence of this plant considering the small number of individual plants; this species does have a very showy pink flower. This action will extend to this plant the protection provided by the Endangered Species Act of 1973, as amended in 1978.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, (703) 235–2771.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94–51, contained lists of over 3,100 U.S. vascular plant taxa considered to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823–27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523–24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the above mentioned **Federal Register** publication.

Mirabilis macfarlanei was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. A public hearing on the June 16, 1976, proposal was held on July 22, 1976, in El Segundo, California.

In the June 24, 1977, **Federal Register**, the Service published a final rulemaking (42 FR 32373–32381, to be codified at 50 CFR Part 17) detailing the regulations to protect Endangered and Threatened plant species. The rules establish prohibitions and a permit procedure to grant exceptions to the prohibtions under certain circumstances.

The Department has determined that this rule does not meet the criteria for significance in the Department Regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program, or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909–17916). The comments in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Section 9(a)(2) and 10(a) of the Act were summarized in the June 24, 1977, **Federal Register** final prohibitions and permit provisions. The Governors of Idaho and Oregon were notified of the proposed action. The Governors themselves submitted no comments on the proposed action; several departments within the State of Oregon responded to the proposed action with programmatic, not specific, comments. Recently, the Native Plant Society of Oregon recommended that *M. macfarlanei* be listed as an Endangered species without the determination of Critical Habitat.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Mirabilis macfarlanei* is in danger of becoming extinct throughout all or a significant portion of the range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Mirabilis macfarlanei* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat of range.* This plant is known only from three populations with approximately 20–25 individual plants. the Idaho population has an estimated 10 plants covering a 5-10-meter length. One Oregon population has an estimated 15 plants covering an area approximately 30 x 50 meters; the other Oregon population that is next to a hiking trail consists of two plants. This trail is a main recreation trail along the Snake River. There will certainly be increased recreational use of the river trail now that this area has been designated a National Recreation Area.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Collecting can be a serious threat to the continued existence of this species considering the number of known individual plants. Other species of *Mirabilis* are cultivated and prized as garden ornamentals. *M. macfarlanei* is an attractive plant with a very showy pink flower. As if limited distribution and small population size were not enough, the horticultural statement in C. L. Hitchcock's *Vascular Plants of the Pacific Northwest* places the plant in further jeopardy. Hitchcock recommends that the "rather attractive" plants are worth a try in the wild garden. *Vascular Plants of the Pacific Northwest* is the definitive text on flora of the area and is widely read by botanists including commercial plant collectors.

3. *Disease or predation* (including grazing). The effect of grazing on this species is not known. Grazing does occur near the Oregon populations and should be monitored to see if *M. macfarlanei* is being grazed on. At least two species of fungi have been observed on the vegetative parts of the plants in Idaho. A lepidopteran (which may be a species of *Lithiarepteryx*) may also be working on the buds and leaves. Examination of some of the nearly-open flowers reveal ovaries eaten away and other parts missing.

4. *The inadequacy of existing regulatory mechanisms.* Neither Idaho nor Oregon have legislation to protect Endangered or Threatened plants or official State lists of such plants. Forest Service regulations prohibit removing, destroying, or damaging any plant that it classified as a threatened, endangered, rare or unique species, 36 CFR 261.9(b). The Bureau of Land Management does

have authority under the Federal Land Policy and Management Act of 1976 (the BLM Organic Act) to restrict taking of vegetative resources under certain circumstances. Present regulations (43 CFR 6010.2) prohibit the removal, destruction, and disturbance of vegetative resources unless such activities are specifically authorized. These regulations make no specific reference to Threatened or Endangered plants and provide no framework to allow an over-all program for management and protection of native plants. These various regulations, however, may be difficult to enforce. The Endangered Species Act will offer additional protection to this species, especially as other Federal agencies will then be required to use their authorities to protect listed species pursuant to Section 7 of the Act.

5. *Other natural or manmade factors affecting its continued existence.* This species is known from three small populations with a total of 20–25 individual plants. Extensive searches by both professional and amateur botanists over the past six years have not revealed additional plants. It is an attractive garden subject. This species' showiness and accessibility make the few remaining individuals vulnerable to collection and eventual extinction.

Effect of the Rulemaking

Section 7 (a) of the Act as amended in 1978 provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultations with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species.

Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered plant species, are found at §§ 17.61–17.63 (42 FR 32378–32381).

Section 9(a)(2) of the Act, as implemented by Section 17.61 would apply. With respect to any species or plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381, 50 CFR Part 17), also provide for the issuance of permits under certain circumstances to carry out otherwise prohibitive activities involving Endangered plants.

Effect Internationally

In addition to the protection provided by the Act, the Service will review the status of this species to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate Appendices to the Convention and whether it should be considered under other appropriate international agreements

National Environmental Policy Act

A final Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Endangered Species Act Amendment of 1978

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be Endangered or Threatened species] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical Habitat.

Mirabilis macfarlanei is threatened by taking and the taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this species more vulnerable to taking and therefore it would not be prudent to determine Critical Habitat.

Mirabilis macfarlanei was proposed for listing as an Endangered plant on June 16, 1976. Since it has been determined to be imprudent to designate Critical Habitat for this species at this time, and all listing requirements of the Act have been satisfied, the Service now proceeds with the final rulemaking to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 USC 1531–1543).

The primary author of this rule is Mrs. Lorraine Williams, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1975).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Nyctaginaceae—Four o'clock Family:						
Mirabilis macfarlanei	MacFarlane's Four o'clock.	U.S.A. (ID, OR)	Entire	E	b4	N/A

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33147 Filed 10-25-79; 8:45 am]

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federal register

Friday
October 26, 1979

Part IX

Department of the Interior

Fish and Wildlife Service

Endangered Species Determinations for *Echinocereus lloydii* (Lloyd's hedgehog cactus) and *Echinocereus reichenbachii* var. *albertii* (Black lace cactus)

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
50 CFR Part 17

Determination that Echinocereus lloydii is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Echinocereus lloydii* (Lloyd's hedgehog cactus), a native plant of Texas, to be an Endangered species. The range of this species has been decreased by a highway widening project which passed through the species' habitat. Removal of plants by private collectors and commercial suppliers has resulted in a further depletion of natural populations and continues to threaten this species. This action will extend to this plant the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Chief—Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C., 20240, 703/235-2771.

SUPPLEMENTARY INFORMATION:

Background

Echinocereus lloydii (Lloyd's hedgehog cactus) occurs in one Texas county. The entire occupied historical and present range of this cactus is approximately eight square miles. The area in which this species occurs is primarily privately owned ranch lands except for one highway right-of-way. *Echinocereus lloydii* is a columnar cactus which reaches twelve inches in height and four and one-half inches in diameter. The flowers are scarlet to coral pink and the fruits are greenish-orange when ripe. This species' continued existence is in danger and this rule will extend to it the protection provided by the Endangered Species Act of 1973, as amended. The following paragraphs summarize the actions leading to this final rule and the factors which are currently threatening this cactus.

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above mentioned **Federal Register** publication.

Echinocereus lloydii was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. Four general hearings were held in July and August 1976 on the June 16, 1976 proposal: Washington, D.C.; Honolulu, Hawaii; El Segundo, California; and Kansas City, Missouri. A fifth public hearing was held on July 9, 1979, in Austin, Texas for seven Texas cacti, including *Echinocereus lloydii*, and one fish.

In the June 24, 1977, **Federal Register**, the Service published a final rulemaking (42 FR 32373-32381, codified at 50 CFR 17) detailing the regulations to protect Endangered and Threatened plant species. The rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this rule neither meets the criteria for significance in the Department Regulations implementing Executive Order 12044 (43 CFR Part 14) nor requires a regulatory analysis.

