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A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1973, and specifies how they are affected.

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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.

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 140—COST OF LIVING COUNCIL FREEZE REGULATIONS

Special Freeze Group Questions and Answers No. 20

These "Questions and Answers", which are issued by the Cost of Living Council's Freeze Group, are designed to provide immediate guidance in understanding and applying the new freeze regulations (Part 140 of Title 6 of the Code of Federal Regulations). To achieve the broadest publication, these are hereby added to Appendix A of Part 140. Since they provide guidance of general applicability and are subject to clarification, revision or revocation, they do not constitute legal rulings with respect to specific fact situations.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489; Cost of Living Council Order No. 30, 38 FR 16267; Special Freeze Group Order No. 2, 38 FR 19925)

Issued in Washington, D.C., on July 30, 1973.

BERT M. CONCKLIN,
Deputy Director
Special Freeze Group.

Appendix A of Part 140 is amended by adding the following:

SPECIAL FREEZE GROUP QUESTIONS AND ANSWERS

NO. 20

1. Q: On July 20, 1973, the Cost of Living Council granted a class exception to the freeze rules to all manufacturers in the textile and apparel industries. Under this exception, may a manufacturer of textile and apparel products making shipment on or before July 19, 1973, at the freeze price, retroactively increase the price of the goods shipped?

A: No. In respect to contracts entered into prior to the freeze, prices for shipments prior to and including July 19, 1973, are subject to the freeze price rules. In respect to contracts made subsequent to 9:00 p.m. on June 13, 1973, the delivery price for shipments during the freeze also remains subject to the freeze price rules. The exception only applies to shipments made after July 19, 1973, under contracts made prior to the freeze. Until the end of the freeze, prices which exceed freeze prices for such shipments may be charged. Post-freeze shipments, however, will be subject to the new Phase IV regulations.

2. Q: Does the class exception granted by the Cost of Living Council on July 20, 1973, allow retailers of textile and apparel products to pass on costs during the freeze?

A: No. The exception to increase prices above the freeze price was granted only to manufacturers in the textile and apparel industries as defined in Standard Industrial Classification industry groups 22 and 23.

3. Q: Stevedore companies and terminal operators provide services to foreign flag carriers in United States ports. Are these services considered to be exports and therefore exempt from the freeze?

A: Yes. The service provided by the stevedore companies and terminal operators to a foreign flag carrier is considered an export of a service and is therefore exempt from the freeze. Transactions between stevedore companies and terminal operators and U.S. flag carriers are not exports of services and, therefore, are fully subject to the freeze.

4. Q: A U.S. firm imports regular gasoline and commingles it with the same grade regular gasoline it manufactures domestically. The firm also manufactures and sells premium gasoline. The cost of the imported regular gasoline has increased over the cost on June 12, 1973. May the firm pass on the increased cost of the imported regular gasoline as an increase in the price of both the regular and premium gasoline?

A: No. The firm sells two separate products, regular gasoline and premium gasoline. An increase in the cost of the one product which is imported, regular gasoline, may be passed on as an increase in the selling price of the regular gasoline. It may not be passed on as an increase in the selling price of the premium gasoline.

5. Q: May a State increase the amount both employers and the employees must contribute to the State's workmen's compensation program during the freeze?

A: Yes. Contributions made by employees and employers to workmen's compensation programs are considered tax payments which are exempt from the freeze since they are not prices within the meaning of the Economic Stabilization Program.

6. Q: Are mortgage points controlled by the freeze?

A: No. The point system is a method of adjusting interest rates and, to some extent, of compensating the mortgage dealer. Since the variation of points, just as changes in interest rates, is principally a function of changing money market conditions, points are not subject to the freeze.

[FR Doc.73-16028 Filed 7-31-73;11:49 am]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Valencia Orange Regulation 443]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation fixes the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period August 3-9, 1973. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908. The quantity of Valencia oranges so fixed was arrived at after consideration of the total available supply of Valencia oranges, the quantity of Valencia oranges currently available for market, the fresh market demand for Valencia oranges, Valencia orange prices, and the relationship of season average returns to the parity price for Valencia oranges.

§ 908.743 Valencia Orange Regulation 443.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this section to limit the respective quantities of Valencia oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Valencia orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Valencia oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Valencia oranges is steady. Prices f.o.b. averaged $3.31 per carton on a sales volume of 533 carlots during the week ended July 26, 1973, compared with $3.27 per carton on sales of 474 carlots a week earlier. Track and rolling supplies at 352 cars were down 6 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Valencia oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for section; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on July 31, 1973.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period August 3, 1973, through August 9, 1973, are hereby fixed as follows:

(i) District 1: Unlimited;

(ii) District 2: 500,000 cartons;

(iii) District 3: Unlimited.

(2) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" 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 August 1, 1973.

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

[FR Doc.73-16130 Filed 8-1-73;3:25 pm]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Prohibitions and Restrictions on Importation of Swine, Pork and Pork Products

The purpose of these amendments is to protect the swine population of the United States from African Swine fever, hog cholera, and swine vesicular disease by: (1) Designating countries of the world which are considered not to be infected with swine vesicular disease; (2) designating certain countries which are considered not to be infected with swine vesicular disease but which have a common land border with swine vesicular disease infected countries, or which carry out trade practices with swine vesicular disease infected countries which are less restrictive than are acceptable to the United States; (3) requiring certification by officials of the country of origin of domestic swine that such country is free of swine vesicular disease, hog cholera and African swine fever; and (4) prohibiting the importation of live domestic swine, and restricting the importation of fresh, chilled, frozen or processed pork and pork products and wild swine from countries not considered to be free of swine vesicular disease.

Swine vesicular disease is a highly contagious virus infection of swine caused by a porcine enterovirus. The causative virus is highly virulent and is likely to be present in pork and pork products originating in countries where the disease exists. Since the disease has been recognized only recently, research applicable to mechanical and biological animal carriers is limited. The swine vesicular disease virus is particularly resistant to changes in pH. Under field and laboratory conditions, swine vesicular disease is clinically indistinguishable from foot-and-mouth disease which further complicates eradication procedures. Epidemiologically, swine vesicular disease appears to spread very readily by direct or indirect contact. Trucks used to haul swine vesicular disease infected swine have been shown to have spread the disease to subsequent lots of swine hauled on the same day. Swine vesicular disease is also spread through garbage feeding. Under laboratory conditions, contact animals develop the disease as quickly as do those inoculated.

All known swine vesicular disease infected countries in Europe are attempting to eradicate the disease by slaughter programs. Since clinical symptoms of swine vesicular disease are identical to those of foot-and-mouth disease, those countries which have foot-and-mouth disease but which do not investigate each foot-and-mouth disease outbreak and obtain laboratory confirmation cannot be considered free of swine vesicular disease.

Based on scientific knowledge available at the present time, the importation of live domestic swine and the unrestricted importation of pork and pork products and wild swine from countries not known to be free of swine vesicular disease constitutes an undue risk of introducing this devastating swine disease into the United States.

Therefore, Subchapter D—Exportation and Importation of Animals (Including Poultry) and Animal Products, in Chapter I, Title 9, Code of Federal Regulations, is amended in the following respects:

1. Pursuant to the provisions of section 2 of the Act of February 2, 1903, as amended, and sections 2, 3, 4, and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 134a, 134b, 134c, and 134f), § 92.5, Part 92, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

In § 92.5(a)(1), the last sentence is amended to read:

§ 92.5 Certificate for ruminants, swine, and poultry.

(a) * * *

(1) * * * For domestic swine, the certificate shall also show that the entire country of origin is free of hog cholera, African swine fever, and swine vesicular disease and that for 60 days immediately preceding the time of movement from the premises of origin no swine erysipelas or swine plague has existed on such premises or on adjoining premises.

* * * * *

2. Pursuant to the provisions of section 2 of the Act of February 2, 1903, as amended, and sections 2, 3, 4, and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 134a, 134b, 134c, and 134f), Part 94, Title 9, Code of Federal Regulations, is hereby amended as follows:

New §§ 94.12, 94.13, and 94.14 are added to read:

§ 94.12 Pork and pork products from countries where swine vesicular disease exists.

(a) Swine vesicular disease is considered to exist in all countries of the world except Australia, Canada, Central American countries and Panama, Haiti, Dominican Republic, Denmark, Sweden, Switzerland, Norway, Finland, Iceland, Greenland, Mexico, Netherlands, Federal Republic of Germany, Northern Ireland, the Republic of Ireland, New Zealand, Hungary, Yugoslavia, Bulgaria, Belgium and Luxembourg.

(b) No pork or pork products shall be permitted entry into the United States from any country where swine vesicular disease is considered to exist unless it complies with the following requirements and it is not otherwise prohibited importation under this part:

(1) Such pork or pork product has been treated in accordance with one of the following procedures:

(i) Such pork or pork product has been fully cooked by a commercial method in a rigid can which was sealed promptly after filling, and before such cooking, so that such cooking and sealing produced a fully sterilized product which is in a hermetically sealed can and is shelf stable without refrigeration; or

(ii) Such pork or pork product is in compliance with the following requirements:

(A) All bones have been completely removed in the country of origin, and

(B) Such article has received heat treatment in a commercially accepted manner used for perishable canned pork products that produces an internal temperature of 156° F.; or

(iii) Such pork or pork product if cured and dried is in compliance with the following requirements:

(A) All bones have been completely removed in the country of origin, and

(B) Such pork or pork products shall be consigned directly from the port of entry in the United States to a meat processing establishment operating under Federal meat inspection and approved by the Deputy Administrator, Veterinary Services[2] for heating to an internal temperature of 166° F.

(2) The article was prepared in an establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act and the regulations in § 327.2 in Chapter III of this title; and

(3) In addition to the certificate required in § 327.4 of this title, the article is accompanied by a certificate stating the facts specified in subdivision (i), (ii), or (iii) (A) of subparagraph (1) of this paragraph, which is issued by an official of the National Government of the country of origin who is authorized to issue the certificates required by § 327.4 of this title.

[2] Information as to the identity of approved establishments may be obtained from, and request for approval of any establishment may be made to, the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250. Establishments will be approved only if the Deputy Administrator, Veterinary Services, determines that the imported articles will be so handled at the establishments as to prevent the introduction and dissemination of livestock or poultry diseases into the United States. Approval of any establishment may be refused or withdrawn only after the operator thereof has been given notice of the proposed action and has had an opportunity to present his views thereon.

§ 94.13 Restrictions on importation of pork or pork products from specified countries.

Belgium, Luxembourg, the Netherlands, the Federal Republic of Germany, Switzerland, Hungary, Yugoslavia, and Bulgaria which are declared to be free of swine vesicular disease in § 94.12(a); are countries which either supplement their national pork supply by the importation of fresh, chilled, or frozen pork from countries where swine vesicular disease is considered to exist; or which have a common border with such countries; or which have certain trade practices that are less restrictive than are acceptable to the United States. Thus, the pork or pork products produced in such countries may be commingled with fresh, chilled, or frozen meat of animals from a country where swine vesicular disease is considered to exist resulting in an undue risk of swine vesicular disease introduction into the United States. Therefore, pork or pork products and shipstores, airplane meals, and baggage containing such pork, other than those articles regulated under Part 95 or Part 96 of this chapter, produced in such countries shall not be brought into the United states unless the following requirements are met in addition to other applicable requirements of Part 327, Subchapter A, Chapter III of this title:

(a) All such pork produced shall have been prepared only in establishments that are eligible to have their products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 et. seq.) and the regulations in § 327.2, Chapter III of this title which are issued thereunder, and shall be accompanied by a Department approved meat inspection certificate prescribed in § 327.4 in Chapter III of this title.

(b) Shipments of such pork or other pork products consigned to the United States must be accompanied by an additional certificate signed by a full-time salaried veterinary official of the agency in the National Government having responsibility for the health of animals within that country, stating the name and official establishment number of the establishment where the swine involved were slaughtered and the pork was processed and also stating that:

(1) The slaughtering establishment is not permitted to receive animals that originated in, or have ever been in a country listed in § 94.12(a) as a country in which swine vesicular disease is considered to exist;

(2) The slaughtering establishment is not permitted to receive pork derived from swine which originated in such a country or pork from swine from a swine vesicular disease free country which has been transported through a country where swine vesicular disease is considered to exist except pork which was transported in containers sealed with serially numbered seals of the National Government of a country of origin listed in § 94.12 as a country considered free of the disease.

(3) The pork has been processed, stored, and transported to the means of conveyance that will bring the article to the United States in a manner that precludes its being commingled or otherwise coming in contact with pork or pork products that have not been handled in accordance with the requirements of this § 94.13.

§ 94.14 Swine from countries where swine vesicular disease exists; importations prohibited.

Whereas it is considered that swine vesicular disease exists in all countries of the world except those listed in § 94.12(a), and that swine which originate in or are shipped from or transit any country except those listed, would, if brought into the United States, be likely to introduce or disseminate swine vesicular disease into the United States, it is hereby further determined that, in order to protect the livestock of the United States, it is necessary to prohibit the movement of such swine into the United States and such movement is hereby prohibited: *Provided*, That wild swine may be brought into the United States in accordance with the provisions of § 92.2 or § 92.4(c) of this chapter upon request to the Deputy Administrator, Veterinary Services, in specific cases.

(Sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 37 FR 28464, 28477.)

Effective date. The foregoing amendments shall become effective on August 2, 1973, except with respect to intransit shipments of swine, pork and pork products that are on board a carrier moving to the United States at the time of issuance hereof. Such intransit shipments shall upon arrival in the United States be allowed entry only under such specific requirements or be disposed of in such manner as the Administrator may determine in each specific case to be necessary and adequate to safeguard against the introduction or dissemination of swine vesicular disease into the United States.

The prohibitions and restrictions imposed by these amendments must be made effective immediately to protect the livestock industry of the United States against the introduction of swine vesicular disease from foreign countries. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under 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 the amendments would be impracticable and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 30th day of July 1973.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.73-15908 Filed 8-1-73;8:45 am]

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Prohibitions and Restrictions on Importation of Animals, Meat and Other Articles

These amendments add Great Britain (England, Scotland, Wales, and Isle of Man) to the list of countries designated as free of rinderpest and foot-and-mouth disease in § 94.1(a)(2) and to the listing of those free countries in § 94.11(a) which are subject to special restrictions on importation of their meat and other animal products into the United States. Great Britain is being placed in this specialized category because of that Country's practice of supplementing its national meat supply by importing fresh, chilled or frozen meats from countries designated in § 94.1(a)(1) as infected with rinderpest or foot-and-mouth disease.

Pursuant to section 306 of the Act of June 17, 1930, as amended, section 2 of the Act of February 2, 1903, as amended, and sections 2, 3, 4, and 11 of the Act of July 2, 1962 (19 U.S.C. 1306, 21 U.S.C. 111, 134a, 134b, 134c, 134f), Part 94, Title 9, Code of Federal Regulations, is hereby amended as follows:

1. Section 94.1(a)(2) is amended by adding thereto the name of the country of Great Britain (England, Scotland, Wales, and Isle of Man) after the reference to "Channel Islands."

2. Section 94.11(a) is amended by adding thereto the name of the country of Great Britain (England, Scotland, Wales, and Isle of Man) before the reference to "Japan."

(Sec. 306, 46 Stat. 689, as amended, sec. 2, 32 Stat. 792, as amended, secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132; 19 U.S.C. 1306; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 37 FR 28464, 28477)

Effective date. The foregoing amendments shall become effective August 2, 1973.

Insofar as the amendments relieve certain restrictions presently imposed but no longer deemed necessary to prevent the spread of disease, they should be made effective immediately to be of maximum benefit to affected persons and avoid unnecessary interference with foreign commerce. Insofar as they impose restrictions, they are deemed essential to prevent the introduction and dissemination of certain diseases which pose a threat to the livestock industry of the United States, and they must be made effective without delay in order to accomplish this purpose. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest and good cause is found for making the amendments effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 30th day of July, 1973.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.73-15907 Filed 8-1-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

(Airworthiness Docket No. 73-SW-30; Amdt. 39-1695)

PART 39—AIRWORTHINESS DIRECTIVES

Bell Model 205A-1 Helicopters

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring removal and inspection of the forward and aft cross tubes within 10 hours time in service after attaining 200 hours total time and requiring certain repetitive inspections at intervals of 25 hours and 100 hours from the first inspection until cross tube friction dampers were installed was published in 38 FR 15523 for Bell Model 205A-1 helicopters equipped with amphibious float landing gear.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No comments were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

BELL. Applies to Model 205A-1 helicopters certificated in all categories equipped with float landing gear kit, P/N 205-706-050-1, with 200 hours or more total service time on the float gear.

Compliance required as indicated:

To detect possible cracks in the forward and aft cross tubes of the float landing gear, accomplish the following inspections specified in Bell Helicopter Company Service Bulletin 205-02-73-1 dated February 16, 1973 or later approved revision or in accordance with an equivalent inspection approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, Federal Aviation Administration.

(a) Within the next 10 hours time in service after the effective date of this A.D., unless already accomplished, conduct the inspections specified in Part I, paragraphs 3 and 4 of Bell Service Bulletin 205-02-73-1.

(b) At each 25 hours interval after the initial inspection, conduct the inspection specified in Part I, paragraph 6 of Bell Service Bulletin 205-02-73-1.

(c) At each 100 hours interval after the initial inspection, conduct the inspection specified in Part I, paragraph 7 of Bell Service Bulletin 205-02-73-1.

(d) The repetitive inspections specified herein, with the exception of the one-time inspection in (e), are no longer required after friction dampers, P/N 205-050-127-3 and 205-050-127-5 have been installed.

(e) If friction dampers have been installed on helicopters with float kit, P/N 205-706-050-1, with cross tubes which had 200 hours or more service time at the time of damper installation, conduct the inspections specified in Part II, paragraph 1 of Bell Service Bulletin 205-02-73-1 within 10 hours time in service, after the effective date of this A.D., unless already accomplished.

(f) If a crack is found in a cross tube, replace the cross tube prior to next flight.

This amendment becomes effective August 13, 1973.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c)).

Issued in Fort Worth, Texas on July 20, 1973.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.73-15879 Filed 8-1-73;8:45 am]

[Docket No. 73-NE-24; Amdt. 39-1698]

PART 39—AIRWORTHINESS DIRECTIVE

Pratt and Whitney Engines

Engine tests performed by the manufacturer have determined that the thermal gradients on the Pratt and Whitney JT9D turbine fan engines containing fourth and fifth stage turbine discs, part numbers P/N 646304, 694804, 618305, and 705905, are higher than was originally determined by analytical methods. These higher thermal gradients reduce the cyclic life of the discs. Since this condition exists in all engines with discs having the same part number, an airworthiness directive is being issued to reduce the disc cyclic life from 8000 to 4000 cycles in order to prevent possible engine failure. By the terms of the applicability language, this reduction of cyclic life would not be applicable to engines with discs that have been reconditioned in accordance with Pratt and Whitney Service Bulletin No. 3785.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than thirty (30) days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

PRATT AND WHITNEY—Applies to all Pratt and Whitney Aircraft JT9D turbofan engines containing fourth and fifth stage turbine discs, P/N 646304, 694804, 618305, and 705905.

Compliance required as indicated.

To prevent possible failure of fourth and fifth stage turbine discs, the life limits on these parts have been reduced below the figures currently approved. Unless already accomplished, remove from service fourth and fifth stage turbine discs prior to reaching the revised life limit listed below or within the next 25 cycles in service after the effective date of this airworthiness directive whichever comes later.

Disc part No.	Previous life limit cycles	Revised life limit cycles
646304	8000	4000
604804	8000	4000
618305	8000	4000
705905	8000	4000

(Upon submission of substantiating data through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, New England Region, may adjust the compliance time).

NOTE: (Pratt and Whitney Service Bulletin No. 3785 pertains to this subject).

This amendment becomes effective August 15, 1973.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958 49 U.S.C. 1345(a), 1421, 1423; sec. 6(c), Department of Transportation Act 49 U.S.C. 1655(c))

Issued in Burlington, Massachusetts, on July 25, 1973.

FERRIS J. HOWLAND,
Director, New England Region.

[FR Doc.73-15878 Filed 8-1-73;8:45 am]

[Airspace Docket No. 73-SO-55]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Marianna, Fla., transition area.

The Marianna transition area is described in § 71.181 (38 FR 435). In the description, an extension is predicated on the Marianna VOR 127° radial and was designated to provide controlled airspace protection for IFR aircraft executing the VOR RWY 32 Instrument Approach Procedure. Effective August 16, 1973, the final approach radial for this procedure will be changed to the Marianna VOR 125° radial. It is necessary to alter the description to reflect this change. Since this amendment is minor in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., August 16, 1973, as hereinafter set forth.

In § 71.181 (38 FR 435), the Marianna, Fla., transition area is amended as follows:

". . . 127° . . ." is deleted and ". . . 125° . . ." is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); Sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c)).

Issued in East Point, Ga., on July 24, 1973.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73-15880 Filed 8-1-73;8:45 am]

[Airspace Docket No. 73-SO-34]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On June 20, 1973, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (38 FR 16079), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Holly Springs, Miss., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 11, 1973, as hereinafter set forth.

In § 71.181 (38 FR 435), the following transition area is added:

HOLLY SPRINGS, MISS.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Holly Springs-Marshall County Airport (Lat. 34°48'12" N, Long. 89°31'16" W); within 2 miles each side of Holly Springs VORTAC 336° radial, extending from the 6.5-mile radius area to 11 miles northwest of the VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); Sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c)).

Issued in East Point, Ga., on July 24, 1973.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73-15881 Filed 8-1-73;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-813, Amdt. 13]

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

Inclusive Tour Charters; Authorization

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on July 26, 1973.

By ER-807,[1] 38 FR 19678, the Board adopted amendment No. 11 to Part 212 to authorize, subject to the conditions prescribed therein, foreign route air carriers to perform inclusive tour charters.

The changes which amendment 11 makes to §§ 212.4 and 212.5, respectively, do not reflect certain earlier changes and additions to these sections made in amendment No. 10 to the subject part.[2] This amendment corrects that oversight.

This regulation is issued by the undersigned pursuant to a delegation of authority from the Board to the General Counsel in 14 CFR 385.19, and shall become effective on August 22, 1973, the effective date of ER-807. Procedures for review of this amendment by the Board are set forth in Subpart C of Part 385 (14 CFR 385.50 and 385.54).

Accordingly, the Board hereby amends Part 212 of the Economic Regulations (14 CFR Part 212) effective August 22, 1973, as follows:

1. Amend the Table of Contents by changing the title of § 212.4, the Table as amended to read in pertinent part as follows:

Sec.
212.4 Limitation on the operation of charter trips and certain inclusive tour charter trips.

2. Amend § 212.4 by (1) revising the title of the section; (2) designating the present paragraph of the section, as amended by ER-807, as paragraph (a); and (3) adding paragraph (b), a paragraph which was inadvertently omitted from amendment No. 11 to Part 212. As amended, § 212.4 will read as follows:

§ 212.4 Limitation on the operation of charter trips and certain inclusive tour charter trips.

(a) A foreign air carrier shall not perform any off-route charter trips or inclusive tour charter trips for which prior approval is required unless specific authority in the form of a Statement of Authorization to conduct such charter trip has been granted by the Board: *Provided, however,* That no Statement of Authorization shall be required for the performance of a charter trip as provided in § 212.8(a)(4-a) in cases of emergency: *Provided, also,* That emergency charters for commercial traffic shall be reported in accordance with § 212.14. An emergency charter within the meaning of this section shall not include such circumstances as cancellation of flights due to periodic overhaul of aircraft or delay in the delivery of newly acquired aircraft, and a foreign air carrier may not provide emergency charter trips on any day in each of three or more successive calendar weeks for any single direct air carrier without a Statement of Authorization.

(b) The Board, if it finds that the public interest so requires, may at any time, with or without hearing, notify a foreign air carrier subject to this part that it shall not perform on-route charter trips in the absence of prior Board authorization. The Board's notification shall be effective for such period or periods and with respect to such operations as the Board may specify in accordance with this paragraph. Effective not earlier than 30 days after the date of such notice, the foreign air carrier shall not perform any on-route charter trip falling within the specification of the notice, unless specific authority in the form of a Statement of Authorization to conduct such charter trip has been granted by the Board. Notification of the Board's proposed failure to approve either the whole

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[1] July 17, 1973.

[2] ER-788, effective January 22, 1973, and published at 38 FR 2755. Amendment No. 10 embodied various new rules adopted by the Board in the On-Route Charter Authority of Foreign Air Carrier Permits Proceeding, Docket 22362, Order 73-1-71.

or part of an application for a Statement of Authorization to conduct an on-route charter trip or trips, filed pursuant to the requirements of this subsection, provided that such application has been timely filed at least 30 days in advance of the proposed flight, will be submitted to the President of the United States at least 10 days prior to the date of the proposed flight. Any such failure to approve shall be subject to stay or disapproval by the President within 10 days after the date of the Board's notification.

3. Amend paragraph (b) of § 212.5 to read as follows:

§ 212.5 Statements of authorization; application.

* * * * *

(b) Applications shall be filed with the Board at least five days in advance of the date of the commencement of the proposed flight, except that applications for authority to conduct planeload cargo charters may be filed not less than 48 hours in advance of the proposed flight: *Provided, however,* That an application for the performance of a charter transporting commercial traffic for another direct air carrier or direct foreign air carrier (as provided in § 212.8(a)(4-a)) shall be filed with the Board at least 45 days in advance of the date of the commencement of the proposed flights: *Provided further,* That an application for authority to perform inclusive tour charter trips for which prior approval is required shall be filed with the Board not less than 90 days prior to the date of the commencement of the proposed flights: *And, provided further,* That applications, where required pursuant to § 212.4(b) to conduct on-route charters shall, unless otherwise specified by the Board, be filed not less than 30 days in advance of the proposed flight. Upon a showing that good cause exists for failure to adhere to the above requirements and that waiver of these requirements is in the pubic interest, applications later submitted may be considered by the Board.

* * * * *

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat 743; 49 U.S.C. 1324)

By the Civil Aeronautics Board.

[SEAL] RICHARD LITTELL,
General Counsel.

[FR Doc.73-15961 Filed 8-1-73;8:45 am]

Title 20—Employees' Benefits

CHAPTER V—MANPOWER ADMINISTRATION, DEPARTMENT OF LABOR

PART 602—COOPERATION OF THE U.S. TRAINING AND EMPLOYMENT SERVICE AND STATES IN ESTABLISHING AND MAINTAINING A NATIONAL SYSTEM OF PUBLIC EMPLOYMENT OFFICES

Minimum Wage Rates for Temporary Foreign Agricultural Labor

On page 15969 of the FEDERAL REGISTER of June 19, 1973, there was published a notice of proposed rule making to revise the minimum wage rates at 20 CFR 602.10b(a)(1), which are applicable to the importation of aliens for certain temporary agricultural work. Interested persons were given 15 days in which to file written statements of data, views, or arguments regarding the proposed amendment. No comments were received. After consideration of all relevant matters, the amendment as so proposed is hereby adopted without change and is set forth below.

The amendments herein reflect findings regarding changes in wage rates of U.S. workers in agricultural occupations to be used pursuant to the Secretary's responsibility in the immigration process. Full opportunity was provided for participation in the rule making process. Any additional advance notice of these changes would be contrary to the public interest. Accordingly, this amendment becomes effective on August 2, 1973.

(U.S.C. 1184; 8 CFR 214.2(h))

Signed at Washington, D.C. this 26th day of July, 1973.

WILLIAM H. KOLBERG,
Assistant Secretary for Manpower.

[FR Doc.73-15882 Filed 8-1-73;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

PART 8—COLOR ADDITIVES

Subpart E—Listing of Color Additives for Drug Use Subject to Certification

D&C GREEN NO. 5

The Commissioner of Food and Drugs, having evaluated the data in a petition (CAP 1C0099) filed by Ethicon, Inc., Somerville, NJ 08876, and other relevant material, concludes that D&C Green No. 5 is safe, under the conditions prescribed in this order, for use as a dyeing agent for nylon nonabsorbable surgical sutures (U.S.P.) for use in general surgery and that certification is necessary for the protection of the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), (d), 74 Stat. 399-403; 21 U.S.C. 376 (b), (c), (d)) and under authority delegated to the Commissioner (21 CFR 2.120), part 8 is amended by adding a new § 8.4069 to Subpart E, as follows:

§ 8.4069 D&C Green No. 5.

(a) *Identity.* The color additive D&C Green No. 5 is principally the disodium salt of 2,2'-[(9,10-dihydro-9,10-dioxo-1,4-anthracenediyl) diimino]bis[5-methyl-benzenesulfonic acid].

(b) *Specifications.* D&C Green No. 5 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:

Sum of volatile matter (at 135°C) and chlorides and sulfates (calculated as sodium salts), not more than 20.0 percent.

Water-insoluble matter, not more than 0.2 percent.

1,4-Dihydroxy-anthraquinone, not more than 0.2 percent.

2-Amino-m-toluenesulfonic acid, not more than 0.2 percent.

Subsidiary colors, not more than 5.0 percent.

Lead (as Pb), not more than 10 parts per million.

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

Total color, not less than 80.0 percent.

(c) *Uses and restrictions.* D&C Green No. 5 may be safely used to color nylon (the copolymer of adipic acid and hexamethylene diamine) nonabsorbable surgical sutures for use in general surgery subject to the following restrictions:

(1) The quantity of color additives does not exceed 0.6 percent by weight of the suture.

(2) The dyed suture shall conform in all respects to the requirements of the United States Pharmacopeia.

(3) When the sutures are used for the purposes specified in their labeling, there is no migration of the color additive to the surrounding tissue.

(4) If the suture is a new drug, an approved new-drug application, pursuant to section 505 of the act, is in effect for it.

(d) *Labeling.* The label of the color additive shall conform to the requirements of § 8.32.

(e) *Certification.* All batches of D&C Green No. 5 shall be certified in accordance with regulations in subpart A of this part.

Any person who will be adversely affected by the foregoing order may at any time on or before September 4, 1973, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852, 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. 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. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective October 1, 1973, 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; 21 U.S.C. 376(b), (c), (d))

Dated: July 26, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-15939 Filed 8-1-73;8:45 am]

PART 8—COLOR ADDITIVES

Dihydroxyacetone

The Commissioner of Food and Drugs, on the basis of a petition (CAP No. 8), submitted by Plough, Inc., Memphis, TN 38101, and other relevant information, finds that dihydroxyacetone, under the conditions prescribed in this order, is safe and suitable for use in or on externally applied drugs or cosmetics which color the human body. It is further concluded that certification is not necessary for the protection of the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), (d), 74 Stat. 399–403; 21 U.S.C. 376 (b), (c), (d)) and under the authority delegated to the Commissioner (21 CFR 2.120), Part 8 is amended as follows:

1. By adding a new § 8.6016 to Subpart F, as follows:

§ 8.6016 Dihydroxyacetone.

(a) *Identity.* (1) The color additive dihydroxyacetone is 1,3-dihydroxy-2-propanone.

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

(b) *Specifications.* Dihydroxyacetone 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:

Volatile matter (at 34.6° C. for 3 hours at a pressure of not more than 30 mm. mercury), not more than 0.5 percent.

Residue on ignition, not more than 0.4 percent.

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

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

Iron (as Fe), not more than 25 parts per million.

1,3-dihydroxy-2-propanone, not less than 98 percent.

(c) *Uses and restrictions.* Dihydroxyacetone may be safely used in amounts consistent with good manufacturing practice in externally applied drugs intended solely or in part to impart a color to the human body. Authorization for this use shall not be construed as waiving any of the requirements of Section 505 of the act with respect to the drug in which it is used.

(d) *Labeling requirements.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 8.32.

(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.

2. By adding a new § 8.8005 to Subpart H, as follows:

§ 8.8005 Dihydroxyacetone.

(a) *Identity and specifications.* The color additive dihydroxyacetone shall conform in identity and specifications to the requirements of § 8.6016 (a) (1) and (b).

(b) *Uses and restrictions.* Dihydroxyacetone may be safely used in amounts consistent with good manufacturing practice in externally applied cosmetics intended solely or in part to impart a color to the human body.

(c) *Labeling requirements.* The labeling of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 8.32.

(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 the requirements of Section 706(c) of the act.

Any person who will be adversely affected by the foregoing order may at any time on or before September 4, 1973, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, MD 20852, 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. 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. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective October 1, 1973, except as to any provisions that may be stayed by the filing of objections. Notice of the filing of objections or lack thereof will be announced in the FEDERAL REGISTER.

(Sec. 706(b)(1), (c)(2), (d), 74 Stat. 399–402; 21 U.S.C. 376(b)(1), (c)(2), (d)).

Dated: July 26, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-15938 Filed 8-1-73;8:45 am]

Title 38—Pensions, Bonuses and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 36—LOAN GUARANTY

Interest Rate Change

The Veterans Administration is amending §§ 36.4212(a) (2) and (3), 36.4311 and 36.4503, Title 38 of the Code of Federal Regulations to increase the maximum interest rate on new loans to 7¾ perecnt.

Section 1803(c)(1) of Title 38, United States Code provided that the maximum interest rate applicable to loans guaranteed or insured under Chapter 37 of Title 38 shall be established by the Administrator from time to time as he finds the loan market demands, except that such rate in no event shall exceed that in effect under the provisions of section 203(b)(5) of the National Housing Act. The authority of the Department of Housing and Urban Development and the Veterans Administration to establish home mortgage interest rates in excess of 6 percent pursuant to P.L. 92–335 expired on June 30, 1973. To date, this joint authority has not been extended. P.L. 93–75 effective on July 26, 1973 provides the Administrator with independent authority to set the maximum interest rate on mortgages guaranteed, insured, or made pursuant to Chapter 37, Title 38, United States Code, after consultation with the Secretary of HUD.

Section 36.4212, Title 38 of the Code of Federal Regulations relating to that portion of a mobile home loan which finances the purchase of a lot and the cost of necessary site preparation is amended to increase the maximum interest rate from 7 to 7¾ percent. Thus, the interest rate on such loans will be consistent with that in effect on other guaranteed and insured loans for real estate purposes.

Compliance with the provisions of § 1.12 of this chapter is waived in this instance. The availability of mortgage funds from the private sector is dependent upon the interest rate being competitive with other available investments. Compliance with § 1.12 would create an acute shortage of mortgage funds pending the effective date of the sections, which would be more than 30 days after it was published in proposed form.

These amendments are effective upon date of approval of the Administrator.

1. In § 36.4212(a), subparagraphs (2) and (3) are amended to read as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed pursuant to 38 U.S.C. 1819 may not exceed the following maxima:

* * * * *

(2) 7¾ percent simple interest per annum for that portion of the loan which finances the purchase of a lot and the

cost of necessary site preparation, if any.

(3) 7¾ percent simple interest per annum on that portion of a loan which will finance the cost of the site preparation necessary to make a lot owned by the veteran acceptable as the site for the mobile home purchased with the proceeds of the loan except that a rate of not to exceed 10.75 percent may be charged if the portion of the loan to pay for the cost of such necessary site preparation does not exceed $2,500.

* * * * *

2. In § 36.4311, paragraph (a) is amended to read as follows:

§ 36.4311 Interest rates.

(a) Excepting non-real-estate loans insured under 38 U.S.C. 1815 effective July 26, 1973, the interest rate on any loan guaranteed or insured wholly or in part on or after such date may not exceed 7¾ per centum per annum on the unpaid principal balance.

* * * * *

3. In § 36.4503, paragraph (a) is amended to read as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after May 7, 1968, shall not exceed an amount which bears the same ratio to $21,000 (or to such increased maximum as the Administrator may from time to time specify for the area in which the loan is made pursuant to section 1811(d) of title 38, United States Code) as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $12,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Loans made by the Veterans Administration shall bear interest at the rate of 7¾ percent per annum, except where a commitment to make the loan at a lower rate was issued prior to July 26, 1973, in which case the rate of interest shall be that applicable on the date such commitment was issued.

* * * * *

These VA Regulations are effective July 26, 1973.

Approved: July 26, 1973.

By direction of the Administrator:

[SEAL] FRED B. RHODES,
Deputy Administrator.

[FR Doc.73-15866 Filed 8-1-73;8:45 am]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-182]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Michigan	Wayne	Ecorse, City of				Aug. 1, 1973, Emergency.
New York	Ontario	Gorham, Town of				Do.
Pennsylvania	Lycoming	Gamble, Township of.				Do.
Do	McKean	Eldred, Borough of.				Do.
Do	Tioga	Richmond, Township of.				Do.
Do	York	York, Township of.				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

JULY 25, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-15808 Filed 8-1-73;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 114—DEPARTMENT OF THE INTERIOR

PART 114–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Sale of Personal Property

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301 and Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), Subpart 114–5.3 of Chapter 114, Title 41 of the Code of Federal Regulations, is revised as set forth below.

This revision merely makes it clear that existing Departmental policy relating to sales of personal property to Government employees, is also applicable to sales being conducted pursuant to the exchange/sale provisions of the Federal Property and Administrative Services Act of 1949, as amended. It is, therefore, determined that the public rulemaking procedure is unnecessary and this revision shall become effective on August 2, 1973.

JAMES T. CLARKE,
Assistant Secretary of the Interior.

JULY 26, 1973.

The first paragraph and paragraphs (a)(2) and (b) of § 114–45.302 are amended to read as follows:

§ 114–45.302 Sale to Government employees.

While not unlawful, sales of personal property to Federal employees tend to give rise to the question in the public mind as to whether all prospective bidders are really on equal footing. What is feared is not so much collusion or overtly dishonest practices, as that the Federal employee, through his prior use of the property, or close associations with those familiar with the property, is in a somewhat more advantageous position than the member of the general public in making his bid. In this regard, therefore, all sales of personal property within the Department will be subject to the following requirements:

(a) * * *

(2) Motor vehicles and other personal property being sold for replacement purposes pursuant to the Exchange/Sale authority found in section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(c)): *Provided*, That such property meets prescribed replacement standards.

(b) Personal property may be sold to Federal employees only by the publicly advertised sealed bid or public auction sales methods.

* * * * *

[FR Doc.73–15905 Filed 8–1–73;8:45 am]

PART 114–51—PROVISION AND ASSIGNMENT OF QUARTERS AND FURNISHINGS

Subpart 114–51.1—Provision of Quarters

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, Subpart 114–51.1 of Chapter 114, Title 41 of the Code of Federal Regulations is revised as set forth below.

This revision codifies into the Interior Property Management Regulations (IPMR) existing Departmental policies related to the provision of employee housing. It is, therefore, determined that the public rulemaking procedure is unnecessary and the revision shall become effective on August 2, 1973.

JAMES T. CLARKE,
Assistant Secretary of the Interior.

The table of contents for Subpart 114–51.1 is revised by the addition of the following:

Sec.

114–51.103	Design standards.
114–51.104	Housing cost limitation.
114–51.104–1	Elements of cost chargeable to limitation.
114–51.104–2	Elements of cost not chargeable to limitation.
114–51.104–3	Requests for authorization to exceed cost limitation.

Section 114–51.102 is revised to read as follows:

§ 114–51.102 Determination of number, types, and sizes of housing units required.

Bureaus shall be governed by the applicable provisions of Office of Management and Budget Circular No. A–18, Revised, in determining the number, types, and sizes of housing units to be provided employees at a given location.

New §§ 114–51.103 and 114–51.104 are added to subpart 114–51.1 as follows:

§ 114–51.103 Design standards.

Employee housing units constructed by Bureaus and Offices of the Department of the Interior shall not exceed the following standards:

(a) Standard materials, millwork, equipment, and fixtures that are readily available at local supply centers will be used in all dwelling construction.

(b) Design will be simple with no features that increase building costs, such as irregularities in roof framing.

(c) Not to exceed one and a half baths.

(d) One stall garage in areas subject to deep snow or prolonged periods of below freezing temperatures, carports in warmer climates.

(e) Sun porches, enclosed patios, or similar features will not be provided.

(f) Floor area shall not exceed—two-bedroom dwellings, 1,250 square feet; three-bedroom dwellings, 1,300 square feet; exclusive of basement and garage space (or service and storage space in lieu of basement).

(g) No four-bedroom dwellings shall be permitted.

(h) Fireplaces will not be permitted except where essential for adequate heating.

§ 114–51.104 Housing cost limitation.

A maximum amount of $29,000 (regardless of the source of financing) may be expended for single family employee housing units in the continental United States, Alaska, Hawaii, and the Territories, including costs of engineering and design.

§ 114–51.104–1 Elements of costs chargeable to limitation.

The following elements of cost will be charged against the $29,000 cost limitation:

(a) Adaptation of standard dwelling plans to a specific site. Revision or alteration of standard plans and specifications to reflect latest developments in economic construction and materials should be prorated to the dwellings to be constructed from the plans during the fiscal year.

(b) Preparation of necessary plans and specifications to accompany invitations to bid. This will include all costs incurred in providing the contracting officer with data that is to be included as part of the construction contract.

(c) Preparation of site development plans showing location of buildings and other facilities existing or to be installed on the site. These costs will be prorated to number of buildings both existing and to be constructed on the site.

(d) Contract or force account cost of construction of the dwelling including excavation for basement or foundation. Include all construction costs to build a dwelling according to the plans and specifications which accompany the bid or that are approved for force account.

(e) Garage or carport whether attached or detached.

(f) Grading, landscaping, walks, driveways, retaining walls, fences and subsurface drainage. If this work is to serve more than one building, prorate costs accordingly.

(g) Costs incurred in development of landscape plans. Prorate as in paragraph (f) of this section.

(h) Installation of public utilities from the lot line to the dwelling. Prorate as in paragraph (f) of this section.

(i) Cost of airconditioning units, including cost of installation.

§ 114–51.104–2 Elements of cost not chargeable to limitation.

The following elements of cost should not be charged against the housing cost limitation.

(a) General supervision by administrators. Indirect costs, such as payrolling, purchasing, fund accounting, etc.

(b) Revision of standard plans to meet standards specified herein.

(c) Preliminary investigations and field surveys necessary to determine feasibility, location, physical characteristics of the site, etc. This frequently involves consideration of several alternate sites. Includes preliminary engineering surveys and investigations and other costs incurred up to the point where final selection of a site is made.

(d) Cost of site.

(e) Cost of developing water and sanitary systems where public utilities are not available. This includes the drilling of wells and installation of equipment,

and construction of sewer systems. Installation of a power plant where commercial power is not available would also be in this category.

(f) Removable and replaceable items, such as ranges, refrigerators, venetian blinds, storm doors and storm windows.

(g) Part-time services performed by regular field staff (other than full time technical specialists) in contract supervision or inspection during actual construction; that is, after award of contract or start of force account construction.

(h) Extension of public utilities to the lot line.

§ 114–51.104–3 Requests for authorization to exceed cost limitation.

When it is determined that a dwelling cannot be constructed within the $29,000 cost limitation, a request for approval to exceed the limitation may be submitted for Departmental consideration. Such requests, accompanied by a statement in the format of Appendix I to this Subpart 114–51.1, should be addressed to the Appropriations Committees and submitted to the Assistant Secretary—Program Development and Budget for signature and transmittal to the Committees. A statement should be attached to the Appendix setting forth:

(a) The reasons why it is necessary to exceed the limitation,

(b) The justification of need for the housing, including a statement as to why the housing is necessary at this time,

(c) A listing of any permanent Federal housing already located at the site,

(d) The number of bureau employees now located at the housing site,

(e) The contemplated increase in number of bureau employees at the particular location and,

(f) An explanation showing why existing housing is inadequate.

APPENDIX I

DEPARTMENT OF THE INTERIOR

_____
Bureau

DWELLING CONSTRUCTION COSTS
(SEPARATE FORM FOR EACH DWELLING)

LOCATION

State _____ Town _____
Other location _____

DESCRIPTION

Site: Purchased ____ Other land (describe) __
Type and size of dwelling: No. of bedrooms _____ Net floor area (sq. ft.) _____
Basement: Full ____ Partial ____ None ____;
Fireplace: Yes __ No __
Garage: Attached _____ Detached _____
Basement _____ Carport _____ None _____
Air conditioning: Yes __ No __
Nearest source of contract-labor and materials _____ Distance ____ Miles
(town and state)

ESTIMATED COSTS

Engineering and Design _____ Preparation of site development plan _____
Cost of dwelling _____ Cost of garage or carport _____ Cost of air conditioning _____
Cost of landscaping:
Landscape plans ___ Grading and leveling ___
Lawn, shrubs, trees _____ Sidewalks (linear ft.) _____
Fencing ____ Driveway, curbs (linear ft.) ____
Retaining walls ___ Sub-surface drainage ___
Installation of utilities (lot line to dwelling) _____
Full-time technical specialists on inspection or supervision _____
Other applicable costs (identify) _____
TOTAL COSTS _____
(Attach sheet giving additional details with respect to distance from nearest source of labor and materials; comparative bid prices; if costly site preparation measures are needed; whether the work was advertised more than once, and any other item which it is felt should be more fully explained).

[FR Doc.73–15906 Filed 8–1–73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19547; FCC 73–788]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

Geneva Radio Regulations

Memorandum opinion and order. In the matter of amendment of Part 2 of the Commission's rules and regulations to conform, to the extent practicable, with the Geneva Radio Regulations, as Revised by the Space WARC, Geneva, 1971, Docket No. 19547.

1. The Commission, on February 14, 1973, adopted a Report and Order in Docket No. 19547 which, in part, amended Part 2, § 2.106 of the Commission's rules by adding footnote NG 105 which pertained to the 11.7–12.2 GHz band. The Report and Order in the aforementioned Docket was published in the FEDERAL REGISTER on March 1, 1973 (38 FR 5502), corrected on April 12, 1973 (38 FR 9228) and May 4, 1973 (38 FR 11086), and revised the Table of Frequency Allocations to conform, to the extent practicable, with the Geneva Radio Regulations, as revised by the Space World Administrative Radio Conference in Geneva, 1971.

2. A Petition for Reconsideration of the Commission's action in adopting footnote NG 105 in Docket No. 19547 was timely filed by CML Satellite Corporation (CML) on March 26, 1973. An Opposition to the Petition was filed by the Association of Maximum Service Telecasters (AMST) on April 16, 1973, and a Reply to the Opposition was filed by CML on April 26, 1973. Essentially, CML requested deletion of footnote NG 105, which states (as adopted):

In the band 11.7–12.2 GHz, assignments in the Broadcasting Satellite and Fixed Satellite Services will not be made pending further Order of the Commission.

AMST's opposition to the CML petition was based on its concern for the broadcasting satellite service, and the fact that deletion of NG 105 would, in the absence of more definitive information concerning the broadcasting satellite service, open the way for fixed-satellite service in the entire 11.7–12.2 GHz band. CML states, in its Reply to the Opposition comments, that such opposition was based principally on the basis that such action (i.e. deletion of NG 105) would permit assignments in the Broadcasting Satellite service without further policy consideration by the Commission.

3. CML's petition is based on a desire to proceed with an application which had been filed over two years ago for use of the frequencies in connection with the domestic satellite system it proposes and because, as it alleges, "of the enormous harm to CML and the potential uses of its domestic satellite system."

4. From the beginning, the Commission saw the 11.7–12.2 GHz band as one important to the broadcasting satellite service. In the notice of proposed rulemaking in Docket 19547, adopted July 14, 1972 and released on July 26, 1972, which was published in the FEDERAL REGISTER on August 4, 1972 (37 FR 15714), we said in paragraph 11:

It should be noted that the WARC imposed no power flux density limit in this band with respect to either broadcasting satellites or fixed satellites and no limits are proposed in our national rules. It is in this band that a domestic broadcasting-satellite service might logically be expected to develop—if we are to have one. It it conceivable that the fixed-satellite service would be used initially for the distribution of broadcasting program material and evolve with time into a community or direct-to-the-home broadcasting-satellite service. It is perhaps more conceivable, unless steps are taken to preclude it, that the fixed-satellite service would not take that course, but would be used for conventional fixed-satellite service and develop to a stage where the entire band and the preferred orbital positions were being used, to the virtual exclusion of a broadcasting-satellite service.

We are still of that opinion. In fact, we would now like to emphasize the importance of there being no flux limits in this band and point out that it is the lowest frequency band allocated to Broadcasting satellites that has no flux limit. As such, it is a highly desirable band for these satellites, that, by their very nature require high flux densities in contrast with fixed satellite systems that do not require a high flux density and moreover, have other bands available to them.

5. Despite the comments of CML, we are still of the opinion, as set forth in paragraph 17 of the Report and Order in Docket No. 19547, that "system parameters and demands for either service are not yet clear." Only a portion of the necessary components and subsystems have yet reached the experimental or developmental stage; and the effects of propagation on system design and performance are still unsettled. Further, we know little of overall commercial and operational requirements for this band. We are therefore not yet ready to arrive at any conclusions concerning the ultimate disposition of the band. Nonetheless, we now favor its interim use by fixed satellite systems.

6. In this connection, however, it should be pointed out that we are extremely uncertain as to when broadcasting satellites will be developed in the United States. Recent developments, including reductions in both Government

and industry funded programs, indicate that such development will take at least as long as the decade or so predicted earlier. If such indications are correct, we should not preclude the band from being used during this period of time. Only two communications satellite programs will be continued as a result of the recent NASA decision: one is the ATS/F satellite which will have the capability of transmitting television to community-type receivers in the 2500 MHz region (for experiments with, among other U.S. users, the Federation of Rocky Mountain States) and at around 890 MHz (for subsequent experiments with India); the other is the joint Canada/NASA Communications Technology Satellite ("CTS"). This satellite is scheduled for launch in 1975 and will use a 200 watt tube being developed especially for this program to transmit television signals in the band 11.7–12.2 GHz. Receiving antennas as small as two feet in diameter will be tested with this satellite. Experimental satellites like these will provide technical and operation experience that will be useful in planning for follow-on systems. We should emphasize that full account of the needs of CTS will be taken and that there needs be no adverse impact on this satellite by any fixed-satellite systems that would be permitted under the revised footnote NG 105, described herein. Further, it is possible, indeed forseeable, that, if broadcasting satellites are developed, they will evolve, at least in part, from Fixed Satellite Systems operating in the 11.7–12.2 GHz band. This is a likely outcome because, as the number of earth stations in a system increases, it is more economical to use higher power satellites which permits the use of less expensive earth stations—in other words, a broadcasting satellite system. Accordingly, to bring about this evolution, the interim use of the band by fixed satellite service systems should be encouraged.

