b. No assignments, adjustments, or waivers will be granted for the purchase and use of any allocated natural gas liquid product for gas utility or gas transmission company use unless the petitioner can demonstrate a definite requirement for such use of said product and that equipment is or will be in place to supplement supplies for the impending heating season (the heating season means the six month period from October 1 through March 31 of the following year).

c. No such assignment, adjustment or waiver will be in effect for a period of greater than two years.

d. No such assignment, adjustment or waiver will be granted unless the applicant demonstrates that its supplier will incrementally price the requested product to it to the maximum extent permitted under the Mandatory Petroleum Price Regulations.

e. FEA shall not grant any application for an assignment, adjustment, or waiver for the gas utility or transmission company use of propane or any other allocated natural gas liquid product where the granting of such an application would significantly reduce the availability of such product for traditional and high priority users (e.g., by impacting upon the availability of transportation, storage, or terminaling facilities).

f. FEA shall not grant any assignment, adjustment, or waiver for the gas utility or gas transmission company use of propane or any other allocated natural gas liquid product except upon the condition that the applicant shall arrange to take possession of and transport such product to on-site storage in a manner that will not adversely impact upon traditional transportation systems for such product. "On-site storage" means storage located on, or immediately adjacent to, the site of use, or such storage from which product may be withdrawn and transported to the site of use without adversely impacting upon transportation of product for other users (e.g., as by wholly owned transport vehicles or a limited access product pipeline or natural gas pipeline).

g. FEA shall grant assignments, adjustments, and waivers for gas utility or gas transmission company use of propane only to provide gaseous fuel service to customers which would be in Federal Power Commission (FPC) priority of service classification 1 and those customers in priorities 2 and 3 (as specified in FPC Orders 467 B and C) that do not have an alternate fuel capability. For purposes of these guidelines, alternate fuel capability means having equipment in place and storage capability available to use a fuel other than natural gas or an allocated natural gas liquid product on a continuing basis. As otherwise provided in this part, all firms, regardless of FPC priority of service classification, are permitted to acquire non-Canadian imported allocated natural gas liquid products for industrial use and may have gas utilities act as agents in acquiring or delivering such products by displacement through natural gas pipelines.

5. BASIS FOR EVALUATION

In addition to satisfying the filing requirements of the appropriate subpart of Part 205, all applications for an assignment, adjustment, or waiver for the use of an allocated natural gas liquid product for gas utility or gas transmission company use should be accompanied by the following information:

a. *Natural gas supply/demand situation.* i. A description of the design winter model of the gas utility, the character of its firm and interruptible customers by FPC priority classification and/or comparable state PUC classification, and estimated actual supply of pipeline natural gas, including intrastate gas, stored gas, and gas from any other source during the period the requested products would be used.

ii. Projected daily rates of injection into and drawdown from gas storage during the period for which the products are requested.

iii. The existence, character, and effect of any actual natural gas curtailments and/or natural gas curtailment plan affecting the market area(s) served by the gas utility, including the expected natural gas shortfall by FPC category during the period for which the allocated natural gas liquid products are desired.

iv. A description of the availability of all alternate sources of gas supplies including but not limited to liquefied natural gas (LNG), domestic synthetic natural gas (SNG), spot or emergency purchases of natural gas and the efforts made to obtain such alternate supplies, including efforts made to obtain additional supplies of domestic pipeline natural gas through the FPC or a state PUC.

v. The degree to which the gas utility has curtailed or proposed to curtail gas supplies to those customers which have an alternate fuel capability as defined herein.

vi. The degree to which conservation measures have reduced, or could reduce, gaseous fuel requirements of the gas utility's customers, and the utility's current conservation-related programs and plans and an assessment of conservation upon future demand.

vii. A statement as to the estimated growth of the applicant over the previous heating season by FPC category including numbers of new customers and volume of gas required to satisfy such requirements.

b. *Allocated natural gas liquid product supply/demand situation.* i. The volumes of the requested allocated natural gas liquid product (1) purchased or obtained, (2) contracted for delivery, and (3) actually used for each calendar quarter of the period April 1, 1972, through March 31, 1973.

ii. The volumes of the allocated natural gas liquid product for which the request is being made, by calendar quarter, and the basis for the request; i.e., a statement of the volume of the projected deficit for each of the three Federal Power Commission priority classifications for which the use of such product may be authorized.

iii. The volumes of the requested product currently in inventory, by location.

iv. The capacity and location of storage facilities owned, leased, or operated by applicant which would be available to store the requested product.

v. The names of supplier(s), location(s) of supply, price per gallon, and the arrangements made with the supplier(s) to supply product.

vi. Certification from the proposed supplier(s) that the requested product has or will be imported from non-Canadian sources or that the applicant itself will import from non-Canadian sources.

vii. A description of the arrangements for the transportation of the allocated natural gas liquid product to the site of use, or to on-site storage, including monthly volume estimates.

viii. The conversion factor (i.e., the number of gallons of the requested product that are required to produce 1 Mcf of gaseous fuel). Factors above 12.0 must be supported by engineering or system specifications and an appropriate rationale as to the need for the high-BTU propane air or other mixture.

d. *Environmental information.* A specific description of the environmental consequences of FEA granting the requested relief.

e. *Other.* Any other information that FEA may require.

[FR Doc.77-21941 Filed 7-28-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-1013; Amdt. 28]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Disclosure Standards for Lease Transactions

Correction

In FR Doc. 77-20918 appearing at page 37509 in the issue for Thursday, July 21, 1977, in Account 2080 appearing on page 37515, first column, the third line of the text should be completed so that it reads as follows: "* * * capital leases as provided in Section 2-20(a)."

[Reg ER-1014, Amdt 10]

PART 287—EXEMPTION AND APPROVAL OF CERTAIN INTERLOCKING RELATIONSHIPS

Notice of Approval by Comptroller General

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice of approval by the Comptroller General of the reporting requirements contained in a regulation concerning the exemption of direct air carriers with respect to certain interlocking relationships. This approval is required by the Federal Reports Act, and was transmitted to the Civil Aeronautics Board by letter dated June 21, 1977.

DATES: Effective: July 25, 1977. Adopted: July 25, 1977.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202-673-5270).

Accordingly, the Civil Aeronautics Board amends Part 287 of its Economic Regulations (14 CFR Part 287) by adding the following note at the end of Part 287:

NOTE.—The reporting requirements contained in § 287.3a have been approved by the U.S. General Accounting Office under Number B-180226 (R0453).

This amendment is issued by the undersigned pursuant to the delegation of authority from the Board to the Secretary in 14 CFR 385.24(b).

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; U.S.C. 1324.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-21942 Filed 7-28-77;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Order No. 526-B; Docket No. RM 74-16]

PART 3—ORGANIZATION; OPERATION; INFORMATION AND REQUESTS

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Order on Court Remand Prescribing FPC Form No. 40 With Amendments

AGENCY: Federal Power Commission.