Summary of Comments and Recommendations

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program, or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). Some of these comments had addressed the provisions for plants under Section 9(a)(2) and 10(a) of the Act. These comments are summarized in the June 24, 1977, **Federal Register** final prohibitions and permit provisions. No comments dealing specifically with *Echinocereus lloydii* were received during these official comment periods. The Governor of Texas was notified of the proposed action, but the governor submitted no comments dealing specifically with *Echinocereus lloydii*. The Texas Forest Service commented on the proposed Texas trees and requested more time for comments beyond the August 16 comment period. The Service has continued to solicit comments since the publication of the proposal in 1976.

On July 9, 1979, the Service held a second public hearing in Austin, Texas and again solicited comments on seven Texas cacti and one fish. Dr. Del Weniger, a botanist, who the Service contracted to prepare status information on Texas cacti commented concerning the current status of *Echinocereus lloydii*. He noted that this species is highly Endangered. The El Paso Cactus and Rock Club submitted a written comment that they favored the proposed action. No other comments dealt specifically with *Echinocereus lloydii*.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Echinocereus lloydii* Brittain and Rose (Lloyd's hedgehog cactus; synonyms: *Echinocereus roetteri* var. *lloydii* Backeberg) is in danger of becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Echinocereus lloydii* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, this cactus was known from a small area (approximately 8 square miles). This is the only area known today. A swath through this population was eliminated and many cacti destroyed by a highway construction project which is now complete. Botanists have noted a dramatic and significant decrease in the number of individuals at this site over the past 15 years, primarily due to the highway construction and subsequent access which was provided to collectors.

Echinocereus lloydii has also been reported as occurring in New Mexico (several individuals at two or three scattered locations). Based on current biological opinion these reports appear erroneous or at best the identity of the New Mexico plants is questionable. Until further studies are completed, the range should only include Texas.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* As with many other cacti, this species is in world-wide demand by collectors of rare cacti. Removal of plants from the wild has occurred and has resulted in the depletion of natural populations. Following construction of the highway through the population almost all the plants were removed from their natural habitat. This is the primary threat to this species since no further construction projects are now planned for the area. Over-collection is certainly an ongoing threat to this cactus.

3. *Disease or predation* (including grazing). Cattle grazing could adversely affect this species by trampling, especially young plants. At present, light grazing does not seem to affect the species, however, if this were intensified it could threaten the continued existence of this species.

4. *The inadequacy of existing regulatory mechanisms.* Texas has no state laws protecting Endangered and Threatened plants. All native cacti are on Appendix II of the convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention regulates export of cacti, but does not regulate interstate or intrastate trade in this cactus or habitat destruction. No other Federal protective laws currently apply specifically to this species. The Endangered Species Act will now offer additional protection for the cactus.

5. *Other natural or manmade factors affecting its continued existence.* Restriction to a specialized and localized soil type, and the low total population level with a resultant restricted gene pool are factors which tend to intensify the adverse effects of threats to the plants and their habitat.

Effect of the rulemaking

Section 7(a) of the Act, as amended in 1978, will affect Federal agencies as follows:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with, and with the assistance of, the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of Endangered species and Threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with, and with the assistance of, the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. This rulemaking requires Federal Agencies to satisfy these statutory and regulatory obligations with respect to this species. However, this cactus is presently known only from privately owned lands.

Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered plant species, are found at §§ 17.61–17.63 (42 FR 32378–32381).

Section 9(a)(2) of the Act, as implemented by § 17.61, would apply. With respect to any species or plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381, to be codified at 50 CFR Part 17), also provides for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Endangered plants.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora which requires a permit for export of this plant. The Service will review whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

A final Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical Habitat.

Echinocereus lloydii is threatened by taking (see discussion under factors 2 and 4 in the Conclusion section of this rule) and the taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this species more vulnerable to taking and therefore it would not be prudent to determine Critical Habitat.

The Service now proceeds with the final rulemaking to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531–1543).

The primary author of this rule is Ms. E. La Verne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1975). Status information for this species was compiled by Dr. Del Weniger (Our Lady of the Lake Univ., San Antonio, Texas).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and Threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus family:						
Echinocereus lloydii	Lloyd's hedgehog cactus	U.S.A.—TX	Entire	E		NA

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33149 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Determination that Echinocereus reichenbachii var. albertii is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Echinocereus reichenbachii* (Terscheck) Haage f. var. *albertii* L. Benson (Black lace cactus), a native plant of Texas, to be an Endangered species. Known populations of this cactus have been reduced fifty percent (from six sites to three) by brush clearing for range improvement programs. Remaining populations are seriously threatened by further brush clearing of the brush communities in the South Texas Coastal Bend.

Another threat to this cactus is over-collecting. This cactus is in world-wide demand by collectors of rare cacti, especially for show specimens. Past commercial and private exploitation has caused a serious decline in its natural population level so that not more than 4,000 plants remain in the wild. This determination that *Echinocereus reichenbachii* var. *albertii* is an Endangered species implements the protection provided by the Endangered Species Act as well as mechanisms to assist in management and recovery of surviving populations.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. John Spinks, Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.

SUPPLEMENTARY INFORMATION:

Background

Echinocereus reichenbachii var. *albertii* is an endemic member of the Gulf Coast Plain brush community of the South Texas Coastal Bend. It is found on the ecotone between the Gulf coastal plain and the more rolling interior mesquite-chapparal country. It is highly salt tolerant. This cactus is presently known from only three sites, one in each of the following three counties: Refugio, Kleberg and Jim Wells. The combined area of all sites for this taxon is about seven hectares. Not more than 4,000 plants are known to remain in the wild.

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above mentioned **Federal Register** publication.

Echinocereus reichenbachii var. *albertii* was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. Public hearings on the June 16, 1976, proposal were held on July 22, 1976, in El Segundo, California and on July 28, 1976, in Kansas City, Missouri. Another public hearing was held on July 9, 1979, in Austin, Texas for the seven Texas cacti proposed as Endangered species, including *Echinocereus reichenbachii* var. *albertii*.

In the June 24, 1977, **Federal Register**, the Service published a final rulemaking (42 FR 32373-32381, codified at 50 CFR) detailing the permit regulations to protect Endangered and Threatened plant species. These rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis, under Executive Order 12044 and 43 CFR Part 14.

SUMMARY OF RECOMMENDATIONS: In keeping with the intent of section 4(b)(1)(C) of the Act, a summary of all comments and recommendations received are here published in the **Federal Register** prior to adding this species to the List of Endangered and Threatened Wildlife and Plants.

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program, or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). Some of these comments had addressed the general problems of cacti conservation. Additionally, many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Section 9(a)(2) and 10(a) of the Act. These comments are summarized in the June 24, 1977, final prohibitions and permit provisions (42 FR 32374-32381).

No comments dealing specifically with *Echinocereus reichenbachii* var. *albertii* were received during these official comment periods. The Governor of Texas was notified of this proposed action. The Governor submitted no comments on the proposed action, nor did the State Conservation Agency. Botanists have submitted information on this species since the close of the official comment period.

On July 9, 1979, a public hearing was held in Austin, Texas, and the comment period was officially reopened (July 2 through July 23, 1979). The Governor of Texas was notified of the proposal to list *Echinocereus reichenbachii* var. *albertii* as an Endangered species. The Governor submitted no comments on the proposed action.

One written comment specific to *Echinocereus reichenbachii* var. *albertii* was received in the July, 1979, comment period. The El Paso Cactus and Rock Club favored listing this species as Endangered.