7. At the same time, the systems that develop the technology should not make the transition to new systems impossible by their continuing occupancy of the band. They must be expected to evolve, convert or even relinquish occupancy of major portions of allocated spectrum to those new systems of equal or greater benefit to the public. We recognize that changes of which we are speaking will likely not take place, nor will they be required, for a considerable period of time. Moreover, those changes will not occur without notice.

8. Should systems in the fixed satellite service become operational in the next few years, it would be reasonable to assume that minor accommodation for broadcasting satellites (such as a change in orbital location) would probably not be required for perhaps a decade or so, and significant changes (such as giving up the use of specific frequencies), would probably not be required for much longer, if ever. In any event, plans for such broadcasting satellite systems, including their design, development, engineering, funding, and launch will likely be under consideration for a number of years. During this time, operators of fixed satellite systems would be able to alter the design of their systems for successive versions.

9. While we fully recognize the likely occurrence of the foregoing situation, our reluctance to concur totally with the request of CML stems from the fact that this is the lowest band in the radio spectrum (and therefore the most desirable) which has been allocated internationally for the broadcasting satellite service with no limitation on power flux density. Further, it is difficult to foresee where, in the event the band becomes saturated with domestic fixed satellite systems, an alternative band could be made available especially in view of the regional and international agreements required.

10. Finally, because the United States was one of the principal advocates of an allocation for a broadcasting satellite service at the 1971 Space WARC, the Commission, as one of the principal developers of the national position, is deeply committed to retaining a viable allocation for the service.

11. Thus, while we understand the aim of CML to utilize the 11.7–12.2 GHz band for their proposed fixed satellite system with no restrictions, we are not disposed to simply remove the footnote which is the subject of their petition. Instead, we will amend the wording of the footnote to read as follows:

Pending adoption of specific rules concerning sharing of the band 11.7–12.2 GHz between the Broadcasting Satellite and Fixed-Satellite Services, systems in those Services may be authorized on a case-by-case basis subject to the condition that adjustments in certain system design or technical parameters (including but not limited to orbital location, channel use, etc.) may become necessary during the system lifetime in order to accommodate use of the band by systems of the same or other service.

12. *Accordingly, it is ordered,* Pursuant to sections 4 and 303 of the Communications Act, That footnote NG 105 to § 2.106 of the Commission's rules and regulations is amended as reflected in the attached Appendix effective September 7, 1973.

13. *It is further ordered,* That the petition for reconsideration filed by CML is granted to the extent reflected herein and in all other respects is denied.

14. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Adopted: July 26, 1973.

Released: July 31, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

In § 2.106, footnote NG 105 is amended to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

NG 105 Pending adoption of specific rules concerning sharing of the band 11.7–12.2 GHz between the Broadcasting Satellite and Fixed-Satellite Services, systems in those Services may be authorized on a case-by-case basis subject to the condition that adjustments in certain system design or technical parameters (including but not limited to orbital location, channel use, etc.) may become necessary during the system lifetime in order to accommodate use of the band by systems of the same or other service.

* * * * *

[FR Doc.73-15924 Filed 8-1-73;8:45 am]

[Docket No. 19732; FCC 73-802]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Marion, Ill.

Report and order. In the matter of amendment of § 73.202(b), *Table of assignments,* FM Broadcast Stations (Marion, Illinois), Docket No. 19732, RM-1946.

1. The Commission has under consideration its notice of proposed rule making adopted May 3, 1973 (FCC 73-465, 38 FR 12757), inviting comments on a proposal to substitute Class B Channel 297 for Channel 296A at Marion, Illinois, and substituting Class C Channel 238 for Class C Channel 297 at Poplar Bluff, Missouri. This proceeding was instituted on the basis of a petition filed by 3-D Communications Corporation ("3-D"), licensee of Station WDDD(FM), which operates on Channel 296A. Interested parties were invited to comment on the proposal on or before June 14, 1973, and could reply to such comments on or before June 25, 1973. There were no oppositions to the proposal. Supporting comments were filed by the petitioner.

2. Marion has a population of 11,724 and is the seat of Williamson County (population 49,021).[1] In addition to FM Station WDDD(FM), Marion has a daytime station, WGGH. The only other broadcast station in the county is a Class IV fulltime AM station located at Herrin, Illinois.

3. Petitioner points out that the southern Illinois area is undergoing a rebirth of industrialization and growth and indicates that this growth will cause a tremendous increase in population. 3-D contends that a Class B station is needed to serve the area south of Marion which is extremely hilly and would provide service that does not require special receiving equipment. It states that it would be able to extend the station's coverage to a large area not now served and which is in need of additional radio service. 3-D indicates that because of the increase in population the station would serve (3-D estimates an increase to 250,000 persons from the current 75,000) and would be able to operate on a 24-hour-per-day

[1] Commissioner Johnson concurring in the result; Commissioner H. Rex Lee absent.

[1] Population figures cited are from the 1970 U.S. Census.

basis. In order to substitute Channel 297 for Channel 296A presently assigned to Marion, Illinois, and licensed to petitioner, it would be necessary to substitute Channel 238 for Channel 297 at Poplar Bluff, Missouri. The channel at Poplar Bluff is unoccupied. However, a station operating on Channel 238 at Poplar Bluff would have to be sited at least 3 miles northwest of the community to meet the minimum mileage separation requirement from Station WBHT–FM, Brownsville, Tennessee, operating on Channel 237A. The substitution of Channel 297 for 296A at Marion would not preclude future assignments on any of the adjacent channels.

4. After consideration of the pertinent facts in this case, we are of the view that the subject proposal has merit and that its adoption would serve the public interest. Although the area which would receive a first service is minimal, approximately one-fourth of the gain area (approximately 250 square miles) would receive a second FM service. Since there are communities with Class B assignments in the neighboring area which have less population than Marion, there appear to be no substantial reasons not to substitute a Class B channel for a Class A channel in Marion. Channel 297 cannot be used at any other place in this area. Its assignment to Marion would not preclude future assignments on any of the adjacent channels. A Class C channel is substituted for a Class C channel, which is presently unoccupied at Poplar Bluff, Missouri. Thus, the substitution of a Class B channel for a Class A channel at Marion would result in efficient use of FM frequencies.

5. Authority for the action taken herein is contained in sections 4(i), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended.

6. *Accordingly, it is ordered*, That effective September 7, 1973, the *Table of assignments* (§ 73.202(b) of the rules) is amended with respect to the communities listed as follows:

City	*Channel No.*
Marion, Illinois	297
Poplar Bluff, Missouri	233, 238

7. *It is further ordered*, That effective September 7, 1973, and pursuant to section 316(a) of the Communications Act of 1934, as amended, the outstanding license of 3–D Communications Corporation for Station WDDD(FM), Marion, Illinois, is modified to specify operation on Channel 297 in lieu of Channel 296A subject to the following conditions:

(a) The licensee shall inform the Commission in writing by no later than September 27, 1973, of its acceptance of this modification.

(b) The licensee shall submit to the Commission by September 7, 1973, all necessary information complying with the applicable technical rules for modification of authorization to cover the operation of Station WDDD(FM) on Channel 297 at Marion, Illinois.

(c) The licensee may continue to operate on Channel 296A under its outstanding authorization until it is ready to operate on the new frequency. Ten days prior to commencing operation on Channel 297, the licensee shall submit the same measurement data normally required in an application for an FM broadcast station license.

(d) The licensee shall not commence operation on Channel 297 until the Commission specifically authorizes it to do so.

8. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Adopted: July 26, 1973.

Released: July 31, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73–15925 Filed 8–1–73;8:45 am]

[Docket No. 19683; FCC 73–804]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Ocala and Dunnellon, Fla.

Report and order. In the Matter of amendment of § 73.202(b), *Table of assignments*, FM Broadcast Stations. (Ocala and Dunnellon, Florida), Docket No. 19683, RM–1908.

1. The Commission here considers the notice of proposed rulemaking in this docket, adopted February 7, 1973 (FCC 73–159; 38 FR 4676), proposing amendment of the FM *Table of assignments* (§ 73.202(b) of the Commission's rules and regulations), as concerns Ocala and Dunnellon, Florida.[3] The parties filing comments are the petitioner, Osceola Broadcasting Company, Inc. (Osceola), licensee of fulltime AM Station WTMC at Ocala, and Greater Ocala Broadcasting Corporation (Greater Ocala), licensee of daytime-only AM Station WWKE at Ocala.

2. Ocala, population 22,583,[4] is the seat and largest city in Marion County (population 69,030). Aural broadcast service at Ocala consists of FM Station WMOP–FM, Channel 229, and three AM stations—WTMC, WWKE, and WMOP (also daytime-only). FM Channel 272A is also assigned to Ocala, but it is occupied by Station WTRS–FM at Dunnellon, Florida.[5] Osceola's objective is replacement of a channel for Channel 272A at Ocala because of that channel's use at Dunnellon, which circumstance we deemed to be an appropriate basis for proposing reassignment of that channel. Osceola made additional arguments based on Ocala's size, recent growth (66.1 percent between the 1960 and 1970 Census), and as the focus for Marion County (whose population increase is 33.7 percent), and our notice indicated that Ocala might warrant additional service in these circumstances. We also observed that petitioner's showing about first nighttime service was not sufficient, although the desirability of additional nighttime service in the area was clear.[6] The notice stated that the proposed assignment of Channel 224A to Ocala comports with spacing requirements if a station on that channel would operate from a site at least three miles southwest of Ocala. We also noted that the proposed assignment would cause little preclusion. The cities affected—Crystal River and Dunnellon—did not merit another channel assignment considering population (1,696 and 1,146, respectively); Channel 253 had then been recently assigned to Crystal River (39 F.C.C. 2d 452, 455–7 (1973)), and in this proceeding we were proposing the reassignment of Channel 272A from Ocala to Dunnellon to conform the FM Table of Assignments to actual operation of Station WTRS–FM.

3. Osceola, as requested by the Notice, has indicated its continuing readiness to construct and operate on an FM channel if assigned to Ocala. In other respects, Osceola incorporates by reference statements in its petition, but we need not repeat such data and information which served as the basis for our Notice or what was said in the Notice. Osceola's comments were filed one day late together with an appropriate motion stating that the failure to file timely was due to an inadvertence. In the circumstances, we are permitting the late filing; this did not delay action on our part in disposing of this proceeding, and, except for reaffirming Osceola's interest, no new facts or arguments are presented.

4. As already noted, Greater Ocala, licensee of daytime-only AM Station WWKE at Ocala, also filed comments supporting the proposed assignment of Channel 224A at Ocala. Greater Ocala states that in recent years community and civic leaders as well as members of the general public have expressed to its management the desire for additional nighttime service, which need, it feels, is reinforced by the inability of the two nighttime aural services at Ocala to fully serve the area around Ocala whose percentage of growth is expected to be greater in the future. (The projected population figures for Marion County for 1980 and 1990 show increases but at a diminishing rate of 30 percent and 22 percent.)

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[2] Commissioner H. Rex Lee absent.

[3] The caption which originally referred to only Ocala is being changed to reflect that this proceeding also concerns a channel assignment at Dunnellon.

[4] All population information is from the 1970 Census, unless otherwise indicated.

[5] Dunnellon is about 22 miles from Ocala. The Commission's Rules and Regulations formerly permitted the use of a Class A channel at an unlisted community within 25 miles of the community of assignment; the distance is now 10 miles (see § 73.203(b)).

[6] In this respect, Station WMOP–FM is authorized to construct a more powerful facility than that referred in the engineering study submitted in support of the petition. However, in this respect, it would appear that operation of WMOP–FM at 75 kW power and 500 feet antenna height A.A.T. or equivalent should have been assumed; see Roanoke Rapids-Goldsboro, 9 F.C.C. 2d 672 (1967).

5. While other questions were raised,[2] this proceeding basically only involves the substitution of a channel at Ocala for Channel 272A because of its use at Dunnellon and conforming the FM Table of Assignments in the latter respect. As noted above, Channel 224A is available for assignment at Ocala in lieu of Channel 272A without a change elsewhere, and the preclusionary effect is nonexistent considering all relevant factors. In the circumstances, we find that the public interest, convenience, and necessity would be served by the assignment of Channel 224A to Ocala in lieu of Channel 272A and the reassignment of Channel 272A from Ocala to Dunnellon.

6. Authority for this action is found in sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended.

7. *Accordingly, it is ordered*, That the FM Table of Assignments (§ 73.202(b) of the Commission's rules and regulations) is amended effective September 7, 1973, as concerns Ocala and Dunnellon, Florida, as follows:

City	*Channel No.*
Ocala, Florida	224A, 229
Dunnellon, Florida	272A

8. *It is further ordered*, That the motion of Osceola Broadcasting Company, Inc. to accept its late filed comments in this proceeding is granted.

9. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Adopted: July 26, 1973.

Released: July 31, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[3]

[SEAL] VINCENT J. MULLINS, *Acting Secretary.*

[FR Doc.73-15926 Filed 8-1-73;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1104, Amdt. 6]

PART 1033—CAR SERVICE

Penn Central Transportation Co. et al., Authorized to Operate Over Tracks of the Erie Lackawanna Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 25th day of July 1973.

Upon further consideration of Service Order No. 1104, (37 FR 15307, 22986; 38 FR 3512, 8445, 14754, and 18026), and good cause appearing therefor:

It is ordered, That: § 1033.1104 *Service Order No. 1104* (Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., trustees, authorized to operate over tracks of the Erie Lackawanna Railway Company) Service Order No. 1104 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 31, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m. July 31, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-15952 Filed 8-1-73;8:45 am]

[Rev. S. O. 1110, Amdt. 10]

PART 1033—CAR SERVICE

Penn Central Transportation Co., et al.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 25th day of July 1973.

Upon further consideration of Revised Service Order No. 1110 (37 FR 19616, 22871, 23236; 38 FR 878, 3333, 5636, 8446, 10942, 14755, and 18025), and good cause appearing therefor:

It is ordered, That § 1033.1110 *Service Order No. 1110* (Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., trustees, required to restore service at the Buttonwood (Wilkes-Barre), Pennsylvania, Gateway and to reroute traffic originally routed via that gateway), Revised Service Order No. 1110 be, and it is hereby, amended by substituting the following paragraphs (a) and (e) for paragraphs (a) and (e) thereof:

(a) The Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees, (Penn Central) be, and it is hereby, ordered to restore service via its Buttonwood (Wilkes-Barre), Pennsylvania, gateway on or before September 30, 1973.

(e) *It is further ordered*, That this order shall become effective at 11:59 p.m., September 15, 1972, and, as to paragraph 1033.1110(b), shall expire at 11:59 p.m., September 30, 1973, unless sooner vacated by order of this Commission upon restoration of service through the Buttonwood (Wilkes-Barre) gateway.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-15953 Filed 8-1-73;8:45 am]

[S.O. 1111, Amdt. 10]

PART 1033—CAR SERVICE

Delaware and Hudson Railway Co. Authorized To Operate Over Tracks of Erie Lackawanna Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 25th day of July 1973.

Upon further consideration of Service Order No. 1111 (37 FR 19617, 22872, 25237; 38 FR 878, 3332, 5637, 8446, 10942, 14755, and 18025), and good cause appearing therefor:

It is ordered, That § 1033.1111 *Service Order No. 1111* (Delaware and Hudson Railway Company authorized to operate over tracks of Erie Lackawanna Railway Company Thomas F. Patton and Ralph S. Tyler, Jr., trustees) Service Order No. 1111 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads

[2] The Notice also mentioned that we normally do not intermix classes of FM channels, but that issue has been disposed of when Channel 272A was assigned to Ocala in lieu of Channel 253; see Titusville and Ocala, Florida, 40 F.C.C. 946, 950–1 (1965).

[3] Commissioner H. Rex Lee absent.

subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-15954 Filed 8-1-73;8:45 am]

[S.O. 1144]

PART 1033—CAR SERVICE

St. Louis-San Francisco Railway Co. Authorized To Operate Over Tracks of Atchison, Topeka and Santa Fe Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 25th day of July 1973.

It appearing, That the St. Louis-San Francisco Railway Company (SL-SF) and The Atchison, Topeka and Santa Fe Railway Company (ATSF) have agreed to operate certain transcontinental freight trains via a connecting track at Avard, Oklahoma; that such routing of these trains will expedite the movements of these trains by approximately twenty-four (24) hours when compared with movements of similar traffic handled by these companies via existing routes; that there are no terminal facilities of either of these carriers at Avard, Oklahoma; that suitable facilities are available on the ATSF at Waynoka, Oklahoma; that the ATSF has agreed to operation by the SL-SF over ATSF tracks between Avard milepost 336+109 and Waynoka milepost 345+2599 7', a distance of approximately ten miles; that operation by the SL-SF over the aforementioned tracks of the ATSF is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1144 Service Order No. 1144.

(a) *St. Louis-San Francisco Railway Company authorized to operate over tracks of the Atchison, Topeka and Santa Fe Railway Company.* The St. Louis-San Francisco Railway Company (SL-SF) be, and it is hereby, authorized to operate over tracks of The Atchison, Topeka and Santa Fe Railway Company (ATSF), between Avard, Oklahoma, milepost 336+109 and Waynoka, Oklahoma, milepost 345+2599 7', a distance of approximately ten miles.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the SL-SF over tracks of the ATSF is deemed to be due to carriers' disability, the rates applicable to traffic moved by the SL-SF over these tracks of the ATSF shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 11:59 p.m., July 31, 1973.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 31, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-15955 Filed 8-1-73;8:45 am]

[S. O. 1145]

PART 1033—CAR SERVICE

Distribution of Boxcars

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of July 1973.

It appearing, That an acute shortage of fifty-foot plain boxcars exists on the Maine Central Railroad Company; that shippers located on lines of this carrier are being deprived of such cars required for loading, resulting in a severe emergency; that present rules, regulations, and practices with respect to the use, supply, control, movement, distribution, exchange, interchange, and return of boxcars owned by this railroad are ineffective. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1145 Service Order No. 1145.

(a) Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) Return to owner empty, except as otherwise authorized in paragraph (3) herein, all plain boxcars which are listed in the Official Railway Equipment Register, I.C.C. R.E.R. No. 388, issued by W. J. Trezise, or reissues thereof as having mechanical designation XM, bearing reporting marks issued to the Maine Central Railroad Company and having inside length of forty-nine feet or longer.

(2) Plain boxcars described in paragraph (1) include both plain boxcars in general service and plain boxcars assigned to the exclusive use of a specified shipper.

(3) Boxcars described in paragraph (1) herein may be loaded only to stations on the lines of the car owner or to any station which is a junction with the car owner. After unloading at a junction with the car owner, such cars shall be delivered to the car owner at that junction, either loaded or empty.

(4) Boxcars described in paragraph (1) herein shall not be back-hauled empty from a junction with the car owner.

(5) The return to the owner of a boxcar described in paragraph (1) herein shall be accomplished when it is delivered to the car owner, either empty or loaded.

(6) Junction points with the car owner shall be those listed by the car owner in its specific registration in the Official Railway Equipment Register, I.C.C. R.E.R. No. 388, issued by W. J. Trezise, or successive issues thereof, under the heading "Freight Connections and Junction Points."

(7) No common carrier by railroad subject to the Interstate Commerce Act shall accept from shipper any loaded boxcar for movements contrary to the provisions of paragraph (3) of this section.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(c) *Effective date.* This order shall become effective at 11:59 p.m., July 31, 1973.

(d) *Expiration date.* This order shall expire at 11:59 p.m., November 15, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-15956 Filed 8-1-73;8:45 am]

SUBCHAPTER B—PRACTICE AND PROCEDURES

[Ex Parte No. 298]

PART 1107—REQUIREMENTS AND PROCEDURES RELATING TO RAILROAD RATE ADJUSTMENT ACT OF 1973

Order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 27th day of July 1973.

Upon consideration of the record in the above-captioned proceeding, including the notice of proposed rulemaking and order served on July 6, 1973, and published in the FEDERAL REGISTER on July 10, 1973, inviting the filing of statements of verified facts, views, or arguments; and of the statements received in response from the parties listed in Appendix A below; and

It appearing, that a review of all the statements received is convincing that the proposed requirements and procedures set forth in the notice of proposed rulemaking and order should be modified as reflected below;

Wherefore, and for good cause:

It is ordered, That the following procedures be, and they are hereby, prescribed under the authority of Public Law 93-69, the Railroad Rate Adjustment Act of 1973 (49 U.S.C. 15a(4)(a)), and that they shall become effective on August 1, 1973.

Sec.
1107.1 Requirements.
1107.2 Notice.
1107.3 Commission order.

AUTHORITY: P.L. 93-69, Railroad Rate Adjustment Act of 1973 (49 U.S.C. 15a(4)(a)).

§ 1107.1 Requirements.

Petition or petitions filed by class-I line-haul common carriers subject to part I of the Interstate Commerce Act under the provisions of subsection (4)(a) of section 15a of the act, for adjustment of their interstate freight rates when increases in the expenses of such carriers have or will result from any increases in taxes under the Railroad Retirement Tax Act, as amended, occurring on or before January 1, 1975, or as the result of the enactment of the Railroad Retirement Amendments of 1973, shall be verified and shall disclose:[1]

(a) The amount of increases in expenses of such carriers resulting from any increases in taxes under the Railroad Retirement Tax Act, as amended, occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973, by showing—

(1) For each of the four calendar quarters ending with the latest quarter preceding the filing date of the petition—

(i) The mid-month number of employees,

(ii) The total service hours by operating and other employees, as reported in ICC wage statistics, Forms A and B,

(iii) The total compensation paid for operating and other employees, as reported in ICC wage statistics, Forms A and B,

(iv) The total compensation subject to retirement taxes,

(v) The retirement taxes paid,

(vi) The retirement tax rate,

(vii) The retirement taxes reimbursed by AMTRAK and other public authorities.

(2) For the third and fourth quarters of 1973 and for each quarter of 1974—

(i) The estimated mid-month number of employees,

(ii) The estimated total service hours by operating and other employees, as reported in ICC wage statistics, Forms A and B,

(iii) The estimated total compensation paid for operating and other employees, as reported in ICC wage statistics, Forms A and B,

(iv) The estimated total compensation to be subject to retirement taxes,

(v) Estimated retirement taxes to be paid,

(vi) Estimated retirement tax rates,

(vii) The estimated retirement taxes to be reimbursed by AMTRAK and other public authorities and, in addition,

(viii) The estimated dollar amount of tax increases resulting from the increased tax rates.

(b) The dollar amount of increased freight rates needed by showing—

(1) For each of the four calendar quarters ending with the latest quarter preceding the filing date of the petition—

(i) The freight revenue ton miles,

(ii) The freight revenues.

(2) For the second and third quarters of 1973 and each quarter of 1974—

(i) The estimated freight revenue ton miles,

(ii) The estimated freight revenue based on rate levels in effect at the time of the filing of the petition, and

(iii) The estimated freight revenues to be obtained from the increases proposed, including the effect on the movement of the traffic.

(c) Specify proposed rate holddowns and exemptions by individual roads and districts with reasons for such exceptions and effect on estimated freight revenues.

(d) The availability of means other than a rate increase by which carriers might absorb or offset such increases in expenses, identifying the means considered.

§ 1107.2 Notice.

Notice of the filing of such a petition will be given to the general public by publication of such a notice in the FEDERAL REGISTER.

§ 1107.3 Commission order.

Upon consideration of the evidence presented in such a verified petition, and in accordance with the provisions of subsection (4)(b) of section 15a, within 30 days of the filing of the petition, the Commission shall issue an order (a) permitting the establishment of interim increases in the general level of the interstate rates in an amount approximating that needed to offset the increases in expenses attributable to the increases in taxes referred to above, (b) requiring the publication in the tariffs establishing the interim increase of a rule requiring the carriers to pay refunds, with interest at the rate of 4 percent per annum, to the extent that the increase ultimately approved under the provisions of subsection (4)(c) of section 15a is less than that approved on an interim basis, (c) requiring publication of the said order in the Federal Register, and (d) providing for notification to this Commission by all persons who are interested in participating in the subsequent hearings to be held under the provisions of subsection (4)(c) of section 15a.

It is further ordered, That notice of this order shall be given to the general public by depositing a copy in the office of the Commission's Secretary and by filing a copy with the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

This is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

APPENDIX

VERIFIED STATEMENTS

Railroad respondents
Institute of Scrap Iron and Steel
Puget Sound Traffic Association
Southern Hardwood Traffic Association and Associated Cooperage Industries of America, Inc., jointly
Western Wood Products Association, California Redwood Association, Western Wood Preservers Institute, and Western Plywood Manufacturers' Traffic Conference, jointly
Swift & Company and Swift Chemical Company, jointly
Glass Container Manufacturers Institute, Inc.

STATEMENT OF VIEWS

The National Industrial Traffic League
Carolina Power & Light Company, Duke Power Company, South Carolina Electric & Gas Company, and Virginia Electric and Power Company, jointly
Consumers Power Company
General Mills, Inc.
Producers Grain Corporation
Pacific Northwest Traffic League
Weyerhaeuser Company
California Grape & Tree Fruit League
Monsanto Company
Roberta Simons
Canners League of California

[FR Doc.73-15948 Filed 8-1-73;8:45 am]

[1] The data furnished should be individually by carrier, summarized by district, and nationwide; the methods used to derive the estimates must be reflected, including assumptions used; and all underlying work papers must be made available to the Commission upon request.

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Izembek National Wildlife Range, Alaska

The following special regulation is issued and is effective on August 2, 1973.

§ 28.28 Special regulations, public access, use, and recreation; for individual wildlife refuge areas.

ALASKA

IZEMBEK NATIONAL WILDLIFE RANGE

Boats are permitted on the Izembek National Wildlife Range for public access, use, and recreation subject to the following special condition:

(1) The use of water-jet driven boats or boats driven by air propellers, commonly known as air boats, is prohibited.

The provisions of this special regulation supplement the regulations which govern public access, use, and recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1973.

ROBERT D. JONES, Jr.,
Refuge Manager.

JULY 13, 1973.

[FR Doc.73-15921 Filed 8-1-73;8:45 am]

PART 32—HUNTING

Kirwin National Wildlife Refuge, Kansas

The following special regulation is issued and is effective on August 2, 1973. The limited time ensuing from the date of the adoption of the Federal migratory game bird regulations to and including the establishment of State hunting seasons makes it impracticable to give public notice of proposed rule making.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

KANSAS

KIRWIN NATIONAL WILDLIFE REFUGE

Public hunting of doves on the Kirwin National Wildlife Refuge, Kansas, is permitted from September 1 through October 30, 1973, inclusive, but only on the area designated by signs as open to hunting. This open area, comprising 3,300 acres, is delineated on maps available at refuge headquarters, 5 miles west of Kirwin, Kansas, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 10597 W 6th Ave., Denver, Colorado 80215.

Hunting shall be in accordance with applicable State and Federal regulations covering the hunting of doves.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 30, 1973.

KEITH S. HANSEN,
Refuge Manager, Kirwin National Wildlife Refuge, Kirwin, Kansas.

JULY 26, 1973.

[FR Doc.73-15945 Filed 8-1-73;8:45 am]

PART 32—HUNTING

Kirwin National Wildlife Refuge, Kansas

The following special regulation is issued and is effective on August 2, 1973. The limited time ensuing from the date of the adoption of the Federal migratory game bird regulations to and including the establishment of State hunting seasons makes it impracticable to give public notice of proposed rule making.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

KANSAS

KIRWIN NATIONAL WILDLIFE REFUGE

Public hunting of teal ducks on the Kirwin National Wildlife Refuge, Kansas, is permitted from September 8 through September 16, 1973, inclusive, but only on the area designated by signs as open to hunting. This open area comprising 3,300 acres, is delineated on maps available at refuge headquarters, 5 miles west of Kirwin, Kansas, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 10597 W 6th Ave. Denver, Colorado 80215.

Hunting shall be in accordance with applicable State and Federal regulations covering the hunting of teal ducks subject to the following special condition:

(1) Blinds—Temporary blinds constructed above ground from natural vegetation are permitted. Digging of holes or pits to serve as blinds is prohibited.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through September 16, 1973.

KEITH S. HANSEN,
Refuge Manager, Kirwin National Wildlife Refuge, Kirwin, Kansas.

JULY 26, 1973.

[F.R. Doc.73-15944 Filed 8-1-73;8:45 am]

PART 32—HUNTING

Quivira National Wildlife Refuge, Kansas

The following special regulation is issued and is effective on August 2, 1973.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

KANSAS

QUIVIRA NATIONAL WILDLIFE REFUGE

Public hunting of teal ducks on the Quivira National Wildlife Refuge, Kansas, is permitted from September 8 through September 16, 1973, inclusive, but only on the areas designated by signs as open to hunting. Hunting of mourning doves, sora and Virginia rails, and Wilson's snipe is also permitted during the teal season. This open area, comprising 7,990 acres, is delineated on maps available at refuge headquarters, Stafford, Kans., and from the Area Manager, Bureau of Sport Fisheries and Wildlife, Federal Building, Room 1748, 601 East 12th Street, Kansas City, Missouri 64106. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of migratory birds.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through September 16, 1973.

DAVID E. HEFFERNAN,
Acting Refuge Manager Quivira National Wildlife Refuge, Stafford, Kansas.

JULY 26, 1973.

[FR Doc.73-15920 Filed 8-1-73;8:45 am]

PART 32—HUNTING

Kirwin National Wildlife Refuge, Kansas

The following special regulation is issued and is effective on August 2, 1973. The limited time ensuing from the date of the adoption of the Federal migratory game bird regulations to and including the establishment of State hunting seasons makes it impracticable to give public notice of proposed rule making.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

KANSAS

KIRWIN NATIONAL WILDLIFE REFUGE

Public hunting of doves on the Kirwin National Wildlife Refuge, Kansas, is permitted from September 1 through October 30, 1973, inclusive, but only on the area designated by signs as open to hunting. This open area, comprising 3,300 acres, is delineated on maps available at refuge headquarters, 5 miles west of Kirwin, Kansas, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 10597 W 6th Ave., Denver, Colorado 80215.

Hunting shall be in accordance with applicable State and Federal regulations covering the hunting of doves.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 30, 1973.

KEITH S. HANSEN,
Refuge Manager, Kirwin National Wildlife Refuge, Kirwin, Kansas.

JULY 26, 1973.

[FR Doc.73-15910 Filed 8-1-73;8:45 am]

PART 32—HUNTING

Kirwin National Wildlife Refuge, Kansas

The following special regulation is issued and is effective on August 2, 1973. The limited time ensuing from the date of the adoption of the Federal migratory game bird regulations to and including the establishment of State hunting seasons makes it impracticable to give public notice of proposed rule making.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

KANSAS

KIRWIN NATIONAL WILDLIFE REFUGE

Public hunting of teal ducks on the Kirwin National Wildlife Refuge, Kansas, is permitted from September 8 through September 16, 1973, inclusive, but only on the area designated by signs as open to hunting. This open area comprising 3,300 acres, is delineated on maps available at refuge headquarters, 5 miles west of Kirwin, Kansas, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 10597 W 6th Ave., Denver, Colorado 80215.

Hunting shall be in accordance with applicable State and Federal regulations covering the hunting or teal ducks subject to the following special condition:

(1) Blinds—Temporary blinds constructed above ground from natural vegetation are permitted. Digging of holes or pits to serve as blinds is prohibited.

The Provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through September 16, 1973.

KEITH S. HANSEN,
Refuge Manager, Kirwin National Wildlife Refuge, Kirwin, Kansas.

JULY 26, 1973.

[FR Doc.73-15911 Filed 8-1-73;8:45 am]

Proposed Rules

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 rulemaking prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1050]

MILK IN THE CENTRAL ILLINOIS MARKETING AREA

Notice of Proposed Suspension of Certain Provisions of the Order

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of certain provisions of the order regulating the handling of milk in the Central Illinois marketing area is being considered for the month of August 1973.

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file the same with the Hearing Clerk, Room 112–A, Administration Building, United States Department of Agriculture, Washington, D.C., 20250, not later than 5 days from the date of publication of this notice in the FEDERAL REGISTER. All documents filed should be in quadruplicate.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The provisions proposed to be suspended are as follows:

In § 1050.61(a) the term "route disposition" as it first appears, and the term "route" as it subsequently appears twice therein.

Statement of consideration. The proposed suspension would remove the limit on the categories of Class I disposition in Federal order marketing areas that shall be counted in the determination of whether a distributing plant has a greater volume of Class I sales in the Central Illinois marketing area than in any other Federal order marketing area. For distributing plants, which meet the minimum pooling provisions under more than one order, full regulation is provided under the order for the market where the greatest volume of Class I sales is made. Under the Central Illinois order, only Class I route disposition is now counted in such determination. The proposed suspension would include, additionally, Class I disposition to other plants in the respective marketing areas, as is provided under the Quad Cities-Dubuque order.

Mississippi Valley Milk Producers Association, Inc., requests the suspension action to facilitate continued regulation of the Borden, Inc., Pekin, Illinois, distributing plant under the Central Illinois order rather than its being pooled under the Quad Cities-Dubuque order in August 1973. This producer association, which supplies the Pekin plant with member producer milk, states that over one-third of the Class I disposition pooled under the Central Illinois order is associated with the Pekin plant. The association contends that if the plant shifts regulation to the Quad Cities market the change in Class I utilization percentages between the markets would result in a substantial reduction of the uniform price under the Central Illinois order and a substantial increase in the uniform price under the Quad Cities-Dubuque order. Consequently, it would have a disruptive impact on the milk procurement situation between the markets, as it is influenced by the relationship of uniform prices under the orders.

Also, the association states that if the Pekin plant were pooled under the Quad Cities order it would adversely affect the association's ability to continue supplying milk to the plant, since substantial additional hauling costs are incurred in moving its member milk to the Pekin location compared to plants located within the Quad Cities market, which are about 100 miles nearer to its member producers' farms. The Quad Cities order prices applicable at the Pekin plant location are the same as for plants within 70 miles of Rock Island, Illinois (one of the Quad Cities).

Signed at Washington, D.C., on July 30, 1973.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.73–15909 Filed 8–1–73;8:45 am]

Commodity Exchange Authority

[17 CFR Part 1]

SCHEDULE OF REGISTRATION FEES

Proposed Increase

Notice is hereby given that the Secretary of Agriculture under the authority contained in section 8a(4) of the Commodity Exchange Act (7 U.S.C. 12a) is considering amending § 1.11 of the general regulations under the Commodity Exchange Act to provide for a schedule of registration fees as follows:

For each application for registration, or renewal thereof, as futures commission merchant, $200 plus a fee of $6 for each domestic branch office and for each correspondent or agent, operating within the United States, authorized to solicit or accept orders for the purchase or sale of any commodity for future delivery on behalf of the applicant.

For each application for registration, or renewal thereof, as floor broker, $20.

As so amended, § 1.11 would read as follows:

§ 1.11 Registration fees; form of remittance.

Each application for registration, or renewal thereof, as futures commission merchant shall be accompanied by a fee of $200, plus a fee of $6 for each domestic branch office and for each correspondent or agent, operating within the United States, authorized to solicit or accept orders for the purchase or sale of any commodity for future delivery on behalf of the applicant. Each application for registration, or renewal thereof, as floor broker, shall be accompanied by a fee of $20. Fees shall be remitted by money order, bank draft, or check, payable to The Commodity Exchange Authority, USDA. Applications and fees shall be forwarded to the nearest regional office of The Commodity Exchange Authority, United States Department of Agriculture.

The last previous increase in registration fees with respect to futures commission merchants was effective with registration for the calendar year 1959 when the application fee was increased from $25 to $30 and the duplicate registration certificate fee (for each branch office and correspondent and agent) was raised from $2 to $5. The only previous increase in registration fees in the case of floor brokers was from $10 to $15 effective with registration for the calendar year 1956.

Registration costs have increased substantially in recent years, both as a result of ordinary inflationary factors and as a result of amendments to the Commodity Exchange Act in 1968 prescribing minimum financial requirements for futures commission merchants and authorizing fitness checks for futures commission merchants and floor brokers. Fees collected for the fiscal year 1973 amount to approximately $21,800 for futures commission merchants and $20,700 for floor brokers whereas costs for the same period are estimated to be $70,000 and $29,000, respectively. The proposed increase in fees is designed to recover the increased costs and conform to the view of Congress as expressed in the Independent Offices Appropriation Act, 1952, that Federal agencies should recover the cost of special services (including registration) to the fullest extent possible. Registration fees are deposited in the Treasury as general receipts and are not available for expenditure by the Department of Agriculture.

The proposed increase in fees would become effective for anyone applying for, or renewing, registration for the calendar year 1974.

All persons who desire to submit written data, facts or arguments for consideration in connection with the proposed amendment should file the same with the Administrator, Commodity Exchange Authority, United States Department of Agriculture, Washington, D.C. 20250 not later than September 30, 1973.

Issued July 27, 1973.

ALEX C. CALDWELL,
Administrator,
Commodity Exchange Authority.

[FR Doc.73-15967 Filed 8-1-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19795; FCC 73-805]

FM BROADCAST STATIONS IN RAPID CITY, SOUTH DAKOTA

Proposed Table of Assignments

In the matter of amendment of section 73.202(b), *Table of assignments*, FM Broadcast Stations. (Rapid City, South Dakota), Docket No. 19795, RM-2014.

1. The Commission has before it for consideration the above-captioned petition for rule making filed on July 17, 1972, by James E. Taylor, the licensee of AM Station KIMM, Rapid City, South Dakota, who requests the amendment of § 73.202(b) of the Commission's rules to allow the assignment of Class C FM Channel 262 to Rapid City, South Dakota.

2. Rapid City has a population of 43,836 and is the seat of Pennington County, population 59,349 (1970 Census). Two FM channels (both Class C and both occupied) are presently assigned to Rapid City. The community has four AM stations—two full-time, and two daytime-only. One of the daytime-only stations operates in conjunction with an FM station. Petitioner, who is the licensee of the other daytime-only AM station, states that if Channel 262 is assigned to Rapid City he will apply for its use using maximum facilities.

3. Petitioner contends that Rapid City is one of the fastest growing cities in South Dakota and large enough to support an additional Class C FM facility. He notes that because Rapid City is in a busy tourist and convention area and is the home of numerous colleges, its population is substantially higher than the Census indicates.[1] Petitioner states that the official figures also do not include the 14,000 persons who live on Ellsworth Air Force Base (located 7 miles east of Rapid City). Further, he mentions that Rapid City serves the surrounding agricultural community, that it is in the midst of a period of industrial development, and that retail sales in 1971 were over $150,000,000. Petitioner adds that the proposed assignment of another FM facility would be helpful in providing additional communications during local natural disasters.

4. The preclusion study submitted by petitioner indicates that the proposed assignment of Channel 262 to Rapid City would prohibit future assignments on seven channels. However, Rapid City's location in the sparsely populated southwestern section of South Dakota permits a number of other FM channels to be assigned to the communities located within the precluded areas. Most of these communities have populations that are less than 5,000. Those having more than 5,000 already have FM assignments.

5. We believe that petitioner has made a sufficient public interest showing to warrant exploring the possibility of making the proposed assignment of an additional Class C FM channel to Rapid City. However, since the request is for a third FM assignment to a community of 43,836 persons, which exceeds the FM guidelines, the petitioner should submit a showing as to whether its expected operation would provide a first and a second FM service to any portion of its coverage area and the population that would reside therein. The showing should be made according to the Roanoke Rapids-Goldsboro, N.C. criteria (8 FCC 2d 672 (1967)).

6. Pursuant to the authority contained in sections 4(i), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, we invite comments from all interested persons on the proposal to amend the FM Table of Assignment as follows:

City	Channel No.	
	Present	Proposed
Rapid City, S. Dak.	230, 250	230, 250, 262

7. *Showings required.* Comments are invited on the proposal discussed above. Proponent will be expected to answer whatever questions are raised in the Notice and other questions that may be presented in initial comments. The proponent of the proposed assignment is expected to file comments even if he only submits or incorporates by reference his former pleading. He should also restate his present intention to apply for the channel if it is assigned and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

8. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered, if advanced in reply comments.

(b) With respect to petitions for rule making which conflict with the proposal in this notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given, as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

9. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules and regulations, interested parties may file comments on or before September 7, 1973, and reply comments on or before September 17, 1973. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

10. In accordance with the provisions of § 1.419 of the Commission's rules and regulations, an original and fourteen copies of all comments, reply comments, pleadings, briefs, or other document shall be furnished the Commission.

11. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C. (1919 M Street NW.)

Adopted: July 26, 1973.

Released: July 31, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-15927 Filed 8-1-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 18]

SOUR CREAM AND RELATED PRODUCTS

Proposal To Establish Definitions and Standards of Identity

1. Notice is given that a petition has been filed by the Milk Industry Foundation, 910 17th St., NW, Washington, DC 20006, proposing establishment of definitions and standards of identity for the products: sour cream, sour half-and-half, acidified sour cream, and acidified sour half-and-half. The latter two products would differ from the former two in that the souring would be accomplished through direct acidification with food grade acids, rather than by the traditional method of culturing with lactic acid producing bacteria.

Grounds given in support of the proposal are that there is diversity in the regulations of the various states as to the names given to these products and the minimum fat content required; and that establishment of Federal standards of identity would assist in bringing about uniformity, thereby reducing consumer

[1] It is our understanding that for census purposes college students have been considered residents of the communities in which they were residing while attending college. Petitioner should address himself to this issue in his comments.

[2] Commissioner H. Rex Lee absent.

confusion and making possible more efficient interstate distribution of the foods.

The petitioner, the Milk Industry Foundation, proposes that 4 new sections be added to Part 18 as follows:

Section 18.550 Sour cream, soured cream or cultured sour cream; identity; label statement of ingredients. (a) Sour Cream, Soured Cream or Cultured Sour Cream is the fluid or semifluid food resulting from the culturing by lactic acid producing bacteria and/or similar culture(s) of pasteurized cream and/or other pasteurized dairy ingredients, and which contains not less than 18 percent milkfat, nor less than 0.2 percent acidity calculated as lactic acid, and may contain one or more of the optional ingredients specified in paragraph (b) of this section.

(b) Optional ingredients: The optional ingredients referred to in paragraph (a) of this section consist of suitable substances which are not food additives as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act, or if they are food additives as therein defined, they are used in conformity with regulations established pursuant to section 409 of the act. Optional ingredients that perform a useful function are regarded as suitable, when used in a quantity not greater than is reasonably required to accomplish their intended effect.

(c) Ingredient declaration: The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 1 of this chapter, except that:

(1) Cream, plastic cream and dried cream may be declared as "cream".

(2) Milk, concentrated milk, dried milk and reconstituted milk prepared by addition of water to concentrated milk or dried milk may be declared as "milk".

(3) Skim milk, concentrated skim milk, nonfat dry milk, and reconstituted skim milk prepared by the addition of water to concetrated skim milk or nonfat dry milk may be declared as "skim milk".

(4) Cheese whey, concentrated cheese whey and dried cheese whey may be declared as "whey".

(5) Bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream".

(6) Milk-clotting enzymes may be declared by the word "enzymes".

The declaration of the ingredients as set forth in this paragraph shall appear in letters not less than one-half the size of that required by § 1.8b of this chapter for the declaration of net quantity of contents, but in no case less than one-sixteenth of an inch.

Section 18.555 Acidified sour cream or acidified soured cream; identity; label statement of ingredients. (a) Acidified Sour Cream or Acidified Soured Cream conforms to the definition and standard of identity for Sour Cream (§ 18.550); except that in lieu of culturing the pasteurized cream and/or other pasteurized dairy ingredients by lactic acid producing bacteria and/or similar culture, safe and suitable food grade acidifying agent(s) is (are) used, with or without lactic acid producing bacteria and/or similar culture(s).

(b) Ingredient declaration. The label shall bear an ingredient declaration which complies with the provisions of § 18.550(c).

(c) In declaring the name of the food, the word "Acidified" shall appear in letters not less than one-half of the heights of the letters used in the words "Sour Cream" or "Soured Cream".

Section 18.560 Sour half-and-half, soured half-and-half or cultured sour half-and-half; identity; label statement of ingredients. (a) Sour Half-and-Half, Soured Half-and-Half or Cultured Sour Half-and-Half conforms to the definition and standard of identity for Sour Cream (§ 18.550); except that it shall contain not less than 10.5 percent milkfat.

(b) Ingredient declaration: The label shall bear an ingredient declaration which complies with the applicable provisions of § 18.550.

Section 18.565 Acidified sour half-and-half or acidified soured half-and-half; identity; label statement of ingredients. (a) Acidified Sour Half-and-Half or Acidified Soured Half-and-Half conforms to the definition and standard of identity for Acidified Sour Cream (§18.555); except that it shall contain not less than 10.5 percent milkfat.

(b) Ingredient declaration: The label shall bear an ingredient declaration which complies with the applicable provisions of § 18.555.

2. The Commissioner of Food and Drug concurs that identity standards for sour cream and related products are desirable, and that in naming these products a distinction should be made between sour cream produced by the conventional method (culturing with lactic acid producing bacteria) and acidified sour cream (produced by direct addition of food grade acid to cream). However, the petitioner's proposal, while specifying minimum milkfat percentages, does not require that sour cream must be made from cream; but would permit use of butter, butter oil, and anhydrous milkfat as fat sources; and of whey solids, sodium caseinate, soy protein, or other safe and suitable ingredients to partially or completely replace the nonfat milk solids portion of cream. The Commissioner of Food and Drugs is of the opinion that the name "sour cream" unqualified should be reserved for the product made from cream, and proposes that a similar product not fabricated solely from cream and safe and suitable functional ingredients should be called a "sour cream dressing". The Commissioner recognizes the usefulness of functional additives to improve the texture and keeping quality of sour cream, and to prevent syneresis or the separation of serum from the product, and he therefore proposes that safe and suitable ingredients to accomplish these functions be permitted. Inasmuch as the proposed identity standards for half-and-half, light cream, light whipping cream, and heavy cream (37 FR 18392, September 9, 1972) would provide for optional use of nutritive sweeteners and characterizing flavoring, the Commissioner proposes that the identity standards for sour cream and related products also provide for such optional ingredients. He also proposes that addition of rennet, an enzyme that has a long history of use as an aid in coagulating sour cream, be permitted.

Further, the Commissioner is of the opinion that an acidity of 0.20 percent (expressed as lactic acid) is not sufficient to characterize these cultured and direct acidified products, and he proposes instead a minimum acidity of 0.50 percent.

A proposed amendment of 21 CFR 10.1 to define "safe and suitable" ingredients was published in the FEDERAL REGISTER of April 26, 1973 (38 FR 10277). Definitions for the terms "pasteurized" and "cream" used in the following proposal are given in the definitions sections proposed for Part 18 (37 FR 18392, September 9, 1972). The proposed definition for "cream" provides that cream may have been adjusted by adding thereto milk, concentrated milk, dried milk, skim milk, concentrated skim milk, or nonfat dry milk. Label declaration of such ingredients, when used to adjust the milk solids level of the finished food, would not be required.

Accordingly, as an alternative to the petitioner's proposal, the Commissioner, on his own initiative, proposes that six new sections be added to Part 18.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that Part 18 be amended by adding six new sections to read as follows:

§ 18.550 Sour Cream; identity.

(a) *Description.* Sour cream results from the souring, by lactic acid producing bacteria, of pasteurized cream. Sour cream contains not less than 18 percent milkfat, and has a titratable acidity of not less than 0.50 percent, calculated as lactic acid.

(b) *Optional ingredients.* (1) Safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life of the product, in amounts not greater than necessary to accomplish their intended effect.

(2) Rennet.

(3) Safe and suitable dry nutritive sweeteners.

(4) Salt.

(5) Flavoring ingredients (with or without safe and suitable coloring) as follows:

(i) Fruit and fruit juice (including concentrated fruit and fruit juice).

(ii) Safe and suitable natural and artificial food flavoring.

(c) *Method of analysis.* Referenced methods in subparagraph (1) and (2) of this paragraph are from "Official Methods of Analysis of the Association of Official Analytical Chemists", 11th Ed., 1970.[1]

(1) Milkfat content—"Fat—Official Final Action", § 16.129.

(2) Titratable acidity—"Acidity—Official Final Action", § 16.022.

(d) *Nomenclature.* The name of the food is "Sour cream" or alternatively "Cultured sour cream". The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened".

[1] Copies may be obtained from: Association of Official Analytical Chemists P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044.

(e) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 1 of this chapter, except that bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream".

§ 18.555 Acidified sour cream; identity.

(a) *Description.* Acidified sour cream results from the souring of pasteurized cream with safe and suitable acidifiers, with or without addition of lactic acid producing bacteria. Acidified sour cream contains not less than 18 percent milkfat, and has a titratable acidity of not less than 0.50 percent, calculated as lactic acid.

(b) *Optional ingredients.* (1) Safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life of the product, in amounts not greater than necessary to accomplish their intended effect.

(2) Rennet.

(3) Safe and suitable nutritive sweeteners.

(4) Salt.