ACTION: Order on court remand prescribing FPC Form No. 40 with amendments.

SUMMARY: The Commission on June 30, 1977, prescribed FPC Form No. 40 after remand from the United States Court of Appeals for the Ninth Circuit. Form 40 is a report of Proved Domestic Gas Reserves with certain exceptions, by persons found to be natural-gas companies within the meaning of the Natural Gas Act. To comply with the Court remand the Commission set forth evidentiary support for its conclusion that (1) the reserve data should be submitted on a reservoir basis, (2) the necessary data was not available from other Federal agencies and (3) the required data could be supplied by the producers. At the suggestion of certain of the producers minor changes in Form No. 40 were made that did not increase or reduce the burden of reporting.

EFFECTIVE DATE: June 30, 1977.

ADDRESS: Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Kenneth F. Plumb, Secretary (275-4166).

NATURAL GAS COMPANIES ANNUAL REPORT OF PROVED DOMESTIC GAS RESERVES: FPC FORM NO. 40

JUNE 30, 1977.

This order arises from the Court's remand in *Union Oil Company of California* v. *F.P.C.*, 542 F. 2d 1036 (CA9-1976), in which the Court found there was not sufficient record evidence to support the Commission's requirement in Order Nos. 526 and 526-A [1] for reserve information on a reservoir basis. By order of February 2, 1977, in accordance with the Court's remand, we reopened the record reciting the Court's finding of (1) a lack of evidentiary support for the reserves data on a reservoir basis rather than some other basis, (2) there was no evidence that the necessary data were not available from other agencies of the Federal Government, and (3) there was no evidence contradicting the statements of the producers that the reserve data were not kept on a reservoir basis, nor could easily become available to them.

[1] —— F.P.C. ——, issued February 25, 1975; and —— F.P.C. ——, issued August 18, 1975.

The Commission required the Staff to file written comments on these questions, granted other parties opportunity to file answering comments, testimony and exhibits, and prescribed a hearing at which all parties, including Staff, could present rebuttal evidence.

Accordingly, on February 10, 1977, the Staff filed its comments, and answers were filed by producers and other parties.[2] The hearing was held on April 4, 1977, and witnesses presented by Superior, Amoco, and Gulf were cross-examined.

Tenneco Oil Co. on March 10, 1977, requested a public conference with regard to the consolidation of reports of natural gas reserves to interested federal agencies. The Commission stated in a notice of May 2, 1977, that this would be considered in the light of the whole record. Tenneco also made an oral motion at the hearing and a written motion on April 8, 1977, requesting that the Staff be required to make a witness available for cross-examination on its comments. Action on the motion was deferred by order of May 6, 1977, pending a determination on the whole record in the reopened proceeding. Gulf Oil Corp. on April 5, 1977, filed a motion requesting that the proceeding be expanded to consider rules concerning confidential reserve information, and action on this motion was deferred by the notice of May 2, 1977.

A petition for late intervention was filed on April 21, 1977, by Senators Hubert Humphrey, John Durkin, and James Abourezk, and by Representatives Herbert Harris, Andrew Maguire, and John Moss, and was granted by Commission Order of May 31, 1977.

THE COMMISSIONS NEED FOR GAS RESERVE DATA

In its comments the Commission Staff notes that the current nationwide approach to new gas wellhead ratemaking is greatly dependent upon productivity in terms of Mcf per successful foot drilled. For this purpose the Commission has had to rely on American Gas Association (AGA) data although serious shortcomings relating to those data have been alleged, and a report entitled "Staff Report on the Undated 31 Lease Investigation" showed significant reporting anomalies and deficiencies regarding field discovery dates and industry compliance with the AGA definition of proved gas reserves. The Staff believes that the Form No. 40 data will provide a more uniform and reliable series for reserve additions upon which the Commission can base its ratemaking determinations.

The Staff notes other needs for the Form 40 data. It will permit adjustment of rates of depletion where necessary in ratemaking. It will enable the Commission to observe what fraction of new gas reserve additions is being dedicated to the interstate market. Further, the data will permit the Commission to make realistic projections of future supplies of natural gas. This will enable energy planning, permit Commission determination of the appropriateness of research and development of supplemental supplies of gas and Commission planning with respect to the depreciation allowance on pipeline facilities.

The Staff is supported by the Congressmen, AGD, APGA, California and the Bureau of FTC. In general they make points similar to those advanced by the Staff. The Congressmen emphasize the inadequacy of the AGA data because the method is ill-defined and lacks known procedural steps. They contend that the members of AGA do not conform to its own definition of proved reserves, there is no standard procedure for determining the exact date of a field discovery and there are no, or only inadequate, audits of AGA data. Also they say that there have been shown substantial inaccuracies in reporting. They conclude that there is a need for an independent data base which can be relied on as an alternate to the AGA data.

APGA cites a "Report to the Secretary of the Interior on Preliminary Investigation-Production Capability and Production Levels at Selected Natural Gas Producing Fields in the Gulf of Mexico Outer Continental Shelf" issued in "February 1977" where it was stated there are "large discrepancies of operator estimates and USGS estimates of proved reserves" (p. 27); a "Report on Indicated Disparity in Reporting of Offshore Louisiana Non-Associated Natural Gas Reserves" issued by the FPC Staff in Docket No. R-389-B on March 21, 1974, where it was stated that reserves added in 1971 and 1972 reported by AGA for Federal Domain leases should have been at least 54 percent higher (p. 7); the "Staff Report on the Updated 31 lease Investigation" issued in Docket No. RM75-14 on June 21, 1976, where it was found that 1971-1972 discoveries were reported by AGA to have been discovered in other years although the estimates in total were reasonable; and the "Staff memorandum to Federal Trade Commission in American Gas Association, et al., File No. 711-0042" issued by the FPC's Bureau of Competition on March 25, 1975, where the AGA procedure was said to be deficient in that access to company data was not available to the members of the subcommittee estimating reserves and it was shown that for certain Southern Louisiana Offshore fields the pipelines stated higher

[2] Amoco Production Co., The People of the State of California and the Public Utilities Commission of the State of California (California), Gulf Oil Corp., Small Producers, Mobil Oil Corp., American Public Gas Association (APGA), Sabine Production Co., Shell, Bureau of Competition of Federal Trade Commission (Bureau of FTC), Associated Gas Distributors (AGD), Getty Oil Co., Marathon Oil Co., Phillips Petroleum Co., Ashland Oil, Inc., Exxon Corp., Amerada Hess Corp., Aminoil USA, Inc., the Rodman Corp., Phillips Petroleum Co., Texaco, Inc., the Superior Oil Company, Tenneco Oil Co., and Pennzoil Co., Pennzoil Producing Co., Pennzoil Offshore Gas Operators, Inc., and Pennzoil Louisiana and Texas Offshore, Inc. (Pennzoil), Dr. Edwin Goebel, Jake L. Hamon, Samedan Oil Co.

reserves than the AGA. APGA concludes that the AGA data are unreliable and information on Form 40 is essential.