At the July 9, 1979, public hearing in Austin, Texas, Del Weniger, Chairman of the Biology Department at Our Lady of the Lake University in San Antonio, commented on the natural history and distribution of *Echinocereus reichenbachii* var. *albertii*. He recommended it be final-listed as Endangered because "it is very limited and endangered from brush clearing." He detailed these threats to the species from habitat destruction and collecting.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Echinocereus reichenbachii* (Terscheck) Haage f. var. *albertii* L. Benson (Black lace cactus; synonyms: *Echinocereus melanocentrus* Lowry) is in danger of becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Echinocereus reichenbachii* var. *albertii* are as follows:

(1) *The present or threatened destruction, modification or curtailment of its habitat or range.* Historically, this cactus occurred in six scattered localities on flat Coastal plains in dense brush of east central Jim Wells County, northern Kleberg County, and southern Refugio County, Texas. Brush clearing and collecting have resulted in the loss of habitat for this cactus and a reduction in its range to only three remaining known locations, one in each county. One of these sites in Jim Wells County has already been reduced by brush clearing. These remaining sites are privately owned and are parts of large ranching operations. Habitat destruction as a result of brush control and range improvement programs is an immediate and serious threat to this cactus.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* This species is a greatly desired show plant and collectors' item. Entire plants are collected by cactus dealers and amateur growers. Plants from one of the two originally known populations in Jim Wells County were taken years ago for commercial trade. No sign of that population has been reported since that time; it was apparently totaly extirpated by taking. Those few botanists knowing the whereabouts of the other site have been very careful not to reveal its exact location. This secrecy accounts for its continued existence in the face of this taking threat.

(3) *Disease or predation* (including grazing). This does not seem to be a factor threatening this cactus.

(4) *The inadequacy of existing regulatory mechanisms.* The State of Texas provides no protection for this cactus. The Endangered Species Act would offer the first protection for it.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention only regulates export of the taxon, and, therefore, does not regulate internal trade in the cactus or habitat destruction. No other Federal protective laws currently apply to this taxon. The Endangered Species Act of 1973, as amended, will now offer additional protection for the taxon.

(5) *Other natural or man-made factors affecting its continued existence.* Restriction to a specialized and localized ecotonal plant community with a low total population level consisting of small, scattered and disjunct populations and a resultant restricted gene pool are factors which tend to intensify the adverse effects of threats to this plant and its habitat.

Effect of the Rulemaking

Section 7(a) of the Act as amended in 1978 provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 (a) of the Act. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species.

Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered plant species are found at Section 17.61–17.63 (43 FR 32378–32381).

Section 9(a)(2) of the Act, as implemented by Section 17.61 would apply. With respect to any species of plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381), codified in 50 CFR Part 17, also provide for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Endangered plants.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export of the taxon. The Service will review whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

An Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Endangered Species Act Amendments of 1978

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat

of such species which is then considered to be Critical Habitat.

Echinocereus reichenbachii var. *albertii* is threatened by taking and the taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this species more vulnerable and therefore it would not be prudent to determine Critical Habitat.

Echinocereus reichenbachii var. *albertii* was proposed for listing as an Endangered plant on June 16, 1976. Since it has been determined to be imprudent to designate Critical Habitat for this species at this time, and all listing requirements of the Act have been satisfied, the Service now proceeds with the final rulemaking to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 USC § 1531–1543).

The primary author of this rule is Ms. Rosemary Carey, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1975). Status information for this species was compiled by Del Weniger, Chairman, Biology Department, Our Lady of the Lake University, San Antonio, Texas, and author of *Cacti of the Southwest.*

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Echinocereus reichenbachii var. *albertii*	Black lace cactus	U.S.A. (TX)	Entire	E	65	NA

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33150 Filed 10-25-79; 8:45 am]

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federal register

Friday
October 26, 1979

Part X

Department of the Interior

Fish and Wildlife Service

Endangered Species Determinations for *Pediocactus peeblesianus* var. *peeblesianus* (Peebles Navajo Cactus), *Echinocereus kuenzleri* (Kuenzler Hedgehog Cactus), and *Echinocactus horizonthalonius* var. *nicholii* (Nichols Turks Head Cactus)

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Determination That Pediocactus peeblesianus var. peeblesianus Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Pediocactus peeblesianus* var. *peeblesianus* (Peebles Navajo cactus), a native plant of Arizona, to be an Endangered species. Gravel extraction, highway construction operations, and cattle grazing have led to degradation and loss of the plants' restricted habitat. The plants are in demand by cactus collectors, and removal by commercial suppliers and private collectors has caused a decline in the natural population. This determination will extend to this cactus the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant taxa to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered by the Smithsonian Institution to be endangered, threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within, as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523-24572) to determine approximately 1,700 vascular plant taxa to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plants was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above mentioned **Federal Register** publication.

Pediocactus peeblesianus var. *peeblesianus* was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. A public hearing on this proposal was held on July 22, 1976, in El Segundo, California. A second public hearing was held on July 11, 1979, in Phoenix, Arizona for five Arizona cacti proposed as Endangered species, including this *Pediocactus*. In the June 24, 1977, **Federal Register**, the Service published a final rule (42 FR 32373-32381, codified at 50 CFR Part 17) detailing the permit regulations to protect Endangered and Threatened plant species. The rule established prohibitions and permit procedures to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this listing does not meet the criteria for significance in the Department regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

In keeping with the general content of Section 4(b)(1)(C) of the Act, a summary of all comments and recommendations received is published in the **Federal Register** prior to adding any plant species to the List of Endangered and Threatened Wildlife and Plants.

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). Some of these comments had addressed the general problems of conservation of cacti.

Additionally, many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Sections 9(a)(2) and 10 of the Act. These comments are summarized in the June 24, 1977, **Federal Register** final rule (42 FR 32373-32381) on plant trade prohibitions and permit provisions.

With the July 2, 1979, **Federal Register** notice (44 FR 38611) for the second public hearing on certain proposed southwestern cacti, comments on the taxon were again solicited, with an official comment period of July 2 through July 23, 1979. The Governor of Arizona was notified of the proposal to list *Pediocactus peeblesianus* var. *peeblesianus* as an Endangered species. Although the Governor himself submitted no comment on the proposed action, the Arizona Commission of Agriculture and Horticulture reported that the cactus is already under State law, and concurs that it be listed as an Endangered species.

Six other written comments were received concerning this cactus. The Arizona State Office of the Bureau of Land Management concurs that the cactus be listed as Endangered. The Southwest Region Office of the Bureau of Reclamation indicated concern that there was a lack of supporting data for the listing, and a lack of detailed information on Critical Habitat for the cactus. Extensive information on the cactus is on file and available in the Service's Albuquerque Regional Office and Washington Office of Endangered Species; it is not prudent to determine Critical Habitat for the cactus because it would increase threats to it, as explained further below. Four letters or statements from botanists were received; all strongly supported listing this *Pediocactus* as an Endangered species. In addition, the Service has received a detailed contracted status report from the Museum of Northern Arizona and a provisional U.S. Forest Service status report concluding that the taxon is Endangered.

At the July 11, 1979, public hearing in Phoenix, Arizona, the listing of this cactus as an Endangered species was supported by six statements, from the Arizona Commission of Agriculture and Horticulture, the Central Arizona Cactus and Succulent Society, and professional botanists employed in academia and governments; none opposed the listing. One statement also indicated the difficulty encountered in enforcing existing prohibitions of cacti, such as those constraints on collecting cacti under State law, and expressed hope that enforcement would increase through provisions, of the Endangered Species Act, including possibilities through Federal/State plant cooperative agreements.

In this regard, Section 3(15) of the Act has placed the responsibility for enforcement of the trade provisions which pertain to import and export with the Secretary of Agriculture, and this responsibility has been delegated to their Animal and Plant Health Inspection Service. Interstate trade enforcement is the responsibility of the

U.S. Fish and Wildlife Service, Division of Law Enforcement. Permits for activities allowed through Section 10 of the Act and the regulations of June 24, 1977 (42 FR 32373–32381), are the responsibility of the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, Washington, D.C. 20240, 703/235–1903.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Pediocactus peeblesianus* (Croizat) L. Benson var. *peeblesianus* (Peebles Navajo cactus; synonyms: *Navajoa peeblesiana, Toumeya peeblesiana, Echinocactus peeblesianus, Utahia peeblesiana*) is in danger of becoming extinct throughout its limited range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Pediocactus peeblesianus* var. *peeblesianus* are as follows:

(1) *The present or threatened destruction, modification, or curtailment of its habitat or range.* This cactus is known from only a few locations in Navajo County, Arizona, from near Joseph City to the Marcou Mesa region northwest of Holbrook. An unknown proportion of the original habitat of this taxon, perhaps 10–25 per cent, has been destroyed through gravel pit operations on the private lands on which it occurs, and the recent construction of Interstate 40 around Holbrook, Arizona. There are several gravel pits near the habitat; one of the gravel pit operations within 1/5 km of the known distribution of the plants is stripping much of the area. Rock collecting also occurs in the area, with the resulting trampling of plants and disturbance of habitat. The total area in which this substrate-restricted, narrow endemic could potentially occur is estimated to be seven square km; habitat on which it occurs within that area is even more restricted, so it is quite susceptible to unplanned habitat change.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* This taxon is in world-wide demand by collectors of rare cacti, and removal of plants from native habitats by both private collectors and commercial suppliers occurs.