(5) Flavoring ingredients (with or without safe and suitable coloring) as follows:

(i) Fruit and fruit juice (including concentrated fruit and fruit juice).

(ii) Safe and suitable natural and artificial food flavoring.

(c) *Methods of analysis.* As prescribed by § 18.550(c).

(d) *Nomenclature.* The name of the food is "Acidified sour cream". The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened".

(e) *Label declaration.* As prescribed by § 18.550(e).

§ 18.560 Sour half-and-half; identity.

(a) *Description.* Sour half-and-half results from the souring, by lactic acid producing bacteria, of pasteurized half-and-half. Sour half-and-half contains not less than 10.5 percent but less than 18 percent milkfat, and has a titratable acidity of not less than 0.50 percent, calculated as lactic acid.

(b) *Optional ingredients.* As prescribed by § 18.550(b).

(c) *Methods of analysis.* As prescribed by § 18.550(c).

(d) *Nomenclature.* The name of the food is "Sour half-and-half" or alternatively "Cultured sour half-and-half". The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened".

(e) *Label declaration.* As prescribed by § 18.550(e).

§ 18.565 Acidified sour half-and-half; identity.

(a) *Description.* Acidified sour half-and-half results from the souring of pastuerized half-and-half with safe and suitable acidifiers, and with or without addition of lactic acid producing bacteria. Acidified sour half-and-half contains not less than 10.5 percent but less than 18 percent milkfat, and has a titratable acidity of not less than 0.50 percent, calculated as lactic acid.

(b) *Optional ingredients.* As prescribed by § 18.555(b).

(c) *Methods of analysis.* As prescribed by § 18.550(c).

(d) *Nomenclature.* The name of the food is "Acidified sour half-and-half". The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened".

(e) *Label declaration.* As prescribed by § 18.550(e).

§ 18.570 Sour cream dressing; identity.

(a) *Description.* Sour cream dressing is the food which contains not less than 18 percent milkfat and is made in semblance of sour cream, but does not comply with the standards of identity for either sour cream (§ 18.550) or acidified sour cream (§ 18.555). Sour cream dressing has a titratable acidity of not less than 0.50 percent, calculated as lactic acid. The blend of all ingredients used shall be pastuerized, except that volatile flavoring substances, enzymes, bacterial cultures, and acidifying agents may be added following pastuerization.

(b) *Optional ingredients.* Safe and suitable ingredients may be used in a quantity not greater than is reasonably required to accomplish their intended effect.

(c) *Methods of analysis.* As prescribed by § 18.550(c).

(d) *Nomenclature.* The name of the food is "Sour cream dressing". The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition or charterizing flavoring, the name of the food shall be preceded by the word "sweetened".

(e) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 1 of this chapter, except that:

(1) Bacterial cultures may be declared by the word "cultured" followed by the name of the substrate, e.g., "cultured cream".

(2) Concentrated skim milk, nonfat dry milk, and reconstituted skim milk prepared by addition of water to concentrated skim milk or nonfat dry milk may be declared as "skim milk".

(3) Concentrated milk, dry whole milk, and reconstituted milk prepared by addition of water to concentrated milk or dry whole milk may be declared as "milk".

(4) Sweet cream buttermilk, concentrated sweet cream buttermilk, and dried sweet cream buttermilk may be declared as "buttermilk".

(5) Cheese whey, concentrated cheese whey, and dried cheese whey may be declared as "whey".

§ 18.575 Sour half-and-half dressing; identity.

(a) *Description.* Sour half-and-half dressing is the food which contains not less than 10.5 percent but less than 18 percent milkfat and is made in semblance of sour half-and-half, but does not comply with the standards of identity for either sour half-and-half (§ 18.560) or acidified sour half-and-half (§ 18.565). Sour half-and-half dressing has a titratable acidity of not less than 0.50 percent, calculated as lactic acid. The blend of all ingredients used shall be pastuerized, except that volatile flavoring substances, enzymes, bacterial cultures, and acidifying agents may be added following pasteurization.

(b) *Optional ingredients.* As prescribed by § 18.570(b).

(c) *Methods of analysis.* As prescribed by § 18.550(c).

(d) *Nomenclature.* The name of the food is "Sour half-and-half dressing". The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any flavoring that characterizes the product, as specified in § 1.12 of this chapter. If nutritive sweetener in an amount sufficient to characterize the food is added without addition of characterizing flavoring, the name of the food shall be preceded by the word "sweetened".

(e) *Label declaration.* As prescribed by § 18.570(e).

Interested persons may, on or before October 1, 1973 file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: July 20, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73–15697 Filed 8–1–73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

[Public Notice CM-46]

SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW STUDY GROUP ON MARITIME BILLS OF LADING

Notice of Meeting

A meeting of the Maritime Bills of Lading Study Group, a sub-group of the Secretary of State's Advisory Committee on Private International Law, will take place on Friday, August 10, 1973, in room 5519 of the Department of State. The meeting, which will begin at 10:00 a.m., will be open to the public.

The primary purpose of the meeting is to review issues to be considered at the sixth session of the Working Group on this subject established by the United Nations Commission on International Trade Law (UNCITRAL). The study group will give particular attention to the topic of liability for delay. It will also discuss other issues relating to maritime bills of lading, including the scope of application of any revison of the existing conventions in the field and matters relating to the required contents and legal effects of the contract of carriage of goods by sea.

Members of the general public who desire to attend the meeting will be admitted up to the limits of the capacity of the meeting room. Entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Accordingly, members of the general public who plan to attend the meeting are requested to inform the Chairman of the Advisory Committee of their names and addresses prior to August 10. The mailing address of the Chairman is Office of the Legal Adviser, Department of State; the telephone number is area code 202, 632-8134. All non-Government attendees at the meeting should use the C Street entrance to the building.

Dated: July 25, 1973.

ROBERT E. DALTON,
Executive Director.

[FR Doc.73-15918 Filed 8-1-73;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

POLYMERIZED CHLOROBUTADIENE, COMMONLY KNOWN AS POLYCHLOROPRENE RUBBER, FROM JAPAN

Antidumping; Determination of Sales at Less Than Fair Value

JULY 31, 1973.

Information was received on November 14, 1972, that polymerized chlorobutadiene, commonly known as polychloroprene rubber, from Japan was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

A "Withholding of Appraisement Notice" was published in the FEDERAL REGISTER of June 14, 1973.

I hereby determine that for the reasons stated below, polymerized chlorobutadiene from Japan is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

Statement of Reasons On Which This Determination Is Based.

The information before the Bureau of Customs reveals that the proper basis of comparison for fair value purposes is between purchase price and the adjusted home market price of such or similar merchandise.

Purchase price was calculated on the basis of an f.o.b. port price for exportation to the United States, with deductions for a sales discount, inland freight, insurance, and warehousing and ship loading charges at the port. An addition was made for import duties rebated by reason of the exportation of the merchandise to the United States.

Adjusted home market price was based an a weighted-average delivered customer's premises price, with deductions for a sales discount, inland freight, handling charges, credit costs, labelling costs, a commission, and technical service expenses. Adjustments were made for differences in packing, selling expenses, and advertising costs.

Using the above criteria, purchase price was found to be lower than the adjusted home market price of such or similar merchandise.

The United States Tariff Commission is being advised of this determination.

This determination is being published pursuant to section 201(c) of the Act (19 U.S.C. 160(c)).

[SEAL] EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-16064 Filed 8-1-73;8:45 am]

PRIMARY LEAD METAL FROM AUSTRALIA

Antidumping Withholding of Appraisement Notice

JULY 31, 1973.

Information was received on February 16, 1973, that primary lead metal from Australia was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an Antidumping Proceeding Notice which was published in the FEDERAL REGISTER on March 16, 1973, on page 7130. The Antidumping Proceeding Notice indicated that there was evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect that the purchase price (section 203 of the Act; 19 U.S.C. 162) of primary lead metal from Australia is less, or likely to be less, than the foreign market value (section 205 of the Act; 19 U.S.C. 164).

STATEMENT OF REASONS

The information currently before the Bureau of Customs tends to indicate that there are sufficient sales in the home market to provide an adequate basis of comparison for fair value purposes.

Accordingly, the probable basis of comparison for fair value purposes will be between purchase price and the adjusted home market price of such or similar merchandise.

Preliminary analysis suggests that purchase price will probably be calculated on the basis of a c.i.f. price, with deductions for a discount, Australian inland freight, ocean freight, insurance, and a sales commission.

The adjusted home market price will probably be calculated on the basis of a weighted-average of delivered prices in the home market with deductions for freight and insurance. Adjustments will probably be made for selling expenses and packing.

Using the above criteria, there are reasonable grounds to believe or suspect that purchase price will be lower than the adjusted home market price.

Customs officers are being directed to withhold appraisement of primary lead metal from Australia in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

In accordance with §§ 153.32(b) and 153.37, Customs Regulations (19 CFR 153.32(b), 153.37), 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 requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street, N.W., Washington, D.C. 20229, in time to be received by his office not later than 10 calendar days from the date of publication of this notice in the Federal Register. Such requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than September 2, 1973.

This notice, which is published pursuant to § 153.34(b), Customs Regulations (19 CFR 153.34(b)), shall become effective upon publication in the FEDERAL REGISTER. It shall cease to be effective at the expiration of 6 months from the date of this publication, unless previously revoked.

[SEAL] EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-16063 Filed 8-1-73;8:45 am]

RACING PLATES (ALUMINUM HORSESHOES) FROM CANADA

Antidumping; Withholding of Appraisement Notice

JULY 31, 1973.

Information was received on March 8, 1973, that racing plates (aluminum horseshoes) from Canada were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an Antidumping Proceeding Notice which was published in the FEDERAL REGISTER of April 13, 1973, on page 9337. The Antidumping Proceeding Notice indicated that there was evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect that the purchase price (section 203 of the Act; 19 U.S.C. 162) of racing plates (aluminum horseshoes) from Canada is less, or is likely to be less, than the foreign market value (section 205 of the Act; 19 U.S.C. 164).

STATEMENT OF REASONS

The information before the Bureau of Customs tends to indicate that the probable basis of comparison for fair value purposes will be between purchase price and the home market price of such or similar merchandise.

Purchase price will probably be calculated on the United States delivered price with deductions for freight, brokerage charges, and U.S. duty. An addition will probably be made for import duties not collected by reason of exportation of the merchandise to the United States.

Home market price will probably be based on the f.o.b. factory price.

Using the above criteria, there are reasonable grounds to believe or suspect that purchase price will be lower than the home market price.

Customs officers are being directed to withhold appraisement of racing plates (aluminum horseshoes) from Canada in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

In accordance with §§ 153.32(b) and 153.37, Customs Regulations (19 CFR 153.32(b), 153.37), 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 requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street, N.W., Washington, D.C. 20229, in time to be received by his office not later than August 12, 1973. Such requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than September 2, 1973.

This notice, which is published pursuant to § 153.34(b) Customs Regulations (19 CFR 153.34(b)), shall become effective upon publication in the FEDERAL REGISTER. It shall cease to be effective at the expiration of 6 months from the date of this publication, unless previously revoked.

[SEAL] EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-16062 Filed 8-1-73;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

SCIENTIFIC ADVISORY BOARD

Notice of Meeting

JULY 26, 1973.

The USAF Scientific Advisory Board Ad Hoc Committee on Electromagnetic Pulse Vulnerability of USAF Manned Systems will hold closed meetings on August 13 and 14, 1973 at Kirtland Air Force Base, New Mexico.

The Committee will receive classified briefings on the Air Force plans for testing aircraft systems on electromagnetic pulse effects.

For further information please contact the Scientific Advisory Board Secretariat at (202) 697-4648.

JOHN W. FAHRNEY,
Colonel, USAF, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.73-15943 Filed 8-1-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

Closure of Lands to the Discharge of Firearms

JULY 27, 1973.

Public Notice is hereby given that under the provisions of Part 24 of 43 CFR, and in the interest of public safety, the following described lands, under the jurisdiction of the Bureau of Land Management, are hereby closed effective August 10, 1973, to the discharge of all firearms:

SEWARD MERIDIAN, ALASKA

T. 12 N., R. 3 W.,
Sections 1, 2, 3 and 12: all,
Section 10: N½;
Section 11: N½.
T. 13 N., R. 3 W.,
Sections 34, 35 and 36: all.

The above described lands total 5,120 acres more or less. The lands are located in the Anchorage Borough, State of Alaska, and commonly referred to as the Campbell Airstrip Reserve.

The above described lands receive intensive recreation use, and the continued discharge of firearms constitutes a hazard to the public health and safety.

RICHARD L. THOMPSON,
Acting State Director.

[FR Doc.73-15915 Filed 8-1-73;8:45 am]

[M 25638: Group 545]

MONTANA

Notice of Filing of Plat of Survey

JULY 25, 1973.

1. The plat of survey of an omitted island in the Yellowstone River, described below, accepted May 29, 1973, will be officially filed in this office effective at 10 am, on September 10, 1973.

MONTANA PRINCIPAL MERIDIAN

T. 1 N., R. 13 E.,
Sec. 24, lot 3 (4.54 acres);
Sec. 25, lot 9 (2.98 acres).
T. 1 N., R. 14 E.,
Sec. 19, lot 10 (28.62 acres);
lot 11 (34.39 acres);
Sec. 30, lot 5 (6.63 acres).

2. The character of this island and its location in relation to the original township survey in 1886 indicates its existence when Montana was admitted to the Union.

3. The island was withdrawn by Executive Order dated July 2, 1910, for Power Site Reserve No. 35. The land is not open to the public land laws except for mineral leasing and except for the mining laws as authorized in P.L. 555 dated August 11, 1955 (69 Stat. 681).

4. All inquiries relating to this island should be sent to Chief, Division of Management Services, Bureau of Land Management, Billings, Montana 59101.

LARRY O. KOCH,
Acting Chief, Branch of Records and Data Management.

[FR Doc.73-16026 Filed 8-1-73;8:45 am]

SALT LAKE DISTRICT U-1 & U-2 GRAZING BOARDS

Notice of Meeting

Notice is hereby given that the Grazing District Grazing Boards of District U-1 and U-2 of the Sale Lake District will hold a meeting on August 23, 1973, at 9 a.m., at the Ramada Inn, 1000 South State Street, Salt Lake City, Utah. The meeting will be on a combined basis except for those matters of concern to a single board at which time the boards will hold concurrent sessions. The agenda for the meeting will include Advisory

Board recommendations on winter grazing applications and section 4115.2-2(b) transfers. The boards will also consider range improvement projects, implementation of matters relating to grazing management contained in the District's completed Management Framework Plans (Rich County, Lakeside-Skull Valley, and West Desert).

The meeting will be open to the public. Time will be available for limited comments by members of the public. Those wishing to make an oral statement should inform the Chairman of either Board prior to the meeting of the Board. Any interested person may file a written statement with the joint Boards for their consideration. The Advisory Board Chairman for U-1 is Norman Weston, and for the U-2 Board it is C. Garnett Player. Written statements may be submitted at the meeting or mailed to either Mr. Weston or Mr. Player, c/o District Manager, Bureau of Land Management, 1750 South Redwood Road, Rm. 214, Salt Lake City, Utah 84104. Further information concerning this meeting may be obtained from the District Manager, Salt Lake District Office, (801) 524-5348. Minutes of the meeting will be available for public inspection 30 days after the meeting at the District Office, 1750 South Redwood Road, Salt Lake City, Utah 84104.

GERALD E. HILLIER,
District Manager, Salt Lake.

[FR Doc.73-15904 Filed 8-1-73;8:45 am]

National Park Service

[Order 80]

EXECUTIVE SECRETARY, ADVISORY COUNCIL ON HISTORIC PRESERVATION

Delegation of Authority

Section 1. *Delegation.* The authority of the Director, National Park Service to serve as the Executive Director of the Advisory Council on Historic Preservation is hereby redelegated to the Executive Secretary, Advisory Council on Historic Preservation.

Section 2. *Redelegation.* The authority delegated in Section 1 of this order may not be redelegated.

Section 3. *Revocation.* This order supersedes National Park Service Order 53 published October 19, 1968 (33 FR 15562) and National Park Service Order 74 published April 15, 1972 (37 FR 7534).

(80 Stat. 919; 16 U.S.C. 470m)

Dated: July 27, 1973.

RONALD H. WALKER,
Director, National Park Service.

[FR Doc.73-15875 Filed 8-1-73;8:45 am]

JACKSON HOLE AIRPORT, GRAND TETON NATIONAL PARK, WYO.

Public Hearing Regarding Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a draft environmental statement concerning possible actions under consideration related to the Jackson Hole Airport within Grand Teton National Park, Wyoming.

Under consideration is provision for jet carrier service, increasing the passenger carrying capability of present turboprop aircraft serving the facility, and general aviation safety. These actions involve extension of an existing 6,305-foot runway to 8,000 feet, construction of a parallel 8,000-foot taxiway, additional parking aprons, additional car parking, an improved access road, a new sewage system, and miscellaneous minor improvements. Interrelated projects include an instrument landing system, a runway lighting system, and an air traffic control tower.

Notice is hereby given in accordance with the Department of the Interior's policy and procedures as outlined in Department Manual Part 516.2 that public hearings will be held for the purpose of receiving comments and suggestions on the draft environmental impact statement.

A public hearing will be held beginning at 10 am on Sept. 11, 1973, at the Virginian Motel, Highway 89 West, Jackson, Wyoming.

Copies of the draft environmental statement which discusses the social, economic and ecological effects of the proposal and alternatives to the proposal may be obtained from Director, National Park Service, Washington, D.C. 20240, the Superintendent, Grand Teton National Park, Moose, Wyoming 83012, or from the Regional Director, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102.

Interested individuals, representatives of organizations and public officials are invited to express their views in person at the aforementioned public hearing, provided they notify the Hearing Officer in care of the Superintendent, Grand Teton National Park, P.O. Box 67, Moose, Wyoming 83012, no later than two days in advance of the date announced for the hearing, of their desire to appear. Those not wishing to appear in person may submit written statements on the draft environmental impact statement to the Hearing Officer at that address for inclusion in the official record, which will be held open for 30 days following conclusion of the hearing. Any questions should be directed to the Superintendent, Grand Teton National Park, at the above address.

Oral statements will be limited to a period of 15 minutes. In the event the number of persons desiring to testify warrants, the hearing officer, at his discretion, may further limit the time for oral presentation. These time limitations require that the oral presentation be restricted to one person speaking on behalf of an organization. An oral statement may, however, be supplemented by a more complete written statement which 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 so presented at the hearing shall be subject to determinations that they are appropriate for inclusion in the transcribed hearing record. To the extent that time is available after presentation of oral statements by those who have given the required advance notice, the Hearing Officer will give others present an opportunity to be heard.

After an explanation of the draft environmental impact statement 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 or his representative.
2. Members of Congress.
3. Members of the State Legislature.
4. Official representatives of the counties in which the proposed airport improvements are 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: July 31, 1973.

RONALD H. WALKER,
Director, National Park Service.

[FR Doc.73-15929 Filed 8-1-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

MIGUEL DISTRICT GRAZING ADVISORY BOARD; NORTH END DISTRICT GRAZING ADVISORY BOARD

Notice of Meeting

The Miguel district grazing advisory board and North End district grazing advisory board will hold a joint meeting beginning at 9:00 a.m. August 7, 1973, at the Junction of the Love Mesa Road and the North Divide Road. (Section 29, T. 49 W., R. 15 W., N.M.P.M.)

The purpose of the meeting is to discuss the proposal to combine the range management of the Hereford Cattle and Horse allotment and the Love Mesa Cattle and Horse allotment into one unit. The meeting will consist of horseback riding the Love Mesa allotment August 7th, staying overnight at permittee Calhoun's cow camp on August 7th, and horseback riding the Hereford Allotment August 8th.

The meeting will be open to the public. Persons who wish to attend should notify: District Ranger Edward Heist, 101 North Uncompahgre Street, Montrose, Colorado 81401; Telephone number 249-3711. Written statements concerning the proposal may be filed with the boards before or after the meeting.

The boards have established the following rules for public participation:

1. Furnish own transportation to and from meeting place. This includes horse, riding tack and vehicles to transport self and horse.

2. Furnish own food, bedroll and other subsistence as desired for the entire trip.

JOHN T. MINOW,
Forest Supervisor.

JULY 26, 1973.

[FR Doc.73-15912 Filed 8-1-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEES

Notice of Meetings

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92-463, 86 Stat. 770-776), the Food and Drug Administration announces the following public advisory committee meetings and other required information in accordance with provisions set forth in section 10(a)(1) and (2) of the act:

Committee name	Date, time, place	Type of meeting and contact person
1. Panel on Review of Contraceptives and Other Vaginal Drug Products.	Aug. 2, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open 9 a.m. to 11 a.m., closed after 11 a.m. Armond M. Welch, Room 10B-05, 5600 Fishers Lane, Rockville, MD. 20852, 301-443-4960.

Purpose. Advises the Commissioner of Food and Drugs on the safety and effectiveness of currently marketed nonprescription-drug products for human use containing contraceptives or other vaginal drug products; reviews and evaluates available data on these products, the adequacy of their labeling; advises on the promulgation of monographs establishing conditions under which these over-the-counter drug products are generally recognized as safe and effective and not misbranded; and serves as a forum for the exchange of views regarding the prescription and nonprescription status of these various active ingredients and combinations thereof.

Agenda. Orientation of members; discussion of legal and scientific aspects and formulation of plans and procedures for future meetings.

Committee name	Date, time, place	Type of meeting and contact person
2. Panel on Review of Laxative, Antidiarrheal, Emetic, and Antiemetic Drugs.	Aug. 3 and 4, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open 9 a.m. to 10 a.m., closed after 10 a.m. John T. McElroy (BD-109), Room 10B-05, 5600 Fishers Lane, Rockville, Md. 20852, 301-443-4960.

Purpose. Reviews and evaluates available information concerning safety and effectiveness of active ingredients of currently marketed nonprescription-drug products containing laxatives, antidiarrheal, emetic, and antiemetic agents.

Agenda. Continuing review of over-the-counter drug products under investigation.

Committee name	Date, time, place	Type of meeting and contact person
3. FDA/NIMH Drug Abuse Advisory Committee.	Aug. 9, 9 a.m., Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open 9 a.m. to noon, closed after noon, Edward C. Tocus, Ph.D., Room 10B-18, 5600 Fishers Lane, Rockville, Md. 20852, 301-443-3870.

Purpose. Advises FDA on action to be taken on Notices of Claimed Investigational New Drugs for substances with abuse potential and advises NIMH on supplies of substances for clinical studies, on requests for quantities of substances for studies, and on requests for any amount of substances which involve protocols containing unique problems.

Agenda. Review of Committee functions; abuse potential of drugs; actions taken on Committee advice; and review of research protocols.

Committee name	Date, time, place	Type of meeting and contact person
4. Panel on Review of Dentifrices and Dental Care Agents.	Aug. 15 and 16, 9 a.m., Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open Aug. 15, 9 a.m., to 10 a.m., closed Aug. 15 after 10 a.m., closed Aug. 16. Michael D. Kenedy, Room 10-B-05, 5600 Fishers Lane, Rockville, Md. 20852, 301-443-4960.

Purpose. Reviews and evaluates available information concerning safety and effectiveness of active ingredients of currently marketed nonprescription-drug products containing dentifrices and dental care agents.

Agenda. Continuing review of over-the-counter drug products under investigation.

Committee name	Date, time, place	Type of meeting and contact person
5. Panel on Review of Antimicrobial Agents.	Aug. 30 and 31, Sept. 1, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open Aug. 30, 9 a.m. to 10 a.m., closed Aug. 30 after 10 a.m., closed Aug. 31 and Sept. 1. Michael D. Kennedy, Room 10B-05, 5600 Fishers Lane, Rockville, Md. 20852, 301-443-4960.

Purpose. Reviews and evaluates available information concerning safety and effectiveness of active ingredients of currenty marketed nonprescription-drugs containing antimicrobial agents.

Agenda. Continuing review of over-the-counter drug products under investigation.

Agenda items are subject to change as priorities dictate.

During the open sessions shown above, interested persons may present relevant information or views orally to any committee for its consideration. Information or views submitted to any committee in writing before or during a meeting shall also be considered by the committee.

A list of committee members and summary minutes of meetings may be obtained from the contact person for the committee both for meetings open to the public and those meetings closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act.

Most Food and Drug Administration advisory committees are created to advise the Commissioner of Food and Drugs on pending regulatory matters. Recommendations made by the committees on these matters are intended to result in action under the Federal Food, Drug, and Cosmetic Act, and these committees thus necessarily participate with the Commissioner in exercising his law enforcement responsibilities.

The Freedom of Information Act recognized that the premature disclosure of regulatory plans, or indeed internal discussions of alternative regulatory approaches to a specific problem, could have adverse effects upon both public and private interests. Congress recognized that such plans, even when finalized, may not be made fully available in advance of the effective date without damage to such interests, and therefore provided that this type of discussion would remain confidential. Thus, law enforcement activities have long been recognized as a legitimate subject for confidential consideration.

These committees often must consider trade secrets and other confidential information submitted by particular manufacturers which the Food and Drug Administration by law may not disclose, and which Congress has included within the exemptions from the Freedom of Information Act. Such information includes safety and effectiveness information, product formulation, and manufacturing methods and procedures, all of which are of substantial competitive importance.

In addition, to operate most effectively, the evaluation of specific drug or device products requires that members of committees considering such regulatory matters be free to engage in full and frank discussion. Members of committees have frequently agreed to serve and to provide their most candid advice on the understanding that the discussion would be private in nature. Many experts would be unwilling to engage in candid public discussion advocating regulatory action against a specific product. If the committees were not to engage in the deliberative portions of their work on a confidential basis, the consequent loss of frank and full discussion among committee members would severely hamper the value of these committees.

The Food and Drug Administration is relying heavily on the use of outside experts to assist in regulatory decisions. The Agency's regulatory actions uniquely affect the health and safety of every citizen, and it is imperative that the best advice be made available to it on a continuing basis in order that it may most effectively carry out its mission.

A determination to close part of an advisory committee meeting does not mean that the public should not have ready access to these advisory committees considering regulatory issues. A determination to close the meeting is subject to the following conditions: First, any interested person may submit written data or information to any committee, for its consideration. This information will be accepted and will be considered by the committee. Second, a portion of every committee meeting will be open to the public, so that interested persons may present any relevant information or views orally to the committee.

The period for open discussion will be designated in any announcement of a committee meeting. Third, only the deliberative portion of a committee meeting, and the portion dealing with trade secret and confidential information, will be closed to the public. The portion of any meeting during which non-confidential information is made available to the committee will be open for public participation. Fourth, after the committee makes its recommendations and the Commissioner either accepts or rejects them, the public and the individuals affected by the regulatory decision involved will have an opportunity to express their views on the decision. If the decision results in promulgation of a regulation, for example, the proposed regulation will be published for public comment. Closing a committee meeting for deliberations on regulatory matters will therefore in no way preclude public access to the committee itself or full public comment with respect to the decisions made based upon the committee's recommendation.

The Commissioner has been delegated the authority under section 10(d) of the Federal Advisory Committee Act to issue a determination in writing, containing the reasons therefor, that any advisory committee meeting is concerned with matters listed in 5 U.S.C. 552(b), which contains the exemptions from the public disclosure requirements of the Freedom of Information Act. Pursuant to this authority, the Commissioner hereby determines, for the reasons set out above, that the portions of the advisory committee meetings designated in this notice as closed to the public involve discussion of existing documents falling within one of the exemptions set forth in 5 U.S.C. 552(b), or matters that, if in writing, would fall within 5 U.S.C. 552(b), and that it is essential to close such portions of such meetings to protect the free exchange of internal views and to avoid undue interference with Agency and committee operations. This determination shall apply only to the designated portions of such meetings which relate to trade secrets and confidential information or to committee deliberations.

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15940 Filed 8-1-73;8:45 am]

[FAP 3B2890]

MONSANTO CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 3B2890) has been filed by Monsanto Co., 1800 N. Lindbergh Blvd., St. Louis, MO 63166, proposing that § 121.2526 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 121.2526) be amended to provide for the safe use of polyamine-epichlorohydrin resin prepared by reacting hexamethylenediamine with 1,2-dichloroethane to form a prepolymer and further reacting this prepolymer with epichlorohydrine. The resulting resin optionally may be modified with nitrilotris (methylenephosphonic acid), pentasodium salt. The resin is to be used as a component of paper and paperboard in contact with foods.

Dated: July 25, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-15941 Filed 8-1-73;8:45 am]

[FAP 2A2794]

OLIN CORP.

Notice of Withdrawal of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), Olin Corp., 120 Long Ridge Rd., Stamford, CT 06904, has withdrawn its petition (FAP 2A2794), notice of which was published in the FEDERAL REGISTER of June 13, 1972 (37 FR 11739), proposing that § 121.1091 *Chemicals used in washing or to assist in the lye peeling of fruits and vegetables* (21 CFR 121.1091) be amended in paragraph (a)(2) to provide for the safe use of calcium hypochlorite in washing fruits and vegetables.

Dated: July 25, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-15942 Filed 8-1-73;8:45 am]

Office of Education

TASK FORCE ON EDUCATION AND TRAINING FOR MINORITY BUSINESS ENTERPRISE

Notice of Public Meeting

JULY 18, 1973.

Notice is hereby given, pursuant to Public Law 92-463, that the next meeting of the Task Force on Education and Training for Minority Business Enterprise will be held on August 9, 1973, 2 p.m. to 7 p.m. and August 10, 1973, 9 a.m. to 4 p.m., local time, at the Loew's L'Enfant Plaza Hotel, 9th and Independence Avenue, SW., Washington, D.C., 20024.

The Task Force on Education and Training for Minority Business Enterprise is authorized under the authority of Executive Order 11625, dated October 13, 1971, and specifically established through a Statement of Formal Determination by the Secretary of Health, Education, and Welfare, January 12, 1972. This Task Force is established to advise the Secretary of Health, Education, and Welfare and the Secretary of Commerce with respect to the entire range of problems associated with the education and training needs of the actual and potential minority entrepreneur and will make recommendations as to the legislative and programmatic action calculated to ameliorate the problems so identified.

The agenda of the meeting is structured primarily to give the public members of the Task Force and Government representatives the opportunity to react and make suggestions for modifications to a draft of the Final Report of the Task Force on Education and Training for Minority Business Enterprise prior to submission to the Secretary of Health, Education, and Welfare, and the Secretary of Commerce.

Because of limited space for the meetings, persons who are not public members of the Task Force who wish to attend should call for reservations at telephone number 963-7135.

ROBERT M. WORTHINGTON,
Associate Commissioner for Adult, Vocational, Technical and Manpower Education and Chairman, Task Force on Education and Training for Minority Business Enterprise.

[FR Doc.73-15917 Filed 8-1-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-344]

PORTLAND GENERAL ELECTRIC CO.

Availability of Final Environmental Statement

Pursuant to the National Environmental Policy Act of 1969 and the United States Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that the Final Environmental Statement prepared by the Commission's Directorate of Licensing, related to the proposed Trojan Nuclear Plant, currently under construction, and the proposed issuance of an operating license to the Portland General Electric Company, in Columbia County, Oregon is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. and in the Law Library, Columbia County Courthouse, Circuit Court Room, St. Helens, Oregon 97501. The Final Environmental Statement is also being made available at the Federal Aid Coordination Section, Local Government Relations Division, Executive Department, 301 Public Service Building, Salem, Oregon 97310 and at the Columbia Region Association of Governments, 6400 SW. Canyon Court, Portland, Oregon 97204.

The notice of availability of the Draft Environmental Statement for the Trojan Nuclear Plant, and requests for comments from interested persons was published in the FEDERAL REGISTER on January 3, 1973, 38 FR 73. The comments received from Federal, State and local officials and interested members of the public have been included as appendices to the Final Environmental Statement.

Single copies of the Final Environmental Statement may be obtained by

writing the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Maryland, this 30th day of July 1973.

For the Atomic Energy Commission.

GEORGE W. KNIGHTON,
Chief, Environmental Projects Branch No. 1 Directorate of Licensing.

[FR Doc.73-15923 Filed 8-1-73;8:45 am]

[Docket Nos. 50-445 and 50-446]

TEXAS UTILITIES GENERATING CO. ET AL.

Notice of Hearing on Application for Construction Permits

In the matter of TEXAS UTILITIES GENERATING COMPANY, DALLAS POWER AND LIGHT COMPANY, TEXAS ELECTRIC SERVICE COMPANY, AND TEXAS POWER AND LIGHT COMPANY (Comanche Peak Steam Electric Station, Units 1 and 2.)

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, Licensing of Production and Utilization Facilities, and Part 2, Rules of Practice, notice is hereby given that a hearing will be held, at a time and place to be set in the future by an Atomic Safety and Licensing Board (Board), to consider the application filed under the Act by the Texas Utilities Generating Company, Dallas Power and Light Company, Texas Electric Service Company, and Texas Power and Light Company (the applicants), for construction permits for two pressurized water nuclear reactors designated as the Comanche Peak Steam Electric Station, Units 1 and 2 (the facilities), each of which is designed for initial operation at approximately 3411 thermal megawatts with a net electrical output of approximately 1159 megawatts. The proposed facilities are to be located on the applicants' site in Somervell County, Texas, approximately 4½ miles north of Glen Rose, Texas, and approximately 40 miles southwest of Fort Worth in North Central Texas. The hearing will be scheduled to begin in the vicinity of the site of the proposed facilities.

The hearing will be conducted by an Atomic Safety and Licensing Board which has been designated by the Chairman of the Atomic Safety and Licensing Board Panel, consisting of Lester Kornblith, Jr., Dr. William E. Martin, Jr., and Robert M. Lazo, Esq., Chairman. Dr. Hugh C. Paxton has been designated as a technically qualified alternate, and Charles A. Haskins, Esq., has been designated as an alternate qualified in the conduct of administrative proceedings.

Upon completion by the Commission's regulatory staff of a favorable safety evaluation of the application and an environmental review, and upon receipt of a report by the Advisory Committee on Reactor Safeguards, the Director of Regulation will consider making affirmative findings on Items 1–3, a negative finding on Item 4, and an affirmative finding on Item 5 specified below as a basis for the issuance of construction permits to the applicants:

Issues Pursuant to the Atomic Energy Act of 1954, as Amended.

1. Whether in accordance with the provisions of 10 CFR 50.35(a):

(a) The applicants have described the proposed design of the facilities including, but not limited to, the principal architectural and engineering criteria for the design, and have identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, and will be supplied in the final safety analysis report;

(c) Safety features or components, if any, which require research and development have been described by the applicants and the applicants have identified, and there will be conducted a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facilities, and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facilities can be constructed and operated at the proposed location without undue risk to the health and safety of the public.

2. Whether the applicants are technically qualified to design and construct the proposed facilities;

3. Whether the applicants are financially qualified to design and construct the proposed facilities; and

4. Whether the issuance of permits for construction of the facilities will be inimical to the common defense and security or to the health and safety of the public.

Issue Pursuant to National Environmental Policy Act of 1969 (NEPA).

5. Whether, in accordance with the requirements of Appendix D of 10 CFR Part 50, the construction permits should be issued as proposed.

In the event that this proceeding is not a contested proceeding, as defined by 10 CFR 2.4(n), the Board will determine (1) without conducting a de novo evaluation of the application, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of regulation on Items 1–4 above, and to support, insofar as the Commission's licensing requirements under the Act are concerned, the issuance of the construction permits proposed by the Director of Regulation; and (2) determine whether the review conducted by the Commission pursuant to NEPA has been adequate. In the event that this proceeding is not contested, the Board will convene a prehearing conference of the parties at a time and place to be set by the Board. It will also set the schedule for the evidentiary hearing. Notice of the prehearing conference and the hearing will be published in the FEDERAL REGISTER.

In the event that this proceeding becomes a contested proceeding, the Board will consider and initially decide, as issues in this proceeding, Items 1–5 above as a basis for determining whether the construction permits should be issued to the applicants.

The Board will convene a special prehearing conference of the parties to the proceeding and persons who have filed petitions for leave to intervene, or their counsel, to be held at such times as may be appropriate, at a place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.751a. Notice of the special prehearing conference will be published in the FEDERAL REGISTER.

The Board will convene a prehearing conference of the parties, or their counsel, to be held subsequent to any special prehearing conference, after discovery has been completed, or within such other time as may be appropriate, at a time and place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.752.

With respect to the Commissions' responsibilities under NEPA, and regardless of whether the proceeding is contested or uncontested, the Board will, in accordance with section A.11 of Appendix D of 10 CFR Part 50, (1) determine whether the requirements of section 102(2)(C) and (D) of NEPA and Appendix D of 10 CFR Part 50 have been complied with in this proceeding; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine whether the construction permits should be issued, denied, or appropriately conditioned to protect environmental values.

For further details, see the application for construction permits dated June 5, 1973, and amendments thereto, and the applicants' Environmental Report dated June 5, 1973, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., between the hours of 8:30 a.m. and 5:00 p.m. on weekdays. Copies of those documents will also be made available at the Somervell County Public Library, On the Square, P.O. Box 417, Glen Rose, Texas 76043, for inspection by members of the public between the hours of 2:00 p.m. and 5:00 p.m. on Mondays and Wednesdays and 11:00 a.m. and 3:00 p.m. on Saturdays. As they become available, a copy of the safety evaluation by the Commision's Directorate of Licensing, the Commission's draft and final detailed statements

on environmental considerations, the report of the Advisory Committee on Reactor Safeguards (ACRS), the proposed construction permits, other relevant documents, and the transcripts of the prehearing conferences and of the hearing will also be available at the above locations. Copies of the Directorate of Licensing's safety evaluation and the Commission's final detailed statement on environmental considerations, the proposed construction permits, and the ACRS report may be obtained, when available, by request to the Deputy Director for Reactor Projects, Directorate of Licensing, United States Atomic Energy Commission, Washington, D.C. 20545.

Any person who does not wish to, or is not qualified to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715. A person making a limited appearance may only make an oral or written statement on the record, and may not participate in the proceeding in any other way. Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, United States Atomic Energy Commission, Washington, D.C. 20545, not later than September 4, 1973.

A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above.

Any person whose interest may be affected by the proceeding, who does not wish to make a limited appearance and who wishes to participate as a party in the proceeding must file a written petition under oath or affirmation for leave to intervene in accordance with the provisions of 10 CFR 2.714.

A petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and any other contentions of the petitioner including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any other which may be entered in the proceeding on the petitioner's interest. Any such petition shall be accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. A petition that sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied.

A petition for leave to intervene must be filed with the Office of the Secretary of the Commission, United States Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., not later than September 4, 1973. A petition for leave to intervene which is not timely will not be granted unless the Board determines that the petitioner has made a substantial showing of good cause for failure to file on time and after the Board has considered those factors specified in 10 CFR 2.714(a)(1)–(4) and 2.714(d).

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have all the rights of the applicants to participate fully in the conduct of the hearing, such as the examination and cross-examination of witnesses, with respect to their contentions related to the matters at issue in the proceeding.

An answer to this notice, pursuant to the provisions of 10 CFR 2.705, must be filed by the applicants not later than August 22, 1973.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, United States Atomic Energy Commission, Washington D.C. 20545, Attention: Chief, Public Proceedings Staff, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. A copy of the petition or request for limited appearance should also be sent to the Chief Hearing Counsel, Office of the General Counsel, U.S. Atomic Energy Commission, Washington, D.C. 20545 and to Mr. Troy B. Conner, Jr., Conner & Knotts, 1747 Pennsylvania Avenue, NW, Washington, D.C. 20006, attorney for the applicants.

Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR 2.708, an original and twenty (20) conformed copies of each such paper with the Commission.

With respect to this proceeding, pursuant to 10 CFR 2.785, an Atomic Safety and Licensing Appeal Board will exercise the authority and the review function which would otherwise be exercised and performed by the Commission. Notice as to the membership of the Appeal Board will be published in the FEDERAL REGISTER.

Dated at Germantown, Maryland this 30th day of July, 1973.

UNITED STATES ATOMIC ENERGY COMMISSION
GORDON M. GRANT,
Acting Secretary of the Commission.

[FR Doc.73-16047 Filed 8-1-73;8:45 a.m.]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

List of Statements

Environmental impact statements received by the Council on Environmental Quality from July 23 through July 27, 1973.

DEPARTMENT OF AGRICULTURE

Contact: Dr. T. C. Byerly
Office of the Secretary
Washington, D.C. 20250
(202) 447-7803
Forest Service

Draft	*Date*
Rangeland Enhancement, California	07/25

California
County: Several
The statement refers to a program of plant control and revegetation which is intended to enhance rangeland on National Forest lands in California. Plants which are controlled include sagebrush, perennial bunchgrass, and mountain meadow vegetative types. Methods include the use of mechanical equipment, herbicides, water spreading, prescribed burning, and hand labor. Land potentially suitable for treatment includes 170,000 acres. Adverse impact will be to air, soil, and water qualities; livestock will be kept from treated areas for one to three years after treatment; wildlife which could be significantly affected include deer, antelope, and sage grouse.
(ELR ORDER # 31237) (NTIS ORDER # EIS 73 1237D)

Ten Year Timber Management Plan, Flathead N.F.	07/25

Montana
County: Several
The statement refers to a proposed ten year timber management plan for the Flathead National Forest. The Forest totals 2,355,366 acres, of which 942,339 acres are considered to be in the timber growing land base. There will be construction of forest roads, skid trails, firelines, and log landings. Adverse impact will be to water quality, aesthetics, wildlife habitat, and vegetative succession. (74 pages)
(ELR ORDER # 31235) (NTIS ORDER # EIS 73 1235D)

Sagebrush and Wyethia, Nevada	07/25

Nevada
The statement refers to a proposed program of herbicide spraying on 5,000 acres of National Forest lands annually, in order to control sagebrush and wyethia. The agent to be used is 2,4-D. Adverse impact will occur from the introduction of the chemical to air and water. Non-target plant species will be affected; the loss of habitat will have greatest effect upon sage grouse, deer (winter range), and antelope (winter range). (86 pages)
(ELR ORDER # 21238) (NTIS ORDER # EIS 73 1238D)

Draft	*Date*
Pinyon Juniper Chaining Program, Nevada	07/25

Nevada
The statement refers to the proposed control of pinyon-juniper growth on 4,000 to 5,000 acres of National Forest land annually, by the mechanical process of chaining. Adverse impact will be primarily esthetic; some wildlife species will be affected by loss of habitat. (80 pages)
(ELR ORDER # 31236) (NTIS ORDER # EIS 73 1236D)

Final *Date*
Herbicide Use, Oregon National Forests 07/25
Oregon
The statement refers to the proposed use of the herbicides Amitrole, Dicamba, 2,4,5-T,2,4-D, Silvex, and Picloram on the Deschutes, Fremont, Ochoco and Winema National Forests. The purposes of the action include the control of vegetation which interferes with crop trees, is poisonous to livestock, or is classified as noxious on agricultural land. Additional purposes are the improvement of wildlife habitat and the reduction of rodent populations. The use of these chemicals will put herbicide residues into the environment in varying amounts; non-target species will be hit. Very little is known about what effect these herbicides will have on the plant and wildlife community. (approx. 350 pages)

COMMENTS MADE BY: DOI, DOT, COE, HUD, HEW, USDA state and regional agencies, and concerned citizens.

(ELR ORDER # 31240) (NTIS ORDER # EIS 73 1240F)

SOIL CONSERVATION SERVICE

Final *Date*
Burnt Creek RC & D Measure 07/23
North Dakota
County: Burleigh
The project is intended to reduce flooding on 2,500 acres of agricultural land. Project features include a floodwater diversion, dikes, a grade control structure, a diversion structure, and an inverted siphon. Two and one half acres of woody habitat will be destroyed. (42 pages)

COMMENTS MADE BY: EPA, COE, DOI State agencies.