APGA requests that all four of these documents be incorporated by reference into the record of these proceedings. We have taken notice of them here, but they are not needed to show discrepancies between AGA reserve estimates and other estimates or the need for reporting on reserve estimates. The Court on remand is concerned with the record support for reporting by reservoirs discussed below, the availability of the data from other agencies and the difficulty of procuring it. For this reason we do not think it is necessary to include these documents in the record.

California notes Opinion No. 770–A [3] as showing the shortcomings of available data and the importance of a reserve estimate in the calculation of a reasonable rate of depreciation for a pipeline.

In our opinion the comments make a clear case that there is a need for the collection of data on an independent basis in order to avoid the deficiencies in the data otherwise available. The Court notes that the producers do not claim that the Commission has no regulatory need for reserve data; they only claim that the Commission does not need that data on a reservoir basis. Likewise, in their comments the producers do not, in general, contest the need for reserve data. Rodman, however, says that it calculates reserves only on occasion and proposes that it be permitted to file only such reserve information as it has in its possession. The Small Producers would like to be exempted.

We think that in the present circumstances as shown by the record it is plain that the Commission needs reserve data as accurate as possible for ratemaking, the issuance of certificates, and reporting to Congress on the state of the industry. The Court in Second National Rate Cases pointed out the deficiencies in the AGA data and said that it expected the Commission to use its own revised procedures to gather data for the next national ratemaking proceeding. As noted below, producers delivering less than 250,000 Mcf each year are exempt. In order to get reliable data all other producers who are "natural-gas companies" subject to our jurisdiction should report their reserves.

Need for Reservoir Data

As noted by the Staff, a reservoir is defined in Form 40 as:

> *Reservoir.*—A porous and permeable underground formation containing an individual and separate accumulation of producible hydrocarbons (oil and/or gas) which is confined by impermeable rock or water barriers and is characterized by a single natural pressure system. In most situations, reservoirs are classified as oil reservoirs and/or gas reservoirs by a regulatory agency. In the absence of regulatory authority, classification is based on natural occurrence of the hydrocarbons in the reservoir and classification and names as determined by the respondent.

The Staff says that the actual data used in calculating proved reserve estimates are derived from many sources and include geophysical data, well logs, and the results of various engineering tests. These data are relevant to a particular well but may be extrapolated to the reservoir area. While well-by-well information is relevant for certain purposes, the Staff says that the smallest meaningful unit of occurrence of natural gas is the reservoir. It is clear from the definition that a reservoir from the standpoint of geology is a definable and coherent unit of gas and/or oil. A well or lease may be only part of a reservoir; a field may involve more than one reservoir separated vertically by impervious strata or laterally by geological barriers. The depth, size, porosity and pressure conditions can, of course, vary from one reservoir to another.

As discussed by the Staff, the use of reservoir data facilitates audit of reserve data by the Staff. Because of the extent of the data only a representative statistical sample can be audited each year. If the data were on a field basis it would be much more difficult for Staff to sample and examine the data in such manner as to simultaneously fulfill multiple audit objectives. With reservoir data the Commission Staff can select a statistically valid sample in advance at a substantial saving of time in company offices. By selecting a unique sample of reservoirs each year, it would be possible over a period of years to audit all significant reservoirs in each field.

Use of reservoir data, the Staff says, in fields which have multiple reservoirs and multiple owners, could help avoid double counting and other unacceptable statistical aberrations. Also reservoir data relate to gas under definable risk conditions and would permit consideration of the option of an improved new gas rate keyed to the level of risk incurred. Further, reservoir reporting permits consideration of the size of newly discovered reservoirs, and would enable the Commission to determine where the Nation is on the "resource exhaustion curve." On an area basis experience has shown that the large reservoirs are usually discovered early and the rate of decline in size of discoveries thereafter is an important matter.

In addition, the Staff observes that reservoir level data are essential in the analysis of shut-in reserves. The data are necessary to determine whether the reservoir is shut-in awaiting well workover, because it is non-economic to produce, or for other reasons. The Staff adds that most producers keep records by lease but these are not on a uniform basis and would present an impossible compilation and auditing task to the Commission.

The Staff is supported by the Congressmen, AGD, APGA, California, and Bureau of FTC. The Congressmen say that if the Commission is to set rates based on adequate data, reservoir level data are necessary, for the reservoir is the building block of the reserve estimates. APGA questions how a producer can know the extent of its reserves in a given lease or field if it does not know the reserves contained in each reservoir within the lease or field. The Bureau of FTC believes that if an efficient auditing procedure is to be established, the collection of reserve estimates on a reservoir basis is necessary. This will identify specific reservoirs in which major changes have occurred and inform the FPC about incentives needed to encourage the drilling of specific types of wells.

On the other hand the producers contend there is no need for reserve information on a reservoir basis. Mobile says that administrative efficiency and economy cannot be viewed as a sustainable basis for compelling reserve reporting on a reservoir basis. It says also that the fact reserves not available to the market are in a non-producing status would seem of marginal informational value. If each producer reports on each reservoir, Mobile says, it will not avoid double counting but will result in multiple counting and an inability to determine which of several reservoir estimates to use. Superior thinks the Commission has no legitimate interest in whether production and gathering take place on uncommitted reservoirs. Also it does not believe the Natural Gas Act sanctions a requirement that it furnish a report solely to satisfy anticipatory unidentified statistical parameters.

Amoco says that it does not make sense to require reservoir-by-reservoir detail for the overwhelming producing portions of reserves just so that the miniscule shut-in part of reserves can also be reported on a reservoir basis. It says that determination of how much of the new gas supply is committed to the intrastate market as compared to the interstate market can be reported on a field-by-field basis without the necessity for reservoir-by-reservoir reporting. Amoco also says that Form 40 does not permit computation of a productivity drilling factor by various types of drilling, e.g., exploratory versus development, as Staff comments claim, and since it covers only non-associated gas, the Commission could not obtain productivity of drilling data on a state or regional basis. Further, Amoco says, because of the loss of historical records it would not be possible to track the volume distribution of newly discovered reservoirs.

Gulf cautions that reserve figures are only estimates and such estimates cannot be improved by making or reporting estimates on a reservoir basis as opposed to a field or lease basis. Gulf thinks that because of the Commission's averaging of productivity figures the Staff is only conjecturing in saying that reporting deficiencies could have an impact on annual new gas additions. Gulf also says that the Staff has not shown why reservoir reporting is necessary to identify new reserves as to their geographic and geologic

[3] *Opinion and Order on Rehearing Modifying in Part Opinion No. 770 and Granting Petitions for Intervention*, ---- F.P.C. ----, Docket No. RM 75–14, November 5, 1976, p. 54; affirmed *The Second National Natural Gas Rates Cases*, ---- F. 2d ---- (CADC–June 16, 1977).

location, commitments and producing status and volume. Gulf adds that the reservoir data are not necessary to determine the status of shut-in reserves and uncommitted reserves which, it says, are beyond the Commission's jurisdiction. Nor, it says, has the Staff shown why it needs the data to determine the fraction of new gas committed to the intrastate market. Gulf also contends that reservoir reporting is not necessary for the Staff's audit, for an audit only requires that a valid sample be chosen.