(3) *Disease or predation* (including grazing). Cattle grazing, adversely affecting the plants by trampling, especially during wet seasons of the year when the ground is muddy and the plants are emergent, is a definite potential threat on the portions of the range which are Bureau of Land Management and State of Arizona administered, and to a lesser extent a potential threat on the privately owned parts of the range of the taxon.

(4) *The inadequacy of existing regulatory mechanisms.* This species is offered protection under Arizona law, A. R. S. Chapter 7, Article 1, Section 3–901, specifically prohibiting collection of *Pediocactus peeblesianus* (listed as *Toumeya peeblesiana)* as well as all other members of the Cactaceae (Cactus family), except by permit. All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention only regulates export of the taxon, and therefore does not regulate internal trade in the cactus, or habitat destruction.

Although Bureau of Land Management regulations prohibit the removal, destruction, and disturbance of vegetative resources unless such activities are specifically allowed or authorized (43 CFR 6010.2), the prohibitions are difficult to enforce. The Endangered Species Act offers additional protection for the cactus as indicated in part below, which will reinforce the Bureau's regulations.

(5) *Other natural or man-made factors affecting its continued existence.* Restriction to a very specialized and localized soil type in a small geographical area, restriction to flat areas or gentle slopes in an area which is rather hilly, and a very low total population level (a few hundred to 1,000 plants in the wild) with a resultant restricted gene pool, are all factors which tend to intensify threats to the plants or their habitat.

Effects of the Rulemaking

Section 7(a) of the Act, as amended, provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, ensure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. This rule requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this taxon. New rules implementing the 1978 amendments to Section 7 of the Act are being prepared now by the Service.

Endangered and Threatened species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all such species. The principal regulations which pertain to Endangered plant species are found at Sections 17.61–17.63 (42 FR 32378–32380) and are summarized below.

All provisions of Section 9(a)(2) of the Act, as implemented by Section 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, or to deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity, or to sell or offer for sale this taxon in interstate of foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381), and codified in 50 CFR Part 17, provide for the issuance of permits, under certain circumstances, to carry out otherwise prohibited activities involving Endangered plants, such as trade in specimens of cultivated origin.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export. The Service will review *Pediocactus peeblesianus* var. *peeblesianus* to determine whether it should be considered under the Convention on Native Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

An Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this

determination is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Pediocactus peeblesianus var. *peeblesianus* has already been reduced in numbers and is threatened by taking, an activity not directly prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this taxon more vulnerable to further taking and, therefore, the Service determines that it would not be prudent to determine Critical Habitat.

Pediocactus peeblesianus var. *peeblesianus* was proposed on June 16, 1976 (41 FR 24536), and since Critical Habitat is not being determined for this taxon, the Service is proceeding at this time with a final rule to determine this species to be Endangered pursuant to the Endangered Species Act of 1973, as amended. This rule is issued under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884).

The primary author of this rule is Dr. Bruce MacBryde, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1975). Dr. Arthur M. Phillips, III, Dr. Barbara G. Phillips, and Ms. Elaine M. Peterson, Museum of Northern Arizona, compiled the status report and other provisional documents for this taxon.

Regulation Promulgation

Accordingly, Section 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Add in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus family:						
Pediocactus peeblesianus var. *peeblesianus*	Peebles Navajo cactus.	U.S.A. (AZ)	Entire	E	67	NA

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33151 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part

Determination that Echinocereus Kuenzleri Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Echinocereus kuenzleri* (Kuenzler hedgehog cactus), a native plant of New Mexico, to be an Endangered species. The plants are in demand by cactus collectors, and removal by commercial suppliers and private collectors has caused near extinction of the natural populations. Much of the original habitat was destroyed by road improvement, and grazing and real estate development are also threats. Less than 200 individuals are known in nature, although the plant is available in cultivation. This action will extend to this plant the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235–2771.

SUPPLEMENTARY INFORMATION:

Background

Echinocereus kuenzleri is known from only two populations at the eastern edge of the Sacramento Mountains, in the Central Highlands of New Mexico. Most of the original population, discovered in 1961 near Elk, was destroyed with road building. Less than 200 individuals remain in the wild. These are still sought by collectors, despite the fact that the plant is horticulturally propagated and available in cultivation. Grazing and real estate development are also current threats. The two populations are found in Otero and immediately adjacent Chaves Counties, and in Lincoln County north of Elk.

Section 12 of the Endangered Species Act of 1973 required the Smithsonian Institution to prepare a report on plants which might qualify for listing under the Act. The Secretary of the Smithsonian Institution, in response to Section 12, presented his report on plant taxa to Congress on January 9, 1975. This report, designated as House Document No. 94–51, contained lists of over 3,100 U.S. vascular plants considered by the Smithsonian Institution to be endangered, threatened or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823–27924) of his acceptance of this report as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within, as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523–24572) to determine approximately 1,700 vascular plant taxa to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plants was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the above mentioned **Federal Register** publication.

This cactus in its New Mexico range was included in the July 1, 1975, notice of review as *E. hempelii*, with an indication that the taxonomy was in question. The species in its New Mexico and Mexico ranges was proposed as Endangered in the June 16, 1976, proposed rule, again under the name *E. hempelii*. Also in 1976, *Echinocereus kuenzleri* was scientifically described as a new species for the New Mexico population of what had previously been called *E. hempelii*. The true *E. hempelii*, as recently reinterpreted, is known only from a few locations in Chihuahua. Since all New Mexico populations of

what had been called *E. hempelii* are now known as *E. kuenzleri*, we are adopting the latter name in this final rule. Kuenzler hedgehog cactus has also been called *E. fendleri* var. *kuenzleri*, but this name has not yet been officially published in accord with the International Code of Botanical Nomenclature. A public hearing on the June 16, 1976, proposal was held on July 22, 1976, in El Segundo, California. A second public hearing was held on July 12, 1979, in Albuquerque, New Mexico for five New Mexico cacti proposed as Endangered species, including this *Echinocereus*. The notice for that public hearing (44 FR 38611) used the now correct name *E. kuenzleri*, and indicated that the cactus had been called *E. hempelii* previously.

In the June 24, 1977, **Federal Register**, the Service published a final rule (42 FR 32373–32381, codified at 50 CFR Part 17) detailing the permit regulations to protect Endangered and Threatened plant species. The rule established prohibitions and permit procedures to grant exception to the prohibitions under certain circumstances.

The Department has determined that this listing rule does not meet the criteria for significance in the Department regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

In keeping with the general intent of Section 4(b)(1)(C) of the Act, a summary of all comments and recommendations received is published in the **Federal Register** prior to adding any plant species to the List of Endangered and Threatened Wildlife and Plants.

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909–17916). Some of these comments had addressed the general problems of conservation of cacti.

Additionally, many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Sections 9(a)(2) and 10 of the Act. These comments are summarized in the June 24, 1977, **Federal Register** final rule (42 FR 32373–32381) on plant trade prohibitions and permit provisions. Several persons at the recent public hearing in New Mexico indicated lack of familiarity with these prohibitions and permit provisions. Requests for copies of these final trade regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, 703/235–1903.