(ELR ORDER No. 31219) (NTIS ORDER No. EIS 73 1219F)

DEPARTMENT OF DEFENSE

ARMY CORPS

Contact: Mr. Francis X Kelly
Director, Office of Public Affairs
Attn: DAEN–PAP
Office of the Chief of Engineers
U.S. Army Corps of Engineers
1000 Independence Avenue, S.W.
Washington, D.C. 20314
(202) 693–7168

Draft *Date*
Las Tunas Beach Park, Erosion Project 07/20
California
County: Los Angeles
The statement refers to a proposed beach erosion control project. Project measures include the construction of two rubblemound groins and the deposit of 200,000 cu. yds of fill. There will be adverse impact to marine biota. (Los Angeles District) (45 pages)
(ELR ORDER No. 31205) (NTIS ORDER No. EIS 73 1205D)

Dry Creek Lake, Russian River Basin 07/20
California
County: Sonoma
The statement refers to the proposed construction of the Dry Creek Lake and Channel, Russian River Basin Project, known locally as the Warm Springs Dam and Lake Sonoma Project. Project measures include a 319 feet high earthfill dam on Dry Creek, a 381,000 acre-feet reservoir, recreation facilities, a fish hatchery, and channel improvements on Dry Creek. A total of 17,650 acres of land will be acquired for the project. The project will result in the displacement of residents; increased economic activity; the loss of wildlife habitat and displacement of wildlife; and the loss of archeological sites, among other effects. (San Francisco District)
(ELR ORDER No. 31207) (NTIS ORDER No. EIS 73 1207D)

St. Joseph's Bay 07/19
Florida
The statement refers to the maintenance dredging of the entrance channel and inner harbor channels in St. Joseph Bay. Spoil will be placed in diked areas on land. Adverse impact will be to marine biota. (26 pages)
(ELR ORDER No. 31202) (NTIS ORDER No. EIS 73 1202D)

Central and Southern Florida Flood Control 07/20
Florida
The statement refers to proposed modifications to the Central and Southern Florida Flood Control Project, in order to provide flood protection for a rapidly urbanizing 38 square mile area. Project measures include the removing of 683,000 cu. yds. of material from Canal 17, and the enlarging of Structure 44. There will be a more rapid discharge of nutrient-rich fresh water to Lake Worth during flood periods. (Jacksonville District) (33 pages)
(ELR ORDER # 31211) (NTIS ORDER # EIS 73 1211D)

Local Protection Project, Bettendorf 07/24
Iowa
County: Scott
The statement refers to a local flood protection project for the City of Bettendorf. Project measures will include 3 miles of earthen levee and 400 feet of concrete "I" wall. Adverse impact will include the loss of 20 acres of farm land, 10 acres of bottomland vegetation, 5.8 acres of riverbottom aquatic habitat, the disruption of the river view for 12 residences, and increased river turbidity during construction. (Rock Island District) (29 pages)
(ELR ORDER # 31227) (NTIS ORDER # EIS 73 1227D)

Red River Lake 07/20
Kentucky
The statement refers to a proposed multipurpose project for flood control, water supply, and recreation at mile 42.3 of the Red River. Total project land requirement is 5,775 acres, one fourth of which will be from the Daniel Boone National Forest. Inundation will include 1,546 acres of land and 15 miles of free-flowing stream. (Louisville District) (106 pages)
(ELR ORDER # 31209) (NTIS ORDER # EIS 73 1209D)

Pascagoula Harbor 07/19
Mississippi
The statement refers to the continuation of routine maintenance dredging of the harbor and nearby channels. Adverse impact will include the loss of marine biota, an increase in the amount of mercury in the food chain, and alternation to Petit Bois Island. (Mobile District) (22 pages)
(ELR ORDER # 31200) (NTIS ORDER # EIS 73 1200D)

Preferential Mail Center, Manchester 07/23
New Hampshire
The statement refers to the proposed construction of a preferential mail center on a 45 acre site in Manchester Adverse impact will result from construction disruption and runoff to a local brook. (Waltham District) (62 pages)
(ELR ORDER # 31225) (NTIS ORDER # EIS 73 1225D)

East Rockaway Inlet 07/19
New York
The statement refers to the proposed dredging of the Federal Channel in East Rockaway Inlet to its authorized dimensions. Disposal of spoil will be in deep water offshore. There will be adverse impact to marine biota. (11 pages)
(ELR ORDER # 31201) (NTIS ORDER # EIS 73 1201D)

Flood Control Project, Ardsley 07/20
New York
The statement refers to a flood control project on the Saw Mill River in Ardsley, New York. Project measures will include relocation of a portion of the river, and construction of levees, walls, a stilling basin, and interior drainage facilities. There will be adverse impact to riparian life. (31 pages)
(ELR ORDER # 31210) (NTIS ORDER # EIS 73 1210D)

Optima Lake, North Canadian River 07/20
Oklahoma
County: Texas
The statement refers to the continued construction of the dam and lake on the North Canadian River and Coldwater Creek. Purposes of the project are flood control, water supply, recreation, and fish and wildlife. The lake will permanently inundate 5,340 acres of wildlife habitat, with possible periodic inundation of 7,639 acres. The free flowing nature of Coldwater Creek and the North Canadian River will be lost. The historic townsite of Old Hardesty will be inundated. (Tulsa District)
(ELR ORDER # 31213) (NTIS ORDER # EIS 73 1213D)

Cougar Lake, McKenzie River Salmon Hatchery 07/24
Oregon
County: Lane
The statement refers to the continuation of operations at Cougar Lake, for flood control, power generation, low flow augmentation, and recreation; and construction of a new fish hatchery which will serve to replace runs of spring chinnook salmon which have been eliminated by Cougar Dam and Lake. The operation of the hatchery will add waste materials to McKenzie River. (Portland District)
(95 pages)
(ELR ORDER # 31229) (NTIS ORDER # EIS 73 1229D)

Final *Date*
Libby Reregulating Dam 07/24
Montana
The statement refers to the proposed construction of a reregulating dam on the Kootenai River, along with a 4 unit 36,000 kw hydroelectric power plant. A 1000' long access road will also be part of the project. The plant will require construction of transmission lines; an unspecified amount of land will be committed to the project. (68 pages)
COMMENTS MADE BY: USDA DOI DOT EPA FPC HEW
(ELR ORDER # 31228) (NTIS ORDER # EIS 73 1228F)

Niobrara Ground Water 07/25
Nebraska
County: Knox
The statement considers a program which is intended to resolve the seepage and drainage problems in the vicinity of the town of Niobrara. The village is located on river bottom lands near the confluence of the Niobrara and Missouri Rivers. The growth of the river delta and a rising ground water table threaten local flooding. The program would involve government purchase of all affected property, the establishment of a non-profit development corporation to establish a new townsite and facilities, and the relocation of displaced individuals. Total Federal cost of the project is to be $7,000,000. (54 pages)
COMMENTS MADE BY: EPA, state, local and private agencies
(ELR ORDER # 31230) (NTIS ORDER # EIS 73 1230F)

Gathright Lake, Supplement (2) 07/20
Virginia
The document provides supplemental information on the Gathright Lake Project

in Virginia. An earlier statement was filed with the Council on June 1, 1973.
(ELR ORDER # 30935; NTIS ORDER # EIS 73 0935F).
(ELR ORDER # 31208) (NTIS ORDER # EIS 73 1208F)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders
Executive Director of Environmental Affairs
18th and F Street, N.W.
Washington, D.C. 20405
(202) 343-4161

Draft	*Date*
Federal Home Loan Bank Board	07/18

District of Columbia
The statement refers to the proposed construction of a building which will house the Federal Home Loan Bank Board. The site is 17th and C Streets, N.W. The multi-story structure will encompass 400,650 gross square feet, including two levels of below grade parking. The adjacent building is listed on the National Register of Historic Places. There will be construction disruption. (30 pages)
(ELR ORDER #31197) (NTIS ORDER #EIS 73 1197D)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard
Director, Environmental Project Review
Room 7260
Department of the Interior
Washington, D.C. 20240
(202) 343-3891

BUREAU OF LAND MANAGEMENT

Draft	*Date*
Oil and Gas Lease Sale, Fall 1973	07/20

Mississippi, Alabama, Florida
The statement refers to the proposed sale of one hundred and fifty-nine tracts (886,458 acres) of Outer Continental Shelf Lands off Mississippi, Alabama, and Florida, for oil and gas exploration and development. The sale is scheduled for fall, 1973. All tracts offer some degree of pollution risk. Each tract offered is subject to a matrix analytical technique in order to evaluate significant environmental impacts.
(ELR ORDER #31215) (NTIS ORDER #EIS 73 1215D)

BUREAU OF OUTDOOR RECREATION

Draft	*Date*
Upper Iowa Scenic River Project	07/20

Iowa
County: Winneshiek
The proposed action would initiate public acquisition of a land corridor along the Upper Iowa River. The ultimate length of the corridor will be 80 miles. The segment covered by the statement will be 28.7 river miles and 4,993.5 acres, to be acquired utilizing a 50 percent grant from the Federal Land and Water Conservation Fund. The project is intended to protect the free-flowing, scenic values of the Upper Iowa River, and to make the river available for public recreation use. Impact will include the acquisition of the land, in fee title; the possible impact of future, as yet unplanned, development; and that of the long-range acquisition of the entire 80 miles.
(ELR ORDER #31212) (NTIS ORDER #EIS 73 1212D)

BUREAU OF SPORTS FISHERIES AND WILDLIFE

Final	*Date*
Lahontan National Fish Hatchery	07/25

Nevada
County: Douglas
The statement refers to the proposed construction and operation of additional facilities at the Hatchery. Major additions include an administration-visitor building, 3 residences, a hatchery building, storage buildings, and waste treatment facilities. The purpose of the action is the propagation of Lahontan cutthroat trout, in order to restore the fisheries in Pyramid and Walker Lakes. Hatchery waste discharge will result in organic enrichment of Allerman Canal and pasture lands; long term pumping of ground water may result in a temporary decline in the acquifer. (53 pages)
COMMENTS MADE BY: USDA, COE, DOI, EPA, FPC
(ELR ORDER # 31233) (NTIS ORDER # EIS 73 1233F)

GEOLOGICAL SURVEY

Draft	*Date*
Santa Ynez Unit, Santa Barbara Channel	07/23

California
The statement refers to proposed operations on seventeen oil and gas leases (83,037 acres) of the Santa Ynez Unit, on the Outer Continental Shelf in the Santa Barbara Channel. The leases will be issued under the provisions of Section 8 of the Outer Continental Shelf Lands Act (67 Stat. 462) for extraction of known gas and oil deposits. Development will entail some degree of pollution risk to the marine environment, adjacent shoreline, and the site of the onshore treating and processing facility from accidental or recurrent oil spillage. (three volumes)
(ELR ORDER # 31217) (NTIS ORDER # EIS 73 1217D)

NATIONAL PARK SERVICE

Draft	*Date*
Masterplan, Glacier National Park	07/23

Montana
The statement refers to a proposed master plan for the Glacier National Park. The plan is intended to set programs to maintain the present serene wilderness and semi-wilderness nature of the Park, while providing an outstanding experience for both the general vacationer and the wilderness enthusiast. Adverse effects will be from visitor use impact. (91 pages)
(ELR ORDER # 31224) (NTIS ORDER # EIS 73 1224D)

Proposed Wilderness, Glacier National Park	07/23

Montana
The statement refers to the proposed legislative designation of three wilderness areas within the Glacier National Park. Total acreage involved is 917,600. Six hundred acres of potential wilderness is also proposed for inclusion when it qualifies. Adverse effects include possible rationed use, restrictions on back country development, increased costs of trail maintenance, and restriction on certain research projects and management practices. (56 pages)
(ELR ORDER # 31233) (NTIS ORDER # EIS 73 1233D)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director
Office of Environmental Quality
400 7th Street, S.W.
Washington, D.C. 20590
(202) 466-4357

FEDERAL HIGHWAY ADMINISTRATION

Draft	*Date*
U.S. 278, Alabama	07/19

Alabama
County: Cullman
Proposed is the reconstruction and conversion of 1.51 miles of U.S. 278 from two lanes to four lanes. The project begins east of I-65 and extends to Main Street in Cullman. Adverse impacts of the action are the acquisition of land for right of way and the displacement of three families and four businesses. (19 pages)
(ELR ORDER # 31199) (NTIS ORDER # EIS 73 1199D)

18th Street and Central Avenue, Kansas City	07/23

Kansas
County: Wyandotte
The statement refers to the proposed improvement of the intersection of 18th Street and Central Avenue in the City of Kansas City to provide channelization and signalization. Additional land will be required for right of way. Three families and eight businesses will be displaced. (14 pages)
(ELR ORDER # 31226) (NTIS ORDER # EIS 73 1226D)

Jefferson Freeway, US 31W, Kentucky	07/23

Kentucky
County: Jefferson
The statement considers six alternatives for the construction of approximately 23 miles of an overall 34 mile Jefferson Freeway project. The project generally forms a ten (10) mile radius of circumferential belt line, beginning at Dixie Highway (US 31W) and extending to Taylorsville Road (KY 155), around the outer perimeter of metropolitan Louisville. Adverse impacts will result from the acquisition of approximately 1600 acres of land and the displacement of 347 residents and 18 businesses for right-of-way purposes. (62 pages)
(ELR ORDER # 31221) (NTIS ORDER # EIS 73 1221D)

Poughkeepsie East-West Arterial and SH 549	07/10

New York
County: Dutchess
The proposed project is the construction of the Poughkeepsie East-West Arterial and Poughkeepsie-Pleasant Valley, S.H. 549 to complete the arterial. Arterial length is 5.75 miles. The project will displace 39 businesses and 262 families. A 4(f) review has been filed to obtain land from five public/private owned park/recreation areas. An increase in air, noise and water pollution will occur. (101 pages)
(ELR ORDER # 31151) (NTIS ORDER # EIS 73 1151D)

US 301, North Carolina	07/23

North Carolina
County: Johnston
Proposed is the widening of a 0.73 mile segment of US 301 (8th Street) in Smithfield. Adverse environmental effects include the acquisition of approximately 1.6 acres of land, displacement of one business, removal of aesthetically pleasing trees, and increases in noise and air pollution. (26 pages)
(ELR ORDER # 31218) (NTIS ORDER # EIS 73 1218D)

State Highway 37, Garrison	07/17

North Dakota
County: McLean
Proposed is the improvement of State Highway 37 from Garrison to US 83, a distance of 6 miles. The project consists of acquiring additional agricultural land for right of way and constructing a two lane hard surfaced roadway along the alignment of existing State Highway 37. One business and one residence will be displaced. (35 pages)
(ELR ORDER # 31181) (NTIS ORDER # EIS 73 1181D)

S. Tigard Interchange—I 5	07/20

Oregon
County: Clackamas
Proposed is the construction of a new Federal-Aid Secondary Route (F.A.S. 943) to connect Interstate 5 with Boones Ferry Road. Project length is 1.1 miles. Adverse effects of the action include the loss of 23 acres of wildlife habitat and increased siltation and turbidity. (130 pages)
(ELR ORDER # 31214) (NTIS ORDER # EIS 73 1214D)

FAS 6126 (Long Hollow Pike) 07/23
Tennessee
County: Davidson, Sumner
Proposed is the construction of a 0.98 mile section of a four-lane undivided urban highway, and the addition of an interchange with Interstate Route 65. Adverse effects of the action are the displacement of three residences and two businesses, the loss of some natural resources, and increased noise and air pollution. (48 pages)
(ELR ORDER # 31220) (NTIS ORDER # EIS 73 1220D)

State Route 6, Tennessee 07/23
Tennessee
County: Maury
The statement considers six alternatives for the construction of approximately 15 miles of a four lane divided highway which would serve as a principal connection between the Cities of Mt. Pleasant and Columbia. Adverse effects are the displacement of some residences and businesses as a result of right-of-way acquisition; loss of some natural resources and increases in noise and air pollution (72 pages)
(ELR ORDER # 31222) (NTIS ORDER # EIS 73 1222D)

Corridor "L", US 19 Relocation 07/02
West Virginia
County: Nicholas
The proposed project is the construction of 2.1 miles of Appalachian Corridor "L". Two businesses and three families will be displaced. A 4(f) review will be filed to obtain 8 acres from the Nicholas Memorial County Park. Increases in noise, air and water pollution will occur. (approx. 90 pages)
(ELR ORDER # 31097) (NTIS ORDER # EIS 73 1097D)

Final *Date*
Jenkins-Pikeville Road, U.S. 23-119 07/20
Kentucky
County: Pike, Letcher
Proposed is the relocation of U.S. 23 and 119 between Jenkins and Darton. The project is a segment of the Appalachian Development Highway System designated as Corridor B. Length of the project is 10.49 miles. Approximately 460 acres are required for right of way. Adverse effects include temporary increased erosion, some air pollution, and inconvenience to relocatees. (170 pages)
COMMENTS MADE BY: DOC HEW HUD EPA DOI DOT state agencies
(ELR ORDER # 31204) (NTIS ORDER # EIS 73 1204F)
U.S. 67 (7th and 8th Streets) 07/20
Texas Arkansas
County: several
The proposed action along U.S. Highway 67 is the implementation of two-one-way streets along the existing Seventh and Eighth Streets, into an Urban Arterial thoroughfare for a distance of 2.2 miles, from Texas and Pacific Railroad on West 7th Street (Texas U.S. 67) to East 9th Street (Arkansas U.S. 67). Twenty families and four businesses may be displaced. Two states and two municipalities are involved in this action. (63 pages)
COMMENTS MADE BY: USDA EPA COE HEW HUD DOT state and local agencies of Texas and Arkansas
(ELR ORDER # 31206) (NTIS ORDER # EIS 73 1206F)

TIMOTHY ATKENSON,
General Counsel.

[FR Doc.73-15959 Filed 8-1-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

CABLE TELEVISION TECHNICAL ADVISORY COMMITTEE AND EXECUTIVE COMMITTEE OF THE TECHNICAL ADVISORY COMMITTEE

Meetings Scheduled

JULY 27, 1973.

Panel 9 of the Cable Television Technical Advisory Committee will hold an open meeting on Monday, August 6, 1973, at 10:00 a.m. The meeting will be held in Building A at the Mitre Corporation in Bedford, Massachusetts. The agenda of the meeting will include:

(1) Reviewing last meeting's minutes
(2) Report on Steering Committee's activities
(3) Reviewing results of data communications questionnaire to determine character of communications channels proposed for 2-way services
(4) Reviewing Class III and IV channel services breakdown
(5) Demonstration and discussion of MITRE 2-way TDM system
(6) Report on noise and RFI buildup in systems
(7) Project assignments
(8) Review of timetable
(9) New business.

The Executive Committee of the Steering Committee of the Cable Television Technical Advisory Committee will hold an open meeting on August 7, 1973, at 9:30 a.m. in the Conference Room of the Cable Television Bureau in Washington, D.C. The agenda of the meeting will include a discussion of the appointment of an executive secretary and the solicitation of funds.

[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-15928 Filed 8-1-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CP74-10]

CITIES SERVICE GAS CO.

Notice of Application

July 25, 1973.

Take notice that on July 16, 1973, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP74-10 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of and for permission and approval to abandon certain pipeline and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon by reclamation approximately 1.12 miles of 6-inch pipeline and existing measuring and regulating facilities in Cherokee County, Kansas. It is stated that said line is operationally obsolete and is incapable of providing reliable service to The Gas Service Company (Gas Service) for resale in Baxter Springs, Kansas, as evidenced by the failure of the line on March 13, 1973, due to flooding conditions on the Spring River which the line crosses in Cherokee County. The proposed abandonment would result in the discontinuance of service to Gas Service for resale to one rural customer now served by the 6-inch line. That customer would be paid $300 to cover the conversion costs to an alternative fuel such as liquefied petroleum gas. Another customer served by the line to be abandoned will continue to be served by Applicant's 12-inch Riverton pipeline.

Applicant proposes to replace the older 6-inch line by the construction and operation of approximately 2.0 miles of 6-inch pipeline and appurtenant measuring and regulating facilities extending from its Quapaw 16-inch line in Ottawa County, Oklahoma, to a point in Cherokee County, Kansas, for the deliveries of gas for resale in Baxter Springs. It is stated that the proposed line will not cross the Spring River.

The cost of the proposed facilities is $64,770 which will be financed from treasury funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 15, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-15895 Filed 8-1-73;8:45 am]

[Docket No. CI73-642]

FELMONT OIL CORP.

Order Granting Interventions and Fixing Date for Hearing

Issued July 25, 1973.

The above-named Applicant has filed an application pursuant to section 7(c) of the Natural Gas Act,[1] and pursuant to § 2.75[2] of the Commission's General Policy Statements, the new Optional Procedure for Certificating New Producer Sales of Natural Gas set forth in Order No. 455,[3] (hereinafter § 2.75) for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce.

On March 28, 1973, Felmont Oil Corporation (Felmont) filed in Docket No. CI73-642 an application for the sale of natural gas to Columbia Gas Transmission Corporation (Columbia) from the Pineton Field, Indiana and Cambria Counties, Pennsylvania (North Sub-area, Appalachian Basin Area). The application covers Felmont's interest in seven existing unitized gas wells in the Pineton Field.

Felmont, pursuant to the optional procedure, filed its contrct with Columbia dated February 15, 1973, concurrently with its application as its FPC Gas Rate Schedule. The basic contract provides for a rate of 45.0 cents per Mcf at 14.73 psia, subject to a downward Btu adjustment. The initial price is subject to no adjustments or escalations other than the downward Btu adjustment. The contract is effective for a period "as long as the wells produce gas in paying quantities", and Felmont requests the pre-granted right to abandon any well not meeting that criteria for continued production.

The contract submitted by Felmont also provides for an interest free advance payment by Columbia of not more than $130,000 to pay for the construction of the necessary gathering facilities. Columbia would recoup the advance payment by withholding specified portions of the contract price until it had recovered the advance payment.

Felmont's application was notice on April 10, 1973, and the notice was published in the FEDERAL REGISTER on April 20, 1973, (38 FR 9859). Timely petitions to intervene or protests were due on or before May 1, 1973. Timely petitions to intervene were filed by the following parties:

Associated Gas Distributors

Columbia Gas Transmission Corporation.

Having reviewed the petitions to intervene, we find that all of the above-mentioned petitioners have sufficient interest in this proceeding to warrant intervention.

A formal hearing has been requested, and we find a hearing is desirable to determine, on the record, whether the present and future public convenience and necessity will be served by certificating this sale, and whether the proposed rate is just and reasonable, taking into consideration all factors bearing on maintenance of an adequate and reliable supply of gas, delivered at the lowest reasonable cost.[4]

This hearing is not the proper forum for the relitigation of the propriety of the § 2.75 procedures; that matter is now before the Court of Appeals. See n. 3, supra. This hearing will be addressed solely to the issues of public convenience and necessity, and the justness and reasonableness of the particular sales and rates herein proposed.

Those parties and intervenors desiring to submit cost and non-cost data should structure their evidence to reflect the tests under § 2.75 for determining the justness and reasonableness of the rate sought,[5] bearing in mind that with respect to proceedings under § 2.75 of our regulations, we have heretofore stated:

> We will, absent a showing of special circumstances, accept as conclusive the cost findings embodied in our area rate decisions, as such may be supplemented from time to time by appropriate Commission order. (Order 455, paragraph 63, page 21.)

We do not, therefore, open this hearing to the presentation of cost data, other than that incorporated from the Belco, et al. proceedings as hereinafter ordered, unless, in the judgment of the Presiding Administrative Law Judge, a showing of special circumstances is made.

We also direct the attention of the parties to our recent statement in Opinion No. 639, Area Rates for the Appalachian and Illinois Basin Areas, Docket No. R-371, opinion issued December 13, 1972, wherein we stated:

> We have been admonished not to rely on cost alone, but also to consider producer rate levels in the context of "non-cost" factors of supply and demand, capital formation, and probable industry response to any given level of rates. Austral Oil, et al. v. F.P.C., 428 F.2d 407 (CA5, 1970). Applications under § 2.75 will be so considered . . . .

No intervenor has questioned Columbia's need for the approximately 2.1 billion cubic feet per year of natural gas that will be available as a result of these purchases. We note from the filings that Columbia has received approval of its interim curtailment plan. Columbia is not making emergency purchases of natural gas, but has invoked the provisions of § 157.29 of the Regulations under the Natural Gas Act (18 CFR § 157.29) to assure maintenance of adequate supplies of natural gas. A Columbia affiliate has received permission to import liquefied natural gas (LNG) and has filed applications concerning synthetic pipeline gas. Accordingly, the hearing provided for herein should not explore any issues related to Columbia's need for additional supplies of natural gas. However, we shall require Columbia to present evidence as to whether or not a comparable supply of natural gas is available to Columbia at any rate lower than the rates proposed in these applications.

We have just rendered a decision in the first proceedings under § 2.75 in which a full evidentiary record was made.[6] We think it appropriate in these circumstances to incorporate by reference the record developed in that proceeding into these consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

The Commission finds.

(1) It is necessary and in the public interest that the above-docketed proceeding be set for hearing.

(2) It is desirable and in the public interest to allow the above-named petitioners to intervene in this proceeding in order that they may establish the facts and the law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders.

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 7, 15, and 16 thereof, The Commission's rules of practice and procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I) a public hearing shall be held concerning the issues presented by the application herein commencing September 25, 1973, at 10:00 a.m. (e.d.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426.

(B) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR § 3.5(d)), shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

(C) Applicant and all intervenors supporting the applications shall file their direct testimony and evidence on or before August 31, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(D) The Commission Staff and all intervenors opposing the application shall file their direct testimony and evidence on or before September 11, 1973. All

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[1] 15 U.S.C. § 717, et seq. (1970).

[2] 18 CFR § 2.75.

[3] Statement of Policy Relating to Optional Procedure for Certificating New Producer Sales of Natural Gas, Docket No. R-441, — F.P.C. — (issued August 3, 1972), appeal pending sub nom. John E. Moss, et al. v. F.P.C., No. 72-1837 (D.C. Cir.).

[4] Opinion And Order Issuing Certificate Of Public Convenience And Necessity And Determining Just And Reasonable Rates, Opinion No. 659, Belco Petroleum Corporation, Agent, et al., Docket Nos. CI73-293, et al., —— F.P.C. ——, —— (issued May 30, 1973, slip op. at para. 21, p. 5).

[5] Opinion 659 gave consideration to such factors as (1) cost, (2) return, (3) alternate supply costs, (4) contract rates for intra- and interstate sales, (5) commodity value, Opinion No. 659, supra.

[6] Opinion No. 659, supra.

testimony and evidence shall be served upon the Presiding Administrative Law Judge, and all other parties to these proceedings.

(E) All rebuttal testimony and evidence shall be served on or before September 19, 1973. All parties submitting rebuttal testimony and evidence shall serve such testimony and evidence upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(F) The record in the *Belco case*, Docket Nos. CI73-293, et al., is incorporated by reference into the subject consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

(G) The above-named petitioners are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, however*, That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and *Provided, further*, That the admission of such interests shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(H) The Administrative Law Judge's decision shall be rendered on or before October 31, 1973.

(I) All parties shall submit briefs on exceptions to the Commission on or before November 12, 1973.

By the Commission.[7]

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-15891 Filed 8-1-73;8:45 am]

[Docket No. R-479]

FUEL ADJUSTMENT CLAUSES IN WHOLESALE RATE SCHEDULES

Notice of Extension of Time

JULY 25, 1973.

Motions were filed by The Cincinnati Gas & Electric Company, The Edison Electric Institute and Pacific Gas and Electric Company on July 12, 1973, and July 20, 1973, respectively for an extension of time within which to file comments to the notice of proposed rulemaking issued June 21, 1973, concerning fuel adjustment clauses in wholesale rate schedules.

Upon consideration, notice is hereby given that the time is extended to and including October 4, 1973, within which all persons may file data, views and comments in writing in the above rulemaking proceeding.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-15897 Filed 8-1-73;8:45 am]

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[7] Chairman Nassikas concurring in part filed a separate statement which is appended to the original document.

[Dockets Nos. CP70-288 and CP70-289]

INTER-CITY MINNESOTA PIPELINES LTD. AND ICG TRANSMISSION LTD.

Notice of Petition To Amend

JULY 25, 1973.

Take notice that on April 19, 1973, Inter-City Minnesota Pipelines Ltd. (Inter-City) and ICG Transmission Limited (ICG), 1500 Richardson Building, 1 Lombard Place, Winnipeg 2, Manitoba, Canada, filed in Docket Nos. CP70-288 and CP70-289, respectively, a petition to amend the order authorizing ICG to import and export natural gas to and from the United States and Canada pursuant to section 3 of the Natural Gas Act and the permit authorizing Inter-City to construct, maintain, and operate facilities at the international boundary pursuant to Executive Order No. 10485, so as to authorize the exportation and importation of additional volumes of gas and to substitute Inter-City in lieu of ICG, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners were authorized, pursuant to a 25-year contract, by the order of August 10, 1970, in Docket Nos. CP70-288 and CP70-289 (44 FPC 262) to import up to 38,000 Mcf of gas per day (12,481,000 Mcf per year) from Canada through proposed pipeline facilities crossing the international boundary near Sprague, Manitoba; to construct, operate, and maintain border facilities therefor; and to sell up to 1,634 Mcf per day (337,000 Mcf per year) of gas to Minnesota. Up to 36,366 Mcf per day of gas (12,141,000 Mcf per year) was authorized to be exported back to Canada through proposed pipeline facilities crossing the international boundary at Rainy River, Ontario, for sale in Canada of up to 14,343 Mcf per day (4,429,000 Mcf per year). ICG was then authorized to reimport up to 27,023 Mcf per day (7,715,000 Mcf per year) for sale in Minnesota. Inter-City was also authorized by the order of December 21, 1970, in Docket No. CP71-142 (44 FPC 1611) to construct and operate approximately 160 miles of 12-inch pipeline and appurtenant facilities to facilitate the authorized import and export of gas, and to sell gas to residential, commercial, and industrial customers in Roseau, Warroad, Baudette and International Falls, Minnesota, and in Rainy River, Emo, and Fort Frances, Ontario. It is stated that the National Energy Board of Canada (NEB) issued three export-import licenses authorizing the proposal in the same daily and annual quantities as provided for by the Commission for a term of 25 years commencing November 1, 1970.

Petitioners state that during the two years, November 1, 1970, to October 31, 1972, they imported approximately 2,314,000 Mcf of gas less than previously authorized. To retrieve this deficiency, Petitioners took, between February 1, 1971, and October 31, 1972, approximately 554,759 Mcf of gas in excess of its daily authorized takes.

Petitioners now propose to import additional volumes of gas up to 10,296 Mcf per day (305,000 Mcf per year) through the facilities at the international boundary near Sprague, Manitoba, for export to Canada at Rainy River, Ontario. Petitioners then propose to import an additional 796 Mcf per day (680,000 Mcf per year) into the United States at International Falls, for sales of an additional 9,500 Mcf per day (985,000 Mcf per year) in Minnesota. It is stated that the NEB has issued temporary amendments expiring December 31, 1973, permitting the increase exports upon the condition that the total volumes exported to the United States at the end of any contract year ending October 31 do not exceed the original annual volume limit times the number of contract years that the original licenses have been in effect. Petitioners request that continuing authority to import and export the additional gas be granted until the deficit in initial imports is recovered. Petitioners state that they intend to obtain appropriate NEB authorization for the exportation of the remaining deficit. Petitioners also propose certain rate adjustments which have been filed in Inter-City's FPC Gas Tariff, Original Volume Nos. 1 and 2. The purpose of the proposed additional import and export of gas is to satisfy the requirements of Inter-City's customers which are greater than originally estimated due, in part, to a deficiency of hydro-electric power generated by the Rainy River.

Petitioners request that Inter-City be substituted in lieu of ICG as authorized importer and exporter since Inter-City now owns or is transporting all of the gas brought into the United States.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 20, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-15894 Filed 8-1-73;8:45 am]

[Docket No. CI74-6]

KANSAS GAS PURCHASING

Notice of Application

JULY 25, 1973.

Take notice that on July 9, 1973, Kansas Gas Purchasing (Applicant), P.O. Box 748, Salina, Kansas 67402, filed in Docket No. CI74-6 an application pursuant to section 7(c) of the Natural Gas

Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Northern Natural Gas Company from acreage in Kiowa County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 25,000 Mcf of gas per month for one year at 36.0 cents per Mcf at 14.65 psia, subject to upward and downward Btu adjustment, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70).

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before August 20, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-15896 Filed 8-1-73;8:45 am]

[Docket No. CI73-430]

McCULLOCH OIL CORPORATION OF TEXAS

Order Granting Interventions and Fixing Date for Hearing

JULY 25, 1973.

The above-named Applicant has filed an application pursuant to section 7(c) of the Natural Gas Act,[1] and pursuant to § 2.75[2] of the Commission's General Policy Statements, the new Optional Procedure for Certificating New Producer Sales of Natural Gas set forth in Order No. 455,[3] (hereinafter § 2.75) for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce.

On December 21, 1972, McCulloch Oil Corporation of Texas (McCulloch) filed in Docket No. CI73-430 an application for the sale of natural gas to Arkansas Louisiana Gas Company (Arkla) from the Southwest Mathers Ranch Area, Hemphill County, Texas, at an initial price of 35 cents per Mcf until October 1, 1976, with a 1.0 cent per Mcf price escalation every four years thereafter, to a maximum price of 39 cents per Mcf, subject to upward and downward Btu adjustment, at 14.65 psia. The subject contracts continue into effect until October 1, 1992, and provide price adjustments allowing for the recovery of compression and dehydration charges for changes in state production taxes.

McCulloch proposes to sell approximately 301,500 Mcf of natural gas per month to Arkla. Of the total, some 187,500 Mcf per month will be sold pursuant to an August 14, 1972 contract between McCulloch and Arkla, and the other 114,000 Mcf per month will be sold pursuant to August 9, 1972, contract between Arkla and J. M. Huber Corporation, as predecessor in interest to McCulloch.

McCulloch's application was noticed on January 10, 1973 (38 FR 1600), and all protests and petitions to intervene were to be filed by January 29, 1973.

A notice of intervention was filed by The Public Service Commission for the State of New York, and timely petitions to intervene were filed by:

American Public Gas Association.
Associated Gas Distributors.
Arkansas Louisiana Gas Company (late).

Deliveries of the natural gas to Arkla were commenced on May 19, 1973, pursuant to § 2.75n (18 CFR 2.75n).

Having reviewed the petitions to intervene, we find that all of the above-mentioned petitioners have sufficient interest in this proceeding to warrant intervention.

A formal hearing has been requested, and we find a hearing is desirable to determine, on the record, whether the present and future public convenience and necessity will be served by certificating this sale, and whether the proposed rate is just and reasonable, taking into consideration all factors bearing on maintenance of an adequate and reliable supply of gas, delivered at the lowest reasonable cost.[4]

This hearing is not the proper forum for the relitigation of the propriety of the § 2.75 procedures; that matter is now before the Court of Appeals. See n. 3, supra. This hearing will be addressed solely to the issues of public convenience and necessity, and the justness and reasonableness of the particular sales and rates herein proposed.

Those parties and intervenors desiring to submit cost and non-cost data should structure their evidence to reflect the tests under § 2.75 for determining the justness and reasonableness of the rate sought,[5] bearing in mind that with respect to proceedings under § 2.75 of our regulations, we have heretofore stated:

> We will, absent a showing of special circumstances, accept as conclusive the cost findings embodied in our area rate decisions, as such may be supplemented from time to time by appropriate Commission order. (Order 455, paragraph 63, page 21.)

We do not, therefore, open this hearing to the presentation of cost data, other than that incorporated from the Belco, et al. proceedings as hereinafter ordered, unless, in the judgment of the Presiding Administrative Law Judge, a showing of special circumstances is made.

We also direct the attention of the parties to our recent statement in Opinion No. 639, Area Rates for the Appalachian and Illinois Basin Areas, Docket No. R-371, opinion issued December 13, 1972, wherein we stated:

> We have been admonished not to rely on cost alone, but also to consider producer rate levels in the context of "non-cost" factors of supply and demand, capital formation, and probable industry response to any given level of rates. Austral Oil, et al. v. F.P.C., 428 F.2d 407 (CA5, 1970). Applications under § 2.75 will be so considered * * *.

No intervenor has questioned Arkla's need for the additional supplies for natural gas that will be available to it as a result of this purchase, and we note that this Commission has already determined that Arkla's supply situation is critical. Opinion No. 643, Opinion And Order Reversing Initial Decision, Approving Curtailment Plan, And Directing Further Proceedings, Docket No. RP71-122, —FPC— (issued January 8, 1973). Accordingly, the hearing provided for herein should not explore any issues related to Arkla's need for additional supplies of natural gas. However, we shall require Arkla to present evidence as to whether or not a comparable supply of natural gas is available to Arkla at any rate lower than the rate proposed in this application.

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[1] 15 U.S.C. 717, et seq. (1970).
[2] 18 CFR 2.75.
[3] Statement Of Policy Relating To Optional Procedure For Certificating New Producer Sales of Natural Gas, Docket No. R-441, — F.P.C. — (issued August 3, 1972), appeal pending sub nom. John E. Moss, et al. v. F.P.C., No. 72-1837 (D.C. Cir.).
[4] Opinion And Order Issuing Certificate Of Public Convenience And Necessity And Determining Just And Reasonable Rates, Opinion No. 659, Belco Petroleum Corporation, Agent, et al., Docket Nos. CI73-293, et al., — F.P.C. —, — (issued May 30, 1973, slip op. at para. 21, p. 5).
[5] Opinion 659 gave consideration to such factors as (1) cost, (2) return, (3) alternate supply costs, (4) contract rates for intra- and interstate sales, (5) commodity value, Opinion No. 659, supra.

We have just rendered a decision in the first proceedings under § 2.75 in which a full evidentiary record was made.[6] We think it appropriate in these circumstances to incorporate by reference the record developed in that proceeding into these consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

The Commission finds.

(1) It is necessary and in the public interest that the above-docketed proceeding be set for hearing.

(2) It is desirable and in the public interest to allow the above-named petitioners to intervene in this proceeding in order that they may establish the facts and the law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders.

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 7, 15, and 16 thereof, The Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I) a public hearing shall be held concerning the issues presented by the application herein commencing September 14, 1973, at 10:00 a.m. e.d.t. in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(B) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

(C) Applicant and all intervenors supporting the applications shall file their direct testimony and evidence on or before August 17, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(D) The Commission Staff and all intervenors opposing the application shall file their direct testimony and evidence on or before August 24, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, and all other parties to these proceedings.

(E) All rebuttal testimony and evidence shall be served on or before September 5, 1973. All parties submitting rebuttal testimony and evidence shall serve such testimony and evidence upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(F) The record in the Belco case, Docket Nos. CI73-293, et al., is incorporated by reference into the subject consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

(G) The above-named petitioners are permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene: *and provided, further,* That the admission of such interests shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(H) The Administrative Law Judge's decision shall be rendered on or before October 24, 1973.

(I) All parties shall submit briefs on exceptions to the Commission on or before November 2, 1973.

By the Commission.[7]

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-15890 Filed 8-1-73;8:45 am]

[Docket No. CI73-688]

POST OAK OIL CO.

Order Fixing Date for Hearing

JULY 25, 1973.

The above-named Applicant has filed an application pursuant to section 7(c) of the Natural Gas Act,[1] and pursuant to § 2.75[2] of the Commission's general policy statements, the new Optional Procedure for Certificating New Producer Sales of Natural Gas set forth in Order No. 455,[3] (hereinafter § 2.75) for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce.

On April 19, 1973, Post Oak Oil Company (Post Oak) filed an application in Docket No. CI73-688 for certification of a sale of natural gas to Colorado Interstate Gas Company (Colorado) from South Buffalo Area, Harper County, Oklahoma (Hugoton-Anadarko Area).

Post Oak's contract with Colorado, dated March 27, 1973, has a term of 20 years, and provides for an initial rate of 35.0 cents per Mcf, with a 0.5 cent per Mcf escalation on January 1, 1977, and each year thereafter. The price is subject to upward and downward Btu adjustments, and the contract further provides for reimbursement to seller of 100 percent of any new or additional taxes.

The tendered contract contains an FPC Area Rate Clause which is prohibited in contracts submitted for certification under § 2.75f (18 CFR 2.75f). Since Post Oak has not waived any rights under this clause or submitted a filing stating that the clause will not be operative if a certificate is issued under § 2.75, we shall require such a filing before a certificate is issued.

Notice of Post Oak's application was issued on April 26, 1973, and the notice was published in the FEDERAL REGISTER on March 3, 1973 (38 FR 11067). Timely protests to intervene were due on or before March 18, 1973. No petitions to intervene were filed.

We find a hearing is desirable to determine, on the record, whether the present and future public convenience and necessity will be served by certificating this sale, and whether the proposed rate is just and reasonable, taking into consideration all factors bearing on maintenance of an adequate and reliable supply of gas, delivered at the lowest reasonable cost.[4]

This hearing is not the proper forum for the relitigation of the propriety of the § 2.75 procedures; that matter is now before the Court of Appeals. See n. 3, supra. This hearing will be addressed solely to the issues of public convenience and necessity, and the justness and reasonableness of the particular sales and rates herein proposed.

Those parties and intervenors desiring to submit cost and non-cost data should structure their evidence to reflect the tests under § 2.75 for determining the justness and reasonableness of the rate sought,[5] bearing in mind that with respect to proceedings under § 2.75 of our regulations, we have heretofore stated:

> We will, absent a showing of special circumstances, accept as conclusive the cost findings embodied in our area rate decisions, as such may be supplemented from time to time by appropriate Commission order. (Order 455, paragraph 63, page 21.)

We do not, therefore, open this hearing to the presentation of cost data, other than that incorporated from the Belco, et al. proceedings as hereinafter ordered, unless, in the judgment of the Presiding Administrative Law Judge, a showing of special circumstances is made.

We also direct the attention of the parties to our recent statement in Opinion No. 639, Area Rates for the Appalachian and Illinois Basin Areas, Docket No. R-371, opinion issued December 13, 1972, wherein we stated:

> We have been admonished not to rely on cost alone, but also to consider producer rate levels in the context of "non-cost" factors of supply and demand, capital formation, and probable industry response to any given level of rates. Austral Oil, et al. v.

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[6] Opinion No. 659, supra.

[7] Chairman Nassikas concurring in part filed a separate statement which is filed as part of the original document.

[1] 15 U.S.C. § 717, et seq. (1970).

[2] 18 CFR § 2.75.

[3] Statement Of Policy Relating To Optional Procedure For Certificating New Producer Sales of Natural Gas, Docket No. R-441, —— F.P.C. —— (issued August 3, 1972), appeal pending sub nom. John E. Moss, et al. v. F.P.C., No. 72-1837 (D.C. Cir.).

[4] Opinion And Order Issuing Certificate Of Public Convenience And Necessity And Determining Just And Reasonable Rates, Opinion No. 659, Belco Petroleum Corporation, Agent, et al., Docket Nos. CI73-293, et al., —— F.P.C. ——, —— (issued May 30, 1973, slip op. at para. 21, p. 5).

[5] Opinion 659 gave consideration to such factors as (1) cost, (2) return, (3) alternate supply costs, (4) contract rates for intra- and interstate sales, (5) commodity value, Opinion No. 659, supra.

F.P.C., 428 F.2d 407 (CA5, 1970). Applications under § 2.75 will be so considered * * *.

We have just rendered a decision in the first proceedings under § 2.75 in which a full evidentiary record was made.[6] We think it appropriate in these circumstances to incorporate by reference the record developed in that proceeding into these consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

The Commission finds.

(1) It is necessary and in the public interest that the above-docketed proceeding be set for hearing.

The Commission orders.

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 7, 15, and 16 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter I) a public hearing shall be held concerning the issues presented by the application herein commencing October 2, 1973, at 10:00 a.m. (e.d.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(B) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR § 3.5(d)), shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

(C) Applicant shall file his direct testimony and evidence on or before September 7, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(D) The Commission Staff shall file their direct testimony and evidence on or before September 18, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, and all other parties to these proceedings.

(E) All rebuttal testimony and evidence shall be served on or before September 26, 1973. All parties submitting rebuttal testimony and evidence shall serve such testimony and evidence upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(F) The record in the Belco case, Docket Nos. CI73-293, et al., is incorporated by reference into the subject consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

(G) The above-named petitioners are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, However,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and *Provided, further,* That the admission of such interests shall not be construed as recognition by the this proceeding.
Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in

(H) The Administrative Law Judge's decision shall be rendered on or before November 9, 1973.

(I) All parties shall submit briefs on exceptions to the Commission on or before November 16, 1973.

By the Commision.[7]

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-15892 Filed 8-1-73;8:45 am]

[6] Opinion No. 659, *supra.*

[Docket No. RP73-47]

SEA ROBIN PIPELINE CO.

Further Extension of Time and Postponement of Prehearing Conference and Hearing

JULY 25, 1973.

On July 18, 1973, Sea Robin Pipeline Company filed a motion for a further extension of time to file testimony and to reset the hearing dates, as fixed by notice issued July 6, 1973. The motion states that no objections to the motion have been received. The notice issued July 6, 1973, erroneously referred to the motion filed by staff as having been filed by Sea Robin Pipeline Company.

Upon consideration notice is hereby given that the procedural dates are further modified as follows:

Service of Intervener evidence, August 1, 1973.

Sea Robin Rebuttal Evidence, August 15, 1973.

Prehearing Conference, August 21, 1973 (10:00 a.m., e.d.t.).

Hearing, September 4, 1973 (10:00 a.m., e.d.t.).

MARY B. KIDD, *Acting Secretary.*

[FR Doc.73-15901 Filed 8-1-73;8:45 am]

[Docket No. E-8224]

SIERRA PACIFIC POWER CO.

Order Accepting for Filing, and Suspending, Proposed Increased Electric Rates, Granting Intervention, and Establishing Hearing Procedures

JULY 26, 1973.

Sierra Pacific Power Company (Sierra) on May 22, 1973, tendered for filing a proposed increase in FPC Rate Schedule Nos. R-1 and R-2 (redesignated as FPC Rate Schedule R) to become effective July 31, 1973. Sierra states that the proposed rates would result in an increase in revenues of $148,864 based on a test year ended December 31, 1972. Sierra maintains that the increase in rates is necessitated by increases in operating expenses, particularly in fuel costs; increases in costs of plant additions; and higher capital costs. According to Sierra, the rate of return under the proposed rates would be 9.00 percent.

The filing was noticed on June 8, 1973, with comments, protests and/or petitions to intervene due by June 27, 1973. Timely petitions to intervene have been filed by the Truckee-Donner Public Utility District, the City of Fallon, Nevada, Mt. Wheeler Power, Inc., Pacific Gas and Electric Company, and California-Pacific Utilities Company.

Review of the rate filing indicates that it raises certain issues which may require development in an evidentiary hearing. The proposed increases in rates and charges have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful.

The Commission finds.

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in Sierra's FPC Rate Schedule Nos. R-1 and R-2, as proposed to be amended in this docket, and that the tendered Rate Schedules be suspended as hereinafter provided.

(2) The disposition of this proceeding should be expedited in accordance with the procedure set forth below.

(3) In the event this proceeding is not concluded prior to the termination of the suspension period herein ordered, the placing of the rate changes applied for in this proceeding into effect, subject to refund with interest while pending Commission determination as to their justness and reasonableness, is consistent with the purpose of the Economic Stabilization Act of 1970, as amended.

(4) The participation of the above named petitioners in this proceeding may be in the public interest.

The Commission orders.

(A) Pursuant to the authority of the Federal Power Act, particularly Section 205(e) thereof, the Commission's rules of practice and procedure, and the regulations Under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held, commencing with a prehearing conference on November 27, 1973, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, concerning the lawfulness of the rates, charges, classifications and services contained in Sierra's FPC Rate Schedule as proposed to amended herein.

(B) Pending hearing and a final decision in this proceeding, Sierra's proposed FPC Rate Schedule Nos. R-1 and R-2 (redesignated as FPC Rate Schedule R) tendered on May 22, 1973, are suspended and the use thereof deferred until December 31, 1973.

(C) At the prehearing conference on November 27, 1973, Sierra's prepared testimony together with its entire rate filing shall be admitted to the record as its complete case-in-chief subject to appropriate motions, if any, by parties to

[7] Chairman Nassikas concurring in part filed a separate statement which is appended to the original document.

the proceeding. All parties will be expected to come to this conference prepared to effectuate the provisions of § 1.18 of the Commission's rules of practice.

(D) On or before November 6, 1973, the Commission Staff shall serve its prepared testimony and exhibits. The prepared testimony and exhibits of any and all intervenors shall be served on or before November 20, 1973. Any rebuttal evidence by Sierra shall be served on or before December 4, 1973. Cross-examination of the evidence filed will commence December 11, 1973.

(E) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5 (d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control the proceeding in accordance with the policies expressed in the Commission's Rules of Practice and Procedure.

(F) The above-named petitioners are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission; *Provided, however,* That the participation of such intervenors shall be limited to matters affecting rights and interests specifically set forth in the respective petitions to intervene and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they, or any of them, might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(G) Nothing contained in this order shall relieve the applicant of any responsibility imposed by the Economic Stabilization Act of 1970, (Public Law 91-379, 84 Stat. 799, as amended by Public Law 92-15, 85 Stat. 38), or by any Executive Order or rules and regulations promulgated pursuant to such Act.

(H) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-15899 Filed 8-1-73;8:45 am]

[Docket Nos. CP73-27, CI73-878, CI73-879, CI73-880 and CP72-292]

STINGRAY PIPELINE CO. ET AL.

Notice of Extension of Time

JULY 26, 1973.

Stingray Pipeline Co., Sun Oil Co. and Pennzoil Offshore Transmission Co.

On July 19, 1973, Sun Oil Company filed a motion for an extension of time to file and serve its direct case in Docket Nos. CI73-878, CI73-879 and CI73-880 as fixed by the order issued July 19, 1973, in the above-designated matter. By letter received July 25, 1973, Sun Oil Company stated that there was no opposition from any of the parties to the request.

Upon consideration, notice is hereby given that the time is extended to August 15, 1973, within which Sun Oil Company shall file and serve its direct case in the above matter. All other dates in the order remain unchanged.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-15900 Filed 8-1-73;8:45 am]

[Docket No. CI73-681]

TEXAS GAS EXPLORATION CORP.

Order Granting Interventions and Fixing Date for Hearing

(Issued July 25, 1973)

The above-named Applicant has filed an application pursuant to section 7(c) of the Natural Gas Act,[1] and pursuant to § 2.75[2] of the Commission's General Policy Statements, the new Optional Procedure for Certificating New Producer Sales of Natural Gas set forth in Order No. 455,[3] (hereinafter § 2.75) for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce.

On April 10, 1973, Texas Exploration Corporation (Texas Gas) filed its application in Docket No. CI73-681 for the certification of a sale of natural gas to Consolidated Gas Supply Corporation (Consolidated) from the Block 255 Field, Vermillion Area, Offshore Louisiana.

Pursuant to the optional pricing procedure, Texas Gas submitted its contract with Consolidated dated January 5, 1973. The contract has a twenty (20) year term, and provides for an initial rate of 45.0 cents per Mcf at 15.025 psia with 0.5 cent per Mcf escalations every year, subject to downward Btu adjustment. The contract further provides for reimbursement of 87.5 percent of any new or additional taxes to the seller.

Initial deliveries were commenced pursuant to § 2.75n (18 CFR 2.75n) on April 13, 1973.

Texas Gas' application in this docket was noticed on April 23, 1973, and the notice was published in the Federal Register on March 1, 1973 (38 FR 10770). Timely protests or petitions to intervene were due on or before May 14, 1973. A Notice of Intervention was filed by The Public Service Commission for the State of New York, and a petition to intervene was filed by the following parties:

Associated Gas Distributors.
American Public Gas Association.

Having reviewed the petitions to intervene, we find that the above-mentioned petitioners have sufficient interest in this proceeding to warrant intervention.

A formal hearing has been requested, and we find a hearing is desirable to determine, on the record, whether the present and future public convenience and necessity will be served by certificating this sale, and whether the proposed rate is just and reasonable, taking into consideration all factors bearing on maintenance of an adequate and reliable supply of gas, delivered at the lowest reasonable cost.[4]

This hearing is not the proper forum for the relitigation of the propriety of the § 2.75 procedures; that matter is now before the Court of Appeals. See n. 3, supra. This hearing will be addressed solely to the issues of public convenience and necessity, and the justness and reasonableness of the particular sales and rates herein proposed.

Those parties and intervenors desiring to submit cost and non-cost data should structure their evidence to reflect the tests under § 2.75 for determining the justness and reasonableness of the rate sought,[5] bearing in mind that with respect to proceedings under § 2.75 of our regulations, we have heretofore stated:

> We will, absent a showing of special circumstances, accept as conclusive the cost findings embodied in our area rate decisions, as such may be supplemented from time to time by appropriate Commission order. (Order 455, paragraph 63, page 21).

We do not, therefore, open this hearing to the presentation of cost data, other than that incorporated from the Belco, et al. proceedings as hereinafter ordered, unless, in the judgment of the Presiding Administrative Law Judge, a showing of special circumstances is made.

We also direct the attention of the parties to our recent statement in Opinion No. 639, Area Rates for the Appalachian and Illinois Basin Areas, Docket No. R-371, opinion issued December 13, 1972, wherein we stated:

> We have been admonished not to rely on cost alone, but also to consider producer rate levels in the context of "non-cost" factors of supply and demand, capital formation, and probable industry response to any given level of rates. Austral Oil, et al. v. F.P.C., 428 F. 2d 407 (CA5, 1970). Applications under § 2.75 will be so considered * * *.

No intervenor has questioned Consolidated's need for the additional supplies of natural gas that will be available to it as a result of this purchase. However, we are unable to determine Consolidated's actual need for additional supplies of natural gas since it has failed to submit the certification required by § 2.75 (18 CFR 2.75h). Accordingly, we will require Consolidated to present evi-

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[1] 15 U.S.C. § 717, *et seq.* (1970).
[2] 18 C.F.R. § 2.75.
[3] Statement Of Policy Relating To Optional Procedure For Certificating New Producer Sales of Natural Gas, Docket No. R-441, — P.P.C. — (issued August 3, 1972), appeal pending sub nom. John E. Moss, et al. v. F.P.C., No. 72-1837 (D.C. Cir.).
[4] Opinion And Order Issuing Certificate Of Public Convenience And Necessity And Determining Just And Reasonable Rates, Opinion No. 659, Belco Petroleum Corporation, Agent, et al., Docket Nos. CI73-293, et al., — P.P.C. —, — (issued May 30, 1973, slip op. at para. 21, p. 5).
[5] Opinion 659 gave consideration to such factors as (1) cost, (2) return, (3) alternate supply costs, (4) contract rates for intra- and interstate sales, (5) commodity value, Opinion No. 659, supra.

dence as to its need for additional supplies of natural gas and as to whether or not a comparable supply of natural gas is available to Consolidated at any rate lower than the rate proposed in this application.

We have just rendered a decision in the first proceedings under § 2.75 in which a full evidentiary record was made.[6] We think it appropriate in these circumstances to incorporate by reference the record developed in that proceeding into these consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

The Commission finds.

(1) It is necessary and in the public interest that the above-docketed proceeding be set for hearing.

(2) It is desirable and in the public interest to allow the above-named petitioners to intervene in this proceeding in order that they may establish the facts and the law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders.