The other producers make similar arguments. Shell, however, is not challenging the Commission's need for or power to obtain reservoir estimates; it does make a number of suggestions as to the manner of reporting as discussed below. Getty submits that the Commission has an obligation to use the information it obtains to prevent further special, splinter and politically oriented investigations and should use the information to provide incentives for wildcat and deep drilling and other activities which will add to the nation's gas reserves. Phillips says that it has revised its data system to enable it in most cases to retrieve information on a reservoir basis, and does not now contest the proposal to retrieve information on such a basis. Several producers, including Exxon, say that because of lack of records, it is impossible to develop reliable gas reserves estimates by reservoir for their royalty-owned properties or properties acquired prior to the advent of modern record keeping practices.

The record here makes clear that the reservoir is the only unit of gas reserves in which the gas is found in one body, is held under similar conditions of permeability, pressure, porosity and depth, and can be produced as a unit by one or more wells. In estimating the amount of gas reserves it would be impossible to obtain accurate results without estimating the reserves in each reservoir.

Fields, on the other hand, often contain more than one reservoir under varying conditions of depth, pressure, porosity and permeability that will have to be produced by separate wells or separate completions. To make an accurate estimate for the field it would be necessary, in any case, to make an estimate for each reservoir. Fields can involve complicated conditions so that in auditing reports filed it will be necessary to examine a statistical sample of the reservoirs in the field, and this could be difficult without reservoir data being available and filed. The reservoir requirement is thus not just a convenience for a Staff auditing team, but a necessity for an accurate result. Further, as the Staff points out, reservoir data are necessary in determining why any given gas reserve is shut-in. The question must be answered whether the reserve is shut-in for physical reasons or is shut-in pending more favorable market conditions. The reservoir data, which reflect gas reserves held under uniform conditions, will permit comparisons that will assist the Commission in devising regulatory action that will bring about production and increase the flowing gas supply.

Leases, of course, may also overlie several reservoirs or parts of one or more reservoirs. Lease records have a serious defect in that they are not kept on a uniform basis. Certain respondents filed data by lease and it was found that each respondent's records were in a different format. To use the lease data would require inspection of each lease and reconciliation of a large mass of data. Accordingly, data on a lease basis would be difficult to use and would not supply the most accurate physical information necessary to estimate the gas reserves involved.

We do not consider the need for reservoir data of importance just to enable the Staff to plan its time more efficiently, even though this may be true. The Commission needs this data to arrive at an accurate estimate of reserves and to determine what stage the development of the various fields has reached. Some of the reservoirs are being used for the supply of gas to intrastate markets; nevertheless we are concerned with such reserves in considering the state of the industry and the economic relationships between the intrastate and the interstate business.

Availability of the Data to the Producers

In its position paper the Staff states that of the 688 natural gas companies, affiliates, and subsidiaries responding in writing to the issuance of Commission Order 526-A, 333 (52 percent) were required to and did file schedule B, "Proved Domestic Natural Gas Reserves by Natural Gas Company—Field and Reservoir," and, of these, 311 filed their reserve data on a reservoir basis as of December 31, 1974. Of the twenty-six largest petroleum companies, twenty-one filed some form of reserves data. Of these fifteen filed at least part of their data by reservoir, and twelve filed all of their data by reservoir. The Staff is cognizant that the gathering of Form 40 data may require expenditures of time, manpower and money. However, a large part of the cost relates to filling out the form the first time, and this has already been incurred. Staff also points out that pipelines have been filing reserve data on a reservoir basis on Form 15 for some time.

The Producers emphasize the difficulties and expenses they will incur in gathering the information and setting it forth in Form 40. For instance, Gulf says that Form 40 would require the producer to go beyond meaningful and useful records and to create or revise tens of thousands of records. This is because lack of records to estimate the remaining reserves in each sand would require arbitrary allocations of production. Mobil calls for a balance to be struck between the burden on respondents and agency need and relevance. Sabine estimates that 50 percent of the various types of information required for Form 40 would not be obtained by the Company for any other purpose. Getty, on the other hand, says that through its efforts it is possible it may be able to file the report on a reservoir basis within a reasonable period of time. Phillips complains that the instructions now require a reporting company to include estimates which it not only does not have, but cannot make. Amerada Hess says that discussions with the consulting firm of DeGolyer and MacNaughton indicate that attempted reconstruction of onshore reserves on a reservoir-by-reservoir basis would be prohibitively expensive (approximately $60,000 for the services of that firm and a like amount for the expenses of Amerada Hess which would entail a total of 85 man weeks). Texaco also complains of the great expense and loss of productive man hours. The Small Producers feel that they are particularly burdened.

We have considered the comments, the written evidence submitted, and the transcript of the oral cross-examination. It is plain that a large number of producers have already compiled data on a reservoir basis and others could do so with some difficulty and expense. The Commission has lacked audited reserve data for many years and has been criticized for determining rates on the industry compiled AGA data.[4] Audited reserve data, in our opinion, are absolutely essential. Since each reservoir is the largest unit in which gas is found under a given set of conditions, the data must be available on a reservoir basis to permit auditing. It is for this reason that in spite of the expenditure of money and man-hours we are requesting data on a reservoir basis.

We realize, of course, that present data does not permit accurate analysis of some of the old reservoirs, nor those reservoirs which are produced jointly. In these cases allocations and estimates may not be as accurate as full records, but we ask for nothing more than that which is feasible.

Availability of the Data From Government Sources

As the Staff explains, some data regarding part or all of the nation's proved gas and/or oil reserves have been collected by Federal and State authorities as well as by the Congress. The Staff's position that these sources are no substitute for Form 40 is supported by some of the non-producing intervenors, including the Congressmen. Some of the producers express their opposition, Mobil in detail.

Staff notes that the FPC has collected partial reserve data from jurisdictional pipelines annually since 1963 through its Form 15. This Form covers reserve estimates made by the pipelines which are dedicated by producers to interstate pipeline companies, was specifically designed for the purpose of pipeline regulation and is thus limited to only part of the nation's reserves. The Congressmen have pointed out that the Staff in Docket No. RI75-112 have found discrepancies between the reserve esti-

[4] The Court said, "To sum up: We do not approve or embrace the AGA figures; we simply tolerate them for purposes of this proceeding." Second National Rate Cases, supra. (Mimeo p. 62).

mates of the pipelines and the corresponding producer's estimates on a reservoir and field basis. Mobil suggests that if Form 15 is inadequate it could be revised. Since Form 15 is directed towards pipelines and does not cover the reserves that are not dedicated to interstate commerce, which is essential, we do not think this is a valid option. FPC Form No. 64 formerly included reserve information but not after 1974, so that Form No. 64 cannot be used in place of Form 40. Indeed, Form No. 64 was purposefully limited so as to avoid duplication with Form No. 40.