With the July 2, 1979, **Federal Register** notice (44 FR 38611) for the second public hearing on certain proposed southwestern cacti, comments on the species were again solicited, with an official comment period of July 2 through July 23, 1979. The Governor of New Mexico was notified of the proposal to list *Echinocereus kuenzleri* as an Endangered species. Although the Governor himself submitted no comment on the proposed action, the New Mexico Natural Resources Department recommends the species be listed as Endangered, without Critical Habitat. They indicated collectors and real estate development as threats, and suggest that a reintroduction program may be necessary.

The New Mexico Department of Agriculture briefly reported on the survival status of the cactus, and also indicated specific areas for the species should not be designated. It indicated that before listing the cactus as Endangered, the possible inadequacy of the laws and their implementation should be considered, and that listing might increase threats to the species. The Service is aware that listing under the Act might be harmful; however, in balance, it considers that providing the provisions of the Act to this species is more likely to prove beneficial than allowing continued inadequate management for the cactus.

Seven other written comments were received concerning this species. The U.S. Forest Service, Region 3, recommend the cactus be listed as Endangered. The Southwest Region Office of the Bureau of Reclamation indicated concern that there was a lack of supporting data for the listing, and a lack of detailed information on Critical Habitat for the cactus. Extensive information on the cactus is on file and available in the Service's Albuquerque Regional Office and Washington Office of Endangered Species; it is not prudent to determine Critical Habitat for the cactus because it would increase threats to it, as explained further below. Three professional botanists and horticulturists comment that extinction is highly likely because of collectors and that the species should be listed as Endangered. In addition, the Service has received contracted status information indicating the species appears very near extinction, and two private citizens familiar with the species have verbally reported to the Service's Albuquerque Regional Office that it is in severe danger from over-collecting and needs maximum protection soon. The Conservation Committee of the Cactus and Succulent Society of America endorses the listing as an Endangered species. All of these comments used the name *E. kuenzleri;* two indicated it is definitely part of the *E. fendleri* complex of taxa, as is reflected in the as yet unofficial name *E. fendleri* var. *kuenzleri*. With regard to the justification that it is not prudent to determine Critical Habitat for the species, one commented:

> If a [collected] plant is to have its [exact] whereabouts in the **Federal Register**, there may as well be a copy of its death notice too.

At the July 12, 1979, public hearing in Albuquerque, New Mexico, three persons knowledgeable on New Mexico cacti and this species expressed support for listing it as Endangered; none opposed the listing.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Echinocereus kuenzleri* Castetter, Pierce et Schwerin (Kuenzler hedgehog cactus; synonyms: *Echinocereus hempelii* of authors, not of Fobe in 1897, and *"E. pseudohemplii"* (sic) of some nursery catalogs) is in danger of extinction throughout its limited range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Echinocereus kunzleri* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* This species is known from only two populations in Otero, Chaves and Lincoln Counties in the Central Highlands of New Mexico. The plants are found in pinyon-juniper woodland on the east side of the Sacramento Mountains, in the vicinity of Elk and 50 miles to the north. Most of the original population known since 1961 was destroyed during road improvements, and road maintenance remains a threat. Real estate development is also a problem for this species in the area near Elk. Some populations are located on Lincoln National Forest.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* This species has been collected so heavily that some have thought it extinct in the wild. While some plants have been taken for private collections, other may have been offered for sale under the unofficial nursery name "*E. pseudohemplii.*" The fact that this cactus has been maintained in several private collections in this country and abroad indicates that a readily available cultivated source could be developed, which would reduce collecting pressures on those in the wild. Less than two hundred wild individuals are now known, with collecting still continuing.

3. *Disease or predation* (including grazing). Cattle grazing appears to be damaging the species and its habitat, since the cactus is not found where the surface of the soil is disrupted, and some plants are probably trampled.

4. *The inadequacy of existing regulatory mechanisms.* New Mexico State Law, Chapter 76, Article 5, Section 21, requires an application to sell collected wild plants, and designation of the wild source area. Article 8 of that Law, Section 1–4, affords limited protection within 400 yards of any highway to all plants (except noxious weeds), and mentions that all species of *Echinocereus* are among the protected plants. The protection includes limited prohibitions against destruction, mutilation or removal of living plants (except seeds) on State or private land, along a highway. Some of the existing plants may be within 400 yards along the highway or other roads in the areas where it occurs.

U.S Forest Service regulations (42 FR 2956–2962) prohibit removing, destroying or damaging any plant that is classified as a Threatened, Endangered, rare, or unique species. However, the prohibitions are difficult to enforce, and as yet do not address this cactus directly.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention only regulates export of the cactus and, therefore, does not regulate interstate or intrastate trade in the cactus, or habitat destruction. The Endangered Species Act will now offer additional protection for the species.

5. *Other natural or manmade factors affecting its continued existence.* This cactus is apparently restricted to rock outcrops of a particular kind in the area, and to surfaces that receive little natural distrubance. Ants take its seeds and may help to disperse the species.

Effect of the Rulemaking

Section 7(a) of the Act as amended in 1978 provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species. New rules implementing the 1978 Amendments to Section 7 of the Act are being prepared now by the Service.

Endangered and Threatened species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all such species. The principal regulations which pertain to Endangered plant species are found at §§ 17.61–17.63 (42 FR 32378–32380). Section 9(a)(2) of the Act, as implemented by Section 17.61, will apply. With respect to any species of plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381, 50 CFR Part 17), provide for the issuance of permits, under certain circumstances, to carry out otherwise prohibited activities involving Endangered plants, such as trade in specimens of cultivated origin.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export of this plant. The Service will review whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

A final Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Echinocereus kuenzleri has been and is threatened by taking, and the taking of plants is not directly prohibited by the Endangered Species Act of 1973. The State of New Mexico and the U.S. Forest Service have not been able to adequately enforce their general prohibitions on removal of plants. Publication of Critical Habitat maps would make this species more vulnerable to taking and therefore it would not be prudent to determine Critical Habitat.

Echinocereus kuenzleri was proposed for listing as an Endangered species on June 16, 1976 (41 FR 29536). Since it has been determined not to be prudent to designate Critical Habitat for this species at this time, the Service now proceeds with the final rule to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 USC 1531–1543; 87 Stat. 884, 92 Stat. 3751).

The primary author of this rule is Dr. Bruce MacBryde, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235-1975).

Regulation Promulgation

Accordingly, Section 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Add in alphabetical order by family, genus, species, the following plant:

§ 17.12 **Endangered and Threatened plants.**

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus family:						
Echinocereus kuenzleri	Kuenzler hedgehog cactus	U.S.A. (NM)	Entire	E	66	N/A

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33152 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Determination That Echinocactus horizonthalonius var. nicholii Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines that *Echinocactus horizonthalonius* var. *nicholii* (Nichols Turks head cactus), a native plant of Arizona, is an Endangered species. Habitat destruction through mining, off-road vehicles, and increasing urban development threatens the continued existence of this species. Removal of plants by collectors has caused a depletion of natural populations. This action will extend to this plant the protection provided by the Endangered Species Act 1973, as amended.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief—Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.

SUPPLEMENTARY INFORMATION:

Background

Echinocactus horizonthalonius var. *nicholii* (Nichols Turks head cactus) occurs in two adjacent Arizona counties. This cactus' entire range only occupies approximately 20 square kilometers of the Sonoran Desert. Within this range the cactus occurs in low densities and is limited to a specific soil type. The total number of individuals has been estimated to be less than 500. *Echinocactus horizonthalonius* var. *nicholii* is a blue-green to yellowish-green cactus with a single columnar stem that reaches 1½ feet in height and 8 inches in diameter. This cactus has pink flowers and fruits which are covered with woolly white hairs. This cactus' continued existence is threatened and this rule will extend to it the protection provided by the ESA of 1973 as amended. The following paragraphs summarize the actions leading up to this final rule and the factors which cause this species to be Endangered.

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered to be endangered, threatened, or extinct. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above mentioned **Federal Register** publication.