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 7, 15, and 16 thereof, The Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, ch. I) a public hearing shall be held concerning the issues presented by the application herein commencing August 27, 1973, at 10:00 a.m. (e.d.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(B) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR § 3.5(d)), shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

(C) Applicant and all other intervenors supporting the applications shall file their direct testimony and evidence on or before August 10, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(D) The Commission Staff and all intervenors opposing the application shall file their direct testimony and evidence on or before August 17, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, and all other parties to these proceedings.

(E) All rebuttal testimony and evidence shall be served on or before August 22, 1973. All parties submitting rebuttal testimony and evidence shall serve such testimony and evidence upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(F) The record in the Belco case, Docket Nos. CI73-293, et al., is incorporated by reference into the subject consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

(G) The above-named petitioners are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and *Provided, further,* That the admission of such interests shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(H) The Administrative Law Judge's decision shall be rendered on or before October 31, 1973.

(I) All parties shall submit briefs on exceptions to the Commission on or before November 12, 1973.

By the Commission.[1]

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-15893 Filed 8-1-73;8:45 am]

[Docket No. CI73-676]

FLORIDA GAS EXPLORATION COMPANY (OPERATOR) ET AL.

Order Granting Interventions and Fixing Date for Hearing

JULY 25, 1973.

The above-named Applicant has filed an application pursuant to section 7(c) of the Natural Gas Act,[1] and pursuant to § 2.75[2] of the Commission's General Policy Statements, the new Optional Procedure for Certificating New Producer Sales of Natural Gas set forth in Order No. 455,[3] (hereinafter § 2.75) for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce.

On April 6, 1973, Florida Gas Exploration Company (Exploration) filed in Docket No. CI73-676 an application for certification of sales by it, Southeastern Exploration, Ltd. (1970) (Southeastern 70), and Southeastern Exploration, Ltd. (1972-A) (Southeastern 72-A) to Florida Gas Transmission Company (Florida Gas) from the Peterman No. A-1 Well, East Bayou Pigeon Field, Iberia Parish, Onshore Southern Louisiana.

Pursuant to the optional procedure, Exploration submitted its contract with Florida Gas dated December 1, 1972 with its application. The basic contract provides for an initial rate of 35.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustments, and price escalations of 1.0 cent per Mcf every year of the contract term. The contract term is twenty (20) years and further provides for reimbursement to the seller of 100 percent of all new or additional taxes.

Exploration is affiliated with Florida Gas and states that the 35.0 cents per Mcf price is the same as the contract prices that Florida Gas pays to certain non-affiliated producers.

Exploration's application was noticed on April 23, 1973 and the notice was published in the FEDERAL REGISTER on March 1, 1973 (38 F.R. 10762). Timely petitions to intervene or protests were due on or before March 14, 1973. Timely petitions to intervene were filed by the following parties:

Florida Gas Transmission Company
Associated Gas Distributors
American Public Gas Association (late).

Having reviewed the petitions to intervene, we find that all of the above-mentioned petitioners have sufficient interest in this proceeding to warrant intervention.

A formal hearing has been requested, and we find a hearing is desirable to determine, on the record, whether the present and future public convenience and necessity will be served by certificating this sale, and whether the proposed rate is just and reasonable, taking into consideration all factors bearing on maintenance of an adequate and reliable supply of gas, delivered at the lowest reasonable cost.[4]

This hearing is not the proper forum for the relitigation of the propriety of the § 2.75 procedures; that matter is now before the Court of Appeals. See n. 3, supra. This hearing will be addressed solely to the issues of public convenience and necessity, and the justness and reasonableness of the particular sales and rates herein proposed.

Those parties and intervenors desiring to submit cost and non-cost data should structure their evidence to reflect the tests under § 2.75 for determining the justness and reasonableness of the rate sought,[5] bearing in mind that with respect to proceedings under § 2.75 of our regulations, we have heretofore stated:

> We will, absent a showing of special circumstances, accept as conclusive the cost findings embodied in our area rate decisions, as such may be supplemented from time to time by appropriate Commission order. (Order 455, paragraph 63, page 21.)

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[1] Chairman Nassikas' statement, concurring in part, is filed as part of the original document.

[1] 15 U.S.C. 717, *et seq.* (1970).

[2] 18 CFR 2.75.

[3] Statement Of Policy Relating To Optional Procedure For Certificating New Producer Sales of Natural Gas, Docket No. R-441, — F.P.C. — (issued August 3, 1972), appeal pending sub nom. John E. Moss, et al. v. F.P.C., No. 72-1837 (D.C. Cir.).

[4] Opinion And Order Issuing Certificate Of Public Convenience And Necessity And Determining Just And Reasonable Rates, Opinion No. 659, Belco Petroleum Corporation, Agent, et al., Docket Nos. CI73-293, et al., — F.P.C. —, — (issued May 30, 1973, slip op. at para. 21, p. 5).

[5] Opinion 659 gave consideration to such factors as (1) cost, (2) return, (3) alternate supply costs, (4) contract rates for intra- and interstate sales, (5) commodity value, Opinion No. 659, supra.

[6] Opinion No. 659, supra.

We do not, therefore, open this hearing to the presentation of cost data, other than that incorporated from the Belco, et al. proceedings as hereinafter ordered, unless, in the judgment of the Presiding Administrative Law Judge, a showing of special circumstances is made.

We also direct the attention of the parties to our recent statement in Opinion No. 639, Area Rates for the Appalachian and Illinois Basin Areas, Docket No. R-371, opinion issued December 13, 1972, wherein we stated:

> We have been admonished not to rely on cost alone, but also to consider producer rate levels in the context of "non-cost" factors of supply and demand, capital formation, and probable industry response to any given level of rates. Austral Oil, et al. v. F.P.C., 428 F.2d 407 (CA5, 1970). Applications under Section 2.75 will be so considered * * *.

No intervenor has questioned Florida Gas's need for the approximately 1 billion cubic feet of natural gas that will be available as a result of this purchase. We note from the filings that Florida Gas is currently curtailing deliveries to its customers and is seeking approval of its curtailment plan in Docket No. RP66-4. Florida Gas is also making short-term emergency purchases in order to maintain its deliverability. Accordingly, the hearing provided for herein should not explore any issues related to Florida Gas's need for additional supplies of natural gas. However, we shall require Florida Gas to present evidence as to whether or not a comparable supply of natural gas is available to Florida Gas at any rate lower than the rate proposed in this application.

We have just rendered a decision in the first proceedings under § 2.75 in which a full evidentiary record was made.[2] We think it appropriate in these circumstances to incorporate by reference the record developed in that proceeding into these consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

The Commission finds.

(1) It is necessary and in the public interest that the above-docketed proceeding be set for hearing.

(2) It is desirable and in the public interest to allow the above-named petitioners to intervene in this proceeding in order that they may establish the facts and the law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders.

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 7, 15, and 16 thereof, The Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR Ch. I) a public hearing shall be held concerning the issues presented by the application herein commencing October 2, 1973, at 10:00 a.m. (e.d.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(B) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

(C) Applicant and all intervenors supporting the applications shall file their direct testimony and evidence on or before September 7, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(D) The Commission Staff and all intervenors opposing the application shall file their direct testimony and evidence on or before September 18, 1973. All testimoney and evidence shall be served upon the Presiding Administrative Law Judge, and all other parties to these proceedings.

(E) All rebuttal testimony and evidence shall be served on or before September 26, 1973. All parties submitting rebuttal testimony and evidence shall serve such testimony and evidence upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(F) The record in the Belco case, Docket Nos. CI73-293, et al., is incorporated by reference into the subject consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

(G) The above-named petitioners are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene: *And provided, further,* That the admission of such interests shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(H) The Administrative Law Judge's decision shall be rendered on or before November 9, 1973.

(I) All parties shall submit briefs on exceptions to the Commission on or before November 16, 1973.

By the Commission.[1]

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-15889 Filed 8-1-73;8:45 am]

[2] Opinion No. 659, *supra.*

[1] Chairman Nassikas concurring in part filed a separate statement as part of the original document.

[Docket No. CP74-14]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

JULY 26, 1973.

Take notice that on July 19, 1973, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP74-17 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a change in the storage service performed under its Rate Schedule S-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to revise Paragraph 6.12 of its Rate Schedule S-1, FPC Gas Tariff, Third Revised Volume No. 1, Sheet 27 from:

> The total of Buyer's withdrawals of gas from storage during the Withdrawal Period for any Storage Year which Natural will be obligated to deliver shall not exceed 66⅔% of such Buyer's Storage * * *

to:

> The total of Buyer's withdrawals of gas from storage during the Withdrawal Period for any Storage Year which Natural will be obligated to deliver shall not exceed 66⅔ percent of such Buyer's Storage Gas Balance as of November 1 of that year, plus all quantities of gas injected by Buyer during the Withdrawal Period which do not increase Buyer's Storage Gas Balance above Buyer's Storage.

Applicant states that the proposed change will afford its storage customers greater assurance of sustaining deliveries to their ultimate consumers during periods when winter weather is more severe than normal. Frequently, a period of below-normal temperatures is followed by a period of above-normal temperatures. To the extent that Applicant's customers have gas available for injection during the warmer periods, and providing that Applicant can physically inject quantities tendered for injection, Applicant's customers' capability of meeting succeeding periods of below-normal temperatures, particularly prolong and severe cold spells, is enhanced. Applicant states further that by permitting its customers to reinstate its obligation to deliver storage gas, following a period of withdrawals, none of its customers will receive more volume of gas than is presently authorized under Applicant's effective entitlement sheets and that if Applicant's customers could not avail themselves of this added protection against the occurrence of two or more severe cold spells in the winter, they would need to curtail other firm service during severe periods in order to provide sufficient gas to meet added space heating needs. During warm periods the gas they would now inject would go into the market for other firm service; and, consequently, the added storage protection offers an upgrading of service insofar as

it reduces volumes available for firm industrial use and increases human need space heating protection.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 20, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by §§ 7 and 15 of the Natural Gas Act and the commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-15887 Filed 8-1-73;8:45 am]

[Docket No. CP74-16]

NORTHERN NATURAL GAS COMPANY

Notice of Application

JULY 26, 1973.

Take notice that on July 19, 1973, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP74-16 an application pursuant to section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 18.8 miles of branchline loop facilities on its existing pipeline system in Iowa and Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate:

Approximately 1.8 miles of 8-inch loop in Scott County, Minnesota;

Approximately 3.9 miles of 6-inch loop in Wright and Sherburne Countries, Minnesota;

Approximately 5.1 miles of 6-inch loop in Carver County, Minnesota;

Approximately 0.7 mile of 4-inch loop in Wright County, Iowa;

Approximately 3.5 miles of 10-inch loop in Boone County, Iowa; and

Approximately 3.8 miles of 4-inch loop in Polk County, Iowa.

The total estimated cost of the proposed facilities is $961,000 which will be financed from cash on hand and funds generated from operations.

The purpose of the proposed facilities is to augment Applicant's ability to provide reliable gas service during the heating season. Applicant states that the proposed branchline loop will provide the necessary wintertime capacity to meet changing load patterns and increased flow requirements on certain portions of its system.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 20, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determinng the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by §§ 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-15888 Filed 8-1-73;8:45 am]

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

NOTICE OF COMMITTEE MEETINGS

Pursuant to the provisions of section 10 of Public Law 92-463, effective January 5, 1973, notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Monday, August 6, 1973.
Thursday, August 9, 1973.
Thursday, August 16, 1973.
Thursday, August 23, 1973.

The meetings will convene at 10:00 a.m. and will be held in Room 5A06A, Civil service Commission Building, 1900 E Street, NW., Washington, D.C.

The committee's primary responsibility is to study the prevailing rate system and from time to time advise the Civil Service Commission thereon.

At these scheduled meetings, the committee will consider proposed plans for implementation of Public Law 92-392, which law establishes pay systems for Federal prevailing rate employees.

The meetings will be closed to the public under a determination to do so, made under the provisions of section 10 (d) of Public Law 92-463.

However, members of the public who may wish to do so, are invited to submit material in writing to the Chairman concerning matters felt to be deserving of the committee's attention. Additional information concerning these meetings may be obtained by contacting the Chairman, Federal Prevailing Rate Advisory Committee, Room 5451, 1900 E. Street, NW., Washington, D.C.

DAVID T. ROADLEY,
Chairman, Federal Prevailing Rate Advisory Committee.

JULY 30, 1973.

[FR Doc.73-15916 Filed 8-1-73;8:45 am]

FEDERAL RESERVE SYSTEM

BARNETT BANKS OF FLORIDA, INC.

Order Approving Acquisition of Bank

Barnett Banks of Florida, Inc., Jacksonville, Florida, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under § 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 90 percent or more of the voting shares of The First National Bank of Bay Harbor Islands, Bay Harbor Islands, Florida ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls 41 banks with total deposits of $1.3 billion, representing approximately 7 percent of total deposits of commercial banks in the State, and is the second largest banking organization in Florida. (All banking data are as of December 31, 1972, and reflect holding company acquisitions approved as of June 30, 1973, including four new acquisitions since January 1, 1973.) The acquisition of Bank (deposits of $28.6 million) would increase Applicant's share of the total State deposits by less than .2 percent, and it would remain the second largest banking organization in Florida.

Bank is located in the Greater Miami Banking Market (the relevant market) where it controls .6 percent of market deposits. Applicant presently operates 7 of the 98 banks in the Greater Miami area. It is the fifth largest of 41 banking organizations represented in the market and holds but 4.8 percent of the total market deposits. Thus, consummation of the proposal will not place Applicant in a dominant position in the area nor have any adverse effect on competing area banks.

Applicant's nearest banking subsidiary, Barnett Bank of Miami Beach, is located 8 miles south of Bank. Bank draws only a minimal amount of its deposits from the service area of this subsidiary. In view of the distance between Bank and this subsidiary, the heavy traffic congestion, and the number of intervening banks, the Board concludes that no significant competition would be eliminated upon consummation of the proposal. Thus, competitive considerations are consistent with approval of the application.

Applicant has recently injected capital into certain of its subsidiary banks and has increased its own equity capital by converting $6.7 million of debentures into common stock. It has also recently completed a public stock offering. In light of these actions, the Board finds the financial condition and managerial resources of Applicant, its subsidiaries, and Bank as satisfactory; and prospects for each are favorable.

Applicant intends to increase the volume and range of Bank's lending services and, in an area of increasing local construction, make Bank a more aggressive competitor in the origination of construction and mortgage loans. Applicant will sever Bank's indirect affiliation with a savings and loan association and, thus, promote a more aggressive lending policy for Bank. Applicant will also cause Bank to seek trust powers and offer trust services. Accordingly, considerations relating to convenience and needs of the communities to be served are consistent with and lend weight to approval. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[1] effective July 24, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-15937 Filed 8-1-73;8:45 am]

[1] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Sheehan, and Bucher. Absent and not voting: Governors Brimmer and Holland.

CENTRAL NATIONAL BANCSHARES, INC.

Acquisition of Bank

Central National Bancshares, Inc., Des Moines, Iowa, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Adair County State Bank, Greenfield, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 12, 1973.

Board of Governors of the Federal Reserve System, July 24, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-15933 Filed 8-1-73;8:45 am]

FIRST INTERNATIONAL BANCSHARES, INC.

Acquisition of Bank

First International Bancshares, Inc., Dallas, Texas, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Citizens First National Bank of Tyler, Tyler, Texas. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 20, 1973.

Board of Governors of the Federal Reserve System, July 23, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-15934 Filed 8-1-73;8:45 am]

FIRST INTERNATIONAL BANCSHARES, INC.

Acquisition of Bank

First International Bancshares, Inc., Dallas, Texas, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to First Hutchings-Sealy National Bank, Galveston, Texas. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 20, 1973.

Board of Governors of the Federal Reserve System, July 24, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-15935 Filed 8-1-73;8:45 am]

FLORIDA NATIONAL BANKS OF FLORIDA

Acquisition of Bank

Florida National Banks of Florida, Inc., Jacksonville, Florida, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 90 percent or more of the voting shares of Northside Bank of Miami, Miami, Florida. The factors that are considered in acting on the application are set forth in §3(c) of the Act (12 U.S.C. 1842(c)).

Applicant's banks have been controlled by the Alfred I. duPont Trust which was required by the 1966 Amendments to the Act to divest either its banking or nonbank assets by July 1, 1971. At the present time the Trust owns approximately 24 percent of Florida National's voting shares, and Trustees hold the power to vote approximately another 10 percent of Florida National's voting shares. On July 5, 1973, the Board notified the duPont Trust that it had made a preliminary determination that the duPont Trust has not made on effective divestiture of control under the Act and that the Trust continues to exercise control or a controlling influence over the management or policies of Florida National and or its subsidiary banks. The duPont Trust has been granted an extension to October 8, 1973, of the time within which it must respond to the Board's determination. Processing of the present application is not intended to reflect acquiesence with the Trust's previously stated contention that it is not a bank holding company with respect to the banks in the Florida National system.

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 20, 1973.

Board of Governors of the Federal Reserve System, July 24, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-15936 Filed 8-1-73;8:45 am]

PAN NATIONAL GROUP, INC.

Order Approving Acquisition of Bank

PanNational Group, Inc., El Paso, Texas, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under § 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 69.9 percent[1] of the voting shares of the successor by merger to Bassett National Bank of El Paso, El Paso, Texas ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the thirteenth largest bank holding company in Texas, controls two banks with total deposits of approximately $294 million representing less than 1 percent of total commercial bank deposits in the State, and approximately 37 percent of commercial bank deposits in the El Paso banking market. Bank is the seventh largest of 13 banks in the El Paso market, controlling approximately $20 million (or 2.4 percent) of the deposits in that market. (All banking data are as of December 31, 1972.) The proposed acquisition will not change Applicant's rank or percentage of deposits controlled among bank holding companies in the State.[2]

Bank has been controlled by Applicant and its subsidiaries and predecessors since principals of Applicant organized Bank in 1961. In addition to the 30.1 percent of Bank's common stock now held by Applicant, common shareholders of Applicant and Bank hold an additional 40.4 percent of Bank. Approval of the application, therefore, will not change the control of commercial bank deposits in El Paso, as Applicant, its subsidiaries or predecessors, have controlled Bank for 12 years and the prospects for disaffiliation appear unlikely. Hence, the acquisition will not likely have an effect on either present or future competition.

The financial and managerial resources of Applicant, its subsidiaries and Bank appear satisfactory and are consistent with approval. Future prospects of all appear favorable in view of the expected continuation of economic expansion in the El Paso area. To the extent acquisition by Applicant will enable Bank to more fully draw upon the specialized services, managerial expertise and larger resources of Applicant, and, thereby, provide these facilities to its service area, convenience and needs considerations are consistent with approval. It is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order of (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[3] effective July 24, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-15930 Filed 8-1-73;8:45 am]

[1] Applicant presently owns 30.07 percent of the voting shares of Bank. In connection with Applicant's application to become a bank holding company approved by the Board on February 29, 1972, Applicant was required to divest its 28.4 percent interest in Charles Bassett Center, Inc. (a nonbank subsidiary engaged in shopping center development) and its 12 percent interest in Darbyshire Steel Company, Inc. (acquired through loan foreclosure in 1972). Applicant has advised the Board that the required divestiture will take place by February 1974.

[2] In addition to the present application, Applicant has also filed applications to acquire two other banks. Consummation of all three proposals will mean that Applicant will control $352 million in deposits and will still rank thirteenth in the State.

POPULAR BANCSHARES CORPORATION

Acquisition of Bank

Popular Bancshares Corporation, Miami, Florida, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 99 percent or more of the voting shares of Popular Bank of Hialeah, Hialeah, Florida. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 20, 1973.

Board of Governors of the Federal Reserve System, July 24, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-15932 Filed 8-1-73;8:45 am]

[3] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Sheehan, and Bucher. Absent and not voting: Governors Brimmer and Holland.

SOUTHEAST BANKING CORP.

Acquisition of Bank

Southeast Banking Corp., Miami, Florida, has applied for the Board's approval under § 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 Southeast National Bank of Manatee, Manatee County, Florida, a proposed new bank. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 12, 1973.

Board of Governors of the Federal Reserve System, July 24, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-15931 Filed 8-1-73;8:45 am]

GENERAL SERVICES ADMINISTRATION

ARCHIVES ADVISORY COUNCIL

Notice of Meeting

Notice is hereby given that the Region 7 Archives Advisory Council will meet at the time and place indicated. Anyone who is interested in attending or wants additional information should contact the person shown below.

REGIONAL ARCHIVES ADVISORY COUNCIL
REGION 7

Meeting date: September 14, 1973.
Time: 1:00 p.m.–5:00 p.m.
Place: Faculty Lounge, Library Building Centenary College Shreveport, LA 71104.

Agenda: Increasing research in archives branch holdings; NARS microfilm publication program; discussion of plans for observance of the Bicentennial of the American Revolution.

For further information contact: Ivan D. Eyler, NARS Regional Commissioner, 819 Taylor Street, Fort Worth, TX 76102, 817-334-2759.

Issued in Washington, DC on July 26, 1973.

JAMES B. RHOADS,
Archivist of the United States.

[FR Doc.73-15902 Filed 8-1-73;8:45 am]

[FEDERAL PROPERTY MANAGEMENT REGULATIONS TEMPORARY REGULATION D-40]

SECRETARY OF THE TREASURY

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of the Treasury to assist in controlling violations of law at United States Treasury locations.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the Act of June 1, 1948 (62 Stat. 281), as amended, authority is hereby delegated to the Secretary of the Treasury to appoint uniformed guards as special policemen, to make all needful rules and regulations, and to annex to such rules and regulations such reasonable penalties, not to exceed those prescribed in 40 U.S.C. 318c, as will ensure their enforcement for the protection of Treasury Building and Treasury Annex, Washington, DC; Bureau of Engraving and Printing and Bureau of Engraving and Printing Annex, Washington, DC; United States Mint, Denver, Colorado; United States Bullion Depository, Fort Knox, Kentucky; United States Assay Office, 32 Old Slip, New York, New York; new United States Mint, Fifth and Arch Streets, Philadelphia, Pennsylvania; United States Assay Office, 155 Hermann Street, San Francisco, California; the old United States Mint Building, 88 Fifth Street, San Francisco, California; and United States Bullion Depository, West Point, New York, over which the United States has exclusive or concurrent legislative jurisdiction.

b. The Secretary of the Treasury may redelegate this authority to any officer or employee of the Department of the Treasury.

c. This authority shall be exercised in accordance with the limitations and requirements of the above cited Acts, and the policies, procedures, and controls prescribed by the General Services Administration.

4. *Revocation.* This regulation revokes FPMR Temporary Regulation D-22.

ARTHUR F. SAMPSON,
Administrator of General Services.

JULY 25, 1973.

[FR Doc.73-15903 Filed 8-1-73;8:45 am]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

CHRISTOPHER COAL CO. AND GLEN IRVAN CORP.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (2.0 mg/m³) have been received as follows:

(1) ICP Docket No. 20278, CHRISTOPHER COAL COMPANY, Pursglove No. 15 Mine, USBM ID No. 46 01454 0, Osage, West Virginia, Section ID No. 007-0 (2 North), Section ID No. 009-0 (11 North), Section ID No. 010-0 (1 Right), Section ID No. 011-0 (1A), Section ID No. 013-0 (2A).

(2) ICP Docket No. 20602, GLEN IRVAN CORPORATION, Bark Camp No. 1 Mine, USBM ID No. 36 02391 0, Penfield, Pennsylvania, Section ID No. 003 (2nd Right).

In accordance with the provisions of section 202(b)(4) (30 U.S.C. 842(b)(4)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be filed in accordance with 30 CFR Part 505 (35 FR 11296, July 15, 1970), as amended, copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Room 800, 1730 K Street, NW., Washington, D.C. 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

JULY 30, 1973.

[FR Doc.73-15877 Filed 8-1-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

MECHANICAL ENTERPRISES, INC.

Order Suspending Trading

JULY 26, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.16⅔ par value, and all other securities of Mechanical Enterprises, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 2:30 p.m. (e.d.t.) July 26, 1973 through midnight e.d.t. August 4, 1973.

By the Commission.

RONALD F. HUNT,
Secretary.

[FR Doc.73-15963 Filed 8-1-73;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

MASSACHUSETTS DEVELOPMENTAL PLAN

Submission of Plan and Opportunity for Public Comment

1. *Submission and Description of Plan.* Pursuant to section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) and § 1902.11 of Title 29, Code of Federal Regulations, notice is hereby given that an Occupational Safety and Health Plan for the State of Massachusetts has been submitted to the Assistant Secretary of Labor for Occupational Safety and Health. The Assistant Secretary has preliminarily reviewed the plan and hereby gives notice that the question of its approval is in issue before him.

The plan designates the Massachusetts Department of Labor and Industries as the agency responsible for administering the plan throughout the State. Under the legislation, the Department of Labor and Industries will have full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State with the exception of employees of the United States, employees working in workplaces within the exclusive Federal maritime jurisdiction, and employees whose working conditions are regulated by Federal agencies other than the Department of Labor under the provisions of section 4(b)(1) of the Occupational Safety and Health Act of 1970. (84 Stat. 1592 29 U.S.C. 653(b)(1)).

The plan includes proposed enabling legislation to be considered by the Massachusetts Legislature during its 1973 session to bring the plan into conformity with the requirements of Part 1902. The legislation will apply to all places of employment and cover all classes of employment except private and domestic employment.

The proposed legislation provides that the Commissioner of the Department of Labor and Industries shall establish and may modify standards for occupational safety and health, and provides for the procedures involved; that he shall establish rules and regulations for the enforcement of the standards; that there shall be an advisory committee on occupational safety and health; that employers may request temporary variances; that the commissioner or his authorized representative may make inspections, and they shall be made without advance notice except in special cases; and that if the inspector believes a standard has been violated he shall issue a written citation to the employer. There are provisions made for prompt restraint of imminent danger situations; monitoring of employee's exposure to toxic materials; a system of penalties; recordkeeping; and training programs.

The proposed legislation is accompanied by a statement of the Governor's support for it and an opinion from the Attorney General that it is consistent with the constitution and other laws of the State. There is set forth in the plan a timetable projection for all developmental aspects of the plan. The plan contains information on personnel to be employed directly; on jurisdictional relations with other State agencies; and on the proposed budget and resources.

2. *Location of Plan for Inspection and Copying.* A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of Federal and State Operations, Occupational Safety and Health Administration, Room 305, 400 First Street N.W., Washington, D.C. 20210; Regional Administrator, Occupational Safety and Health Administration, 18 Oliver Street—5th Floor, Boston, Massachusetts 02110; Massachusetts Department of Labor and Industries, Room 1101, State Office Building, 100 Cambridge

Street, Boston, Massachusetts 02202; and Massachusetts Department of Labor and Industries, Branch Office, 165 Liberty Street—1st Floor, Springfield, Massachusetts 01103.

3. *Public Participation.* Interested persons are hereby given until September 4, 1973, to submit to the Assistant Secretary written data, views, and arguments concerning the plan. The submissions are to be addressed to the Director, Office of Federal and State Operations, Occupational Safety and Health Administration, Railway Labor Building, Room 305, 400 First Street N.W., Washington, D.C. 20210. The written comments will be available for public inspection and copying at the above address.

Copies of pages from the plan or of written comments received with respect thereto will be provided in accordance with the general Department of Labor fee schedule (29 CFR 70.62(a)).

Any interested person(s) may request a hearing concerning the proposed plan, or any part thereof, by filing particularized written objections thereto within the time allowed for comments specified above. If the Assistant Secretary finds that substantial objections are filed, he shall hold a formal or informal hearing on the subjects and issues involved.

The Assistant Secretary for Occupational Safety and Health shall thereafter consider all relevant comments and arguments presented and issue a decision as to approval or disapproval of the plan.

Signed at Washington, D.C., this 30th day of July, 1973.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.73-15960 Filed 8-1-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 310]

ASSIGNMENT OF HEARINGS

JULY 30, 1973.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 107515 Sub 805, Refrigerated Transport Co., Inc., now assigned September 11, 1973, MCC 7878, Transcon Lines—Investigation and Revocation of Certificates, now assigned September 14, 1973, MC 113855 Sub 267, International Transport, Inc., now assigned September 17, 1973, MC 110689 sub 6, Airway Trucking Co., now assigned September 24, 1973, will be held in Room 8544, 300 N. Los Angeles, Street, Los Angeles, Calif.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-15949 Filed 8-1-73;8:45 am]

[Notice 102]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JULY 27, 1973.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67, (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the Federal Register. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

No. MC 15897 (Sub-No. 12 TA), filed July 11, 1973. Applicant: O. K. TRANSFER AND STORAGE CO. 207 S. Union Street P.O. Box 1602, Shawnee, Okla. 74801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Uncrated store fixtures and furnishings*, in mixed loads with one or more of the commodities named in (2) below; and (2) *such commodities* as are dealt in by electronic equipment and supply stores in mixed loads with the commodities set forth in (1) above, from the warehouse facilities of the Radio Shack Division of the Tandy Corporation at Garden Grove, Calif., to Hayden, Mesa, Peoria, Phoenix and Yuma, Ariz.; Boise, Butte City and Twin Falls, Idaho; Las Vegas, Nev.; Bend, Eugene, Portland, Roseburg and Salem, Oreg.; Ogden and Salt Lake City, Utah; Bellevue, Everett, Federal Way, Gig Harbor, Issaquah, Kirkland, Marysville, Mt. Vernon, Renton, Seattle, Tacoma and Vancouver, Wash., for 180 days. SUPPORTING SHIPPER: Radio Shack, Div. of Tandy Corporation, Ray Hicks, Warehouse Manager, 12821 Knotts St., Garden Grove, Calif. 92645. SEND PROTESTS TO: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Rm. 240 Old P.O. Bldg., 215 NW Third, Oklahoma City, Okla. 73102.

No. MC 44639 (Sub-No. 74 TA) filed July 17, 1973 Applicant: L. & M. EXPRESS CO., INC. 220 Ridge Road Lyndhurst, N.J. 07071 Applicant's representative: Herman B. J. Weckstein 60 Park Place Newark, N.J. 07102 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel and materials and supplies* used in the manufacture of wearing apparel (except commodities in bulk), between Eagle Rock, Va., on the one hand, and, on the other, Copiaque, Long Island, N.Y., for 180 days. SUPPORTING SHIPPER: Famous Cottons, Inc., 590 Oak Street, Copiaque, Long Island, N.Y. SEND PROTESTS TO: District Supervisor Joel Morrows, Bureau of Operations, Interstate Commerce Commission, 9 Clinton Street, Newark, N.J. 07102.

No. MC 56640 (Sub-No. 29 TA) filed July 17, 1973. Applicant: DELTA LINES, INC. 333 Hegenberger Road, Oakland, Calif. 94621. Applicant's representative: Marshall G. Berol, 100 Bush Street, San Francisco, Calif. 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: *General commodities* (except household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and Classes A and B explosives), REGULAR ROUTES: (A) between Reno and Boulder City, Nev. serving all intermediate points, and the off-route points of the Tonopah Test Range and the Atomic Energy Commission Test Site (Nevada Test Site) located in Nye and Clark Counties, Nev.: from Reno over U.S. Highway 40 to its junction with U.S. Alternate 95 at or near Fernley; thence over U.S. Alternate 95 to its junction with U.S. Highway 95 at or near Fallon; thence over U.S. Highway 95 to Boulder City, and return over the same route; (B) between Fernley, Nev. and Silver Springs, Nev., serving all intermediate points: from Fernley over U.S. Alternate 95, to Silver Springs, and return over the same route; (C) between Yerington, Nev. and junction U. S. Highway 95 (at or near Schurz, Nev.), serving all intermediate points: from Yerington over U.S. Alternate 95, to its junction with U.S. Highway 95 (at or near Schurz), and return over the same route; and (D) between Luning, Nev. and Gabbs, Nev., serving all intermediate points, and all points within 5 miles of Nevada Highway 23 as off-route points: from Luning over Nevada Highway 23, to Gabbs, and return over the same route, IRREGULAR ROUTES: (A) between points in

Nye County, Nev. and (B) between points in Nye County, Nev., on the one hand, and, on the other, points in Clark, Esmeralda or Mineral Counties, Nev., for 180 days. Note: Applicant intends to tack with its own authority in MC 56640 and subs, and will interline with other carriers at any common service points. SUPPORTING SHIPPERS: There are approximately 71 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: A. J. Rodriguez, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 60157 (sub-No. 18 TA) filed July 17, 1973. Applicant: C. A. WHITE TRUCKING CO., 5327 N. Central Expressway, Suite 310, Dallas, Tex. 75205, Applicant's representative: Frank Crane (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Machinery, equipment, materials* and *supplies* used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and machinery, materials, equipment and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof; (2) *Earth drilling machinery and equipment, and machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (d) the injection or removal of commodities into or from holes or wells, between points in Texas, on the one hand, and, on the other, points in Arkansas and Illinois, for 180 days. SUPPORTING SHIPPER: Lone Star Steel Company, P.O. Box 35888, Dallas, Tex. 75235. SEND PROTESTS TO. Transportation Specialist Gerald T. Holland, Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 61396 (sub-No. 249 TA), filed July 16, 1973. Applicant: HERMAN BROS., INC., 2501 No. 11th Street, P.O. Box 189, Omaha, Nebr. 68101. Applicant's representative: Dale G. Herman (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash*, in bulk, from points in the Souix City, Iowa Commercial Zone, to points in Minnesota, Nebraska and South Dakota, for 180 days. SUPPORTING SHIPPER: PPA of Iowa, Inc., R. A. Pollard, Jr., Exec. Vice President, 2220 Hawkeye Drive, P.O. Box 1618, Sioux City, Iowa 51102. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Bldg., Omaha, Nebr. 68102.

No. MC 61396 (Sub-No. 250 TA) filed July 16, 1973 Applicant: HERMAN BROS., INC. 2501 No. 11th Street P.O. Box 189 Omaha, Nebr. 68101 Applicant's representative: Dale G. Herman (same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid asphalt, road oils, and residual fuel oils*, in bulk, in tank vehicles, from the facilities of Jebro, Inc., Bridgeport Industrial Park, Sioux City, Iowa, to points in Minnesota and South Dakota, for 180 days. SUPPORTING SHIPPER: Jebro, Inc., R. A. Everist, Pres., 313 So. Phillips Ave., Sioux Falls, S. Dak. 57102. SEND PROTESTS TO: District Supervisor Carroll Russell, Bureau of Operations, Interstate Commerce Commission, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 75302 (Sub-No. 12 TA) (CORRECTION) filed June 11, 1973, as MC 138685 (Sub-No. 1 TA) and republished in the FEDERAL REGISTER issue as corrected this issue. Applicant: DOUDELL TRUCKING COMPANY 545 Queen's Row (P.O. Box 842) San Jose, Calif. 95106 Applicant's representative: Marvin Handler 100 Pine Street Suite 2550 San Francisco, Calif. 94111 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel and iron and steel articles* as described in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, from points in Alameda, Contra Costa, Los Angeles, Napa, Riverside, San Bernardino, San Francisco, and San Mateo Counties, Calif., to points in Arizona; and (2) *steel drums*, from points in Arizona, to Vernon, Calif., for 180 days. SUPPORTING SHIPPERS: United States Steel Corp., 120 Montgomery St., San Francisco, Calif. 94106; Davis Walker Corp., 6315 Bandini Boulevard, Los Angeles, Calif. 90040; Kaiser Steel Corp., 300 Lakeshore Drive, Oakland, Calif. 94612; Bethlehem Steel Corp., 100 California, San Francisco, Calif. 94119; and Triangle Conduit & Cable Co., 1666 Willow Pass Road, Pittsburg, Calif. 94565. SEND PROTESTS TO: District Supervisor Claud W. Reeves, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102. Note: The purpose of this republication is to indicate applicant's correct docket No. MC 75302 (Sub-No. 12 TA) in lieu of No. MC 138685 (Sub-No. 1 TA) which was inadvertently previously published in error.

No. MC 106644 (Sub-No. 155 TA) (CORRECTION) filed July 5, 1973, published in the FEDERAL REGISTER issue of July 24, 1973, and, republished as corrected this issue. Applicant: SUPERIOR TRUCKING COMPANY, INC. 2770 Peyton Road, N.W. P.O. Box 916 (Box zip 30301) (Chattanoochee Station) Atlanta, Ga. 30321 Applicant's representative: Archie B. Culbreth Suite 246 1252 West Peachtree Street, N.W. Atlanta, Ga. 30309 Note: The purpose of this partial republication is show the applicant correct MC number as No. MC 106644 (Sub-No. 155 TA) in lieu of No. MC 10644 (Sub-No. 155 TA) which was published in error. The rest of the application remains the same.

No. MC 108973 (Sub-No. 9 TA) filed July 13, 1973 Applicant: INTERSTATE EXPRESS, INC. 2334 University Avenue St. Paul, Minn. 55114 Applicant's representative: Joseph J. Dudley W-1260 First National Bank Bldg. St. Paul, Minn. 55101 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products*, from St. Cloud, Minn., to points in Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Nebraska, North Dakota, South Dakota and Wisconsin, with no transportation for compensation on return except as otherwise authorized and (2) *Machinery, equipment, materials and supplies* used in, or in connection with the manufacture of paper and paper products, between St. Cloud, Minn., on the one hand, and, on the other, points in Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Nebraska, North Dakota, South Dakota and Wisconsin, for 180 days. RESTRICTIONS: The above described operations are limited to a transportation service to be performed under an amendment to an existing and continuing contract with Hoerner Waldorf Corporation. SUPPORTING SHIPPER: Hoerner Waldorf Corporation, 2250 Wabash Avenue, P. O. Box 3260, St. Paul, Minn. 56165. SEND PROTESTS TO: District Supervisor Raymond T. Jones, Bureau of Operations, Interstate Commerce Commission, 448 Federal Bldg., 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 109584 (Sub-No. 150 TA) filed July 18, 1973 Applicant: ARIZONA-PACIFIC TANK LINES P.O. Box 192 Littleton, Colo. 80120 Applicant's representative: Kenneth E. Stolz (Same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chocolate*, in bulk, in tank vehicles, from Salinas, Calif., to Salt Lake City, Utah, for 180 days. SUPPORTING SHIPPER: The Nestle Company, Inc., 100 Bloomingdale Road, White Plains, N.Y. 10605. SEND PROTESTS TO: District Supervisor Roger L. Buchanan, Bureau of Operations, Interstate Commerce Commission, 1961 Stout Street, Denver, Colo. 802020.

No. MC 111729 (Sub-No. 390 TA) filed July 18, 1973 Applicant: PUROLATOR COURIER CORP. 2 Nevada Drive Lake Success, N.Y. 11040 Applicant's representative: John M. Delany (Same address as above) Authority sought to operate as a *common carrier*, by motor

vehicle, over irregular routes, transporting: (1) *Radiopharmaceuticals, radioactive drugs, and medical isotopes and medical test kits,* between Alexandria and Richmond, Va., on the one hand, and, on the other, points in West Virginia, on traffic having an immediately prior or subsequent movement by air or motor vehicle; and (2) *business papers, records, audit and accounting media of all kinds, and advertising material moving therewith,* between Boston, Mass., on the one hand, and, on the other, Greece, N.Y., and Pittsford, N.Y., for 90 days. SUPPORTING SHIPPERS: Mallinckrodt Nuclear, Box 10172, Lambert Field, St. Louis, Mo.; Abbott Laboratories, Radiopharmaceutical Products Division, Abbott Park Building, 8, North Chicago, Ill.; Gorin Stores, Inc., P.O. Box 66, Kenmore Station, Boston, Mass. SEND PROTESTS TO: Anthony D. Giaimo, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 111729 (Sub-No. 391 TA) filed July 16, 1973. Applicant: PUROLATOR COURIER CORP. 2 Nevada Drive Lake Success, N.Y. 11040 Applicant's representative: John M. Delany (same address as above) Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Business papers, records, audit and accounting media of all kinds, and advertising material of all kinds,* moving therewith, (a) between Pittsburgh, Pa., on the one hand, and, on the other, Batavia, Buffalo, Hornell, Lakewood, Niagara, Olean, Rochester, and Victor, N.Y.; and Charleston, Huntington, and Williamson, W. Va.; (b) between Toledo, Ohio, on the one hand, and, on the other, Angola, Auburn, Fort Wayne, and Warsaw, Ind.; Adrian, Albion, Battle Creek, Coldwater, Hillsdale, Marshall, Monroe, Morenci, Sturgis, Tecumseh, and Union City, Mich.; (c) between Paramus, N.J. and York, Pa.; (d) between Red Lion, Pa., on the one hand, and, on the other, Jersey City, South Hackensack and South Rutherford, N.J.; Columbus, Ohio; Springfield and Canton, Mass.; and points in that portion of the New York, N.Y. Commercial Zone as defined in the Commercial Zones and Terminal Areas 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption provided by Section 203(b)(8) of the Act (the "exempt" zone); (e) between Nashville, Tenn., on the one hand, and, on the other, Bedford and Blytheville, Ark.; Chicago, Ill.; Bloomington and Indianapolis, Ind.; Corinth, Clarksdale and Oxford, Miss.; Cincinnati, Columbus and Springdale, Ohio; and points in Kentucky; and (f) between Elmhurst, Ill., on the one hand, and, on the other, points in Ohio, located on/or west of U.S. Interstate Highway 75 and (2) *cutting dies and small parts,* restricted against the transportation of packages or articles weighing in the aggregate more than 100 pounds from the consignor to one consignee on any one day, between Red Lion, Pa., on the one hand, and, on the other, Jersey City, South Hackensack and South Rutherford, N.J.; Columbus, Ohio; Springfield and Canton, Mass.; and points in that portion of New York, N.Y. Commercial Zone as defined in Commercial Zones and Terminal Areas, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption provided by Section 203(b)(8) of the Act (the "exempt" zone), for 90 days. SUPPORTING SHIPPERS: (1) Sears, Roebuck and Co., 4640 Roosevelt Blvd., Philadelphia, Pa.; (2) The Great Atlantic and Pacific Tea Company, Inc., 830 N. Westwood Avenue, P.O. Box 925, Toledo, Ohio; (3) McCrory - McLellan - Green Stores, 2955 East Market St., P.O. Box 3128, York, Pa.; (4) New Era Die Company, Maple Street Extended, Red Lion, Pa.; (5) Kuhn's-Big K Stores, Corp., 3040 Sidco Drive, Nashville, Tenn.; (6) Baird-Ward Printing Company, Inc., P.O. Box 539, Nashville, Tenn.; (7) Service Merchandise Company, P.O. Box 11356, Nashville, Tenn.; and (8) SCA Services Incorporated, 188 Industrial Drive, Elmhurst, Ill. SEND PROTESTS TO: Anthony D. Giaimo, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 113855 (Sub-No. 279 TA) filed July 17, 1973 Applicant: INTERNATIONAL TRANSPORT, INC. 2450 Marion Road S.E. Rochester, Minn. 55901 Applicant's representative: Thomas J. Van Osdel 502 First National Bank Bldg. Fargo, N. Dak. 58102 Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Tractors, tractor attachments, and parts* for tractors and tractor attachments, from Romeo, Mich., to points in Montana, Idaho, Oregon, Washington, California, Nevada, Utah and Arizona, for 180 days. SUPPORTING SHIPPER: Ford Motor Company Tractor, 2500 E. Maple Road, Troy, Mich. 48084. SEND PROTESTS TO: District Supervisor A. N. Spath, Interstate Commerce Commission, Bureau of Operations, 448 Federal Bldg., 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 117610 (Sub-No. 10 TA) filed July 18, 1973 Applicant: DERRICO TRUCKING CORP. 907 E. 141st St., Bronx, N.Y. 10454 Applicant's representative: Bert Collins Suite 6193 5 World Trade Center New York, N.Y. 10048 Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Pulpboard* such as—boxboard, kraftboard, paperboard, and paper for the account of Whippany Paper Board Company, Inc., from Whippany, N.J., to Central Islip, Valley Stream, Syosset, Hauppauge, Deer Park, Melville, Long Island, New York and Mt. Vernon, N.Y.; (2) *waste paper,* from the aforementioned destinations to Whippany, N.J., for 180 days. SUPPORTING SHIPPER: Whippany Paper Board Co., Inc., 10 North Jefferson Road, Whippany, N.J. SEND PROTESTS TO: Marvin Kampel, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 120841 (Sub-No. 4 TA) filed July 16, 1973 Applicant: WALTER J. DUNLAP AND W. A. BIRCKBICHLER, doing business as BLACK & WHITE EXPRESS 217 American Avenue Butler, Pa. 16001 Authority's representative: John A. Vuono 2310 Grant Building Pittsburgh, Pa. 15219 Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen and perishable foods* requiring refrigeration, in temperature controlled vehicles, from points in Butler County, Pa., to Johnstown, Altoona, State College, Somerset, Philipsburg, Houtzdale, Clearfield, DuBoise, Punxsutawney, Blairsville, Reynoldsville, Tyrone and Huntingdon, Pa., for 180 days. SUPPORTING SHIPPER: Rath Packing Company, P.O. Box 330, Waterloo, Iowa 50704. SEND PROTESTS TO: District Supervisor John J. England, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Bldg., 1000 Liberty Avenue, Pittsburgh, Pa. 15222.

No. MC 129034 (Sub-No. 4 TA) filed July 18, 1973 Applicant: LOOMIS COURIER SERVICE INC. 55 Battery Street Seattle, Wash. 98121 Applicant's representative: George H. Hart 1100 IBM Bldg. Seattle, Wash. 98101 Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Cash letters,* (1) Between Portland, Oreg., on the one hand, and, on the other, points in Yakima, Franklin, Walla Walla, Asotin, Whitman, and Spokane Counties, Wash; (2) Between Walla Walla County, Wash., and points in Umatilla, Union, Wallowa, Malheur, Baker, Gilliam, and Morrow Counties, Oreg; and (3) Between points in Spokane, Whitman and Asotin Counties, Wash., and Nefi Perce, Latah, Kootenai, Bonner, Boundary Shoshome, Clearwater, Lewis and Idaho Counties, Idaho, for 180 days. RESTRICTION: Limited to a transportation service to be performed under a continuing contract or contracts with Banks and Banking Institutions. SUPPORTING SHIPPER: Federal Reserve Bank of San Francisco, Portland Branch, P.O. Box 3436, Portland, Oreg. 97208. SEND PROTESTS TO: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Bldg. Seattle, Wash. 98104.

No. MC 133779 (Sub-No. 6 TA) filed July 18, 1973 Applicant: FUNDIS COMPANY (a Nevada Corporation) 110 West Broadway P.O. Box 740 Lovelock, Nev. 89419 Applicant's representative: Pete Fundis (Same address as above) Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Diatamaceous earth,* in bulk, (a) from Clark and Colado, Nev., to points in Arizona, California, Idaho, Oregon, Utah, Washington, and Wyoming and *soda ash,* in bulk and (b) from points in Sweetwater County, Wyo., and San Bernardino County, Calif., to

Clark and Colado, Nev., for 180 days. SUPPORTING SHIPPER: Eagle Picher Industries, Inc., P.O. Box 1869, Reno, Nev. 89505. SEND PROTESTS TO: District Supervisor Robert G. Harrison, Interstate Commerce Commission, Bureau of Operations, 203 Federal Building, 705 North Plaza Street, Carson City, Nev. 89701.

No. MC 134017 (Sub-No. 4 TA) filed July 16, 1973 Applicant: R. M. HENDERSON doing business as H & M MOTOR LINES P.O. Box 3585 One Furman Hall Road Greenville, S.C. 29608 Applicant's representative: E. Stephen Heisley 666 Eleventh Street, N.W. Washington, D.C. 20001 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles, burlap articles and paper articles* (except in bulk), from Garden City, Kans., to points in the United States (except Alaska and Hawaii), under continuing contract with Packaging Products and Design Corp. of Newark, N.J., for 180 days. SUPPORTING SHIPPER: Packaging Products and Design Corp., 574 Ferry Street, Newark, N.J. 07105. SEND PROTESTS TO: E. E. Strotheid, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 300 Columbia Building, 1200 Main Street, Columbia, S.C. 29201.

No. MC 135556 (Sub-No. 2 TA) filed July 9, 1973 Applicant: RAYMOND R. CARPENTER AND JAMES E. CARPENTER, doing business as CARPENTER BROS. TRUCKING Rt. #2, Box 2005 Bucyrus, Ohio 44820 Applicant's representative: Gerald P. Wadkowski 85 East Gay Street Columbus, Ohio Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dry ammonia nitrate*, in bulk, between points in Wyandot County, Ohio, on the one hand, and, on the other, Terre Haute, Ind. and (2) *Animal feed*, in bulk and bag, between points in Ohio, on the one hand, and, on the other, Ft. Wayne and Syracuse, Ind., for 180 days. SUPPORTING SHIPPERS: (1) Landmark, Inc., Kirby Plant, P.O. Box 31, Kirby, Ohio 43330 and (2) The Ziegler Milling Company, P.O. Box 190, Bucyrus, Ohio 44820. SEND PROTESTS TO: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit St., Toledo, Ohio 43604.

No. MC 136228 (Sub-No. 8 TA) filed July 18, 1973 Applicant: LUISI TRUCK LINES, INC. New Walla Walla Highway No. 11 (Box 606) Milton-Freewater, Oreg. 97862 Applicant's representative: Eugene Luisi (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods, frozen foods, fresh produce, beer and wine*, from points in Los Angeles, Orange, Riverside, Kern, Fresno, Madera, Merced, Stanislaus, San Joaquin, Santa Clara, Sacramento, San Benito, San Francisco, and Napa Counties, Calif., to Nyssa, Pendleton and La Grande, Oreg. and Walla Walla, Wash., for 180 days. SUPPORTING SHIPPER: La Grande Fruit Company, Highway 30 East, P.O. Box 458, La Grande, Oreg. 97850. SEND PROTESTS TO: District Supervisor W. J. Huetig, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Bldg., 319 S. W. Pine St., Portland, Oreg. 97204.