The Conservation Division of the United States Geological Survey (USGS) requires the operators of properties on Federal lands to file forms annually which disclose detailed engineering and reservoir data by lease. No ownership information is collected, and no data as to the cause or type of changes to reserves previously estimated, no reserve dedication data, and no breakout of internal company use of reserves appears. Staff thinks the USGS data may be useful in the audit of Form 40 data but cannot supply the continuing, current reserve reporting information necessary for ratemaking purposes.

Staff notes that Securities and Exchange Commission requests reserve estimates on a national or continental basis and retains the data submitted in its files but compiles no reserve report. The Bureau of Census provides net company interest figures for oil and gas exploration but the data is too aggregate and too out of date for Commission purposes. The Internal Revenue Service data is not available to other agencies.

Staff observes the FTC, FEA and Congressional studies were one time only, special purpose inquiries. It notes that a Senate study was concerned with corporate interrelationships, reserve ownership and production and sales but covered only 63 companies.[5] The FTC inquiry, addressed to only 60 companies was primarily concerned with sales, contract and pricing information. Reserve estimates were required by state for total Federal, state and other lease holdings. It also examined the question of shut-in reserves by field and state. The Staff concludes that the FTC data is too aggregate and obtained from too small a sample. The FEA inquiry addressed 22,000 operating firms and concentrated on production and proved reserves by state, county and field. However, reserve commitment status, ownership, and reserves by reservoir were not investigated. Staff finds that major gas producing states require the reporting of wellhead production, but only three report reserves on anything approaching an annual basis, so that the reserve data collected by the states is not adequate for Commission use.

[5] The Structure of the U.S. Petroleum Industry, A Summary of Survey Data, Special Subcommittee on Integrated Oil Operations of the Committee on Interior and Insular Affairs, United States Senate, June 1976.

The Staff explains that the calculation of proved reserves involves many variables, but the validity of the estimates cannot be ascertained by the Staff since the other surveys were not initially designed with multiple objective auditing in mind. It notes that it is the responsibility of the Commission to assure an adequate supply of gas to the interstate consumer at a just and reasonable rate and says the Commission must have the reserve data and other data from Form 40 to discharge this responsibility.

Congressmen, California and FTC agree with the Staff as to the unavailability of the necessary data from other government agencies. As the Staff suggests, they ask that the data be made available to government agencies, state and Federal, and the public.

Mobil and Superior contend that the pipelines' Form 15 should satisfy the Commission's needs. Mobil says that there are numerous reports prepared by individual producing states, which the Commission could use. As an example, it lists the numerous reports required by Texas (none of which are labelled reserve reports). It contends that from the federal and state reports, it is possible to determine the amount of gas moving in interstate and intrastate commerce by type purchases, the prices paid for the gas, the geographical and lease source of the gas volumes and, through a review of performance data, the amount of reserves located under established producing leases. Tenneco and Aminoil urge that it is in the public interest for the Commission to take the lead in attempting to rationalize the industry reporting of reserve data.

It is apparent that the data available from other federal agencies and from the states, as far as we have found will not provide us with equivalent, uniform data collected from all of the producers required to report on Form 40, either on a uniform basis or on a reservoir basis. Our Staff would be obliged to put together estimates from partial figures that it would gather from several sources utilizing differing proved reserve definitions, and which it is not able to audit. In Second National Rate Cases, the Court said that "we expect by the next biennium the Commission will have put into effect its own procedures for gathering reserves data." The Court noted that we had been prevented from using Form 40 by the Ninth Circuit but thought the objections could be overcome.

Requests to Modify Form 40

A number of changes in Form 40 were requested by one or more producers. Some producers argued that the attestation which states that all estimates are true and correct and that the report is a correct statement of the business and affairs of the respondent is unreasonable because the corporate officer signing the form is relying on others to furnish the information which cannot be precise in any case. We agree with these producers that the phrase "to the best of his knowledge, information and belief" should be inserted in the attestation in the Form.

A number of producers contend that reporting of reserves data should be by the operators rather than by other owners of working interests and royalty owners. They argue that their burden would be greatly reduced because they would not have to file as many reports; the reports would be more accurate because it is the operator which typically possesses the most accurate data; multiple reporting of the same reserves would be eliminated; and there would be a lesser burden on the Staff. We agree that the reporting requirement for purely royalty owners can be eliminated, for companies keep reserves data on the royalty and over-riding royalty properties related to their working interests and multiple reporting would be eliminated.

However, quite often the operator may not be a jurisdictional natural-gas company and therefore would not report data on the reservoir, for which it is an operator, while one or more of the working-interest owners, who are not operators, may be natural-gas companies and so report the reserves in question. Therefore we shall retain the requirement with respect to working interest owners. The reporting instructions shall be so modified.

The small producers contend they should be exempted. The very small ones are exempted, those producing 250,000 Mcf or less gas during the year; the others produce significant amounts of gas and should be required to report, although those producers with 20 Bcf or less of proved reserves need file only schedules A and C.

Gulf Oil contends that the Commission should promulgate regulations to protect confidential information submitted by the producers. In its motion filed April 5, 1977, Gulf asked the Commission to expand the present docket to consider specific rules concerning confidential reserve information. It says that now the producers are uncertain about how the Commission will treat the data and this discourages expenditures to discover and develop new deposits of natural gas. It adds that the Commission should not have discretion about the release of information and should consider the protection of confidential information an integral part of the promulgation of Form 40.

The Union case held that the Freedom of Information Act, 5 U.S.C. § 552 was intended to protect confidential information from disclosure by government agencies. Also it held that in Form 40 the Commission proposed a potentially damaging disclosure of information which fails to consider the degree of harm such disclosure would cause to the reporting companies and that such a rule is without rational basis. The Court said that in the event disclosure of information with potentially damaging specificity would advance the public interest the Commission should determine (1) whether the information is entitled to absolute protection under the Freedom of Information Act and, if not, (2) whether the balance of interests in the

specific case are such as to justify disclosure.

In the present context expanding the proceeding to include a general rulemaking on this matter would lead to substantial delay in the issuance of Form 40. However, we will hold administratively confidential those parts of Form 40 heretofore designated and will not make disclosure as an exercise of discretion on our part without affording the producers opportunity for a hearing. Where we are required by statute or otherwise to make disclosure to some other government body we shall notify the producer involved as much in advance as possible.