Echinocactus horizonthalonius var. *nicholii* was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. A public hearing on the June 16, 1976 proposal was held on July 22, 1976, in El Segundo, California. A second public hearing was held on July 11, 1979, in Phoenix, Arizona for five Arizona cacti proposed as Endangered, including *Echinocactus horizonthalonius* var. *nicholii*.

In the June 24, 1977, **Federal Register**, the Service published a final rulemaking (42 FR 32373-32381, codified at 50 CFR) detailing the regulations to protect Endangered and Threatened plant species. The rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this rule does not meet the criteria for significance in the Department Regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

Hundreds of comments on the general proposal of June 16, 1976 were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). Some of these comments addressed the general problems of cacti conservation. Additionally many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Section 9(a)(2) and 10(a) of the Act. These comments are summarized in the June 24, 1977, **Federal Register** final rule (43 FR 17909-17916) on plant prohibitions and permit provisions. One comment dealing specifically with *Echinocactus horizonthalonius* var. *nicholii* was received from the Arizona Department

of Transportation concerning the species distribution. This comment noted that W. Hubert Earle's book, *Cacti of the Southwest*, listed the range of this species as Texas, New Mexico, and Mexico, as well as Arizona. Since this variety was not described until 1969, many earlier floras included the Arizona plants under *Echinocactus horizonthalonius* and thus included all these states and Mexico under its distribution. At least one publication also included a statement that perhaps the disjunct Arizona plants had been transplanted there from the more southern part of the species range. However, more recent biological evidence indicates that this statement was erroneous. The Governor of Arizona was also notified of the proposed action, but he submitted no comments specifically dealing with *Echinocactus horizonthalonius* var. *nicholii*.

On July 11, 1979 the Service held a second public hearing in Phoenix, Arizona and again solicited comments on five Arizona cacti. During this period the Bureau of Reclamation voiced concern that there was a lack of data to support the listing of these five cacti and a lack of detailed information on their Critical Habitats. However, extensive data supporting the listing of these taxa is available from either the Service's regional office in Albuquerque, N.M. or the Washington, D.C. Office of Endangered Species. It has been determined that designating Critical Habitat is imprudent due to the increased pressure this would cause due to over-collecting. Conservationists, botanists, the Bureau of Land Management, and the Arizona Commission of Agriculture and Horticulture all indicated their concurrence with and/or their strong support for the proposal to determine *Echinocactus horizonthalonius* var. *nicholii* to be an Endangered species.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Echinocactus horizonthalonius* var. *nicholii* (Nichols Turks head cactus; synonyms: *Echinocactus horizonthalonius* Lemaire) is in danger of becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Echinocactus horizonthalonius* var. *nicholii* are as follows:

(1) *Present or threatened destruction, modification or curtailment of its habitat or range.* This species occurs in two adjacent counties of Arizona and is currently threatened by several factors including copper mining operations, urban development, and off-road vehicle use. The area where the species occurs has not been extensively mined as yet, although several small mines and numerous test pits are already present. Some of the test pits are within the range of the cactus. This species' habitat is also adjacent to an urban area and some habitat destruction has occurred near a sanitary landfill. A dirt bike path also runs through a portion of the species' habitat near the city. This species occurs on lands administered by the Bureau of Land Management, the Papago Indian Reservation, and on a small piece of private land.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Although the commercial use of this cactus is low, the impact from collectors is an important cause in the decline of this plant and has been recognized since 1950. The plants are frequently used for landscaping purposes in the city near where it occurs.

(3) *Disease or predation (including grazing).* Some plants are occasionally found to be uprooted, probably by peccaries. There is no evidence of recent grazing within the distribution of the plant on lands administered by the Bureau of Land Management. However, if intensive grazing does occur it would be harmful to the species, especially young plants.

(4) *The inadequancy of existing regulatory mechanism.* This plant is protected under Arizona law, A.R.S. Chapter 7, Section 3–901, specifically prohibiting the collection of all members of the Cactaceae (*Cactus family*), except under permit. This species occurs on lands owned by the Bureau of Land Management and the Papago Indian Reservation. Bureau of Land Management regulations prohibit the removal, destruction, and disturbance of vegetative resources unless such activities are specifically allowed or authorized (43 CFR 6010.2). Indian Reservations have the power through tribal resolutions to restrict the taking of plants from their lands as well.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However this Convention regulates export of this plant, but does not regulate internal trade in the cactus, or habitat destruction. Except as noted in the preceding paragraph no other Federal protective laws currently apply to this species. The Endangered Species Act will now offer additional protection for the taxon.

(5) *Other natural or manmade factors affecting its continued existence.* Although the existence of several dispersed populations tends to alleviate the threat to the taxon should severe depletion occur in one area, the restriction of the plants to a localized and specialized habitat and the rather low total population level are factors which tend to intensify the seriousness of any adverse effects occurring within any of the species' range.

Effect of the Rulemaking

Section 7(a) of the Act as amended in 1978 provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded or carried out by such agency (hereinafter in this section referred to as an 'agency action') does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of section 7 of the Endangered Species Act Amendments of 1978.

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species.

Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered plant species, are found at §§ 17.61–17.63 (42 FR 32378–32381).

Section 9(a)(2) of the Act, as implemented by § 17.61 would apply to activities related to this plant. With respect to any species of plant listed as endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign

commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373–32381, 50 CFR Part 17), also provide for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Endangered plants.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora which requires a permit for export of the taxon. The Service will review whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

An Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation (to determine a species to be an Endangered or Threatened species) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Echinocactus horizonthalonius var. *nicholii* is threatened by taking (see discussion under Factors 2 and 4 in the conclusion section of this rule) and such taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of critical habitat maps would make this species more vulnerable and therefore it would not be prudent to determine critical habitat. Federal agencies will be notified of the locations of these plants for protection purposes, BLM, the principal Federal agency involved, is aware of the location of this plant.

The Service now proceeds with this final rulemaking to determine this species to be endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531–1543).

The primary author of this rule is Ms. E. La Verne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703–235–1975). Status information for this species was compiled by Dr. A. M. Phillips, III, Dr. B. G. Phillips, Mr. L. T. Green, Ms. J. Mazzoni, and Ms. Elaine Peterson (Museum of Northern Arizona, Flagstaff, Arizona).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus family:						
Enchinocactus horizothalonius var. *nicholii*	Nichols Turks head cactus.	U.S.A. (AZ)	Entire	E		NA

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-33153 Filed 10-25-79; 8:45 am]

BILLING CODE 4310-55-M

federal register

Friday
October 26, 1979

Part XI

Department of Labor

Employment and Training Administration

National Displaced Homemakers Program Under the Comprehensive Employment and Training Act; Solicitation for Grant Application

DEPARTMENT OF LABOR

Employment and Training Administration

National Displaced Homemakers Program Under the Comprehensive Employment and Training Act; Solicitation for Grant Application

The Department of Labor is soliciting applications for grants under the National Displaced Homemaker Program authorized by Title III of the Comprehensive Employment and Training Act. This notice contains or references laws, regulations, guidelines, specifications and schedules to which eligible organizations must adhere in preparing and submitting an application. Completed applications must be received by 4:30 p.m., December 10, 1979. Applications must be submitted in the manner set forth herein to: U.S. Department of Labor, Room 6122, Patrick Henry Building, 601 "D" Street, N.W., Washington, D.C. 20213, Attn: Chief, Division of National Training Programs.

Additional information and an attachment containing required forms and instructions for completing an application are available upon request from Margie Maith, Division of National Training Programs, telephone: (202) 376–7136.

1. *Eligible applicants.* The Department of Labor will give consideration only to those applications which are submitted by organizations that are private nonprofit organizations or agencies, and incorporated as such according to the time frames and other specifications set forth in this Solicitation for Grant Application (SGA).