No. MC 136408 (Sub-No. 10 TA) filed July 16, 1973 Applicant: CARGO CONTRACT CARRIER CORP. P.O. Box 206 U.S. Highway 20 Sioux City, Iowa 51102 Applicant's representative: William J. Hanlon 60 Park Place Newark, N.J. 07102 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from Emporia, Kans., to points in Bergen, Essex, Passaic, Hudson, Union and Middlesex Counties, N.J. and New York, Nassau, Suffolk and Westchester Counties, N.Y., for 180 days. RESTRICTION: The operations authorized are limited to a transportation service to be performed under a continuing contract with Iowa Beef Processors, Inc. SUPPORTING SHIPPER: Iowa Beef Processors, Inc., John F. Roeser, Jr., V. Pres., Dakota City, Nebr. 68731. SEND PROTESTS TO: District Supervisor Carroll Russell, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 136646 (Sub-No. 4 TA) filed July 16, 1973 Applicant: DYKSTRA TRANSPORT, INC. 317 Fourth Avenue S.E. Sioux Center, Iowa 51250 Applicant's representative: Robert G. Planansky 605 So. 14th Street P.O. Box 82028 Lincoln, Nebr. 68501 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk (gasolines and fuel oils), from the International Boundaries between Canada and points in Minnesota and North Dakota, to points in North Dakota, South Dakota, Minnesota, Nebraska and Iowa, for 150 days. SUPPORTING SHIPPER: Oskey Gasoline and Oil Company, Inc., L. G. Jaskowiak, V.P., Dir. of Transportation, 2950 Metro Drive, Suite 301, Minneapolis, Minn. 55420. SEND PROTESTS TO: Carroll Russell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 711 Federal Office Building, Omaha, Nebr. 68102.

MOTOR CARRIERS OF PASSENGERS

No. MC 123577 (Sub-No. 15 TA) (CORRECTION) filed June 18, 1973, published in the FEDERAL REGISTER issues of July 2, 1973, and July 20, 1973, and republished as corrected this issue. Applicant: WARWICK-GREENWOOD LAKE AND NEW YORK TRANSIT, INC. (Donald A. Robinson, Trustee) 419 Anderson Avenue Fairview, N.J. 07022 Applicant's representative: Edward F. Bowes 744 Broad Street Newark, N.J. 07102 Authority sought to operate as *a common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage and express and newspapers*, in the same vehicle with passengers, between Ringwood, N.J. and New York, N.Y., serving no intermediate points, from junction of Greenwood Lake Turnpike, Skyline Drive and Erskine Road, over Skyline Drive to junction West Oakland Avenue in Oakland, thence over West Oakland Avenue to junction New Jersey Highway 208 in Oakland, thence over New Jersey Highway 208 to junction New Jersey Highway 4 in Fair Lawn, thence over New Jersey Highway 4 to junction New Jersey Highway 17 in Paramus, thence over New Jersey Highway 17 to junction Interstate Highway 80 in Hackensack, thence over Interstate Highway 80 to junction Interstate Highway 95 in Teaneck, thence over Interstate Highway 95 to junction New Jersey Highway 3, and Interstate Highway 495 in Secaucus, return over the same route, serving no intermediate points, for 180 days. Note: The purpose of this partial republication is to show that Skyland Drive should be Skyline Drive and Colfax Avenue should be West Oakland Avenue. The rest of the application remains the same.

By The Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.73-15950 Filed 8-1-73;8:45 am]

[Notice No. 324]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before August 22, 1973. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matter relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-74489. By order of July 30, 1973, the Motor Carrier Board approved the transfer to Ronald Dale Smith, Doing Business As Appleton City

Truck Line, Appleton City, Mo., of portions of Certificates Nos. MC–29611 and MC–29611 (Sub-No. 2) issued to Raymond D. Good, Doing Business As La Cygne Truck Line, La Cygne, Kans., authorizing the transportation of: General commodities, with the usual exceptions, between specified points and areas in Missouri and Kansas. Kenneth F. Crockett, Attorney, 308 Casson Bldg., Topeka, Kans. 66603

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73–15951 Filed 8–1–73;8:45 am]

[Notice 60]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER APPLICATIONS

JULY 25, 1973.

The following applications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by Special Rule 1100.247[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearings.

No. MC 730 (sub-No. 349), filed June 6, 1973. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 1417 Clay Street, P.O. Box 958, Oakland, Calif. 94604. Applicant's representative: R. N. Colledge (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Petroleum products*, in bulk, in tank vehicles; (1) from points in San Juan County, N. Mex., to points in Arizona; (2) between points in California (except shipments moving in foreign commerce); (3) from points in Texas, to points in California and Oregon; and (B) *gas odorants*, in bulk, in tank vehicles, from Houston, Tex., to points in Wyoming and North Dakota.

NOTE: Common control may be involved. Applicant states that authority sought for transportation of petroleum products between points in California will be tacked at Chico, Calif. (sub-No. 204), Meridian, Calif. (sub-No. 52) and Oildale, Calif. (sub-No. 294), to serve points in Oregon and Washington. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif., or Albuquerque, N. Mex.

No. MC 1328 (sub-No. 14), filed June 14, 1973. Applicant: MGS TRANSPORTATION, INC., P.O. Box 270, Alexandria, Ind. 46001. Applicant's representative: Donald W. Smith, 900 Circle Tower Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Corrugated and cleated containers*, from the plantsite of Indiana Box Company, Inc., at Greenfield, Ind., to points in Arkansas, Georgia, Illinois, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, under contract with Indiana Box Corporation.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Chicago, Ill.

No. MC 1977 (sub-No. 18), filed June 11, 1973. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5231 Monroe Street, Denver, Colo. 80216. Applicant's representative: Leslie R. Kehl, suite 1600, Lincoln Center, 1600 Lincoln Street Denver, Colo. 80202 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, between points in Colorado on the one hand, and, on the other, points in Utah.

NOTE: Common control was approved in Nos. MC–F–9760 and MC–F–9396. Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 10875 (sub-No. 35), filed March 14, 1973. Applicant: BRANCH MOTOR EXPRESS COMPANY, a corporation, 114 Fifth Avenue, New York, N.Y. 10011. Applicant's representative: G. G. Heller (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, Classes A and B explosives, commodities in bulk, and household goods as defined by the Commission), serving the plant site of the Ford Motor Company located at or near Romeo, (Macomb County) Mich., as an off-route point in connection with applicant's regular-route operations to and from Detroit.

NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich. or Washington, D.C.

No. MC 20722 (sub-No. 24), filed June 18, 1973. Applicant: M & G CONVOY INC., 590 Elk Street, P.O. Box 104, Buffalo, N.Y. 14240. Applicant's representative: Walter N. Bieneman, One Woodward Avenue, suite 1700, Detroit, Mich. 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles, trucks, and buses*, as described in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and *parts thereof* moving therewith, in initial movements, in truckaway and driveaway service, from the plantsite of Chrysler Corporation near New Stanton (Westmoreland County), Pa., to points in Alabama, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Massachusetts, Mississippi, Missouri, New Hampshire, North Carolina, Rhode Island, South Carolina, Tennessee, Vermont, and Wisconsin.

NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Detroit, Mich.

No. MC 29120 (sub-No. 160), filed June 11, 1973). Applicant: ALL-AMERICAN, INC., 900 West Delaware, P.O. Box

769, Sioux Falls, S. Dak. 57101. Applicant's representative: Michael J. Ogborn (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packinghouses*, as described in Sections A, B, C & D of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, hides and inedible skins), from Waterloo and Columbus Junction, Iowa to points in Michigan, Ohio, Kentucky and Indiana, restricted to traffic originating at the plantsites and storage facilities of Rath Packing Co. at or near the named origins and destined to the named destination areas.

NOTE.—Common control was approved in MC–F–11285. Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Waterloo, Iowa.

No. MC 29848 (sub-No. 3), filed June 11, 1973. Applicant: O. CLOUTIER & SONS, INC., 137 Crawford Street, Fall River, Mass. 02724. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and forest products*, between Portsmouth, R.I.; Woburn, and Boston, Mass.; Hartford, Conn.; Hancock, Vt.; New York, Irvington, New Windsor, Syracuse, Buffalo, and Farmingdale, N.Y.; Port Newark, Port Elizabeth, Camden, and Freehold, N.J.; and Philadelphia, Ridgeway and Pittsburgh, Pa., on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey and Pennsylvania, under contract with Weyerhauser Company.

NOTE: If a hearing is deemed necessary, applicant requests it be held at either Boston, Mass., Providence, R.I., or Washington, D.C.

No. MC 29910 (sub-No. 132), filed May 11, 1973. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South 11 Street, Fort Smith, Ark. 72901. Applicant's representative: Thomas Harper, P.O. Box 43, Kelley Building, Fort Smith, Ark. 72901. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), serving the Highland Industrial Park located in Calhoun and Quachita Counties, Ark., as off-route points in connection with applicant's regular-route operations.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark. or Shreveport, La.

No. MC 31389 (sub-No. 165), filed June 7, 1973. Applicant: McLEAN TRUCKING CO., a corporation, 617 Waughtown Street, P.O. Box No. 213, Winston-Salem, N.C. 27102. Applicant's representative: Francis W. McInerny, 1000 16th Street, NW., suite 502, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value), classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plant site of Gulf States Utilities Company, at or near St. Francisville, La., as an off-route point in connection with applicant's regular route operations to and from Baton Rouge, La.

NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La., or Washington, D.C.

No. MC 31389 (sub-No. 167), filed June 7, 1973. Applicant: McLEAN TRUCKING CO., a corporation, 617 Waughton Street, Winston-Salem, N.C. 27102. Applicant's representative: Francis W. McInerny, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plant site and facilities of Ford Motor Company, located at Romeo, Mich., as an off-route point in connection with carrier's regular route operations to and from Detroit, Mich.

NOTE: Common control was approved in MC–F–11666. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich., or Washington, D.C.

No. MC 35807 (sub-No. 35), filed April 23, 1973. Applicant: WELLS FARGO ARMORED SERVICE CORP., P.O. Box 4313, Atlanta, Ga. 30302. Applicant's representative: Harry J. Jordan, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Currency*, from Nogales and Tucson, Ariz. to El Paso, Tex., under a continuing contract with Southern Arizona Bank & Trust Company.

NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Tucson, Ariz.

No. MC 35628 (sub-No. 349), filed May 31, 1973. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, a corporation, 134 Grandville SW., Grand Rapids, Mich. 49502. Applicant's representative: Leonard D. Verdier, Jr., 900 Old Kent Building, Grand Rapids, Mich. 49502. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving applicant's terminal facilities, in White Deer Township (Union County) Pa., as an off-route point in connection with applicant's regular-route operations as authorized at Sheet 16 of Certificate MC 35628, between Halls, Pa., and Dauphin, Pa., over Pennsylvania Highway 147.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Lansing or Detroit, Mich.

No. MC 42011 (sub-No. 10) (amendment), filed March 29, 1972, published in the FEDERAL REGISTER issue of August 24, 1972 and republished, as amended, this issue. Applicant: D. Q. WISE & CO., INC., 2835 W. 21st Street, P.O. Box 9205, Tulsa, Okla. 74107. Applicant's representative: Rufus H. Lawson, 2400 Northwest 23d, P.O. Box 75124, Oklahoma City, Okla. 73107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, as described in appendix V of "Descriptions in Motor Carrier Certificates," *Ex parte No. MC 45*, 64 M.C.C. 209 (restricted against the transportation of Mercer Description Commodities, Earth drilling commodities, pipe and tubing), from Tulsa, Okla., and points on the Arkansas and Verdigris Rivers in Oklahoma, to points in Arkansas, Kansas, Colorado, Nebraska, Missouri, and Texas.

NOTE: The purposes of this republication are: (1) to eliminate the truck load commodity restriction; (2) to delete the origin of Sandy Springs, Okla.; (3) to restrict the proposed operations to "from and to" movements; and (4) to include the transportation restriction as described above. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tulsa or Oklahoma City, Okla.

No. MC 43963 (sub-No. 1), filed June 22, 1973. Applicant: CHIEF TRUCK LINES, INC., Joliet Road and 79th Street, Hinsdale, Ill. 60521. Applicant's representative: Richard A. Kerwin, 127 North Dearborn Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Material handling equipment, winches, compaction, and road-making equipment, rollers, mobile cranes, and highway freight trailers*, and (2) *parts, attachments, and accessories of the commodities* in (1) above, between the plant sites of Hyster Company at or near Danville, Kewanee, and Peoria, Ill. and Crawfordsville, Ind., on the one hand, and, on the other, points in Wisconsin, Illinois, and Indiana, restricted to the transportation of shipments originating at or destined to the above-named points.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests that it be held at Chicago, Ill.

No. MC 44639 (sub-No. 71), filed June 18, 1973. Applicant: L. & M. EXPRESS CO., INC., 220 Ridge Road, Lyndhurst, N.J. 07071. Applicant's representative:

Herman B. J. Weckstein, 60 Park Place, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel*, and *materials and supplies* used in the manufacture of wearing apparel (exception commodities in bulk), between Whitakers, N.C. and Jersey City, N.J.

Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 53965 (sub-No. 89), filed June 4, 1973. Applicant: GRAVES TRUCK LINE, INC., 2130 S. Ohio, P.O. drawer 838, Salina, Kans. 67401. Applicant's representative: John E. Jandera, 641 Harrison St., Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fibrous glass products and materials, insulating products and materials*, and *materials, supplies and equipment*, used in the production, and distribution thereof, from the plant site and storage facilities of Johns-Manville Products Corp., at or near McPherson, Kans., to points in Arkansas, Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Wisconsin, and Wyoming.

Note: Applicant states that the requested authority can be tacked with its existing authority at McPherson, Kans., to serve numerous destination states named above and Texas, but indicates it has no present intention to tack. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 59583 (sub-No. 138), filed June 14, 1973. Applicant: THE MASON AND DIXON LINES, INC., P.O. Box 969, Eastman Road, Kingsport, Tenn. 37662. Applicant's representative: A. Alvis Layne, 915 Pennsylvania Building, Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel*, and *iron and steel articles*, from the plantsite and storage facilities of Continental Steel Corp., at Kokomo, Ind., to points in Alabama, Connecticut, Delaware, Georgia, Illinois, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia, and (2) *equipment, materials, and supplies* used in the production of iron and steel and iron and steel articles, from points in Alabama, Connecticut, Delaware, Georgia, Illinois, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia, to the plantsite and storage facilities of Continental Steel Corp., at Kokomo, Ind.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 59640 (sub-No. 36), filed June 25, 1973. Applicant: PAULS TRUCKING CORP., Three Commerce Drive Cranford, N.J. 07016. Applicant's representative: Charles J. Williams, 47 Lincoln Park, Newark, N.J. 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, and chain grocery and food business houses, catalogue showroom stores, and home center stores, and in connection therewith, *equipment, materials, and supplies* used in the conduct of such businesses (except commodities in bulk), (1) between Linden and South Plainfield, N.J., on the one hand, and, on the other, points in Connecticut, Delaware, New York, Massachusetts, and Pennsylvania, and (2) between Springfield and Chicopee, Mass., on the one hand, and, on the other, points in Connecticut, Delaware, New Jersey, New York, and Pennsylvania, under a continuing contract, or contracts, with Supermarkets General Corp.

Note: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 61592 (sub-No. 308) filed June 22, 1973. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, Iowa 52722. Applicant's representative: E. A. DeVine (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Wheels, rims, hubs, spindles, and parts thereof*, from the plant site of French and Hecht, Division of Kelsey Hayes Co., at or near Walcott, Iowa, to points in the United States (except Alaska and Hawaii), and (2) *materials and supplies* used in the manufacture and distribution of the above named commodities from points in the United States (except Alaska and Hawaii), to the plant site of French and Hecht, Division of Kelsey Hayes Co. at or near Walcott, Iowa.

NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 66886 (sub-No. 39), filed June 18, 1973. Applicant: BELGER CARTAGE SERVICE, INC., 2100 Walnut Street, Kansas City, Mo. 64108. Applicant's representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Kansas City, Mo. 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Material handling equipment, winches, compaction and road making equipment, rollers, mobile cranes, and highway freight trailers*, and (2) *parts, attachments, and accessories* of the commodities in (1) above, between the plant sites of the Hyster Co. at or near Crawfordsville, Ind., on the one hand, and, on the other, points in Colorado, Kansas, Missouri, Nebraska, Oklahoma, and Texas, restricted to the transportation of shipments originating at or destined to the above named points.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Kansas City, Mo.

No. MC 69833 (sub-No. 109), filed June 7, 1973. Applicant: ASSOCIATED TRUCK LINES, INC., Vandenberg Center, Grand Rapids, Mich. 49502. Applicant's representative: Harry Pohlad (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plantsite and facilities of International Packing Corp. at or near Morristown, Ind., as an off-route point in connection with carrier's authorized regular route operations to and from Shelbyville and Greensburg, Ind.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind. or Columbus, Ohio.

No. MC 71074 (sub-No. 5), filed June 25, 1973. Applicant: WAREHOUSE TRANSPORT, INC., 211 Plainfield Street, Springfield, Mass. 01107. Applicant's representative: David G. Macdonald, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, and chain grocery and food business houses, and *equipment, materials, and supplies* used in the conduct of such business (except commodities in bulk), between points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, under continuing contract or contracts with The Great Atlantic & Pacific Tea Co., Inc.

NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 73688 (sub-No. 62), filed June 21, 1973. Applicant: SOUTHERN TRUCKING CORPORATION, 1500 Orenda Avenue, P. O. Box 7182, Memphis, Tenn. 38107. Applicant's representative: Charles H. Hudson, Jr., 601 Stahlman Building, Nashville, Tenn. 37201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials*, from the warehouse of National Gypsum Co., at Memphis, Tenn., to points in Mississippi in and north of Warren, Hinds, Rankin, Scott, Newton, and Lauderdale Counties, those in Arkansas in and east of Ashley, Bradley Calhoun, Dallas, Hot Springs, Garland, Perry, Pope, Searcy and Marion Counties, those in Missouri in and east of Ozark, Howell, Shannon, Reynolds, Iron, Madison, and Perry Counties, and points in Lamar, Marion, Winston, Franklin, Lawrence, Morgan,

Colbert, Lauderdale, Limestone, and Madison Counties, Ala.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn.

No. MC 74321 (sub-No. 86), filed June 18, 1973. Applicant: B. F. WALKER, INC., 650 17th Street, Denver, Colo. 80202. Applicant's representative: Richard P. Kissinger (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cast iron pipe, plastic pipe, fittings, water meter boxes, manhole covers, valve boxes, frames, watermain fittings, including parts and accessories thereof*, from Tyler, Tex., to points in Alabama, Arizona, Arkansas, California, Colorado, Idaho, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

NOTE: Applicant states that the requested authority can be tacked at Tyler, Tex., with its sub-No. 51, in order to provide through service from Birmingham, Ala., to points in southwestern states via a Tyler, Tex., gateway, but it has no present intention to tack. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Denver, Colo.

No. MC 74321 (sub-No. 87), filed June 4, 1973. Applicant: B. F. WALKER, INC., 650 17th Street, Denver, Colo. 80202. Applicant's representative: Richard P. Kissinger (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building panels*, from the plantsite of Star Manufacturing Co. at Oklahoma City, Okla., to points in Arizona, California, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla.

No. MC 82492 (sub-No. 84), filed June 28, 1973. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., P.O. Box 2853, 2109 Olmstead Road, Kalamazoo, Mich. 49003. Applicant's representative: William C. Harris (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs, drugs and rubber and plastic articles* when moving at the same time and in the same vehicle with foodstuffs (except commodities in bulk), from Columbus, Ohio, to points in Iowa, Minnesota, Nebraska, and Wisconsin, restricted to traffic originating at Columbus, Ohio.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio or Washington, D.C.

No. MC 82841 (sub-No. 122), filed June 15, 1973. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, Nebr. 68127. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the plantsite of Bethlehem Steel Corp. at Lackawana, N.Y., to points in Illinois, Iowa, Missouri, and Wisconsin, and Beatrice, Grand Island, and Omaha, Nebr.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa., or Buffalo, N.Y.

No. MC 82841 (sub-No. 123), filed June 15, 1973. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, Nebr. 68127. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bulk material handling, mixing, and processing equipment*, and *bulk storage bins*, from Columbus, Nebr., to points in the United States (except Alaska and Hawaii).

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 95540 (sub-No. 879), filed May 21, 1973. Applicant: WATKINS MOTOR LINES, INC., 1940 Monroe Drive NE., Atlanta, Ga. 30325. Applicant's representative: Alan E. Serby, 1600 First Federal Building, P.O. Box 872, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen citrus products*, from points in Florida to points in Massachusetts, Maine, Connecticut, Rhode Island, Vermont, and New Hampshire; and (2) *citrus products not canned and not frozen*, from points in Florida to points in Rhode Island.

NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. Further, applicant states that the purpose of the instant application is to eliminate the gateway of Bridgeton, N.J., and provide through service between the points named in (1) and (2) above. If a hearing is deemed necessary, applicant requests it be held at Tampa, or Orlando, Fla.

No. MC 95540 (sub-No. 883) filed June 14, 1973. Applicant: WATKINS MOTOR LINES, INC., 1940 Monroe Drive, NE., P.O. Box 1636, Atlanta, Ga. 3030. Applicant's representative: Lyle E. Welch. 2715 Ellis Street, Fort Worth, Tex. 76106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Inedible meats*, from Palestine, (Anderson County) Tex., to points in Connecticut, Maryland, Massachusetts, New Jersey, New York, and Pennsylvania.

NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Atlanta, Ga.

No. MC 103191 (sub-No. 38), filed June 6, 1973. Applicant: THE GEO. A. PHEMAN CO., INC., 2019 Elgin Street, P.O. Box 2095, Station A, Charleston, S.C. 29403. Applicant's representative: Harris G. Andrews, P.O. Box 4255, Greenville, S.C. 29608. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic liquors*, in bulk, between Charleston, S.C., on the one hand, and, on the other, points in Kentucky and Cincinnati, Ohio.

NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbia, S.C., or Atlanta, Ga.

No. MC 103993 (sub-No. 769), filed June 8, 1973. Applicant: MORGAN DRIVE-AWAY, INC.; 2800 West Lexington Avenue, Elkhart, Ind. 46514. Applicant's representative: Paul D. Borghesani (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles in initial movements, from points in Martin County, Minn., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 103993 (sub-No. 770), filed June 21, 1973. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, Ind. 46514. Applicant's representative: Paul D. Borghesani (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from points in Baxter County, Ark. to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Fayetteville, Ark.

No. MC 106398 (sub-No. 665), filed May 24, 1973. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor

vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from points in Union County, Miss., to points in the United States (except Alaska and Hawaii).

NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn.

No. MC 106398 (sub-No. 667), filed June 13, 1973. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Irwin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from Arlington, Tenn., to points in the United States (except Alaska and Hawaii).

NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn.

No. MC 106398 (sub-No. 668), filed June 13, 1973. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from Marshfield, Wis., to points in the United States (except Alaska and Hawaii).

NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Milwaukee, Wis.

No. MC 106398 (sub-No. 674), filed June 18, 1973. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from points in Lauderdale County, Miss., to points in the United States (except Alaska and Hawaii).

NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Jackson, Miss.

No. MC 107002 (sub-No. 435), filed June 6, 1973. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, Miss. 39205. Applicant's representative: John J. Borth, P.O. Box 8573, Jackson, Miss. 39204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, from Natchez, Miss., to points in Alabama, Arkansas, Illinois, Louisiana, Mississippi, Missouri, New Jersey, Oklahoma, Pennsylvania, Tennessee, and Texas.

NOTE: Applicant states that the requested authority can be tacked with its existing authority at points in Alabama, Arkansas, Illinois, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas, to serve points in Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, North Carolina, Ohio, South Carolina, West Virginia, and Wisconsin, but indicates that it has no present intention to tack. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Jackson, Miss., or New Orleans, La.

No. MC 107012 (sub-No. 182), filed June 7, 1973. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Lincoln Highway East and Meyer Road, Fort Wayne, Ind. 46801. Applicant's representative: Terry G. Fewell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, new household furnishings, fixtures, appliances, and equipment, and new commercial and institutional furnishings, fixtures, and equipment*, all crated, from points in Washington and Oregon, to points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming, restricted against the transportation of commodities which because of size or weight require the use of special equipment.

NOTE: Common control may be involved. Also dual operations. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash., or San Francisco, Calif.

No. MC 107295 (sub-No. 644), filed May 31, 1973. Applicant: PRE-FAB TRANSIT CO., a corporation, 100 South Main Street, Farmer City, Ill. 61842. Applicant's representative: Mack Stephenson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal panels and building parts*, from Little Rock, Ark., to points in the United States in and east of Montana, Wyoming, Colorado, and New Mexico.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark.

No. MC 107403 (sub-No. 851), filed June 11, 1973. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdown, Pa. 19050. Applicant's representative: Harry C. Amers, Jr., 666 11th Street NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, from the plant site of Commercial Solvents Corp., at Sterlington, La., to points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and the District of Columbia, restricted to traffic originating at the plant site of Commercial Solvents Corp.

NOTE.—Common control may be involved Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 107515 (sub-No. 854), filed June 4, 1973. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, Ga. 30050. Applicant's representative: Paul M. Daniell, P.O. Box 872, Atlanta, Ga. 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs, meats, meat products and meat byproducts*, from points in Oklahoma, to points in Alabama, Georgia, Florida, Tennessee (except Memphis), South Carolina, North Carolina, Virginia, West Virginia, Kentucky, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Maine, Vermont, New Hampshire, and the District of Columbia.

NOTE: Dual operations and common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla.

No. MC 108341 (sub-No. 33), filed June 15, 1973. Applicant: MOSS TRUCKING COMPANY, INC., P.O. Box 8409, Charlotte, N.C. 28208. Applicant's representative: Morton E. Kiel, 5 World Trade Center, Suite 6193, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials*, (except commodities in bulk), from the plantsites and facilities of United States Gypsum Co. at Chamblee and Morrow, Ga., to points in Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, restricted to traffic originating at the above described facilities and destined to points in the above named territory.

NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 108393 (sub-No. 71), filed June 14, 1973. Applicant: SIGNAL DELIVERY SERVICE, INC., 930 North York Road, Hinsdale, Ill. 60521. Applicant's representative: J. A. Kundtz, 1100 National

City Bank Building, Cleveland, Ohio 44114. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Parts of electrical and gas appliances*, and *equipment, materials, and supplies* used in the manufacture, distribution, and repair of electrical and gas appliances, (a) between Frankfort, Ind., on the one hand, and, on the other, Marion and Findlay, Ohio, and (b) between St. Marys, Pa., on the one hand, and, on the other, Clyde, Marion and Findlay, Ohio, and St. Joseph, Mich., under contract with Whirlpool Corporation.

NOTE: Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 110098 (sub-No. 138), filed June 25, 1973. Applicant: ZERO REFRIGERATED LINES, a corporation, 1400 Ackerman Road, P.O. Box 20380, San Antonio, Tex. 78220. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs and matches*, from Fullerton, Hayward, Oakdale, and Davis, Calif., to points in Idaho, Oregon, and Washington.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 110589 (sub-No. 26), filed June 14, 1973. Applicant: J. E. LAMMERT TRANSFER, INC., 317 North Oak Street, Grand Island, Nebr. 68801. Applicant's representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese, cheese products, and cheese by-products*, and *pizza toppings*, from Denver, Colo., Hutchinson, and Wichita, Kans., and Superior, Nebr., to points in Alabama, Florida, Georgia, Illinois, Mississippi, Nebraska, North Carolina, South Carolina, Tennessee, and Wisconsin.

NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or Lincoln, Nebr.

No. MC 110659 (sub-No. 18), filed June 25, 1973. Applicant: COMMERCIAL CARRIERS, INC., 975 Virginia Street West, Charleston, W. Va. 25302. Applicant's representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, W. Va. 25526. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Window glass*, from Charleston, W. Va., to points in the lower peninsula of Michigan (except Detroit and points in the Detroit, Michigan Commercial Zone).

Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Charleston, W. Va., Columbus, Ohio, or Washington, D.C.

No. MC 110683 (sub-No. 95), filed June 7, 1973. Applicant: SMITH'S TRANSFER CORP., P.O. Box No. 1000, Staunton, Va. 24401. Applicant's representative: Francis W. McInerny, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving Frankfort, Ind., as an off-route point in connection with applicant's existing authority between Indianapolis, Ind., and Morocco, Ind.

Note: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind. or Washington, D.C.

No. MC 111170 (sub-No. 205), filed June 21, 1973. Applicant: WHEELING PIPE LINE, INC., P.O. Box 1718, El Dorado, Ark. 71730. Applicant's representative: Don A. Smith, P.O. Box 43, Fort Smith, Ark. 72901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petoleum and petroleum products*, in bulk, in tank vehicles, as set forth in Appendix XIII of the report in "Descriptions in Motor Carrier Certificates", 61 M.C.C. 209, from the refinery and loading facilities of AMSCO/Union Oil Company of California located at Nederland (Smiths Bluff), Tex., to points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

Note: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark., or Memphis, Tenn.

No. MC 112304 (sub-No. 69), filed June 21, 1973. Applicant: ACE DORAN HAULING & RIGGING CO., a corporation, 1601 Blue Rock Street, Cincinnati, Ohio 45223. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electrical substations, circuit breakers and switches, and related parts, attachments, and accessories* used in the assembly and construction thereof, from Springdale, Ark. to points in Illinois, Wisconsin, Missouri, Michigan, Ohio, Indiana, Kentucky, Tennessee, North Carolina, Virginia, West Virginia, Delaware, Maryland, Pennsylvania, New York, New Jersey, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine, and the District of Columbia, and (2) *equipment, materials and supplies* (except commodities in bulk), used in the manufacture and assembly of articles in (1) above, from points in the destination states named in (1) above to Springdale, Ark.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo. or Washington, D.C.

No. MC 112750 (sub-No. 298), filed June 8, 1973. Applicant: PUROLATOR COURIER CORP., 2 Nevada Drive, Lake Success, N.Y. 11040. Applicant's representative: John M. Delany (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commercial papers, documents, written instruments and business records* (except currency, and negotiable securities) as are used in the business of banks and banking institutions, (1) between points in Hartford County, Conn., on the one hand, and, on the other, points in Hampden and Hampshire Counties, Mass.; and (2) from Greenfield, Mass., to Windsor Locks, Conn., under contract with banks and banking institutions.

NOTE.—Applicant holds common carrier authority under MC 111729 and subs, therefore dual operations may be involved. Also common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Boston, Mass.

No. MC 112822 (sub-No. 279), filed June 13, 1973. Applicant: BRAY LINES, INC., P.O. Box 1191, 1401 N. Little Street, Cushing, Okla. 74023. Applicant's representative: Marion F. Jones, Suite 1600 Lincoln Center, 1660 Lincoln Street, Denver, Colo. 80203. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Foodstuffs, and powdered whey*, when in mixed shipments with foodstuffs, in vehicles equipped with mechanical refrigeration (except commodities in bulk, in tank vehicles), from the plantsites and public warehouse facilities of vendors or suppliers of Kraft Foods located in Minnesota (except the Minneapolis and St. Paul, Minn., Commercial Zone), and Wisconsin, to the plantsites and public warehouse facilities of Kraft Foods at Springfield, Mo., and Dallas and Garland, Tex., restricted to traffic originating at the named origins and destined to the named destination points.

NOTE.—Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or St. Paul, Minn.

No. MC 112822 (sub-No. 280), filed June 25, 1973. Applicant: BRAY LINES, INC., P.O. Box 1191, 1401 North Little, Cushing, Okla. 74023. Applicant's representative: Marion F. Jones, suite 1600, Lincoln Center, 1660 Lincoln Street, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid wax*, in bulk, in tank vehicles, from Ponca City, Okla., to Lakeland, Fla., and Springhill, La.

NOTE.—Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed

necessary, applicant requests it be held at Houston or Fort Worth, Tex.

No. MC 112822 (sub-No. 281), filed June 25, 1973. Applicant: BRAY LINES, INC., P.O. Box 1191, 1401 North Little, Cushing, Okla. 74023. Applicant's representative: J. R. Gardner (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectioneries*, from Montrose, Colo., to points in California and Texas.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or St. Louis, Mo.

No. MC 114457 (Sub-No. 152), filed June 11, 1973. Applicant: DART TRANSIT CO., a corporation, 780 North Prior Avenue, St. Paul, Minn. 55104. Applicant's representative: Michael P. Zell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Artificial Christmas trees and accessories*, (a) from the plantsite and warehouse facilities of Gordon Industries, Inc., located at Chicago, Ill., to points in the United States (except Alaska and Hawaii); and (b) from the plantsite and warehouse facilities of Gordon Industries, Inc., located at Newburgh, N.Y., to points in Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia; and (2) *returned or rejected shipments* from those destination points named in (b) above, to the plantsite and storage facilities of Gordon Industries, Inc. located at Chicago, Ill. and Newburgh, N.Y.; and (3) *polyvinyl chloride* (except in bulk), from Ramsey, N.J. to the plantsite and storage facilities of Gordon Industries, Inc., located at Chicago, Ill.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, aplicant requests it be held at St. Paul, Minn. or Chicago, Ill.

No. MC 115904 (sub-No. 30), filed June 11, 1973. Applicant: LOUIS GROVER, 1710 West Broadway, Idaho Falls, Idaho 83401. Applicant's representative: Irene Warr, 430 Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flakeboard, particle board and lumber mill products and gypsum products*, from points in California, to points in Idaho, Montana, Wyoming, Colorado, North Dakota, and South Dakota.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah, or Idaho Falls, Idaho.

No. MC 119406 (sub-No. 7), filed June 18, 1973. Applicant: ROBERT J. GRALL, 2901 Calumet Avenue, P.O. Box 313, Manitowoc, Wis. 54220. Applicant's representative: Edward Solie, Executive Building, suite 100, 4513 Vernon Boulevard, Madison, Wis. 53705. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood*, boards or sheets, *veneer, wood paneling, hardboard, construction board, and wood particle board*, from Oshkosh, Wis., to points in Illinois, Indiana, Iowa, Michigan, Minnesota, and Ohio, restricted to traffic originating at the plant site and warehouse facilities of Pluswood, Inc., at Oshkosh, Wis., and destined to points in the above described destination States.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Madison, Wis.

No. MC 113651 (sub-No. 157), filed May 8, 1973. Applicant: INDIANA REFRIGERATOR LINES, INC., 2404 North Broadway, Muncie, Ind. 47303. Applicant's representative: Henry A. Dillon (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses* (except hides and commodities in bulk), and *dressed rabbits* when shipped in mixed shipments with meat, meat products, meat by-products and articles distributed by meat packinghouses, from Denver, Colo., to points in California, Arizona, New Mexico, Washington, and Oregon.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo., or Washington, D.C.

No. MC 113678 (sub-No. 503), filed June 21, 1973. Applicant: CURTIS, INC. 4810 Pontiac Street, Commerce City, Colo. 80022. Applicant's representative: Richard A. Peterson, P.O. Box 80806, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning compounds*, from Omaha, Nebr., Kansas City, Kans., Southbridge, Mass., Sicamore, Ill.; Elizabeth, N.J.; Atlanta, Ga., and Oklahoma City, Okla., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at either Omaha, Nebr., Denver, Colo. or Lincoln, Nebr.

No. MC 113843 (sub-No. 194), filed June 4, 1973. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, Boston, Mass. 02210. Applicant's representative: William J. Boyd, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products* (except commodities in bulk, in tank vehicles), from Owenton and Lawrenceburg, Ky., to the plantsite and warehouse facilities utilized by Kraft Food Division of Kraftco Corp. at Lehigh County, Pa., restricted to the transportation of traffic originating at the named origin points and destined to the named destination.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 113843 (sub-No. 195), filed June 13, 1973. Applicant: REFRIGERATED FOODS EXPRESS, INC., 316 Summer Street, Boston, Mass. 02210. Applicant's representative: Francis P. Barrett, 60 Adams Street, Milton, Mass. 02187. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, tranporting: *Bakery goods*, from Westbury, N.Y., to points in Ohio, Michigan, Virginia, Illinois, Missouri, and Pennsylvania.

NOTE.—Common control was approved in MC-F-6781. Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 114045 (sub-No. 386), filed June 20, 1973. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 5842, Dallas, Tex. 75222. Applicant's representative: J. B. Stuart (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in "Descriptions in Motor Carrier Certificates," 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Chino, Calif., to points in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, and the District of Columbia, restricted to products originating at the plant site and storage facilities of Swift Fresh Meats Co. and destined to the named States.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 114211 (sub-No. 195) (clarification), filed April 27, 1973, published in the FEDERAL REGISTER issue of May 17, 1973, republished, as corrected, in the FEDERAL REGISTER issue of June 1, 1973, and in third publication, as clarified, this issue. Applicant: WARREN TRANSPORT, INC., 324 Manhard Street, P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Daniel Sullivan, 327 South La Salle Street, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Agricultural machinery and implements*,

loaders, platforms, feeders, trailers, wagons, augers, spreaders, buckets, hoists, accessories, attachments, and parts, from points in Wright County, Minn., to points in the United States (except Alaska and Hawaii), and (2) *equipment, materials, and supplies,* used in the manufacture or distribution of the above described commodities (except commodities in bulk), from points in the United States (except Alaska and Hawaii) to points in Wright County, Minn.

NOTE.—Applicant states that taking possibilities exist at points in the United States, to provide service to points in the United States; but indicates that tacking is not intended. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Chicago, Ill.

No. MC 114273 (sub-No. 143), filed June 11, 1973. Applicant: CEDAR RAPIDS STEEL TRANSPORTATION, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Robert E. Konchar, suite 315, Commerce Exchange Building, 2720 First Avenue Northeast, P.O. Box 1943, Cedar Rapids, Iowa 52406. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Petroleum products,* from Toledo, Ohio to Butler, Wis.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 114457 (sub-No. 154), filed June 18, 1973. Applicant: DART TRANSIT CO., a corporation, 780 N. Prior Avenue, St. Paul, Minn. 55104. Applicant's representative: Michael P. Zell (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *New furniture,* in cartons, from the plantsite and storage facilities of the Simmons Co. at Kansas City, Kans., to St. Louis, Mo., restricted to traffic originating at the plantsite and storage facilities of Simmons Co., at Kansas City, Kans.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 114457 (sub-No. 155), filed June 21, 1973. Applicant: DART TRANSIT CO., a corporation, 780 North Prior Avenue, St. Paul, Minn. 55104. Applicant's representative: Michael P. Zell (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, and meat by-products, articles distributed by meat packinghouses,* and *such commodities* as are used by meat packers in the conduct of their business when destined to and for use by meat packers as described in Sections A, C, and D of Appendix I to the report in "Descriptions in Motor Carrier Certificates," 61 M.C.C. 209 and 766 (except commodities in bulk and hides), from the plantsite and warehouse facilities utilized by Yankton Sioux Industries at Wagner, S. Dak., to points in Arkansas, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kansas, Kentucky, Lousiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Maine; and (2) *meats meat products, and meat by-products,* as described in Section A, of Appendix I to the report in "Descriptions in Motor Carrier Certificates," 61, M.C.C. 209 and 766 (except commodities in bulk and hides), *and materials, supplies, and equipment* used by meat packers in the conduct of their business, from points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, Texas, and Wisconsin, to the plantsite and warehouse facilities utilized by Yankton Sioux Industries at Wagner, S. Dak.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Chicago, Ill.

No. MC 114552 (sub-No. 86), filed June 25, 1973. Applicant: SENN TRUCKING CO., a corporation, P.O. Box 333, Newberry, S.C. 29108. Applicant's representative: Frank A. Graham, Jr., 707 Security Federal Building, Columbia, S.C. 29201. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Composition board, plywood, and veneer,* from the plant site and warehouse facilities of International Paper Co., located in Greenwood County, S.C. to points in Georgia, North Carolina, and Virginia.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbia, S.C., Charlotte, N.C. or Washington, D.C.

No. MC 115491 (sub-No. 126), filed June 11, 1973. Applicant: COMMERCIAL CARRIER CORP., 502 East Bridgers Avenue, P.O. Drawer 67, Auburndale, Fla. 33823. Applicant's representative: Tony G. Russell (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Building materials,* from the plant sites and facilities of United States Gypsum Co., located at or near Chamblee and Morrow, Ga., to points in Florida and Georgia, restricted to traffic originating at the above described facilities and destined to points in the above-named territory.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla.

No. MC 115793 (sub-No. 16), filed June 28, 1973. Applicant: CALDWELL FREIGHT LINES, INC., U.S. Highway 321 South, P.O. Box 672, Lenoir, N.C. 28645. Applicant's representative: Theodore Polydoroff, suite 600, 1250 Connecticut Avenue NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *New furniture and furniture stock,* from the plant site of Singer Furniture Co. at or near Trumann, Ark., to the plant sites of Singer Furniture Co. at or near Lenoir and Bryson City, N.C.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Charlotte, N.C.

No. MC 116073 (sub-No. 267), filed June 6, 1973. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., 1825 Main Avenue, P.O. Box 919, Moorhead, Minn. 56560. Applicant's representative: Robert G. Tessar, 1819 4th Avenue South, Moorhead, Minn. 56560. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, in initial movements, and *buildings,* complete or in sections, transported on wheeled undercarriages, from points in Boulder County, Colo. to points in Nebraska, Kansas, Oklahoma, New Mexico, Utah, Wyoming, South Dakota, and Montana.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 116077 (sub-No. 344), filed June 4, 1973. Applicant: ROBERTSON TANK LINES, INC., 2000 West Loop South, suite 1800, Houston, Tex. 77027. Applicant's representative: Pat H. Robertson, suite 401, First National Life Building, Austin, Tex. 78701. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chemicals,* in bulk, in tank vehicles, from the plantsite and facilities of Union Carbide Corp. at or near Taft (St. Charles Parish), La., to points in the United States (except Alabama, Arizona, California, Colorado, Florida, Georgia, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee west of U.S. Highway 27, and Texas), restricted to the transportation of traffic originating at the plantsite and facilities of Union Carbide Corp. and destined to the above destinations.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La. or Washington, D.C.

No. MC 116077 (sub-No. 345), filed July 2, 1973. Applicant: ROBERTSON TANK LINES, INC., 2000 West Loop South, suite 1800, Houston, Tex. 77027. Applicant's representative: Pat H. Robertson, 401 First National Life Building,

Austin, Tex. 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Sulphur*, in bulk, in tank vehicles, from Edgewood, West Yantis, and Myrtle Springs, Tex., to Woodstock, Tenn., and (B) *petroleum wax*, in bulk, in tank vehicles, from Gulf Oil Co., U.S. Cedar Bayou Olefin Plant at or near Baytown, Tex., to points in Connecticut and New Jersey.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La., or Atlanta, Ga.

No. MC 116763 (sub-No. 257), filed June 13, 1973. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, Ohio 45380. Applicant's representative: H. M. Richters (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from Iowa City and Muscatine, Iowa, to points in Arkansas, Kentucky, Louisiana, Mississippi, New Mexico, Oklahoma, Tennessee, and Texas; and from Mechanicsburg, Pa., to points in North Carolina, restricted to traffic originating at the facilities of Heinz U.S.A., Division of H. J. Heinz Company at Iowa City, Iowa, Muscatine, Iowa, and Mechanicsburg, Pa., and destined to points in the named destinations States.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa.

No. 116763 (sub-No. 259), filed June 21, 1973. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, Ohio 45380. Applicant's representative: H. M. Richters (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials and supplies, ceiling suspension systems, iron and steel studding and parts, and plasterboard*, from Westlake, Ohio, to points in Arkansas, Oklahoma, and Texas.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 116763 (sub-No. 262), filed June 25, 1973. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, Ohio 45380. Applicant's representative: H. M. Richters (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Caps, covers, lids and discs, and plastic articles*, from Pomona, Calif., to points in the United States in and east of Minnesota, Iowa, Kansas, Oklahoma, and Texas.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 117815 (sub-No. 211), filed June 14, 1973. Applicant: PULLEY FREIGHT LINES, INC., 405 Southeast 20th Street, Des Moines, Iowa 50317. Applicant's representative: Larry D. Knox, Ninth floor, Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods* and *feed*, animal, fish or poultry (except in bulk), when moving in mixed loads, from Chicago, Ill., to points in Iowa, restricted to shipments originating at the facilities of Campbell Soup Co. and destined to the named destinations.

NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Omaha, Nebr.

No. MC 117119 (sub-No. 478), filed June 10, 1973. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, Ark. 72728. Applicant's representative: Bobby G. Shaw (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potatoes and frozen products*, from Grand Fork, N. Dak., to points in Washington, Oregon, California, Idaho, Nevada, Montana, Wyoming, Utah, Colorado, Arizona, New Mexico, Nebraska, New York, Pennsylvania, Delaware, Maryland, Virginia, New Jersey, West Virginia, and the District of Columbia.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Bismarck, N. Dak. or Washington, D.C.

No. MC 117940 (sub-No. 93), filed June 18, 1973. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Donald L. Stern, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from South Edmeston and Walton, N.Y., Hagerstown, Md., and Elizabeth, N.J., to points in North Carolina, South Carolina, Georgia, Florida, Tennessee, and Alabama.

NOTE.—Applicant also holds contract carrier authority under MC 114789 and subs thereunder, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Miami, Fla.

No. MC 118468 (sub-No. 37), filed May 31, 1973. Applicant: UMTHUN TRUCKING CO., a corporation, 910 South Jackson P.O. Box 236, Eagle Grove, Iowa 50533. Applicant's representative: Patrick E. Quinn, 605 South 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from points in Washington, Oregon, Montana, Idaho, Wyoming, Colorado, North Dakota, and Nebraska, to points in Iowa, Minnesota, Nebraska, Missouri, Wisconsin, Illinois, Kansas, North Dakota and South Dakota, under a continuing contract or contracts with Emmer Bros., Inc. and its affiliates.

NOTE: Applicant also holds common carrier authority in MC 12483 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Chicago, Ill.

No. MC 119400 (sub-No. 12), filed June 22, 1973. Applicant: SIMANEK, INC., 150 West Seventh Street, Wahoo, Nebr. 68066. Applicant's representative: Patrick E. Quinn, 605 South 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer solutions*, from Doniphan, Nebr., and Kansas City, Mo., to points in Kansas.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 119547 (sub-No. 35), filed June 6, 1973. Applicant: EDGAR W. LONG, INC., Route 4, Zanesville, Ohio 43701. Applicant's representative: Richard H. Brandon, 79 East State Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, (1) from Columbus, Ohio, to Buffalo, N.Y.; (2) from Milwaukee, Wis., Louisville, Ky., and Columbus, Ohio, to Mabscott, W. Va.; (3) from Ft. Wayne, Ind., Louisville, Ky., St. Louis, Mo., and Columbus and Cleveland, Ohio, to Beckley, W. Va.; (4) from Cleveland, Ohio, and Peoria, Ill., to Wheeling, W. Va.; and (5) from Bensonville, Ill., and Milwaukee, Wis., to Zanesville, Ohio.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 119726 (sub-No. 33), filed May 24, 1973. Applicant: N. A. B. TRUCKING CO., INC., 2502 West Howard Street, Indianapolis, Ind. 46221. Applicant's representative: James L. Beattey, 130 East Washington Street, suite 1000, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, caps, covers, tops, and corrugated boxes*, knocked down, from Indianapolis, Ind., to points in Tennessee.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing

authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind.

No. MC 119774 (sub-No. 69), filed June 22, 1973. Applicant: EAGLE TRUCKING CO., a corporation, 301 East Main Street, P.O. Box 471, Kilgore, Tex. 75662. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, Tex. 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cable and wire*, from the plantsite of Kaiser Aluminum and Chemical Corp. at or near Bay Minette, Ala., to points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas; and (2) *materials and supplies* used in the manufacture of cable and wire, from points in the destination territory described in (1) above, to the plantsite of Kaiser Aluminum and Chemical Corp. at or near Bay Minette, Ala.

NOTE.—Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Mobile, Ala., Pensacola, Fla., or New Orleans, La.

No. MC 119792 (sub-No. 36), filed June 14, 1973. Applicant: CHICAGO SOUTHERN TRANSPORTATION CO., INC., 3215 South Hamilton, Chicago, Ill. 60608. Applicant's representative: William J. Boyd, 29 South La Salle Street, suite 330, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, foodstuffs, food products and food ingredients*, from points in Minnesota and Wisconsin, to points in Indiana, Ohio, Kentucky, Tennessee, South Carolina, North Carolina, Georgia, Florida, Alabama, Mississippi and Louisiana.

NOTE: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 123048 (sub-No. 265), filed June 28, 1973. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Racine, Wis. 53403. Applicant's representative: Paul C. Gartzke, 121 West Doty Street, Madison, Wis. 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal buildings*, knocked down, (2) *iron or steel conduit*, (3) *iron or steel conduit fittings;* and (4) *material, equipment and supplies* used in the manufacture, sale or distribution of the commodities named in (1), (2) and (3) above, from Parkersburg, W. Va., to points in the United States (except Alaska and Hawaii).

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Parkersburg, W. Va., or Washington, D.C.

No. MC 123048 (sub-No. 266), filed June 29, 1973. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Racine, Wis. 53403. Applicant's representative: Paul C. Gartzke, 121 West Doty Street, Madison, Wis. 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles*, from Clinton and Leominster, Mass., to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, Tennessee, and Wisconsin.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Boston, Mass., or Washington, D. C.