Pennzoil argues that Schedule B of Form 40 where reserves are reported on an individual reservoir basis contains no provision to reflect adjustments for performance increases or decreases over time. We are in agreement that such a change would be helpful in understanding the changes occurring from year to year but in the interest of reducing the reporting burden, Staff will request information on significant performance changes directly from the producer.

Shell and other producers object to the term "Shut-In" for wells or reservoirs that are not producing as having the connotation that they are ready to produce but are being held off production by unilateral decision of the operator. We agree that the term "Non-Producing" is a preferable term, and we shall amend the Form accordingly. Shell also would amend slightly and add to the list of numbered codes to be used to justify non-production from a proven reservoir. The present lists contains an Item 9. "Other" which permits further explanation. Nevertheless the additional codes might make the Form easier to prepare and more meaningful. We agree with this reasoning and will add additional reasons.

Phillips argues that since Schedule A is presently the only schedule of Form 40 which the Commission has indicated an intention to make public the data on non-producing reserves in Schedule A that has been carried over from Schedule B should be broken down between the numbered codes of explanation, so that the public that sees Schedule A will not get a distorted picture of why reserves are not being produced. Reformatting of Schedule A is not in our view desirable due to increased filing and processing burden. However, we believe that a report indicating a breakout of non-producing volume by reason for non-production is desirable, and such a report will be made public.

Tenneco believes that the definition of proved reserves should be amended. It points out that for reporting purposes "proved reserves" is limited to reservoirs which have demonstrated the ability to produce by either actual production or a conclusive formation test. Tenneco suggests the definition be modified to require the reporting of reserves as proved also upon the basis of modern advanced and reliable techniques for interpreting well logs. Tenneco also objects to the definition as including the undrilled portion of the reservoir or field. These requests are unreasonable for a number of considerations. No other respondent requested such a change. Comparability with historical AGA (time series) data would be destroyed. The AGA definition, essentially the same as the Form 40 definition was developed by a committee comprised of API, AGA, trade association and government agency representatives. It has been used by industry and government for many years. It allows leeway for professional judgment but is definitive enough to provide reserve estimates on essentially common bases. Tenneco also asks that Form 40 should provide sufficient digits for reporting terminal pressures of over 999 psi. This request is reasonable and will be incorporated in Form 40.

Tenneco filed a petition on March 10, 1977, asking that a conference should be called so that representatives of the producers and the several government agencies involved in collecting producer reserve data could examine the feasibility of reducing individual agency reports to one consolidated reserves report form. Other producers took the same position. We note that an inter-agency conference has already been held, the final report of which took note of the essential fact that data collected for macro-analytical needs of most government agencies contains insufficient detail for use in regulatory processes where micro-analytical analysis is required. The recommendation was that FPC proceed on its own while other agencies consolidated their data requests. After considering this analysis of the needs of the other government agencies, it appears that their needs are different than those of this agency and that another conference would serve little purpose at this time. In any case it would delay the issuance of an effective Form 40 and the collection of data needed for regulatory purposes.

By our order of May 6, 1977, we deferred action on Tenneco's motion to compel the production of Staff witness Gordon K. Zareski for cross-examination on the Staff statement, pending a determination on the whole record in the reopened proceeding. We have now done so and note that the record includes the transcript of April 4, 1977, with the cross-examination of three witnesses and the related exhibits, which include the Staff statement of February 10, 1977, the comments filed by numerous parties, and the prepared testimony of the three witnesses. In our opinion this record contains substantial evidence to sustain the revised Form 40 without a Staff witness. Since this is a rulemaking proceeding the Staff statement and the written comments are acceptable as evidence without the support of a witness. There is no reason why Tenneco, which could have presented a witness but did not do so, should be permitted to make its case by calling a Staff witness.

For the purpose of obtaining complete and adequate data for estimating productivity we shall require those persons who have not done so to file Schedule A data for the calendar years 1974 and 1975.

The Commission further finds: (1) The notice and opportunity to participate in this proceeding with respect to the matters presently before the Commission through the submission in writing and at a public meeting of comments are consistent and in accordance with all procedural requirements as prescribed in Section 553, Title 5 of the United States Code.

(2) The amendment to Part 260 of the Commission's Statements and Reports to revise § 260.13 is necessary and appropriate for the administration of the Natural Gas Act.

(3) The amendment of Part 3 of the Commission's General Rules and § 3.170 of the Regulations under the Natural Gas Act is necessary and appropriate for the administration of the Natural Gas Act.

The Commission orders: (A) We revise § 260.13 to read as follows—

§ 260.13 Form No. 40, natural gas companies annual report of proved domestic reserves, including those of any affiliate (associate) or subsidiary of each person found by the Commission to be a "natural-gas company" within the meaning of the Natural Gas Act.

(a) The form of Natural Gas Companies Annual Report of Proved Domestic Gas Reserves as F.P.C. Form No. 40 is adopted.

(b) Each person found by the Commission to be a "natural-gas company" within the meaning of the Natural Gas Act shall prepare and file with the Commission an original and four copies of Schedule A, Natural Gas Companies Annual Report of Proved Domestic Gas Reserves, F.P.C. Form No. 40; shall file one original copy of Schedules B and C; and shall file Schedule D as necessary. Schedule C is not required the first report year. The report for the calendar year ending December 31, 1976, shall be filed by November 1, 1977, and thereafter the report for each calendar year ending December 31 shall be filed by April 1 of the following year.

(c) Each of the persons defined in paragraph (b) of this section who have not filed Schedule A data for the calendar years 1974 and 1975 shall do so by November 1, 1977.

(d) Schedule A shall be made available at the Commission's Offices for public inspection.

(e) Information filed pursuant to this order shall be made under oath.

(B) We revise § 3.170 of Part 3, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations to read as follows:

§ 3.170 Approved forms, etc.

(a) The following is a list of approved forms, statements, and reports under the Natural Gas Act, descriptions of which have been published in Subchapter G, Parts 250 and 260 of this chapter.

(b) Form No. 40, Natural Gas Companies Annual Report of Proved Domestic Gas Reserves, Including Those of Any Affiliate (Associate) or Subsidiary of

Each Person Found By the Commission to be a "natural-gas company" within the meaning of the Natural Gas Act.

(C) The Secretary shall cause copies of FPC Form No. 40, as promulgated by this Order, to be transmitted to the Comptroller General of the United States.

(D) The effective date of this order shall be the date of issuance.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

(F) Tenneco's motion of March 10, 1977, requesting a public conference is denied.

(G) Tenneco's motion of April 8, 1977, that a Staff witness be made available is denied.

(H) Gulf's motion of April 5, 1977, requesting that the proceeding be expanded to consider rules on confidential reserves information is denied.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-20025 Filed 7-28-77;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

[Docket No. 77C-0206]

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

Mica

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document "permanently" lists mica for use in externally applied drugs and cosmetics generally, including drugs and cosmetics intended for use in the area of the eye. The Cosmetic, Toiletry and Fragrance Association, Inc., filed a petition for such use. This rule will remove mica from the provisional list of color additives.