2. *Background.* The National Displaced Homemakers Program is established pursuant to the Secretary's authority under Title III of the Comprehensive Employment and Training Act (CETA). Title III of CETA gives the Secretary a broad mandate to design special programs to provide services for groups which are in need of employment and training services. Section 301(b)(1)(A) of the Act states that:

> The Secretary shall make available financial assistance to conduct programs to provide employment opportunities and appropriate training and supportive services (through multipurpose projects or otherwise to displaced homemakers. Such training and supportive services shall include, but not be limited to, job training, job readiness services, job counseling, job search, and job placement services; outreach and information services, including information on available education opportunities; and referrals (through cooperative arrangements, to the maximum extent feasible) to health, financial management, legal, public assistance, and other appropriate supportive services in the community being served. To the maximum extent feasible, activities supported under this paragraph shall be coordinated with and supplement, but not supplant, activities supported under other titles of this Act and shall emphasize training and other employment related services for participants that are designed to enhance their employability and earnings. Programs shall concentrate on creating new jobs in the private sector for displaced homemakers in order to meet identified needs within the community. To the maximum extent feasible, supervisory, technical, and administrative positions within the programs shall be filled by displaced homemakers. Priority for participation in projects supported under this paragraph shall be given to displaced homemakers who, as provided in regulations which the Secretary shall prescribe, are most in need of services by virtue of age, education, training, household support obligations, and employability.

A total of $5 million has been made available to operate programs for displaced homemakers under Title III. Of this amount, $3.25 million has been allocated on a competitive basis to CETA Title II prime sponsors to operate programs designed generally to meet the needs of eligible displaced homemakers in their areas. Another $1 million will be awarded on a competitive basis pursuant to this SGA to eligible private nonprofit organizations for programs designed to meet the special needs of various subgroups within the eligible displaced homemaker population which have been identified as facing particular disadvantages in terms of employability. The remaining $750,000 will be utilized to carry out evaluation and documentation, and promotion and support activities.

The Department of Labor does not wish to mandate a single type of program design since one of the intents of this SGA is the development of model programs to serve displaced homemakers which can be replicated throughout the country. Therefore, responses to this SGA may vary in scope and design, so long as the proposed programs are in compliance with applicable laws, regulations, and guidelines.

3. *General program description.* (a) The three major purposes of the National Displaced Homemakers Program are:

(1) To provide low income, unemployed or underemployed displaced homemakers, as defined in Section 4, "Participant Eligibility and Selection," with skills by which to obtain permanent unsubsidized employment or, where appropriate, training to improve skill levels and career opportunities.

(2) To assist displaced homemakers in making the transition from home and economic dependency to employment and economic self-sufficiency through the provision of comprehensive employment and training services.

(3) To address the specific needs of individuals who have not been in the labor force for a number of years.

(b) Funds for the National Displaced Homemakers Program will be awarded, on a competitive basis, to eligible applicants. The major features of the competition are as follows:

(1) Eligible applicants will submit only one application.

(2) Applications shall be for no more than $200,000.

(3) The period of performance of the grants shall be for no more than twelve (12) months, commencing January, 1980.

(4) Each application will be evaluated and rated on technical content and cost, using the rating criteria discussed in Section 6 "Application Rating Criteria."

(c) Programs funded pursuant to this SGA shall be designed to meet the special needs of the following subgroups within the displaced homemaker population determined to be eligible within the priorities prescribed by section 301(b)(1)(A):

1. 40 years of age or older;
2. Minority; or
3. Rural residents.

Applications which request the maximum cost limitation of $200,000 must focus on at least two of these three subgroups.

4. *Participant eligibility and selection.* (a) Participants who are enrolled in programs funded through this solicitation must be displaced homemakers. For purposes of the National Displaced Homemakers Program, a displaced homemaker is an individual who:

(1) Has not worked in the labor force for a substantial number of years but has, during those years, worked in the home providing unpaid services for family members (Note, the term "substantial number of years" as used for purposes of this program is interpreted to mean five years. However, program operators should be flexible in applying this interpretation consistent with the needs and composition of the total displaced homemakers population in their areas. Up to 2,600 hours of employment during that period will not disqualify a person.); and

(2)(i) Has been dependent on public assistance or on the income of another family member but is no longer supported by that income; or

(ii) Is receiving public assistance on account of dependent children in the

home, especially where such assistance will soon be terminated ("will soon be terminated" means within two years); and

(iii) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(b) Services should be provided to those displaced homemakers who are most in need. The following criteria shall be used to select those who are most in need:

1. Older (particularly 40 years of age and older).
2. Fewer years of education.
3. Less exposure to training.
4. Greater number of dependents.
5. Lower income and resources.
6. More years away from the labor force.
7. Less work-experience.

Eligible individuals with multiple disadvantages should be selected over those who only meet one of the selection criteria.

(c) In determining eligibility for participation in the program, the eligibility requirements established in 20 CFR Part 675.5–1, "Eligibility requirements pertaining to all prime sponsor programs," and 20 CFR Part 675.5–2, "Eligibility requirements under Title II–B," shall apply. Definitions of terms used in the above cited sections of the regulations may be found in 20 CFR Part 675.4, "Definitions."

5. *Submission of Applications.* (a) All completed applications are to be submitted to the Chief, Division of National Training Programs, at the above address, in accordance with the terms, conditions, procedures and time frames as stated herein.

The application will include:

1. SF 424, Application for Federal Assistance
2. Narrative Description of the Program
3. Assurances and Certifications
4. ETA 2202, Program Planning Summary
5. ETA 5145, Budget Information Summary and back-up.

(b) The Federal Government reserves the right to make an award on any complete and technically accurate application submitted. The Federal Government also reserves the right to reject any applications received. It is understood that all applications will become a part of the official file on this matter without obligation to the Federal Government.

(c) An original and five (5) copies of the application must be submitted. The original and all copies must have original signatures. Applications must be received by 4:30 p.m., December 10, 1979. Addditional materials will not be accepted after this time.

Applications will be subject to the clause entitled "Late Applications, Modifications of Applications and Withdrawal of Applications" included in the Attachment which will be made available upon request.

(d) At the same time that the application is submitted to the Chief, Division of National Training Programs, a copy shall be sent to the appropriate State and Sub-State A–95 Clearinghouse(s).

(e) Copies of the application shall also be submitted to the appropriate Prime Sponsor's Planning Council with a cover letter inviting the Planning Council to comment. The cover letter should ask that any comments be sent directly to the Chief, Division of National Training Programs.

(f) Applicants shall attach to the application sent in response to this Solicitation a brief paragraph stating that applications have been forwarded to the Planning Council, the name and address of the Prime Sponsor Planning Council to whom the applications were sent, and the date they were forwarded.

(g) No application will be accepted if:

(1) The application was submitted by other than a private non-Profit organization or agency.

(2) The application requests more than $200,000.

(3) The application does not contain a statement concerning the forwarding of the application to the Prime Sponsor's Planning Council.

(4) The administrative costs are more than 20 percent of the total funds requested.

(5) The application is received after the due date and time.

(h) If more than one application is received from an organization or agency, only one application will be reviewed and considered for funding. All applications will become the property of the Federal Government.

6. *Application Rating Criteria.* The factors by which applications will be rated, an explanation of these factors, and the total number of points which may be awarded for each factor are as follows:

(a) *Needs and Objectives*—20 Points.

Prior to the development of program strategies, it is necessary to identify the needs of the displaced homemakers population. Applications will be judged on the identification of employment and training needs of displaced homemakers in the area to be served by the project, and how these identified needs are related to the overall program design. Specifically, applications will be evaluated on the degree to which:

(1) The need for a special effort for displaced homemakers in the area to be served is demonstrated.

(2) Program objectives and design are relevant in light of the identified needs.

(3) Program design includes services geared to the needs of the displaced homemaker subgroups identified as facing particular disadvantages (i.e., older, minority, and rural residents).

(b) *Innovation*—15 Points.

One of the purposes of the National Displaced Homemakers Program is the development and testing of model programs which serve and meet the needs of Displaced Homemakers. From this, the more successful models will be identified and documented for possible replication by other organizations. Specifically, applications will be evaluated on the degree to which:

(1) The program design represents a significant departure from traditional ways of serving displaced homemakers.

(2) The program lends itself to replication.