No. MC 123048 (sub-No. 268), filed July 5, 1973. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Racine, Wis. 53403. Applicant's representative: Paul C. Gartzke, 121 West Doty Street, Madison, Wis. 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors*, from West Allis, Wis., to points in Pennsylvania, restricted to traffic originating at the plantsite of Allis-Chalmers Corp. at West Allis, Wis.

Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D. C

No. MC 123048 (sub-No. 269), filed July 5, 1973. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Racine, Wis. 53403. Applicant's representative: Paul C. Gartzke, 121 West Doty Street, Madison, Wis. 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Welded steel tubing and pressured tubing*, from Gerald, Mo., to points in Illinois, Indiana, Iowa, Michigan, Minnesota, North Dakota, Ohio, South Dakota, and Wisconsin.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., Chicago, Ill., or Washington, D.C.

No. MC 123233 (sub-No. 46), filed June 11, 1973. Applicant: PROVOST CARTAGE INC., 7887 Second Avenue, Ville d'Anjou 437, Quebec, Canada. Applicant's representative: J. P. Vermette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Caustic soda*, in bulk, in tank vehicles, from the port of entry on the international boundary line between the United States and Canada located at or near Rooseveltown, N.Y., to Massena, N.Y., restricted to traffic moving in foreign commerce originating in Ontario, Canada.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Albany, N.Y.

No. MC 123233 (sub-No. 47), filed June 10, 1973. Applicant: PROVOST CARTAGE, INC., 7887 Second Avenue, Ville d'Anjou 437, Quebec, Canada. Applicant's representative: J. P. Vermette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Caustic soda and sodium chlorate*, in bulk, in tank vehicles, from the ports of entry on the international boundary line between the United States and Canada located at or near Highgate Springs and Derby Line, Vt., to Jay, Maine, restricted to traffic having a prior movement in foreign commerce.

NOTE: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Albany, N.Y.

No. MC 123993 (sub-No. 26) filed June 6, 1973. Applicant: FOGLEMAN TRUCK LINE, INC., 1724 West Mill Street, P.O. Box 1504, Crowley, La. 70526. Applicant's representative: Austin L. Hatchell, 1102 Perry Brooks Building, Austin, Tex. 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, from the plant site of Commercial Solvents Corp., at Sterlington, La., to points in Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, restricted to traffic originating at the plant site of Commercial Solvents Corp.

NOTE: Applicant holds a motor contract carrier permit in No. MC 41116 and subs thereunder, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New Orleans or Baton Rouge, La.

No. MC 124071 (sub-No. 8), filed May 31, 1973. Applicant: LIVESTOCK SERVICE, INC., 1413 Second Avenue South, St. Cloud, Minn. 46301. Applicant's representative: Bruce E. Mitchell, 1600 First Federal Building, Atlanta, Ga. 30303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cocks, valves and related parts*, from Sartell, Minn., and McMinnville, Tenn., to points in the United States (except Alaska and Hawaii), under contract with De Zurik Corp.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis or St. Paul, Minn.

No. MC 124211 (sub-No. 229), filed June 4, 1973. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, Downtown Station, Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beverages and foodstuffs*, from points in Idaho, Oregon, and Washington, to points in the United States on and east of U.S. Highway 83, and to Rapid City, S. Dak., and Scottsbluff, Nebr.

NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant

requests it be held at Seattle, Wash., or Portland, Oreg.

No. MC 124306 (sub-No. 13), filed June 25, 1973. Applicant: KENAN TRANSPORT COMPANY, INC., P.O. Box 2933, West Durham Station, Guess Road and Interstate 85, Durham, N.C. 27705. Applicant's representative: Francis W. McInerny, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquefied petroleum gas*, from Chesapeake, Va., to points in Georgia, Alabama, Kentucky, Tennessee, West Virginia, New Jersey, and Pennsylvania.

NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Richmond, Va., or Washington, D.C.

No. MC 125375 (sub-No. 10), filed June 1, 1973. Applicant: F. B. GUEST doing business as: F. B. G. TRANSPORT, Route 5, Box 298, Covington, Ga. 30209. Applicant's representative: Monty Schumacher, suite 310, 2045 Peachtree Road NE., Atlanta, Ga. 30309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cottage cheese*, from Watertown, N.Y., to the warehouse facilities of Winn-Dixie Stores, Inc., in Pompano Beach, Fla., under a continuing contract, or contracts, with Borden, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 125996 (sub-No. 37), filed June 8, 1973. Applicant: ROAD RUNNER TRUCKING, INC., P.O. Box 37491, Omaha, Nebr. 68137. Applicant's representative: Arnold Burke, 127 North Dearborn St., suite 1133, Chicago, Ill. 60602. Authortiy sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food ingredients*, from the plant site and storage facilities utilized by Co-Pet-Co., Inc., at or near Cortland, N.Y., to Columbus, Ohio, restricted to shipments originating at Cortland, N.Y., and destined to Columbus, Ohio.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Syracuse, N.Y., or Omaha, Nebr.

No. MC 127242 (sub-No. 3), filed May 29, 1973. Applicant: HOUSTON TRUCK LINES, INC., 602 Service Street, P.O. Box 8847, Houston, Tex. 77009. Applicant's representative: Joe G. Fender, 802 Houston First Savings Building, Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* in cargo containers and/or cargo vans, and *empty cargo containers and empty cargo vans*, between points in Texas, Arkansas, Kansas, Oklahoma, Louisiana, New Mexico, and Kansas City, Mo.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Houston, Tex.

No. MC 127253 (sub-No. 48), filed June 25, 1973. Applicant: R. A. CORBETT TRANSPORT, INC., P.O. Box 728, Waskom, Tex. 75692. Applicant's representative: Ewell H. Muse, Jr., 415 Perry Brooks Building, Austin, Tex. 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, from the plant site of Commercial Solvents Corp. at Sterlington, La., to points in Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, restricted to traffic originating at the plantsite of Commercial Solvents Corp.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La., or Houston, Tex.

No. MC 128273 (sub-No. 142), filed June 18, 1973. Applicant: MIDWESTERN EXPRESS, INC., P.O. Box 189, Fort Scott, Kans. 66701. Applicant's representative: Harry Ross (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods* (except frozen), from points in California to points in Minnesota, Wisconsin, Michigan, Iowa, Missouri, Illinois, Indiana, Kentucky, Ohio, and Pennsylvania.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif.

No. MC 128412 (sub-No. 5), filed June 7, 1973. Applicant: LO-TEMP EXPRESS, INC., 1810 Tenth Avenue, Altoona, Pa. 16603. Applicant's representative: Arthur J. Diskin, 806 Frick Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Flour, sugar, foodstuffs and packaging materials*, from the warehouse of Steel City Milling, Inc., at Youngstown, Ohio, to points in Pennsylvania on and west of U.S. Highway 15, under a continuing contract with Steel City Milling, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Pittsburgh, Pa.

No. MC 128521 (sub-No. 2), filed June 5, 1973. Applicant: BIRMINGHAM-NASHVILLE EXPRESS, INC., 317 Arlington Avenue, P.O. Box 7429, Nashville, Tenn. 37210. Applicant's representative: Walter Harwood, 1822 Parkway Towers, Nashville, Tenn. 37219. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and articles requiring special equipment), between Nashville, Tenn., and New Orleans, La.: From Nashville over U.S. Highway 431 to junction Tennessee Highway 99, thence over Tennessee Highway 99 to Columbia, Tenn., thence over U.S. Highway 431 to Tuscaloosa, Ala., thence over U.S. Highway 11, and also over Interstate Highway 59 to New Orleans, La., and return over the same route, serving no intermediate points.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn., or New Orleans, La.

No. MC 129808 (sub-No. 10), filed June 22, 1973. Applicant: GRAND ISLAND CONTRACT CARRIER, INC., West Highway 30, Grand Island, Nebr. 68801. Applicant's representative: Patrick E. Quinn, 605 South 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Grain storage bins, grain drying bins, bulk feed tanks, metal buildings and parts, materials and supplies* used in connection therewith, *automotive parts and accessories, ballast masters and hand carts*, from the plantsites and storage facilities of Chief Industries, Inc., at or near Grand Island, Nebr., Fort Dodge, Iowa, and Rensselaer, Ind. to points in the United States (except Alaska and Hawaii), and (2) *raw materials, parts, supplies, and tools* used in connection with the manufacture, distribution and erection of the commodities named in (1) above, from points in the United States (except Alaska and Hawaii), to the plantsites and storage facilities of Chief Industries, Inc. at or near Grand Island, Nebr., Fort Dodge, Iowa, and Rensselaer, Ind., under a continuing contract or contracts with Chief Industries, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 129862 (sub-No. 3), filed May 24, 1973. Applicant: RAJOR, INC., P.O. Box 765, Franklin, Tenn. 37064. Applicant's representative: Ernest D. Salm, 8179 Havasu Circle, Buena Park, Calif. 90621. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Baseball bats, tobboggans, tobboggan cushions, bat chokes rubber, bat rubber swing rings, bat grip clear pine tar* in aerosol spray cans, *hockey sticks, hockey pucks, skis and poles, ski scooters, and other items* necessary to merchandise this line of sporting goods, from Dolgeville and Gloversville, N.Y., to points in the United States (except Alaska and Hawaii); (2) *baseball bats, components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (1) above, from points in the United States (except Alaska and Hawaii), to Dolgeville and Gloversville, N.Y., under a contract in (1) and (2) above with Adirondack Division of A-T-O Inc.; (3) *iron and steel pipe hangers, suspension systems and components* for plumbing, heating, powerplant and process piping systems, from Manasquan, N.J., to points in the United States (except Alaska and

Hawaii); (4) *components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (3) above, from points in the United States (except Alaska and Hawaii), to Manasquan, N.J., under a contract in (3) and (4) above with Fee and Mason Division of A–T–O Inc.; (5) *laundrys*, steam or commercial (washing or dry cleaning establishments), including lint collectors or filters, dampeners, dampening presses, dry rooms, dry room appliances, folders, ironer drying cylinders, ironers, marking machines, stackers, starch cookers or kettles, starching machines, tumblers, washer-extractors, washing machine cylinders, washing machines and wringers, from Moline, Ill., to points in the United States (except Alaska and Hawaii); (6) *components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (5) above, from points in the United States (except Alaska and Hawaii), to Moline, Ill., under a contract in (5) and (6) above with Hydraxtor Division of A–T–O Inc.; (7) *airpowered floor polishers and carpet sweepers, vacuum cleaners, die cast products, and building alarm systems* to detect smoke and burglars, from Anaheim, Calif., to points in the United States (except California, Alaska, and Hawaii); (8) *components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (7) above, from points in the United States (except California, Alaska, and Hawaii), to Anaheim, Calif., under a contract in (7) and (8) above with Interstate Engineering Division of A–T–O Inc.; (9) *conveyors and electronic high-speed automated package sorting systems, and analog memory units* for sortation equipment, from Milwaukee, Wis., to points in the United States (except Alaska and Hawaii); (10) *components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (9) above, from points in the United States (except Alaska and Hawaii), to Milwaukee, Wis., under a contract in (9) and (10) above with Speaker Sortation Systems Division of A–T–O Inc.; (11) *running gears, hitches, and fenders* used for mobile homes, motor homes, trailers, and recreational vehicles, from Anaheim and Los Angeles, Calif., to points in the United States (except California, Alaska and Hawaii); (12) *components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (11) above, from points in the United States (except California, Alaska and Hawaii), to Anaheim and Los Angeles, Calif.; (13) *electric and gas refrigerators and their parts* for mobile homes, motor homes, and trailers, from Baltimore, Md., Elizabeth, N.J., Elkhart, Ind., and Los Angeles and Anaheim, Calif., to points in the United States (except Alaska and Hawaii and with no service to California when originating from Los Angeles and Anaheim); (14) *running gears, hitches, and fenders* used for mobile homes, motor homes, trailers, and recreation vehicles, from Tiffin, Ohio, to points in the United States (except Alaska and Hawaii); (15) *components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (14) above, from points in the United States (except Alaska and Hawaii), to Tiffin, Ohio; (16) *outdoor advertising metal poster panels, school furniture and lockers, portable filing cabinets, crane and construction machinery cabs, and components*, from Tiffin, Ohio, to points in the United States (except Alaska and Hawaii); (17) *components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (16) above, from points in the United States (except Alaska and Hawaii), to Tiffin, Ohio, under a contract in (11) through (17) above, inclusive, with Hadco Engineering Division of A–T–O Inc.; (18) *concrete mixers, mortar mixers, machines* used for applying concrete, mortar, plaster, fireproofing, and similar materials, *road rollers, saws, motors, commercial air cooling systems and their pads, and air make-up heating and cooling equipment*, from Los Angeles, Calif., and Elizabeth, N.J., to points in the United States (except Alaska and Hawaii); (19) *components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (18) above, from points in the United States (except Alaska and Hawaii) to Los Angeles, Calif., and Elizabeth, N.Y.; (20) *air coolers and air make-up heating and cooling equipment*, from Little Rock, Ark., to points in the United States (except Alaska and Hawaii); (21) *components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (20) above, from points in the United States (except Alaska and Hawaii) to Little Rock, Ark.; (22) *machinery parts*, from Los Angeles, Calif., to Little Rock, Ark., and Elizabeth, N.J., under a contract in (18) through (20) above, inclusive, with Essick Manufacturing Division of A–T–O Inc.; (23) *fire extinguishers*, charged and not charged, portable hand and wheeled, *fire extinguisher compounds, brass fire-hose couplings, brass valves and fittings, brass castings, brass fire engine accessories and equipment, and firehose*, from Ranson and Charles Town, W. Va., and Charlottesville, Va., to points in the United States (except Alaska and Hawaii); (24) *components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (23) above, from points in the United States (except Alaska and Hawaii), to Ranson and Charles Town, W. Va., and Charlottesville, Va.; (25) *firehose* with or without brass nozzles, *brass firehose couplings, and brass valves*, from North Bergen, N.J., to points in the United States (except Alaska and Hawaii); (26) *components, materials, and supplies* used in the manufacture, production and assembly of the commodities described in (25) above, from points in the United States (except Alaska and Hawaii), to North Bergen, N.J.; (27) *components, materials, and supplies* used in the manufacture, production, and assembly of fire engines and apparatus, from points in the United States (except Alaska and Hawaii), to Elmira, N.Y.; (28) *replacement parts and apparatus* for fire engines and apparatus, from Elmira, N.Y., to points in the United States (except Alaska and Hawaii); (29) *fire extinguishers*, charged and not charged, portable hand and wheeled, and *fire extinguisher compounds*, from Elmira, N.Y., to points in the United States (except Alaska and Hawaii); (30) *components, materials, and supplies* used in the manufacture, production, and assembly of the commodities described in (29) above, from points in the United States (except Alaska and Hawaii), to Elmira, N.Y., under a contract in (23) through (30) above, inclusive, with Badger-Powhatan-Blaze Guard Division of American LaFrance, Inc., a subsidiary of A–T–O, Inc.; (31) *ornamental iron work, partitions or partition doors, steel and wire combined in sections or panels, conveyors, gravity roller, steel wire tote and storage bins*, from Louisville, Ky., to points in the United States (except Alaska and Hawaii); and (32) *components, materials, and supplies* used in the manufacture, production, and assembly of the commodities described in (31) above, from points in the United States (except Alaska and Hawaii), to Louisville, Ky., under a contract in (31) and (32) above with Logan Co. a subsidiary of A–T–O, Inc., restricted in all of the above against the transportation of commodities in bulk, in tank vehicles.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 129863 (sub-No. 9), filed June 4, 1973. Applicant: FREDERICK L. BULTMAN, INC., 11144 West Silver Spring Drive, Milwaukee, Wis. 53225. Applicant's representative: William C. Dineen, 710 North Plankington Avenue, Milwaukee, Wis. 53203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fabricated sheet metal products*, in shipper-owned trailers, from Milwaukee, Wis., to points in Michigan, Illinois, Iowa, and Minnesota, under contract with Ajax Metal Products, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Milwaukee, Wis.

No. MC 133178 (sub-No. 2), filed May 29, 1973. Applicant: PAPER CARGO CORPORATION, 3260 Chicago Drive, Grandville, Mich. 49418. Applicant's representative: Ronald J. Mastej, 900 Guardian Building, Detroit, Mich. 48226. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Corrugated fiberboard and corrugated fiberboard boxes* between Grand Rapids, Mich., on the one hand, and, on the other, Muncie, Goshen, and La Porte, Ind. Restriction: The authority sought

above is restricted to a service to be performed under a continuing contract or contracts with Corco, Inc., and is further restricted to traffic originating at or destined to the plant or facilities utilized by Corco, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Detroit or Lansing, Mich.

No. MC 133490 (sub-No. 8), filed June 6, 1973. Applicant: LEE'S TRUCKING, INC., 122 Cedar Avenue, Minneapolis, Minn. 55404. Applicant's representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, Minn. 55403. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pre-cut houses*, knocked down, from Minneapolis, Minn., to points in Colorado and Wyoming, under contract with President Homes Division-Harvey Builders, Inc.

NOTE: Applicant holds common carrier authority under MC 135299 (sub-No. 1), therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 133566 (sub-No. 25), filed June 15, 1973. Applicant: GANGLOFF AND DOWNHAM TRUCKING CO., INC., Box 676, Logansport, Ind. 46947. Applicant's representative: William L. Slover, 1224 17th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the plantsite and storage facilities of the Kitchens of Sara Lee at Deerfield and Chicago, Ill., to points in Maine, Vermont, New Hampshire, Rhode Island, and Massachusetts, restricted to traffic originating at Deerfield and Chicago, Ill., and destined to the named States.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Fort Wayne, Ind., or Washington, D.C.

No. MC 133689 (sub-No. 28), filed May 16, 1973. Applicant: OVERLAND EXPRESS, INC., 651 First Street SW., P.O. Box 2667, New Brighton, Minn. 55112. Applicant's representative: Daniel C. Sullivan, 327 South La Salle Street, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Potatoes, potato products, and potato byproducts* (except commodities in bulk), from Grafton, N. Dak., to points in Maine, Vermont, New Hampshire, Connecticut, Massachusetts, New York, Maryland, Virginia, West Virginia, Pennsylvania, Delaware, New Jersey, Illinois, Indiana, North Dakota, Kansas, Wisconsin, Ohio, Michigan, Missouri, Minnesota, Iowa, South Dakota, Kentucky, North Carolina, and South Carolina.

NOTE: Applicant holds contract carrier authority under MC 76025 and subs thereunder, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 133802 (sub-No. 1), filed June 25, 1973. Applicant: EMPAK TRANSPORTATION COMPANY, a corporation, 20th and William Streets, Omaha, Nebr. 68108. Applicant's representative: Patrick E. Quinn, 605 South 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lubricants, oils, petroleum products, antifreezes, windshield washer solvent, paint, concrete form release agents and dispensers*, from Bakerstown, Pa., Wichita and Olathe, Kans., Kansas City, Mo., and Compton, Calif., to points in the United States (except Alaska and Hawaii), and (2) *the commodities* named in (1) above and *materials and supplies* used in the production, sale, and distribution thereof, from points in the United States (except Alaska and Hawaii), to Bakerstown, Pa., Wichita and Olathe, Kans., Kansas City, Mo., and Compton, Calif., restricted in (1) and (2) above to traffic originating at or destined to the plantsites and storage facilities utilized by Southwest Petro-Chem, Inc., and its subsidiaries, and further restricted to a transportation service to be performed under a continuing contract or contracts with Southwest Petro-Chem, Inc., and its subsidiaries.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 134145 (sub-No. 35), filed June 11, 1973. Applicant: NORTH STAR TRANSPORT, INC., P.O. Box 51, Thief River Falls, Minn. 56701. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Abrasive paper or cloth*, from the port of entry on the international boundary line between the United States and Canada located at or near Detroit, Mich., to Ames, Iowa; Alexandria and St. Paul, Minn.; and Cumberland, Wis., under contract with Minnesota Mining & Manufacturing Co. (3M Company).

NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Detroit, Mich.

No. MC 134400 (sub-No. 7), filed June 11, 1973. Applicant: MILLER'S TRUCKING AND RENTAL, INC., 200 Southern Avenue, Dubuque, Iowa 52001. Applicant's representative: Carl E. Munson, 469 Fischer Building, Dubuque, Iowa 52001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ornamental iron products including, bars, columns, fencing, pipe, posts, railings and parts, rods, roofing sockets; also cement compounds, gates, lamps, plastic articles, posts, lamp and mailbox, and promotional materials*, (1) from Mount Carroll, Ill., to points in Arkansas, Colorado, Kansas, Iowa, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Wisconsin, and Wyoming; and (2) from Lodi, Ohio, to Mount Carroll, Ill., under contract with Leslie-Locke Building Products Co., Lodi, Ohio.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Cleveland, Ohio.

No. MC 134426 (sub-No. 5), filed June 4, 1973. Applicant: McCORT DRIVEAWAY, INC., 7032 Barkwood Drive, Jacksonville, Fla. 32211. Applicant's representative: Sol H. Proctor, 2501 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* (other than commercial) *setup and assembled parts and accessories*, between points in the United States, including Alaska and Hawaii.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Jacksonville, Fla.

No. MC 134449 (sub-No. 8), filed June 6, 1973. Applicant: LESTER V. MOZNIK, 3753 Grandview Highway, Burnaby, British Columbia, Canada. Applicant's representative: Joseph O. Earp, 411 Lyon Building, 607 Third Avenue, Seattle, Wash. 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic camper canopies and parts thereof*, from San Leandro and Paramount, Calif., and Portland, Oreg., to the ports of entry on the international boundary line between the United States and Canada at or near Blaine and Sumas, Wash., under contract with King of the Road Enterprises, Ltd.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 134599 (sub-No. 80), filed June 4, 1973. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 748, Salt Lake City, Utah 84110. Applicant's representative: Richard A. Peterson, P.O. Box 80806, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Games and toys and advertising and promotional matter*, when moving at the same time and in the same vehicle with games and toys; *aquariums and aquarium accessories; household pet cages, supplies and equipment; brine shrimp, dried; tape, magnetic, sound or video, blank, in cassettes, on reels or as components, accessories and supplies; playground equipment, play ground furniture, bar stools and hobby kits and equipment, materials, and supplies* used in the manufacture and production of the above items (except commodities in bulk and those which because of size and weight, require special handling or special equipment), between City of Industry, Hawthorne, Gardena, and Compton, Calif., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), under a continuing contract with Mattel, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr., or Salt Lake City, Utah.

No. MC 134599 (sub-No. 81), filed June 11, 1973. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 748, Salt Lake City, Utah 84110. Applicant's representative: Richard A. Peterson, P.O. Box 80806, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, crated, *and parts, materials, equipment, and supplies*, used in the manufacture, sale and distribution of such commodities, between the plantsite of Steelcase, Inc. located in Henderson County, N.C., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), under contract with Steelcase, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr., or Salt Lake City, Utah.

No. MC 134734 (sub-No. 12), filed June 1, 1973. Applicant: NATIONAL TRANSPORTATION INC., Box 31, Norfolk, Nebr. 68701. Applicant's representative: Lanny N. Fauss, Box 37096, Omaha, Nebr. 68137. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cranberry products*, (except in bulk), from Kenosha, Wis., to points in Louisiana, Mississippi, Alabama, and Georgia, under contract with Ocean Spray Cranberries, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Milwaukee, Wis.

No. MC 135124 (sub-No. 6), filed June 8, 1973. Applicant: DRESSING TRANSPORT, INC., Lake Street, Wilson, N.Y. 14172. Applicant's representative: Kenneth T. Johnson, Bankers Trust of Jamestown Building, Jamestown, N.Y. 14701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Empty glass containers*, from Port Allegany, Pa., to points in Indiana, Michigan, Illinois, Iowa, and Missouri, under contract with Pierce Glass Co. of Port Allegany, Pa.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Buffalo, N.Y.

No. MC 135306 (sub-No. 2), filed June 20, 1973. Applicant: DAN'S TRANSIT, INC., 239 Woodmont Road, Milford, Conn. 06460. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel, and iron and steel articles*, between points in that part of Connecticut west of the Connecticut River on the one hand, and, on the other, points in Vermont, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, and Pennsylvania.

NOTE: Applicant states it presently holds heavy hauling authority coextensive with the territory sought and files this application as a result of the Commission's decision in *Ace Doran Hauling & Rigging Co.*, Investigation of Operations, 108 M.C.C. 717. Applicant further states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 135760 (sub-No. 12), filed June 12, 1973. Applicant: COAST REFRIGERATED TRUCKING CO., INC., P.O. Box 188, Holly Ridge, N.C. 28445. Applicant's representative: Herbert Alan Dubin, 1819 H Street NW., Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, packinghouse products, and commodities* used and distributed by meat packinghouses, in vehicles equipped with mechanical refrigeration, between Baltimore, Md., and Wilmington, N.C., on the one hand, and, on the other, points in Connecticut, Massachusetts, New York, New Jersey, North Carolina, Pennsylvania, Rhode Island, Maryland, and the District of Columbia, under a continuing contract with H. G. Parks, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 135760 (sub-No. 13), filed June 12, 1973. Applicant: COAST REFRIGERATED TRUCKING CO., INC., P.O. Box 188, Holly Ridge, N.C. 28445. Applicant's representative: Herbert Alan Dubin, 1819 H Street NW., Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen foods*, in vehicles equipped with mechanical refrigeration, from Kansas City, Kans., to points in Illinois, Indiana, Michigan, Ohio, Wisconsin, Alabama, Florida, Georgia, Mississippi, Louisiana, North Carolina, South Carolina, Tennessee, Texas, Virginia, New York, New Hampshire, Pennsylvania, New Jersey, Minnesota, and Iowa; and (2) *frozen citrus juices*, in vehicles equipped with mechanical refrigeration, from points in Florida, to Kansas City, Kans., and points in New York, under a continuing contract with Rich Plan Corp., Food and Freezer Division.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 136220 (sub-No. 6), filed June 14, 1973. Applicant: ROY SULLIVAN, doing business as SULLIVAN TRUCKING CO., 1705 Northeast Woodland, Ponca City, Okla. 74601. Applicant's representative: Dean Williamson, 280 National Foundation Life Building, 3535 Northwest 58th Street, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum coke*, in bulk, in dump vehicles, from the refining and storage facilities of Continental Oil Co. at Ponca City, Okla., to the facilities of the Char-Lite Briquettes Divisions of Pine O' Pine, Inc., at Lewisville, Ark., and Jacksonville, Tex.

NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City or Tulsa, Okla.

No. MC 136343 (sub-No. 11), filed May 3, 1973. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 207, Milton, Pa. 17847. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper bags, plastic bags, paper boxes, and wrapping paper*, (1) from the facilities of Equitable Bag Co., Inc., at Long Island City, N.Y., and Moonachie, N.J., to points in Pennsylvania, New Jersey, Maryland, Delaware, Ohio, Indiana, Illinois, Michigan, Kentucky, Tennessee, New York, Connecticut, Rhode Island, Massachusetts, Alabama, Florida, and the District of Columbia, and (2) from the facilities of Equitable Bag Co., Inc., at or near Florence, Ky., to points in Ohio, Illinois, Michigan, Pennsylvania, New York, New Jersey, Maryland, Delaware, Massachusetts, Rhode Island, Connecticut, Florida, Alabama, and the District of Columbia.

NOTE: Applicant also holds contract carrier authority under MC 96098 and subs, therefore dual operations may be involved. Common control may also be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 136343 (sub-No. 14), filed June 5, 1973. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 207, Milton, Pa. 17847. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs and other commodities* used or useful in the manufacture, sale, and distribution of products manufactured or sold by Diamond Crystal Salt Co., between points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Texas, and Oklahoma (including the District of Columbia).

NOTE: Applicant holds contract carrier authority under MC 96098 and subs thereunder, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich., or Washington, D.C.

No. MC 136378 (sub-No. 3), filed June 11, 1973. Applicant: R & L TRUCKING CO., INC., 105 Rocket Avenue, Opelika, Ala. 36801. Applicant's representative: Robert E. Tate, P.O. Box 517, Evergreen, Ala. 36401. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, from St. Louis, Mo., to points in Talladega County, Ala., under a continuing contract with Coosa Valley Budweiser Co., Inc.; (2) *athletic equipment*, from points in Lee County, Ala., to points

in Florida, under a continuing contract with Abco Industries, Inc.; and (3) *meters and accessories* used in the installation thereof, from Tallassee, Ala., to points in Georgia, Kentucky, and California under a continuing contract with Neptune Meter Co.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Montgomery or Birmingham, Ala.

No. MC 136451 (sub-No. 4), filed June 6, 1973. Applicant: HUBBARD CARTAGE, INC., 3737 North Lincoln, Chicago, Ill. 60613. Applicant's representative: James C. Hardman, 127 North Dearborn Street, Chicago, Ill. 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, between Chicago, Ill., on the one hand, and, on the other, points in Wisconsin pursuant to a continuing contract or contracts with Norwood Papers, Division of B & J Supply, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 136786 (sub-No. 5), filed May 17, 1973. Applicant: ROBCO TRANSPORTATION, INC., 3033 Excelsior Boulevard, Minneapolis, Minn. 55416. Applicant's representative: Val M. Higgins, 1000 1st National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and furniture parts*, from the plantsites and warehouse facilities utilized by Broyhill Industries at or near: (1) Rutherfordton, N.C., to points in Illinois north of Illinois Highway 15, those in Wisconsin on and south of Wisconsin Highway 64, and points in the Upper Peninsula of Michigan; (2) Newton, Conover, Marion, and Taylorsville, N.C., to points in Illinois, Iowa, Missouri, Arkansas, those in Wisconsin on and south of Wisconsin Highway 64, points in the Omaha, Nebr., and Minneapolis-St. Paul, Minn., commercial zones, and the Upper Peninsula of Michigan; (3) Lenior, N.C., to points in Iowa, Missouri, and Arkansas, those in Illinois north of Illinois Highway 15, those in Wisconsin on and south of Wisconsin Highway 64, points in the Omaha, Nebr., and Minneapolis-St. Paul, Minn., commercial zones, and the Upper Peninsula of Michigan; and (4) at or near Rutherfordton, Lenoir, Newton, Conover, Marion, and Taylorsville, N.C., to points in Louisiana, Texas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, California, Nevada, Oregon, and Washington.

NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Charlotte, N.C., or St. Paul, Minn.

No. MC 136786 (sub-No. 7), filed May 18, 1973. Applicant: ROBCO TRANSPORTATION, INC., 3033 Excelsior Boulevard, Minneapolis, Minn. 55416. Applicant's representative: K. O. Petrick (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Macaroni, noodles, spaghetti, or vermicelli*, prepared with or without cheese, meat, vegetables, of sauce, (1) from Minneapolis, Minn., to points in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, Idaho, Nevada, and Utah; and (2) from Carnegie, Pa., to points in Montana, Idaho, Washington, Oregon, California, Nevada, Arizona, Utah, and Minneapolis, Minn.

NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at St. Paul, or Minneapolis, Minn.

No. MC 136831 (sub-No. 1), filed June 7, 1973. Applicant: GEORGE HUSACK, 167 Locust Drive, Schnecksville, Pa. Applicant's representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, Pa. 17011. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lamps, lampshades, flocked paper, plastic lampshades, and parts and accessories* for lamps and lampshades, and *materials, supplies, and equipment* used or useful in the production, storage, distribution, or use of lamps and lampshades, between the plantsite of Keystone Lamp Manufacturing Corp., Washington Township (Lehigh County), Pa., on the one hand, and, on the other, points in New York, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, West Virginia, Pennsylvania, Connecticut, Massachusetts, Rhode Island, Maine, New Hampshire, Vermont, Ohio, North Carolina, South Carolina, Michigan, Indiana, Illinois, Wisconsin, Texas, Florida, Alabama, Tennessee, and Georgia.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa.

No. MC 138134 (sub-No. 1) (Amendment), filed June 1, 1973, published in the FEDERAL REGISTER issue of July 20, 1973, as MC-138830, and republished, as amended, this issue. Applicant: DONALD HOLLAND TRUCKING, INC., 1300 Main Street, Keokuk, Iowa 52632. Applicant's representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Silicon metal, manganese metal, ferro alloys* and *pig iron* in dump vehicles and flatbed trailers, from Keokuk, Iowa, to points in Illinois, Kansas, Minnesota, Missouri, Nebraska, and Wisconsin; and (2) *Scrap metal*, from points in Illinois, Kansas, Minnesota, Missouri, Nebraska, and Wisconsin, to Keokuk, Iowa, under a continuing contract with Foote Mineral Co. at Exton, Pa.

NOTE: The purposes of this republication are: (1) To indicate applicant's request for contract carrier authority in lieu of common carrier authority; (2) to reflect the assignment of docket No. MC-138134 (sub-No. 10) to this proceeding; and (3) to indicate the contracting shipper of Foote Mineral Co. at Exton, Pa. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 138144 (sub-No. 2), filed June 21, 1973. Applicant: FRED OLSON CO., INC., 6022 West State Street, Milwaukee, Wis. 53213. Applicant's representative: Eugene L. Cohn, One North La Salle Street, Room 2255, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, between Chicago, Joliet, and Waukegan, Ill., and Gary, Ind., on the one hand, and, on the other, points in Iowa, Missouri, Nebraska, and Kansas.

NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority at Chicago, Ill., to serve presently authorized points in Indiana, Illinois, and Wisconsin. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 138148 (sub-No. 1), filed June 4, 1973. Applicant: JOSEPH J. SCHMIDT, 7499 Montevideo Court, Jessup, Md. 20794. Applicant's representative: William J. Little, 1110 W. R. Grace Building, 10 East Baltimore Street, Baltimore, Md. 21202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Beer and malt beverages*, from Granston, R.I., and Fort Wayne, Ind., to points in Maryland, and (2) *empty beer and malt beverages containers*, from points in Maryland to Cranston, R.I., and Fort Wayne, Ind.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Baltimore, Md., or Washington, D.C.

No. MC 138380 (sub-No. 2), filed June 14, 1973. Applicant: DEAN ZABEL, P.O. Box 325, Minnesota Lake, Minn. 56068. Applicant's representative: F. H. Kroeger, 2288 University Avenue, St. Paul, Minn. 55114. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Materials, supplies, parts, and accessories* used in the building of custom homes and garages (except commodities in bulk, in tank vehicles), between Minnesota Lake and Wells, Minn., on the one hand, and, on the other, points in Illinois, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin under contract with A Home of Your Own, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 138621 (sub-No. 2), filed June 13, 1973. Applicant: MOUW TRANSPORTATION, INC., 307 Maple Drive, Sibley, Iowa 51249. Applicant's representative: Robert G. Plananský, 605 South 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Butter*, in bulk or print form, (1) from points in Nebraska, South Dakota, and

Minnesota, to points in Iowa; and (2) from points in Nebraska, South Dakota, and Iowa, to points in Minnesota, under a continuing contract or contracts with Associated Milk Producers, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 138635 (sub-No. 4), filed June 6, 1973. Applicant: CAROLINA-WESTERN EXPRESS, INC., 650 Eastwood Drive, Gastonia, N.C. 28052. Applicant's representative: John R. Sims, Jr., suite 600, 1707 H Street NW., Washington, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric heat* in panels and/or strips, *circuit breakers, panels, switches, controllers, transformers weighing less than 1,000 pounds each and parts thereof*, from points in Mecklenburg County, N.C., to points in California and Denver, Colo., restricted to traffic moving in logistic trailers.

NOTE: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Charlotte, N.C.

No. MC 138668 (sub-No. 2), filed May 31, 1973. Applicant: MERCHANTS DELIVERY & WAREHOUSE CORPORATION, 1307 Baur Road, St. Louis, Mo. 63132. Applicant's representative: Austin C. Knetzger, 722 Chestnut Street, St. Louis, Mo. 63101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *All home care products*, sold and distributed by Amway Corp., consisting principally of soaps, detergents, and toiletries, from points in the St. Louis-East St. Louis commercial zone, and Blue Springs, Mo., to points in Missouri, under contract with Amway Corp.

NOTE: If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo.

No. MC 138783, filed May 16, 1973. Applicant: M & M TRUCKING COMPANY, INC., P.O. Box 1743, Auburn, Ala. 36830. Applicant's representative: Jack R. McAnally (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural limestone*, from Auburn, Ala., to those points in that part of Georgia in a territory beginning at the intersection of Interstate Highway 20 with the Alabama-Georgia State line, thence along Interstate Highway 20 to intersection Interstate Highway 75 at Atlanta, Ga., thence along Interstate Highway 75 to intersection U.S. Highway 84 at Valdosta, Ga., thence along U.S. Highway 84 to the Alabama-Georgia State line, under a continuing contract, or contracts, with Georgia Marble Co., Willingham-Little Stone Division.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Auburn, Opelika, or Montgomery, Ala.

No. MC 138809, filed June 8, 1973. Applicant: CROSS COUNTRY EXPRESS, INC., 1912 East Wensley Street, Philadelphia, Pa. 19134. Applicant's representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, Pa. 17108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cocoa powder, kibbled chocolate liquor, cocoa pressed cake and related cocoa products*, from Camden, N.J., to points in California, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia, West Virginia, Wisconsin, and the District of Columbia, under a continuing contract with Intercontinental Cocoa Products, Ltd.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa., or Washington, D.C.

No. MC 138814, filed June 1, 1973. Applicant: WILLIAM A. ADDISON AND L. O. McCULLOUGH, a partnership, doing business as AD-MAC TRUCKING CO., 854 Forest Lake Drive South, Macon, Ga. 31204. Applicant's representative: William A. Addison (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Box and crate material*, woodwired, knocked down, *lumber, hardboard, particle board, masonite, plywood and other manufactured building material* from forest products, *pipe*, rail and track, *piling, highway products and construction material* (except liquid or bulk commodities), restricted against transportation in tank vehicles, between points in Georgia, Florida, Alabama, North Carolina, South Carolina, Tennessee, Kentucky, Virginia, Maryland, Pennsylvania, Ohio, Minnesota, Illinois, Indiana, and Michigan, under contract with Gillespie-Deka Corp., Maxwell Wirebound Box Co., and Southern Crate & Veneer Co.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 138820 (Sub-No. 1), filed June 13, 1973. Applicant: PATTON'S, INC., 2300 Canyon Road, Ellensburg, Wash. 98926. Applicant's representative: James T. Johnson, 1610 IBM Building, Seattle, Wash. 98101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat byproducts*, from Ellensburg, Wash., to points in Oregon, under a continuing contract with Schaake Packing Co., Inc.

NOTE: Applicant currently holds common carrier authority in MC 129516 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash., or Portland, Oreg.

No. MC 138831, filed June 5, 1973. Applicant: JOHNNY JOHNS, doing business as J & J HAULING, 3 Midland Avenue, Elmwood Park, N.J. 07407. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bicycles, outdoor furniture, and materials, equipment, and supplies* used and useful in the manufacture and sale thereof, from points in the New York, N.Y., commercial zone as defined by the Commissioin, to points in Delaware, New Jersey, New York, Pennsylvania, Ohio, Connecticut, Rhode Island, and Massachusetts, under a continuing contract with Raleigh Bicycles of America and Kettler of America.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 138851, filed June 18, 1973. Applicant: M & H FABRICATING COMPANY, a corporation, 725 Mound Street, Springfield, Ohio 45505. Applicant's representative: Charles D. Ross, 367 West Second Street, Dayton, Ohio 45402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Metal decking, bar joists, and structural steel*, from Rankin and Heidelberg, Pa., and Beech Bottom, W. Va., to points in Ohio, under contract with Cheugh and Schlegel of Dayton, Inc.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 138854, filed May 24, 1973. Applicant: HORSE TRANSPORTATION, INC., Rural Delivery No. 3, Harrington, Del. 19952. Applicant's representative: William J. Little, Suite 1110, W. R. Grace Building, 10 East Baltimore Street, Baltimore, Md. 21202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Horses* (other than ordinary livestock) and *equipment, supplies, and paraphernalia* incidental to the transportation, care, display, and racing of such horses, between points in South Carolina, North Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, West Virginia, Ohio, Florida, and Georgia.

NOTE: If a hearing is deemed necessary, applicant does not state a location.

No. MC 138855, filed June 18, 1973. Applicant: FISCHER FAST FREIGHT, INC., 31207 Arrowhead, St. Clair Shores, Mich. 48082. Applicant's representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, Mich. 48080. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from St. Louis, Mo. Columbus, Ohio, and Milwaukee, Wis., to Mount Clemens and Port Huron, Mich., and *empty containers and damaged, rejected, or refused shipments*, on return, under contract with Petitpren, Inc., Mount Clemens, Mich.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Detroit or Lansing, Mich.

No. MC 138858, filed June 5, 1973. Applicant: CHARLES M. SHIRK, 205 East Main Street, Terre Hill, Pa. 17581. Applicant's representative: Christian V.

Graf, 407 North Front Street, Harrisburg, Pa. 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prestressed concrete products*, from the plantsite of Terre Hill Concrete Products, Inc. at Terre Hill, Pa., to points in New York, New Jersey, Maryland, West Virginia, Delaware, Virginia, and the District of Columbia.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa., or Washington, D.C.

No. MC 138861, filed June 19, 1973. Applicant: C-LINE, INC., Tourtellot Hill Road, Chepachet, R.I. 02814. Applicant's representative: Ronald N. Cobert, 1730 M Street NW., Suite 501, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cinder blocks*, from Warwick, R.I., to points in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Vermont.

NOTE: Applicant also holds contract carrier authority in MC 128343 and subs, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Providence, R.I.

MOTOR CARRIER OF PASSENGERS

No. MC 1515 (Sub-No. 185), filed June 7, 1973. Applicant: GREYHOUND LINES, INC., 1400 West Third Street, Cleveland, Ohio 44113. Applicant's representative: L. C. Major, Jr., Suite 301, Tavern Square, 421 King Street, Alexandria, Va. 22314. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, and express and newspapers* in the same vehicle with passengers, between Greensboro, N.C., and Richmond, Va. serving the intermediate points of Durham, N.C., Henderson, N.C., and the junction of Interstate Highway 85 with U.S. Highways 1 and 58, near South Hill, Va.: From Greensboro over Interstate Highway 85 to junction Interstate Highway 95 at Petersburg, Va., thence over Interstate Highway 95 to Richmond, and return over the same route. Restriction: Service at Durham and Henderson, N.C. is restricted against the pickup or discharge of traffic moving to or from Greensboro, N.C., or points west of Greensboro.

NOTE: Common control may be involved. Applicant seeks authority under section 1042.1 of part 1042-Superhighway and Deviation Rules, by the instant application.

No. MC 124817 (Sub-No. 1), filed June 20, 1973. Applicant: SANDWICH, WINDSOR, & AMHERSTBURG, RAILWAY COMPANY, a corporation, 1570 Kildare Road, Windsor, Ontario, Canada. Applicant's representative: Robert D. Gunderman, Suite 710, Statler Hilton, Buffalo, N.Y. 14202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in charter operations and in sightseeing and pleasure tours, from ports of entry on the international boundary line between the United States and Canada, to points in the United States (including Alaska, but excluding Hawaii) and return.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich.

No. MC 135738 (Sub-No. 2), filed June 11, 1973. Applicant: DONALD DeGRAFF, doing business as ACE LIMOUSINE SERVICE, Brick Plaza Shopping Center, Brick Township, N.J. 08723. Applicant's representative: Charles J. Williams, 47 Lincoln Park, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, limited to the transportation of not more than 11 passengers in any one vehicle, not including the driver thereof, in special operations, between points in Ocean and Monmouth Counties, N.J., on the one hand, and, on the other, Philadelphia International Airport, Phialdelphia, Pa.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

No. MC 138730 (sub-No. 1), filed May 11, 1973. Applicant: CARAVAN TOURS, INC., doing business as CARAVAN TOWNE CARS, 707 Route 46, Parsippany, N.J. 07054. Applicant's representative: L. C. Major, Jr., Suite 301, Tavern Square, 421 King Street, Alexandria, Va. 22314. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage and express*, in the same vehicle with passengers, in one-way and round-trip charter operations, beginning and ending at points in Morris, Bergen, Passaic, Sussex, Essex, Union, Hudson, Middlesex, Monmouth, Warren, Hunterdon, and Somerset Counties, N.J., and extending to points in New Jersey, New York, and Pennsylvania, restricted to the transportation of not more than six passengers in any one vehicle (not including the driver).

NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark N.J., or New York, N.Y.

APPLICATION OF FREIGHT FORWARDERS

No. FF-441, filed July 17, 1973. Applicant: HARLE LAND & SEA FORWARDERS (HARLE-THRU) a division of J. P. Harle Forwarding Co., P.O. Box 52908, 614 Cotton Exchange Building, Houston, Tex. 77052. Applicant's representative: Mr. J. P. Harle (same as above). Authority sought to engage in operation, in interstate commerce, as a *freight forwarder*, through use of the facilities of common carriers by railroad, motor vehicle, and water, in the transportation of *general commodities* (except explosives and hazardous articles, perishables, and unusual value articles), principally export and import shipments, between points in Oklahoma, Texas, and Louisiana.

NOTE: If a hearing is deemed necessary, applicant requests it be held at Tulsa, Okla., or Dallas or Houston, Tex.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-15835 Filed 8-1-73;8:45 am]

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PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

Food and Food Products

Definitions, identity, and label statements

Title 21—Food and Drugs

SUBCHAPTER A—GENERAL

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

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

Imitation Foods; Application of the Term "Imitation"

In the FEDERAL REGISTER of January 19, 1973 (38 FR 2138), the Commissioner of Food and Drugs proposed under Title 21 a new § 1.8(e), defining the term "imitation" for purposes of enforcing section 403(c) of the Federal Food, Drug, and Cosmetic Act.

A total of 236 comments were received in response to the proposal from consumers, consumer organizations, state agencies, manufacturers, and trade and agricultural associations. Seventy-six comments favored the proposal and 101 opposed it. Ten comments did not directly address its contents. The remaining comments requested modification, clarification, or additional requirements. The points raised and the Commissioner's conclusions are as follows:

1. Five State agencies, a manufacturer, and a consumer group questioned the correctness of the Commissioner's interpretation of section 403(c) of the Act. The comments questioned the Commissioner's authority to establish a definition for the term "imitation" which was asserted to be more restricted than the interpretation adopted in earlier court cases (62 Cases * * * Jam v. United States, 340 U.S. 593 (1951) and United States v. 651 Cases * * * Chocolate Chil-Zert, 114 F. Supp. 430 (N.D. N.Y. 1953)). One industry association urged that this proposed definition be given more careful consideration before it is finally promulgated, but did not state opposition to it. Two comments suggested that the Food and Drug Administration consider recommending legislation to repeal section 403(c) of the Act. One based this recommendation on the premise that if new products are to be marketed under their own names, section 403(c) is not needed. The other suggested that FDA should obtain data on what "imitation" means to the consumer, and that if consumer interpretation has changed, section 403(c) should be repealed and all products should compete under common or usual names.

The Commissioner concludes that the definition of "imitation" set forth in this regulation is fully consistent with the court opinions in the Jam and Chil-Zert cases, cited above, both of which discussed factors of resemblance, substitution, and inferiority in concluding that the products involved were imitations. There have been several State court cases in the past 10 years holding that a vegetable oil substitute for cream, which looks like, tastes like, and is intended to replace cream, is not an "imitation cream" but rather is a separate and distinct product that should bear its own common or usual name. See, e.g., Coffee-Rich, Inc. v. Kansas State Board of Health, 388 P.2d 582 (Kan. 1964); Coffee-Rich, Inc. v. Michigan Department of Agriculture, 135 N.W. 2d 594 (Mich. 1965). These cases represent the most current and definitive judicial interpretation of the term "imitation."

Several consumers stated that "All imitation foods should be labeled as such." Section 403(c) so requires. This regulation is intended to provide a clear and reasonable definition of "imitation" so that section 403(c) can be enforced consistently and fairly.

The Commissioner also concludes that section 403(c) should not be repealed. As interpreted in this regulation it constitutes a valuable consumer protection measure by protecting against nutritionally inferior substitute foods.

2. Some comments asserted that the proposal would cause difficulty in enforcement of some State laws, and that the proposal does not give the manufacturer of a food a clear explanation of how he can meet the nutritional equivalence requirement before he markets his product. These comments contended that leaving the determination of nutritional equivalence to the ad hoc determination of the Commissioner would make the regulation vague, indefinite, and invalid.

The Commissioner concludes that a clear definition of the term "imitation" for the purposes of section 403(c) of the act should not create difficulty in the enforcement of State laws, since this definition follows the most recent State court judicial decisions.

The Commissioner also concludes that the definition of "imitation" promulgated in this order is sufficiently clear for a manufacturer of a substitute food to determine prior to marketing whether or not such a product is an imitation, and indeed is much more helpful than the current absence of any definition. In order to clarify this matter further, the final regulation provides a clearer definition of nutritional inferiority and no longer provides for "ad hoc" determinations of nutritional inferiority by the Commissioner on the basis of criteria not stated in a regulation.

3. One comment stated that nutritional inferiority should not be the only criterion for defining "imitation." Two comments stated that the criteria for authorizing omission of the term "imitation" from the label of a substitute food should be based on consumer understanding of the overall impression conveyed by the food, the labeling, and the container. Another comment requested that additional labeling requirements be established so that consumers can better differentiate between new and traditional foods. Still other comments recommended labeling foods according to actual food value, irrespective of their imitation status.

Nutritional inferiority is not the only criterion involved in the defining "imitation" status. An evaluation of the overall impression conveyed by the food must first establish that the food is a substitute for and resembles another food.