DATES: Effective August 29, 1977; objections by August 29, 1977.

ADDRESS: Written objections to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, (202-472-5740).

SUPPLEMENTARY INFORMATION: A notice published in the FEDERAL REGISTER of August 6, 1973 (38 FR 21200) stated that a petition (CAP 8C0076) for the "permanent" listing of mica as a color additive for use in externally applied cosmetics, including lipsticks, and those for use in the area of the eye, had been filed by the Cosmetic, Toiletry and Fragrance Association, Inc. (1133 15th St. NW., Washington, DC 20005) c/o Hazleton Laboratories, P.O. Box 30, Falls Church, VA 22046. The petition was filed pursuant to section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376). A notice published in the FEDERAL REGISTER of March 5, 1976 (41 FR 9584) amended the filing of this petition to include the additional use of mica in all types of cosmetics subject to ingestion.

A subsequent notice published in the FEDERAL REGISTER of June 17, 1977 (42 FR 30893) amended the filing of this petition to include the additional use of mica in externally applied drugs.

The Commissioner of Food and Drugs has evaluated the data in the petition and concludes that mica is safe under the conditions set forth below for use in coloring externally applied drugs and cosmetics generally, including those intended for use in the area of the eye, and that certification is not necessary for the protection of the public health. This order "permanently" lists mica for use in externally applied drugs and cosmetics generally, including those for use in the area of the eye, under new §§ 73.1496 and 73.2496 (21 CFR 73.1496 and 73.2496), respectively. The provisional listing of mica for use in cosmetics under § 81.1(g) (21 CFR 81.1(g)), which was extended to July 1, 1977 by regulation published in the FEDERAL REGISTER of February 4, 1977 (42 FR 6992), will be deleted when this order becomes effective on August 29, 1977, unless this order is stayed by the timely filing of objections.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 as amended (21 U.S.C. 376 (b), (c), and (d)) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)), and under authority delegated to the Commissioner (21 CFR 5.1), Parts 73 and 81 are amended as follows:

1. Part 73 is amended:

a. By adding new § 73.1496 to Subpart B, to read as follows:

§ 73.1496 Mica.

(a) *Identity.* (1) The color additive mica is a white powder obtained from the naturally occurring mineral, muscovite mica, consisting predominantly of a potassium aluminum silicate, $K_2Al_4(Al_2Si_6O_{20})(OH_4)$ or, alternatively, $H_2KAl_3(SiO_4)_3$. Mica may be identified and semiquantitatively determined by its characteristic X-ray diffraction pattern and by its optical properties.

(2) Color additive mixtures for drug use made with mica may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring drugs.

(b) *Specifications.* Mica shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice.

Fineness, 100 percent shall pass through a 100-mesh sieve and 80 percent shall pass through a 200-mesh sieve.

Loss on ignition at 600°-650° C, not more than 2 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

(c) *Uses and restrictions.* Mica may be safely used in amounts consistent with good manufacturing practice to color externally applied drugs, including those for use in the area of the eye.

(d) *Labeling requirements.* The label of the color additive and of any mixture prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

b. By adding new § 73.2496 to Subpart C, to read as follows:

§ 73.2496 Mica.

(a) *Identity and specifications.* The color additive mica shall conform in identity and specifications to the requirements of § 73.1496(a)(1) and (b).

(b) *Uses and restrictions.* Mica is safe for use in coloring cosmetics generally, including cosmetics applied to the area of the eye, in amounts consistent with good manufacturing practice.

(c) *Labeling.* The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification pursuant to section 706(c) of the act.

§ 81.1 [Amended]

2. Part 81 is amended in § 81.1 Provisional lists of color additives, in paragraph (g) by deleting the entry for "Mica."

Any person who will be adversely affected by the foregoing order may at any time on or before August 29, 1977, file with the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall be filed in accordance with the requirements of § 71.30 (21 CFR 71.30). If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in

support of the objections in the event that a hearing is held. Four copies of all documents shall be filed and identified with the Hearing Clerk docket number found in brackets in the heading of this order. Received objections may be seen in the Hearing Clerk's office, Monday through Friday, between 9 a.m. and 4 p.m.

Effective date: August 29, 1977, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Sec. 706 (b), (c), (d), 74 Stat. 399-403 as amended (21 U.S.C. 376 (b), (c), (d)); sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note).)

Dated: July 25, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-21792 Filed 7-29-77;8:45 am]

[Docket No. 77C-0208]

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

Ferric Ammonium Ferrocyanide

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document "permanently" lists ferric ammonium ferrocyanide for use in externally applied drugs and cosmetics, including drugs and cosmetics intended for use in the area of the eye. The Cosmetic, Toiletry and Fragrance Association, Inc., petitioned for such use. This rule will remove the color additive from the provisional listing.

DATES: Effective August 29, 1977; objections by August 29, 1977.

ADDRESS: Written objections to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: A notice published in the FEDERAL REGISTER of August 6, 1973 (38 FR 21200) stated that a petition (CAP 8C0082) for the "permanent" listing of ferric ferrocyanide as a color additive for use in externally applied cosmetics, including those for use in the area of the eye, had been filed by the Cosmetic, Toiletry and Fragrance Association, Inc. (1133 15th St. NW., Washington, D.C. 20005), c/o Hazelton Laboratories, Inc., P.O. Box 30, Falls Church, VA 22046. The petition was filed pursuant to section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376). A notice published in the FEDERAL REGISTER of June 17, 1977 (42 FR 30893) amended the filing of this petition to include the additional use of ferric ferrocyanide in externally applied drugs, including those intended for use in the area of the eye.

Ferric ammonium ferrocyanide has been provisionally listed as ferric ferrocyanide for use in cosmetics under § 81.1(g) (21 CFR 81.1(g)). With permanent listing of ferric ammonium ferrocyanide under Part 73, the listing under § 81.1(g) will become obsolete.

The Commissioner of Food and Drugs has evaluated the data in the petition and concludes that ferric ammonium ferrocyanide is safe, under the conditions set forth below, for use in coloring externally applied drugs and cosmetics, including those intended for use in the area of the eye, and that certification is not necessary for the protection of the public health.

The Commissioner notes that there are some references in the literature that indicate oxalic acid may be used to alter the physical characteristics of ferric ammonium ferrocyanide. The Commissioner advises that this is not an appropriate practice for the production of this color additive.