(c) *Potential Program Effectiveness*—20 Points.

Applications will be judged on the effectiveness of the overall program design. Linkages with other service providers will be considered favorably. Additionally, compliance with applicable legislation, regulations, and guidelines will be reviewed. Specifically, applications will be evaluated by the extent to which:

(1) Recruitment procedures are effective.

(2) The program will provide comprehensive services.

(3) The program provides services on a timely basis.

(4) Program design results in the transition of participants into unsubsidized employment.

(5) Linkages with prime sponsors, community-based organizations, local education agencies, apprenticeship programs and other community resources such as the Work Incentive Program (WIN) and business and industry are developed.

(d) *Administrative Capability*—10 Points.

Applications will be judged through review of the organizational structure, in terms of the organization's apparent capability for administering a displaced homemakers program.

(e) *Staff Capability*—10 Points.

The proposed program staffing pattern and staff who will be responsible for the operation of the program will be reviewed. In particular, provisions for employing displaced homemakers in administrative positions, as suggested in the legislation, will be viewed favorably.

Specifically, applications will be evaluated by the degree to which:

(1) Overall staffing patterns are appropriate for the proposed program.

(2) Displaced homemakers will be employed in administrative positions.

(3) Job descriptions are appropriate for the proposed program and positions.

(4) Job qualifications match the proposed positions.

(f) *Previous Experience*—15 Points.

Since one of the purposes of the National Displaced Homemakers Program is the development of model programs in order to avoid duplication it is important that organizations have experience in providing services to women, persons in crisis, or any of the identified subgroups within the target populations of displaced homemakers. Specifically, the applications will be judged by the extent to which:

(1) Previous experience demonstrates an orientation towards serving women.

(2) Previous experience demonstrates an orientation towards serving economically disadvantaged, minority, or middle-aged or older individuals, or individuals who live in rural areas.

(3) Previous experience demonstrates an orientation towards employment and training programs.

(g) *Cost Effectiveness*—10 Points.

Applications will be rated on expected cost effectiveness according to which:

(1) The total program cost appears reasonable in consideration of the nature of the program design.

(2) The budgeted cost categories appear appropriate and reasonable.

7. *Processing of Grant Applications.* The Office of National Programs shall convene a panel to rank all of the applications which have been received and accepted. The panel will rate the applications on both technical content and price (See Section 6, "Application Rating Criteria"). The cost criterion shall be rated separately. The sum of the two ratings will total the final score for the application. Based upon panel recommendations, comments received, and available resources, the Administrator, Office of National Programs will, after any negotiations deemed appropriate, make grant awards.

8. *Announcement of Grant Awards.* After the winning applications have been selected by the Administrator, Office of National Programs, the grant awards shall be publicly announced. Each applicant shall be informed by direct mail of the determination made on its application. The rejection of any application by the Administrator, Office of National Programs, is the final action of the Department of Labor.

9. *Applicable Regulations.* (a) 20 CFR Part 676 Subparts B through E apply to National Displaced Homemaker Program grantees. Except as otherwise indicated below, those portions of Part 676 Subparts B through E which refer to "prime sponsors" do *not* apply, while those which refer to "recipients" do apply to grants funded through this solicitation.

(b) For purposes of this solicitation, the terms "recipient" and "grantee" are synonymous, as are "subrecipient" and "subgrantee." In addition, whenever the terms "grant application," "CETP," and "annual plan" are used, for purposes of this solicitation they shall be interpreted to be "grants." Whenever the applicable regulations refer to the "Regional Administrator" this shall be interpreted for purposes of this solicitation, to be the "Grant Officer." Finally, references to the "Regional Solicitor" shall, for purposes of this solicitation, be interpreted to be the "Associate Solicitor for Employment and Training Legal Services."

(c) As interpreted above, 20 CFR Part 676 Subparts B through E shall apply to grants funded through this solicitation, with the following exceptions.

(1) The following sections, which refer to prime sponsors, shall also apply to recipients:

§ 676.23(d) and (e)—Program linkages and selection of deliverers (subsections concerning use of appropriate services currently available in the community).

§ 674.24—Labor organization consultation and/or concurrence.

§ 676.27(c)(3)—Benefits and working conditions for participants (paragraph prohibiting inappropriate classification of participants).

§ 676.40–2(b)—Administrative and travel costs (subsection concerning use of funds for legal or other associated services).

§ 676.44(a)—Reporting requirements for prime sponsors (subsection concerning reports used to assess performance).

(2) The following provisions of Part 676 shall not apply for purposes of this solicitation:

§ 676.37(c)—Recipient contracts and subgrants (subsection concerning contracts or subgrants which extend beyond expiration of the grant).

§ 676.40(d)(2)—Allowable costs (paragraph concerning pooling of administrative costs).

§ 676.40–2(c)(1)—Administration and travel costs (paragraph concerning travel costs of certain governmental officials).

§ 676.41–1(f)(2)—Classification of costs by category (only the following: "* * * costs incurred in the establishment and maintenance of a planning or advisory council under CETA, or in publishing a grant application * * *").

§ 676.42—Administrative annual plan subpart.

§ 676.43(b)—Administrative staff and personnel standards (subsection concerning bonding provisions).

§ 676.45—Annual plan subpart settlement procedures; termination of master plan.

Signed at Washington, D.C., this 22d day of October, 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
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DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

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

NUCLEAR REGULATORY COMMISSION

55328 9–26–79 / Domestic licensing of production and utilization facilities; fracture toughness requirements for nuclear power reactors

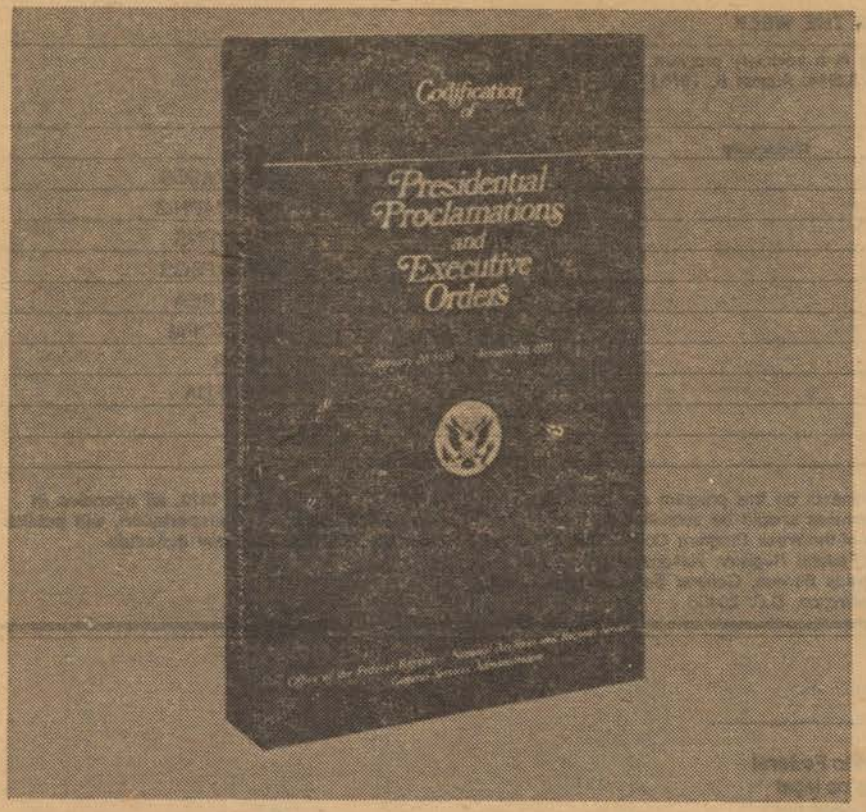
List of Public Laws

Last Listing October 23, 1979

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.R. 1301 / Pub. L. 96–90 To amend title 18 of the United States Code to allow the transportation or mailing to a foreign country of material concerning a lottery authorized by that foreign country, and for other purposes. (Oct. 23, 1979; 93 Stat. 698) Price $.75.

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