Cosmetic labeling is required, under § 701.3 (21 CFR 701.3), to list the name of each color additive present as an ingredient in the finished cosmetic. Cosmetic labeling listing the color additive ferric ammonium ferrocyanide under its formerly accepted name "ferric ferrocyanide" may be used until current supplies are exhausted or until August 29, 1979. In a previous action published in the FEDERAL REGISTER of September 23, 1976 (41 FR 41855) terminating provisional listing of 10 color additives, the Commissioner concluded that 1 year would be sufficient time to permit the depletion of cosmetic labeling improperly identifying the substances as color additives. The Commissioner has concluded that an additional year should be added to the time period for depletion of existing stocks of labels declaring the color as "ferric ferrocyanide" because of its inclusion as such in the 2d edition of the CTFA Cosmetic Ingredient Dictionary. The presence of the improper terminology in this dictionary, which is used widely as a reference for the declaration of ingredients on cosmetic labeling, may delay the correction of cosmetic labeling. The extended time period will also provide time for correction of the dictionary.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 as amended (21 U.S.C. 376 (b), (c), and (d)), and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)), and under authority delegated to the Commissioner (21 CFR 5.1), Parts 73 and 81 are amended as follows:

1. Part 73 is amended: a. By adding new § 73.1298 to Subpart B, to read as follows:

§ 73.1298 Ferric ammonium ferrocyanide.

(a) *Identity.* (1) The color additive ferric ammonium ferrocyanide is the blue pigment obtained by oxidizing under acidic conditions with sodium dichromate the acid digested precipitate resulting from mixing solutions of ferrous sulfate and sodium ferrocyanide in the presence of ammonium sulfate. The oxidized product is filtered, washed, and dried. The pigment consists principally of ferric ammonium ferrocyanide with small amounts of ferric ferrocyanide and ferric sodium ferrocyanide.

(2) Color additive mixtures for drug use made with ferric ammonium ferrocyanide may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring drugs.

(b) *Specifications.* Ferric ammonium ferrocyanide shall conform to the following specifications and shall be free from impurities other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

(Oxalic acid or its salts, not more than 0.1 percent.)
Water soluble matter, not more than 3 percent.
Water soluble cyanide, not more than 0.5 part per million.
Volatile matter, not more than 4 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Nickel (as Ni), not more than 30 parts per million.
Cobalt (as Co), not more than 30 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total iron (Fe), not less than 33 percent and not more than 37 percent.

(c) *Uses and restrictions.* Ferric ammonium ferrocyanide may be safely used in amounts consistent with good manufacturing practice to color externally applied drugs, including those for use in the area of the eye.

(d) *Labeling requirements.* The label of the color additive and of any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

b. By adding new § 73.2298 to Subpart C, to read as follows:

§ 73.2298 Ferric ammonium ferrocyanide.

(a) *Identity and specifications.* The color additive ferric ammonium ferrocyanide shall conform in identity and specifications to the requirements of § 73.1298(a) (1) and (b).

(b) *Uses and restrictions.* Ferric ammonium ferrocyanide is safe for use in coloring cosmetics generally, including cosmetics applied to the area of the eye, in amounts consistent with good manufacturing practice.

(c) *Labeling.* The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification pursuant to section 706 (c) of the act.

§ 81.1 [Amended]

2. Part 81 is amended in paragraph (g) of § 81.1 *Provisional lists of color additives,* by deleting the entry for "Ferric ferrocyanide (iron blue)."

Any person who will be adversely affected by the foregoing order may at any time on or before August 29, 1977, file with the Hearing Clerk (HFC–20), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirement of § 71.30 (21 CFR 71.30). If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Four copies of all documents shall be filed and identified with the Hearing Clerk docket number found in brackets in the heading of this order. Received objections may be seen in the Hearing Clerk's office, between 9 a.m. and 4 p.m., Monday through Friday, except for holidays.

Effective date: August 29, 1977, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Sec. 706(b), (c), and (d), 744 Stat. 399–403 as amended (21 U.S.C. 376(b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note).)

Dated: July 25, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-21794 Filed 7-28-77;8:45 am]

[Docket No. 77C–0209]

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS, FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOOD, DRUGS, AND COSMETICS

Aluminum Powder

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document "permanently" lists aluminum powder for use in externally applied drugs and cosmetics including those intended for use in the area of the eye. The Cosmetic, Toiletry and Fragrance Association, Inc., filed a petition for such use. This rule will remove aluminum powder from the provisional list of color additives.

DATES: Effective August 29, 1977; objections by August 29, 1977.

ADDRESS: Written objections to the Hearing Clerk (HFC–20), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Gerad L. McCowin, Bureau of Foods (HFF–334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs has evaluated the data in the petition filed by the Cosmetic, Toiletry and Fragrance Association Inc., 1130 15th St. NW., Washington, D.C. 20005, and concludes that aluminum powder is safe under the conditions set forth below for use in coloring externally applied drugs and cosmetics including those intended for use in the area of the eye, and that certification is not necessary for the protection of the public health. This order "permanently" lists aluminum powder for use in externally applied drugs and cosmetics, including those for use in the area of the eye, under new §§ 73.1645 and 73.2645, respectively. The provisional listing of aluminum powder for use in cosmetics under § 81.1(g) (21 CFR 81.1 (g)), which was extended to July 1, 1977 by regulation published in the FEDERAL REGISTER of February 4, 1977 (42 FR 6992), will be deleted when this order becomes effective on August 29, 1977, unless this order is stayed by the timely filing of objections.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399–403 as amended (21 U.S.C. 376 (b), (c), and (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)), and under authority delegated to the Commissioner (21 CFR 5.1), Parts 73 and 81 are amended as follows:

1. Part 73 is amended: a. By adding new § 73.1645 to Subpart B, to read as follows:

§ 73.1645 Aluminum powder.

(a) *Identity.* (1) The color additive aluminum powder shall be composed of finely divided particles of aluminum prepared from virgin aluminum. It is free from admixture with other substances.

(2) Color additive mixtures for external drug use made with aluminum powder may contain only those diluents listed in this subpart as safe and suitable in color additive mixtures for coloring externally applied drugs.

(b) *Specifications.* Aluminum powder shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Fineness, 100 percent shall pass through a 200-mesh screen and 95 percent shall pass through a 325-mesh screen.
Mercury, not more than 1 part per million.
Arsenic, not more than 3 parts per million.
Lead, not more than 20 parts per million.
Aluminum, not less than 99 percent.

(c) *Uses and restrictions.* Aluminum powder is safe for use in externally applied drugs, including those intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(d) *Labeling.* The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification pursuant to section 706(c) of the act.

b. By adding new § 73.2645 to Subpart C, to read as follows:

§ 73.2645 Aluminum powder.

(a) *Identity and specifications.* The color additive aluminum powder shall conform in identity and specifications to the requirements of § 73.1645(a) (1) and (b).

(b) *Use and restriction.* Aluminum powder may be safely used in coloring externally applied cosmetics, including cosmetics intended for use in the area of the eye, in amounts consistent with good manufacturing practice.

(c) *Labeling.* The color additive and any mixture prepared therefrom intended solely or in part for coloring pur-