No comment was able to articulate or even suggest objective standards constituting inferiority in addition to nutritional inferiority. Whenever the Commissioner or any other interested person concludes that a substitute food is inferior for reasons other than those set forth in the present regulation, he may propose appropriate revisions to this regulation or a separate regulation governing the particular food. The Commissioner concludes that the only objective factors defining inferiority that can be quantitated at this time relate to nutritional inferiority. Other factors of comparison, such as taste, texture, origin and cost, are too subjective and uncertain to be appropriate for inclusion in this regulation.

Additional labeling requirements already exist which help the consumer to distinguish between foods, including new and traditional foods. For example, the principal display panel of a food in package form must bear as one of its principal features a statement of the identity of the commodity, § 1.8(a) and (b). The Commissioner has recently promulgated a procedure which can be utilized to establish a common or usual name for a new food product, to prevent consumer confusion with a traditional product, 21 CFR Part 102 published in the FEDERAL REGISTER on March 14, 1973 (38 FR 6964), and new § 1.8(e) specifically refers to this procedure as one means of providing informative labeling. The nutritional value of a food is also required to be labeled under § 1.17 whenever a nutrient is added or a nutrition claim is made for the product. All ingredients in a nonstandardized food must be included on the label, and new § 1.8(d) requires uniform placement and a minimum type size for this information. Finally, section 402(b) of the act prohibits any economic adulteration and section 403(a) of the act prohibits use of any labeling which is false or misleading in any particular. In view of all of this informative labeling, the existence of other statutory provisions to prevent deception, and the clear requirement of inferiority in section 403(c) of the act, the Commissioner concludes that it would be contrary to the statute and the public interest to interpret section 403(c) as a trade barrier against the introduction of nutritious new food products.

4. Numerous comments were concerned with the effect of the regulation on standardized foods.

a. Several comments from trade associations and manufacturers of standardized foods suggested that Food and Drug Administration approval of a common or usual name be required for products which are substitutes for standardized foods, but that such approval remain optional for substitutes for non-standardized foods. Several other manufacturers stated that any new products resembling standardized foods should be labeled "imitation."

This regulation will not reduce in any way the protection afforded by standards of identity to the consumer, or to persons who manufacture standardized foods. Any food which purports to be or is represented as a standardized food but which does not conform to the standard

of identity is deemed to be misbranded under section 403(g) of the act. See, e.g. 62 cases * * * Jam v. United States, 340 U.S. 593 (1951). A substitute for a standardized food may properly be labeled with a distinctive common or usual name or a descriptive term or phrase if it is sufficiently informative to prevent confusion with the standardized product. The Commissioner finds that it is neither necessary nor practical to require prior approval of all such common or usual names. The present way by which common or usual names may be established, under § 102.1(d) published in the FEDERAL REGISTER on March 14, 1973 (38 FR 6966) provides adequate consumer protection.

b. Two consumers, two manufacturers, and an agricultural association recommended that new standards of identity be required for all new products. One trade association requested that standards be required for new table spread products.

The Commissioner has concluded that there is no need to require standards of identity for all new food products, just as there has been no need for standards for all existing products. Interested parties may submit petitions to establish standards of identity for any food products, new or existing. Standards will be proposed and adopted whenever this is in the public interest.

c. One trade association suggested that the regulation should preclude the use of a standardized name in connection with the name of a nonstandardized product.

The Commissioner rejects this suggestion because in some cases it may be necessary to include a standardized name in the name of a substitute food in order to provide the consumer with accurate, descriptive, and fully informative labeling.

d. A trade association asserted that the proposed regulation would constitute a "short cut procedure to product standards," which may not be valid.

This regulation does not establish a procedure for standardizing the identity or the name of a food product, other than use of the name "imitation." The establishment of a common or usual name for a non-standardized food product is governed by Part 102 (38 FR 6964), and standards of identity are governed by Part 10. Section 1.8(e) interprets only section 403(c) of the act.

5. The following requests for clarification were received relative to labeling requirements under the proposed regulation:

a. May a food be labeled "imitation" if it is not nutritionally inferior to the food for which it is a substitute?

b. Is a common or usual name required for a food which is nutritionally inferior and labeled as an imitation?

c. Is a fanciful name optional or is it required in addition to a common or usual name?

d. What is the difference between "common or usual name," and "appropriately descriptive term"?

A manufacturer or distributor may label a substitute food which is not nutritionally inferior to the traditional food as an imitation if he concludes that the product is inferior in some other way and if use of the term is not misleading. A substitute food which is nutritionally inferior and labeled as an imitation will in most cases thereby bear a sufficient statement of identity, but "imitation" may not be used as the sole common or usual name if it is misleading to the consumer. In some cases an additional informative term or phrase will be necessary to avoid a misleading label. If there is an established common or usual name for a substitute product, use of "imitation" labeling for that product would inherently be misleading and thus prohibited.

The use of fanciful names in food labeling is optional, and the regulation has been revised to state this fact.

A common or usual name is an established term identifying a particular food. The common or usual name of a food may be established by regulation (e.g., by a standard of identity promulgated pursuant to section 401 of the act, in a common or usual name regulation pursuant to Part 102, or in a regulation establishing a nutritional quality guideline pursuant to Part 100), or by common everyday usage. Where a common or usual name exists, it must be used. For a food, especially a new product, for which there is no established common or usual name, an appropriately descriptive term must be used, and there may be more than one such descriptive term in use for a food until a common or usual name is established. Widespread, consistent use of a descriptive or fanciful term for a sufficient time period will result in such term being established as the common or usual name. An appropriately descriptive term may also be established as a common or usual name by petition pursuant to Part 102 eliminating the time required for common usuage.

6. One comment stated that the regulation should require manufacturers of substitute foods to demonstrate equivalent consumer acceptance of such foods to traditional foods through consumer and market acceptability studies. The Commissioner rejects this suggestion. The purpose of the act and of this regulation is to provide the consumer with sufficient information on food labels so that he can choose intelligently among the various products before him, not to limit choices to those products which have previously obtained consumer acceptance.

7. For foods which resemble other foods and are not nutritionally inferior to them, one individual suggested that "ana" (an abbreviation for analog) be considered as a prefix or suffix to the name of the traditional food which the analog product resembles, e.g., anabacon, anabeef, or cheeseana. The Commissioner agrees that in some cases a term such as "ana", or an alternative uniform system of identification, might be a practical element of a common or usual name. However, considerable care would have to be taken to insure that such terminology is used in conjunction wth a descriptive term so as to provide fully informative labeling which would not be confusing or misleading to the consumer. Adoption of any such terminology should be pursuant to the procedures established in § 102.1(d) published in the FEDERAL REGISTER on March 14, 1973 (38 FR 6966).

8. A number of comments were related to the definition of nutritional inferiority. Some comments, predominantly from industry, requested a stricter definition of "nutritionally inferior." One suggested that nutritional inferiority be based on 10 percent of the amounts of the essential nutrients present in the traditional food for which a new product is a substitute. Other comments suggested requiring equal amounts of nutrients for a substitute food to avoid imitation status. While one of these comments suggested that the total profile of available nutrients be considered, another suggested that all essential nutrients present in a significant amount be considered, and that such significant amounts should be based on caloric content of the food as well as percentages of the U.S. Recommended Daily Allowance (RDA) present per serving.

The Commissioner agrees that the proposed criterion for nutritional inferiority (ten percent of the U.S. RDA) would allow foods with less than ten percent of the U.S. RDA of essential nutrients to be substituted for by similar products which might contain none of these nutrients and yet not be labeled as imitations. In order to prevent such occurrences and in response to comments, the definition of nutritional inferiority has been revised to include any reduction in the content of an essential vitamin or mineral or of protein that is present in a "measurable amount." A "measurable amount" of an essential nutrient is defined as two percent or more of the U.S. RDA of that nutrient per serving or portion of the food, as set out in § 1.17. Protein and those vitamins and minerals listed under § 125.1(b) will be considered essential nutrients for all substitute foods. The regulation is modified accordingly.

Other comments regarding the definition of nutritional inferiority included arguments that such a concept should include the quality of nutrients as well as their quantity, especially protein quality. One comment requested that bioavailability of nutrients be considered, and another requested consideration of maximum limits on the amounts of various nutrients in foods subject to this regulation. The U.S. RDA of protein is already related to quality, under § 1.17(c)(7)(ii), and there are no meaningful distinctions of quality for those nutrients listed in § 125.1(b).

There is at this time no apparent need for bioavailability requirements. Bioavailability is significant for certain drugs because of the need to deliver the drug to the body in precise, consistent amounts. Nutrients in foods exist in widely varying concentrations and there is not the same need for a precise, consistent amount to be delivered. However, if problems of bioavailability of specific added nutrients should be discovered in

the future, the Food and Drug Administration will establish regulations governing bioavailability requirements for such added nutrients.

Excessive nutrient fortification will be effectively prohibited by § 80.1, which would apply to any substitute food product to which nutrients listed under § 125.1(b) are added in amounts greater than necessary to prevent inferiority as compared to the food for which it substitutes, if any such nutrients are present in the food at a level higher than the lower limit established by § 80.1(f)(1).

One manufacturer felt that nutritional inferiority should not be defined until a committee of experts appointed by the National Academy of Sciences (NAS) has reviewed and recommended guidelines for such a definition.

The Commissioner recognizes the significance of the definition of nutritional inferiority as well as the benefits derived from NAS expert committees. However, the Commissioner concludes that there is no need for such a committee at this time.

9. One comment stated that if there are circumstances which would result in a food being nutritionally inferior for reasons other than that stated in the definition, such specific circumstances should be named in the regulation.

The proposal recognized the possibility that a food might be found to be nutritionally inferior for additional reasons not stated in the regulation, and authorized notice from the Commissioner to the manufacturer or distributor in such cases. The final regulation has been revised to eliminate any reference to regulatory action for violation of section 403(c) of the act based on standards of inferiority not promulgated in a regulation. The final regulation provides that if the Commissioner concludes that a food is a substitute for and resembles another food but is inferior to the food initiated for reasons other than those set forth he may propose appropriate revisions to the regulation or he may propose a separate regulation governing the particular food.

10. One comment suggested that a specific type size be required for any "imitation" designation, in relation to the type used for the brand name. Since existing regulations require that any such designation be conspicuous, the Commissioner concludes that this is unnecessary. Any such requirement should be the subject of a separate proposal dealing with the relationship between the brand name and the common or usual name.

11. In response to other concerns expressed in the comments, the Commissioner advises that:

a. While this regulation will affect competition between distributors of new food products and those of traditional foods, this is not a valid objection to a measure otherwise appropriate for avoiding confusion concerning the meaning of "imitation."

b. The nutritional adequacy of substitute foods, i.e., their place in the total diet, is not a subject of this regulation. The consumer is free to determine the place each food will have in his diet, and the labeling required by this regulation will help him to make informed choices.

c. This regulation does not affect the food additive status of any ingredient of the foods herein regulated.

12. The Commissioner is aware of the Resolution adopted June 21, 1973, by the Association of Food and Drug Officials of the United States at this year's annual conference in Rapid City, South Dakota in which opposition to his January 19, 1973, proposal is set forth. The views of that organization as well as the views of the State officials which were individually expressed through their own response to the proposal have been thoroughly considered in arriving at this final order.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 403, 701(a), 52 Stat. 1047–1048, as amended, 1055; 21 U.S.C. 343, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 1 is amended by adding a new paragraph (e) to § 1.8 to read as follows:

§ 1.8 Food in package form, labeling; identity.

* * * * *

(e) Under the provisions of section 403(c) of the Federal Food, Drug and Cosmetic Act, a food shall be deemed to be misbranded if it is an imitation of another food unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(1) A food shall be deemed to be an imitation and thus subject to the requirements of section 403(c) of the act if it is a substitute for and resembles another food but is nutritionally inferior to that food.

(2) A food that is a substitute for and resembles another food shall not be deemed to be an imitation provided it meets each of the following requirements:

(i) It is not nutritionally inferior to the food for which it substitutes and which it resembles.

(ii) Its label bears a common or usual name that complies with the provisions of § 102.1 of this chapter and that is not false or misleading, or in the absence of an existing common or usual name, an appropriately descriptive term that is not false or misleading. The label may, in addition, bear a fanciful name which is not false or misleading.

(3) A food for which a common or usual name is established by regulation (e.g., in a standard of identity pursuant to section 401 of the act, in a common or usual name regulation pursuant to part 102 of this chapter, or in a regulation establishing a nutritional quality guideline pursuant to Part 100 of this chapter), and which complies with all of the applicable requirements of such regulation(s), shall not be deemed to be an imitation.

(4) Nutritional inferiority includes: (i) Any reduction in the content of an essential nutrient that is present in a measurable amount, but does not include a reduction in the caloric or fat content provided the food is labeled pursuant to the provisions of § 1.17, and provided the labeling with respect to any reduction in caloric content complies with the provisions applicable to caloric content in Part 125 of this chapter.

(ii) For the purpose of this section, a measurable amount of an essential nutrient in a food shall be considered to be 2 percent or more of the U.S. RDA of protein or any vitamin or mineral listed under § 125.1(b) per average or usual serving, or where the food is customarily not consumed directly, per average or usual portion, as established in § 1.17.

(iii) If the Commissioner concludes that a food is a substitute for and resembles another food but is inferior to the food imitated for reasons other than those set forth in this paragraph, he may propose appropriate revisions to this regulation or he may propose a separate regulation governing the particular food.

Effective date. Labeling may be changed to comply with this regulation beignning on August 2, 1973. All labeling ordered after December 31, 1973, and all labeling used on products shipped in interstate commerce after December 31, 1974, shall comply with this regulation.

(Secs. 403, 701(a), 52 Stat. 1047–1048, as amended, 1055; 21 U.S.C. 343, 371(a))

Dated: July 25, 1973.

A. M. SCHMIDT,

Commissioner of Food and Drugs.

[FR Doc.73–15701 Filed 8–1–73;8:45 am]

INCIDENTAL ADDITIVES

Exemptions From Food Labeling Requirements

In the FEDERAL REGISTER of January 19, 1973, (38 FR 2141), the Commissioner of Food and Drugs proposed to clarify the Agency's policy with regard to the label declaration of incidental additives and to consolidate into one place regulations currently found in 21 CFR Parts 1, 3, and 5 establishing exemptions from certain labeling requirements.

The comments received and the Commissioner's responses are as follows:

1. Several comments opposed labeling exemptions for incidental additives, particularly the provisions of proposed § 1.10a (a)(4)(i) and (a)(4)(ii)(c) These comments asserted that:

(a) The proposed exemption for incidental additives is not predicated on impracticability, deception or unfair competition as required by section 403(i)(2) of the act.

(b) Any possible incentive to reduce the use of additives is destroyed by not requiring industry to list incidental additives.

(c) Faulty calibration or malfunction of machines used in food manufacturing may result in unnecessary amounts of additives in foods.

(d) Substances that migrate from processing equipment and packaging material should be eliminated rather than exempted from label declaration.

(e) Additives that do not serve a technical or functional effect should not remain in food.

It was also asserted that consumers have an "undeniable right" to know what is in the food they eat so that they may make informed choices among foods. It was noted that, for medical or religious reasons, consumers may wish to restrict their diets and thus need to be aware of the ingredients in foods. It was also contended that the proposed exemptions are contrary to the policy of the Food and Drug Administration stated by the Commissioner at hearings in which he said, "We believe that consumers should be aware of the ingredients in the foods they consume."

The Commissioner concludes that to require label declaration of all incidental additives which may be present in a finished food product in nonfunctional trace amounts would be impracticable. In many cases there may be no feasible way to determine whether nonfunctional trace amounts of some particular substances remain in particular lots of a finished food, and label declaration of such ingredients would be false and misleading for those lots which do not contain any remaining traces of such incidental substances. Furthermore, to require lengthy listings of such substances might cause consumers to give undue attention to the essentially meaningless compilations resulting in deception and unfair competition from competing products whose manufacturers fail to do as thorough a job of imagining all possible substances which may be present in some trace amount.

The Commissioner is not aware of evidence that industry is using food additives without valid technological reasons. A food additive, including a substance migrating from packaging material or equipment, must be approved for safety by the Food and Drug Administration before it can appear in food, and the food additive regulations do not permit use of an additive in an amount greater than necessary to achieve a valid technical or functional effect. Faulty calibration or malfunctioning of machinery, or any other manufacturing practices which result in illegal levels of additives, and any insanitary manufacturing conditions whereby food may have become contaminated with filth or rendered injurious to health, would cause the finished food to be adulterated and subject to regulatory action. Labeling rules are not appropriate to govern such situations.

Section 403(i) of the act specifically provides for regulations establishing exemptions from declaration of ingredients, to the extent that such declaration would be impracticable or result in deception or unfair competition. The insignificant, nonfunctional substances which may be present in a food fall within that exemption provision. The Commissioner is, however, committed to a policy that foods should bear informative labeling listing all ingredients which have any nutritive or other technical or functional effect. The provisions of this regulation are not inconsistent with that policy, but rather apply a rule of reason to prevent lengthy, meaningless listings of insignificant ingredients which may be present in trace amounts.

The Commissioner is not aware of any evidence that any substance omitted from a declaration of ingredients because of this regulation would have any medical, religious or dietary significance. He concludes that these general rules are necessary in the interest of practicality and to avoid deception and unfair competition.

2. It was suggested that the provisions dealing with incidental additives be expanded to cover standardized foods as well as nonstandardized foods.

The Commissioner concludes that there is no reason to exempt standardized foods from this regulation and advises that these rules apply to all foods. All labeling requirements in 21 CFR Part 1 apply equally to standardized and nonstandardized food except where a specific standard establishes a different requirement.

3. One comment requested clarification of the regulations with regard to food products manufactured under the Meat Inspection Act or the Poultry Products Inspection Act, administered by the United States Department of Agriculture.

The Commissioner advises that this regulation is not in conflict with the aforementioned acts or any regulation of the Department of Agriculture.

4. One comment was opposed to the exemption in proposed § 1.10a(a)(1) for "assortment" packages which contain varying ingredients.

Section 1.10a(a)(1) has been modified to require the labels of such assortments to list by name those ingredients that may be present.

5. One comment from a consumer group opposed the exemption in proposed § 1.10a(a)(3) for propylene glycol and glycerin in quiescently frozen confections. The comment also stated that the proposed exemption appears to be in violation of section 403(i)(2) of the act in that it is not based on impracticability, deception or unfair competition.

This provision was proposed as a transfer to this regulation of § 1.10(g) (21 CFR 1.10). Propylene glycol and glycerin used as carriers for stabilizers and emulsifiers in quiescently frozen confections were exempted from label declaration by § 1.10(g) because these ingredients are used in small amounts, are generally recognized as safe and are exempt from label declaration when used in ice cream and other frozen desserts by the standards of identity for those competing products.

The Commissioner concludes that this exemption should not be continued and that proposed § 1.10a(a)(3) should be deleted. The Commissioner republished in the FEDERAL REGISTER of January 19, 1973 a statement of policy favoring label declaration of all optional ingredients in standardized foods and announcing that food standards will be amended to require such declaration (38 FR 2137). It would be inconsistent, under these circumstances, to continue labeling exemptions for analogous ingredients in nonstandardized foods.

6. One comment interpreted proposed § 1.10a(b) to mean that a food repackaged in a retail establishment would be exempt from listing ingredients.

The exemptions of proposed § 1.10a(b) do not apply to listing of ingredients other than optional ingredients in standardized foods. As specified, this paragraph pertains only to exemptions from subsections 403(e)(1), (g)(2), and (i)(1) of the act. A standardized food, repackaged in a retail establishment, is exempt from label declaration of optional ingredients which would otherwise be required to be declared on the label only if the food is displayed to the consumer with its interstate labeling or other sign, card, etc., clearly in view listing the optional ingredients. The same alternate methods for providing ingredient information for nonstandardized foods retailed from bulk containers are authorized by proposed § 1.10a(a)(2).

7. One comment proposed that if an open container of a fresh fruit or vegetable is displayed at retail without labeling then it should be required to bear its interstate label or a counter card, sign or other device listing the ingredients.

The Commissioner advises that if fresh fruits or vegetables retailed from bulk containers contain additional ingredients within the meaning of 403(i)(2) of the act, for example waxed fruits, they are required to be labeled in accordance with section 403(i)(2) of the act or the exemption provisions of § 1.10a(a)(2).

8. One comment asserted that the provisions of proposed § 1.10a(b), insofar as they apply to "delicatessen products" offered for retail sale in open trays, are not authorized by the fair packaging and labeling powers of the Commissioner.

The Commissioner advises that § 1.10a(b) is authorized by the various sections of the Federal Food, Drug, and Cosmetic Act specified in that paragraph, and that it does not purport to be promulgated pursuant to the Fair Packaging and Labeling Act.

9. The Commissioner does not agree with a comment that the use of counter cards, signs, or other devices required by § 1.10a(b) would necessarily hinder and obscure a customer's view. Such cards, signs, etc. may be above, below, or otherwise adjacent to a food display if they are conspicuous. The Commissioner further advises that § 1.10a(b)(3) specifically provides that a food subject to section 403(i)(1) of the act need not have such a card or sign "if the common or usual name of the food is clearly revealed by its appearance."

10. In response to a request for clarification, the Commissioner advises that containers of fresh fruits and vegetables which otherwise comply with § 1.10a(c) and which are covered with clear uncolored overwrap through which the contents of the container are clearly visible are "open" within the meaning of § 1.10a(c). The regulation has been revised to so state.

11. One trade association requested confirmation of its interpretation that the exemption in proposed § 1.10a(d)(2)

(for a shipment of food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantity at an establishment other than that where originally processed or packed) covers not only shipments intended to be processed, labeled, or repacked as the same food but also ingredients for use in the manufacture of other foods.

The Commissioner advises that the regulation does not apply to food to be used as an ingredient in the manufacture of other foods.

12. One comment opposed the proposal to exempt the use of harmless markers in food on the basis that some people may be allergic to the markers used. The comment proposed that if a marker is present in a food then the label of such food indicate the presence of an unidentified ingredient.

Markers cannot be added to a food without prior approval by the Food and Drug Administration and such approval is not given unless the marker will be safe and suitable for use. To require a manufacturer to state that an unidentified ingredient is present would nullify the purpose for which such markers are used. The Commissioner is not aware that any markers currently in use have caused any allergic reaction in consumers, and no such evidence was submitted. Accordingly, § 1.10a(g) of the proposed regulation has been retained.

13. It was asserted that the statement required to appear on wrapped fish fillets and wrapped banana clusters specifying weighing of the package "at the time of sale" conflicts with both common practice and the provisions of these sections since the product may be weighed and have its weight marked prior to or at the time of sale. It was proposed in one comment that as an alternative to showing the wrapper tare weight on the individual packages of fish, the tare weight along with instructions should be permitted to be shown on the shipping containers only. One manufacturer asserted that the wording in proposed § 1.10a(h) and (i) is confusing since the term "wrapper tare ——— ounce" appearing in paragraph (h) does not appear in paragraph (i).

The Commissioner agrees that in practice these products may be weighed prior to time of sale, and the affected proposed § 1.10 a(h)(1)(ii) and (i)(1)(ii) are revised to read "to be weighed at or before time of sale". The Commissioner does not agree with the suggestion to permit the wrapper tare weight to appear on the shipping containers only. This could increase the possibility of misbranding of the individual packages once they are removed from the cartons, should the weighing and weight marking not be done immediately or should tare weights differ from shipment to shipment. The example wrapper tare weight statement appearing in paragraph (h) has been added to paragraph (i).

14. In response to a request for clarification, the Commissioner advises that the wrapper tare weight statement must appear on the wrappers used by the fish packer in the shipment to the retailer.

15. The Commissioner is aware of the Resolution adopted June 21, 1973, by the Association of Food and Drug Officials of the United States at this year's annual conference in Rapid City, South Dakota in which opposition to his January 19, 1973, proposal is set forth. The views of that organization as well as the views of the State officials which were individually expressed through their own response to the proposal have been thoroughly considered in arriving at this final order.

Accordingly, having considered the comments received, and other relevant information, the Commissioner concludes that proposed § 1.10a with the changes noted above, should be adopted.

Therefore, pursuant to the provisions of the Federal Food, Drug and Cosmetic Act (secs 403, 405, 701(a), 52 Stat. 1047–1049, 1055; 21 U.S.C. 343, 345, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 1, 3, and 5 are amended as follows:

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

§ 1.10 [Amended]

1. In § 1.10 paragraphs (e), (f), and (g) are hereby revoked, and paragraph (h) is redesignated as paragraph (e).

2. A new § 1.10a is added to Part 1, to read as follows:

§ 1.10a Food; labeling; exemptions from labeling requirements.

(a) The following foods are exempt from compliance with the requirements of section 403(i)(2) of the act (requiring a declaration on the label of the common or usual name of each ingredient when the food is fabricated from two or more ingredients).

(1) An assortment of different items of food, when variations in the items that make up different packages packed from such assortment normally occur in good packing practice and when such variations result in variations in the ingredients in different packages, with respect to any ingredient that is not common to all packages. Such exemption, however, shall be on the condition that the label shall bear, in conjunction with the names of such ingredients as are common to all packages, a statement (in terms that are as informative as practicable and that are not misleading) indicating by name other ingredients which may be present.

(2) A food having been received in bulk containers at a retail establishment, if displayed to the purchaser with either (i) the labeling of the bulk container plainly in view or (ii) a counter card, sign, or other appropriate device bearing prominently and conspicuously the information required to be stated on the label pursuant to section 403(i)(2) of the act.

(3) Incidental additives that are present in a food at insignificant levels and do not have any technical or functional effect in that food. For the purposes of this subparagraph, incidental additives are:

(i) Substances that have no technical or functional effect but are present in a food by reason of having been incorporated into the food as an ingredient of another food, in which the substance did have a functional or technical effect.

(ii) Processing aids, which are as follows:

(*a*) Substances that are added to a food during the processing of such food but are removed in some manner from the food before it is packaged in its finished form.

(*b*) Substances that are added to a food during processing, are converted into constituents normally present in the food, and do not significantly increase the amount of the constituents naturally found in the food.

(*c*) Substances that are added to a food for their technical or functional effect in the processing but are present in the finished food at insignificant levels and do not have any technical or functional effect in that food.

(iii) Substances migrating to food from equipment or packaging or otherwise affecting food that are not food additives as defined in section 201(s) of the act; or if they are food additives as so defined, they are used in conformity with regulations established pursuant to section 409 of the act.

(b) A food repackaged in a retail establishment is exempt from the following provisions of the act if the conditions specified are met.

(1) Section 403(e)(1) of the act (requiring a statement on the label of the name and place of business of the manufacturer, packer, or distributor).

(2) Section 403(g)(2) of the act (requiring the label of a food which purports to be or is represented as one for which a definition and standard of identity has been prescribed to bear the name of the food specified in the definition and standard and, insofar as may be required by the regulation establishing the standard the common names of the optional ingredients present in the food), if the food is displayed to the purchaser with its interstate labeling clearly in view, or with a counter card, sign, or other appropriate device bearing prominently and conspicuously the information required by these provisions.

(3) Section 403(i)(1) of the act (requiring the label to bear the common or usual name of the food), if the food is displayed to the purchaser with its interstate labeling clearly in view, or with a counter card, sign, or other appropriate device bearing prominently and conspicuously the common or usual name of the food, or if the common or usual name of the food is clearly revealed by its appearance.

(c) An open container (a container of rigid or semirigid construction, which is not closed by lid, wrapper, or otherwise other than by an uncolored transparent wrapper which does not obscure the contents) of a fresh fruit or fresh vegetable, the quantity of contents of which is not more than 1 dry quart, shall be exempt from the labeling requirements of sec-

tions 403(e), (g)(2) (with respect to the name of the food specified in the definition and standard), and (i)(1) of the act; but such exemption shall be on the condition that if two or more such containers are enclosed in a crate or other shipping package, such crate or package shall bear labeling showing the number of such containers enclosed therein and the quantity of the contents of each.

(d) Except as provided by paragraphs (e) and (f) of this section, a shipment or other delivery of a food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantity at an establishment other than that where originally processed or packed, shall be exempt, during the time of introduction into and movement in interstate commerce and the time of holding in such establishment, from compliance with the labeling requirements of section 403 (c), (e), (g), (h), (i), (j), and (k) of the act if:

(1) The person who introduced such shipment or delivery into interstate commerce is the operator of the establishment where such food is to be processed, labeled, or repacked; or

(2) In case such person is not such operator, such shipment or delivery is made to such establishment under a written agreement, signed by and containing the post office addresses of such person and such operator, and containing such specifications for the processing, labeling, or repacking, as the case may be, of such food in such establishment as will insure, if such specifications are followed, that such food will not be adulterated or misbranded within the meaning of the act upon completion of such processing, labeling, or repacking. Such person and such operator shall each keep a copy of such agreement until 2 years after the final shipment or delivery of such food from such establishment, and shall make such copies available for inspection at any reasonable hour to any officer or employee of the Department who requests them.

(3) The article is an egg product subject to a standard of identity promulgated in Part 42 of this chapter, is to be shipped under the conditions specified in paragraph (d)(1) or (d)(2) of this section and for the purpose of pasteurization or other treatment as required in such standard, and each container of such egg product bears a conspicuous tag or label reading "Caution—This egg product has not been pasteurized or otherwise treated to destroy viable Salmonella microorganisms." In addition to safe and suitable bactericidal processes designed specifically for Salmonella destruction in egg products, the term "other treatment" in the first sentence of this paragraph shall include use in acidic dressings in the processing of which the pH is not above 4.1 and the acidity of the aqueous phase, expressed as acetic acid, is not less than 1.4 percent, subject also to the conditions that:

(i) The agreement required in paragraph (d)(2) of this section shall also state that the operator agrees to utilize such unpasteurized egg products in the processing of acidic dressings according to the specifications for pH and acidity set forth in this paragraph, agrees not to deliver the acidic dressing to a user until at least 72 hours after such egg product is incorporated in such acidic dressing, and agrees to maintain for inspection adequate records covering such processing for 2 years after such processing.

(ii) In addition to the caution statement referred to above, the container of such egg product shall also bear the statement "Unpasteurized ——— for use in acidic dressings only," the blank being filled in with the applicable name of the eggs or egg product.

(e) Conditions affecting expiration of exemptions. (1) An exemption of a shipment or other delivery of a food under paragraph (d)(1) or (3) of this section shall, at the beginning of the act of removing such shipment or delivery, or any part thereof, from such establishment become void ab initio if the food comprising such shipment, delivery, or part is adulterated or misbranded within the meaning of the act when so removed.

(2) An exemption of a shipment or other delivery of a food under paragraph (d)(2) or (3) of this section shall become void ab initio with respect to the person who introduced such shipment or delivery into interstate commerce upon refusal by such person to make available for inspection a copy of the agreement, as required by paragraph (d)(2) or (3) of this section.

(3) An exemption of a shipment or other delivery of a food under paragraph (d)(2) or (3) of this section shall expire:

(i) At the beginning of the act of removing such shipment or delivery, or any part thereof, from such establishment if the food comprising such shipment, delivery, or part is adulterated or misbranded within the meaning of the act when so removed; or

(ii) Upon refusal by the operator of the establishment where such food is to be processed, labeled, or repacked, to make available for inspection a copy of the agreement, as required by such paragraph.

(f) The word "processed" as used in this paragraph shall include the holding of cheese in a suitable warehouse at a temperature of not less than 35° F. for the purpose of aging or curing to bring the cheese into compliance with requirements of an applicable definition and standard of identity. The exemptions provided for in paragraph (d) of this section shall apply to cheese which is, in accordance with the practice of the trade, shipped to a warehouse for aging or curing, on condition that the cheese is identified in the manner set forth in one of the applicable following paragraphs, and in such case the provisions of paragraph (e) of this section shall also apply:

(1) In the case of varieties of cheese for which definitions and standards of identity require a period of aging whether or not they are made from pasteurized milk, each such cheese shall bear on the cheese a legible mark showing the date at which the preliminary manufacturing process as been completed and at which date curing commences, and to each cheese, on its wrapper or immediate container, shall be affixed a removable tag bearing the statement "Uncured ——— cheese for completion of curing and proper labeling," the blank being filled in with the applicable name of the variety of cheese. In the case of swiss cheese, the date at which the preliminary manufacturing process had been completed and at which date curing commences is the date on which the shaped curd is removed from immersion in saturated salt solution as provided in the definition and standard of identity for swiss cheese, and such cheese shall bear a removable tag reading, "To be cured and labeled as 'swiss cheese,' but if eyes do not form to be labeled as 'swiss cheese for manufacturing.' "

(2) In the case of varieties of cheeses which when made from unpasteurized milk are required to be aged for not less than 60 days, each such cheese shall bear a legible mark on the cheese showing the date at which the preliminary manufacturing process has been completed and at which date curing commences, and to each such cheese or its wrapper or immediate container shall be affixed a removable tag reading, "——— cheese made from unpasteurized milk. For completion of curing and proper labeling," the blank being filled in with the applicable name of the variety of cheese.

(3) In the case of cheddar cheese, washed curd cheese, colby cheese, granular cheese, and brick cheese made from unpasteurized milk, each such cheese shall bear a legible mark on the cheese showing the date at which the preliminary manufacturing process has been completed and at which date curing commences, and to each such cheese or its wrapper or immediate container shall be affixed a removable tag reading "——— cheese made from unpasteurized milk. For completion of curing and proper labeling, or for labeling as ——— cheese for manufacturing," the blank being filled in with the applicable name of the variety of cheese.

(g) The label declaration of a harmless marker used to identify a particular manufacturer's product may result in unfair competition through revealing a trade secret. Exemption from the label declaration of such a marker is granted, therefore, provided that the following conditions are met:

(1) The person desiring to use the marker without label declaration of its presence has submitted to the Commissioner of Food and Drugs full information concerning the proposed usage and the reasons why he believes label declaration of the marker should be subject to this exemption; and

(2) The person requesting the exemption has received from the Commissioner of Food and Drugs a finding that the marker is harmless and that the exemption has been granted.

(h) Wrapped fish fillets of nonuniform weight intended to be unpacked and marked with the correct weight at or before the point of retail sale in an establishment other than that where originally packed shall be exempt from

the requirement of section 403(e)(2) of the act during introduction and movement in interstate commerce and while held for sale prior to weighing and marking:

(1) *Provided*, That:

(i) The outside container bears a label declaration of the total net weight; and

(ii) The individual packages bear a conspicuous statement "To be weighed at or before time of sale" and a correct statement setting forth the weight of the wrapper: *And*

(2) *Provided further*, That it is the practice of the retail establishment to weigh and mark the individual packages with a correct net-weight statement prior to or at the point of retail sale. A statement of the weight of the wrapper shall be set forth so as to be readily read and understood, using such term as "wrapper tare — ounce," the blank being filled in with the correct average weight of the wrapper used.

(3) The act of delivering the wrapped fish fillets during the retail sale without the correct net-weight statement shall be deemed an act which results in the product's being misbranded while held for sale. Nothing in this paragraph shall be construed as requiring net-weight statements for wrapped fish fillets delivered into institutional trade provided the outside container bears the required information.

(i) Wrapped clusters (consumer units) of bananas of nonuniform weight intended to be unpacked from a master carton or container and weighed at or before the point of retail sale in an establishment other than that where originally packed shall be exempt from the requirements of section 403(e)(2) of the act during introduction and movement in interstate commerce and while held for sale prior to weighing:

(1) *Provided*, That:

(i) The master carton or container bears a label declaration of the total net weight; and

(ii) The individual packages bear a conspicuous statement "To be weighed at or before the time of sale" and a correct statement setting forth the weight of the wrapper; using such term as "wrapper tare ——— ounce," the blank being filled in with the correct average weight of the wrapper used;

(2) *And provided, further*, That it is the practice of the retail establishment to weigh the individual packages either prior to or at the time of retail sale.

(3) The act of delivering the wrapped clusters (consumer units) during the retail sale without an accurate net weight statement or alternatively without weighing at the time of sale shall be deemed an act which results in the product's being misbranded while held for sale. Nothing in this paragraph shall be construed as requiring net-weight statements for clusters (consumer units) delivered into institutional trade, provided that the master container or carton bears the required information.

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

§ 3.1 [Revoked]

3. The provisions of § 3.1 are hereby revoked.

§ 3.26 [Revoked]

4. The provisions of § 3.26 are hereby revoked.

PART 5—[REVOKED]

5. The provisions of Part 5 are hereby revoked.

Effective date. This order shall become effective on September 4, 1973.

(Secs. 403, 405, 701(a), 52 Stat. 1047–1049, 1055; 21 U.S.C. 343, 345, 371(a))

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15702 Filed 8-1-73;8:45 am]

LABEL STATEMENTS; FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER

In the matter of revising the regulations for food for special dietary uses:

The Commissioner of Food and Drugs published Proposed Findings of Fact, Proposed Conclusions, and a Tentative Order in the FEDERAL REGISTER of January 19, 1973 (38 FR 2143), and allowed 60 days for the filing of written exceptions by any interested person whose appearance was filed at the hearing. The published document also included a history of the proceedings in the matter and an explanation of the scope of this action. Time for the filing of exceptions was subsequently extended through April 20, 1973 by notice published in the FEDERAL REGISTER on March 9, 1973 (38 FR 6396).

Exceptions to the order and the Findings of Fact were received from 35 persons whose appearance was filed at the hearing and one person who did not file such an appearance. In addition, approximately 790 postcards, form letters, and individual letters representing 1200 persons were received by the Hearing Clerk, objecting to the order. Over 20,000 similar letters objecting to the order, submitted to other government offices, were forwarded to the agency. None of these letters provided any substantive reasons for modifying the order. All exceptions filed have been considered and have been the basis of modification in the findings and in the order as set forth below. The Commissioner is aware of the Resolution adopted June 21, 1973, by the Association of Food and Drug Officials of the United States at this year's annual conference in Rapid City, South Dakota, in which opposition to his January 19, 1973, tentative order is set forth. The views of that organization, as well as the views of the State officials which were individually expressed through their own responses to the tentative order, have been thoroughly considered in arriving at this final order.

1. Exceptions were received stating that defining the term "special dietary use" to include dietary supplements was not within the province of the Federal Food, Drug, and Cosmetic Act. The Commissioner finds no merit in this exception. The agency as well as the courts have long recognized that dietary supplements which possess a label or labeling indicating the presence of various vitamins or minerals do in fact represent that the product has a special dietary use for man, by reason of its vitamin and mineral properties. 21 CFR 125.3; *V. E. Irons* v. *United States*, 244 F.2d 34 (C.A. 1, 1957), cert denied 354 U.S. 923 (1957).

2. An exception was received stating that the words "pathological" and "disease" should have been included in the definition of "special dietary use" in § 125.1(a) (21 CFR 125.1). The Commissioner reiterates the general principle that the labeling of foods for special dietary uses may not represent, suggest, or imply that the food is adequate or effective in the prevention, cure, mitigation, or treatment of any disease or symptom. Such products are defined as drugs under the act. The Commissioner also points out that, under specific sections of Part 125, provisions are made for appropriate labeling of foods for special dietary use for use solely under medical supervision to meet nutritional requirements in specific medical conditions. Such foods are intended to provide sound nutrition to sick persons rather than to treat a disease. The Commissioner concludes that the deletion of the words "pathological" and "disease" from the definition of foods for special dietary use is proper and supported by the Hearing Record and therefore no change is warranted.

3. In order to clarify the derivation of U.S. Recommended Daily Allowances (U.S. RDA's) and to indicate his intent to amend them at appropriate times, the Commissioner adds a new subparagraph to § 125.1(b). It is made clear in the regulation that as new information on nutrient needs of humans is obtained and becomes generally adopted as authoritative by experts in nutritional science, comparable changes will be made in the table of U.S. RDA's when such changes will serve to better inform users of the nutrient value of a food for special dietary use. This action is supported by paragraph 9 of the Proposed Findings of Fact.

4. Exceptions were received objecting to the use of the new term "U.S. RDA" on the basis that the term was not used

in the 1962 and 1966 proposals and therefore was not a subject of the hearings.

One of the purposes of the hearings was to develop a set of recommended dietary allowances which reflect the nutrient requirements of consumers, and which can also be used in the labeling of foods to fully inform the consumer regarding nutrient content. Paragraphs 9, 10 and 13 of the Proposed Findings of Fact for Part 125 support the use of publication No. 1694 of the National Academy of Sciences, including the table entitled "Recommended Daily Dietary Allowances", to develop such a new set of recommended dietary allowances. Because the term "RDA", standing alone, refers specifically to the values found in the table entitled "Recommended Daily Dietary Allowances", it would be improper to use the identical term in referring to a new set of recommended dietary allowances not identical in all instances to those appearing in the aforementioned table. The Commissioner therefore concludes that a new term is needed which will convey the sense of recommended dietary allowances without being confused with the already existing RDA's, and finds "U.S. RDA" to be such a term. The Commissioner further concludes that the development of such a new term falls within the mandate of the hearings to develop a new set of recommended dietary allowances, and therefore finds no merit in the exception.

5. An exception was received suggesting that the U.S. RDA's for biotin and folic acid were too high, since experience with naturally-occurring lower levels in milk-based weight control dietaries had not resulted in any observations of deficiency in either humans or experimental animals consuming these products.

The Commissioner again notes his reliance upon the information contained in "Recommended Dietary Allowances," (Seventh Revised Ed., 1968), published by the Food and Nutrition Board of the National Academy of Sciences-National Research Council, as being authoritative for the development of the U.S. RDA's. This is clearly indicated in paragraphs 9, 10 and 13 of the Proposed Findings of Fact for Part 125, as well as in § 125.1 (b)(1), which also indicates that the U.S. RDA's "are subject to amendment from time to time as more information on human nutrition becomes available." As noted in paragraph 9 of the Proposed Findings of Fact for Part 125, the Commissioner considers revisions in subsequent editions of "Recommended Dietary Allowances" to be the principal indicator for any need for revisions of U.S. RDA's. There presently is inadequate scientific evidence to justify changing the folic acid and biotin levels. The Commissioner therefore concludes that changes in the U.S. RDA's for biotin and folic acid at this time are unwarranted.

6. Exceptions were received recommending that the quantity of tryptophan present in a food for special dietary use be taken into consideration in terms of niacin equivalents when calculating the amount of niacin in that food. The Commissioner has carefully reviewed the Hearing Record and notes the discussion of the matter in "Recommended Dietary Allowances," (Seventh Revised Ed., 1968), published by the Food and Nutrition Board, National Academy of Sciences-National Research Council.

The Commissioner considers the quantitative contribution of tryptophan to total niacin activity in foods to be variable and the quantitative determination of niacin equivalents derived from tryptophan subject to serious practical limitations of analytical methodology. The Commissioner notes that, although the conversion of a portion of tryptophan intake to niacin is a well-established nutrition principle, there is currently inadequate knowledge of the magnitude of such conversion resulting from the consumption of specific individual foods. Therefore, for the present, the use of niacin equivalents derived from tryptophan is rejected for declaring total niacin activity. As further knowledge accumulates and improved analytical procedures become available, the Commissioner will re-examine the matter.

7. Exceptions were received stating that the U.S. RDA's for the specific consumer groups failed to insure that the special dietary requirements of infants (i.e., persons not more than 12 months of age) are properly identified and recognized. Noting the numerous exceptions concerning this issue, at the urging of the American Academy of Pediatrics, and after review of the Hearing Record and the Hearing Examiner's Report, the Commissioner concludes that, although the U.S. RDA's for infants and children under four years of age can safely be used by infants and one- to two-year-olds, as stated in paragraph 14 of the Proposed Findings of Fact, there is a need to establish infant U.S. RDA's for the labeling of those foods intended for use primarily or solely by infants. (WD-3A-Sebrell, Q&A 15; Lowe, Tr. 12568-70) The major concern expressed by the American Academy of Pediatrics dealt with the nutrition labeling of food products, e.g., strained vegetables, fruits, and meat mixtures. In their opinion, the higher U.S. RDA levels could result in mothers feeding their infants large quantities of food in order to provide the higher vitamin and mineral levels, and thus causing excessive caloric intake and obesity. By separate action the Commissioner is proposing to revise Nutrition Labeling § 1.17(h)(1) (21 CFR 1.17) to reflect this change by requiring that when nutrition labeling is used on baby foods expressly labeled for use by infants less than twelve months of age, the U.S. RDA's established in § 125.1(b) for infants shall be used. A reasonable and scientifically accurate derivation of infant U.S. RDA values from "Recommended Dietary Allowances," (Seventh Revised Ed., 1968), published by the Food and Nutrition Board of the National Academy of Sciences-National Research Council reads as follows: (WD-3A-Sebrell, Q&A 15)

Vitamins & minerals	Unit of measurement	U.S. RDA for infants
Vitamin A	International units	1,500
Vitamin D	do	400
Vitamin E	do	5
Vitamin C	Milligrams	35
Folic acid	do	0.1
Thiamine	do	0.5
Riboflavin	do	0.6
Niacin	do	8
Vitamin B_6	do	0.4
Vitamin B_{12}	Micrograms	2
Biotin	Milligrams	0.05
Pantothenic acid	do	3
Calcium	Grams	0.6
Phosphorus	do	0.5
Iodine	Micrograms	45
Iron	Milligrams	15
Magnesium	do	70
Copper	do	0.5
Zinc	do	5

Therefore, the Commissioner concludes that paragraph 13 of the Proposed Findings of Fact and § 125.1(b) should be amended by including the above U.S. RDA's for infants as a separate column entitled "Infants" and revising the heading for the group entitled "Infants and children under 4 years of age" to read "Children under 4 years of age".

8. Exceptions were received pointing out that the units of measurement for vitamins A and D in the tentative order for § 125.1 are International Units, which is in conflict with the final order published for § 125.5(c)(5) (21 CFR 125.5) which uses U.S.P. Units as the units of measurement for vitamins A and D.

The Commissioner concurs that the units of measurement for these sections should be uniform and elsewhere in this issue of the FEDERAL REGISTER is publishing a proposed amendment to change the units of measurement for vitamins A and D in § 125.5 to International Units.

9. Exceptions were received to the effect that there is a need to describe the proper uses of the essential nutrients listed in § 125.1(c) for which no U.S. RDA's have been established. The Commissioner recognizes that there are certain foods for special dietary uses where the inclusion of one or more of these nutrients is appropriate, as determined by other regulations. Therefore, for purposes of clarification, the following sentences are added to paragraph (c): "These nutrients are not appropriate for addition to general purpose foods or dietary supplements of vitamins and minerals, but may be added to such foods for special dietary uses as infant formulas and foods represented for use solely under medical supervision to meet nutritional requirements in specific medical conditions, when permitted by other regulations."

The Codex Alimentarius is presently preparing food standards on two types of infant formulas, one with a milk base and one without. The Commissioner has concluded that it is appropriate to await the availability of those standards before proceeding with similar regulations in this country. In the interim, the Food and Drug Administration will monitor the use of nutrients listed in § 125.1(c) in infant formula products to make cer-

tain that they are safe and appropriate on the basis of a sound nutritional rationale.

Similarly, it is premature at this time to promulgate regulations setting definitive standards on the use of these nutrients in so-called "medical foods" represented solely for use under medical supervision to meet nutritional requirements in specific medical conditions. Pending promulgation of such regulations the Commissioner will continue a close surveillance of these products to prevent improper use of any nutrient listed in § 125.1(c).

The Commissioner is unable to anticipate exactly when such regulations will be promulgated. Accordingly, the restriction in § 125.1(c), that such ingredients may be used in those products only in accordance with specific regulations, is being held in abeyance until further notice.

10. Exceptions were received recommending the recognition of choline, inositol, selenium and chromium as appropriate for inclusion in certain foods for special dietary uses. The Commissioner has carefully reviewed the Hearing Record and the current state of scientific knowledge concerning these substances and their role in the human diet. The Commissioner reiterates that the Food and Drug Administration relies heavily on "Recommended Dietary Allowances," (Seventh Revised Ed., 1968), published by the National Academy of Sciences as a basic guide to the inclusion or exclusion of nutrient substances from regulations concerned with nutrient composition. (WD-3A-Sebrell Q&A 4) On the basis of the review and the present position of the National Academy of Sciences, the Commissioner concludes as follows:

There is now sufficient evidence of the essentiality of choline in the human for it to be appropriate to include choline in infant formulas, especially those designed for the premature, and in chemically defined diets to be used as the sole source of nutrition under the supervision of physicians to provide good nutrition to critically ill patients. Because any diet of general purpose food contains sufficient chloine, however, it is not appropriate to include choline in other forms of foods for special dietary uses.

There is insufficient evidence to show that inositol is an essential nutrient for humans, and it is therefore inappropriate for this substance to be included in foods for special dietary uses. There is also inadequate knowledge at this time to determine the essentiality of chromium, and therefore it is not appropriate to include chromium in foods for special dietary uses. The Food and Drug Administration will follow new scientific information on the nutritional role of inositol and chromium, and amend these regulations if they are shown to be essential.

The information on selenium is equivocal at this time. It has been clearly shown to be essential in animals and thus is widely regarded as also essential in humans, but there is as yet no evidence of a possible deficiency in man. Because there is presently no known justification for the addition of selenium to any type of food product the Commissioner has concluded that this ingredient should not be added to § 125.1(c) at this time.

The Commissioner therefore concludes that the paragraph 11 of the Proposed Findings of Fact should be amended by including the words "and choline" after the word "biotin" and that § 125.1(c) should be amended to include the word "choline" following the words "vitamin K".

11. Exceptions were filed concerning § 125.1(h), setting forth the need to clarify the meaning of the terms "product", "upper limit of the U.S. RDA", and "food represented for use solely under medical supervision." The Commissioner recognizes the need for clarification of this paragraph, and it is therefore reworded as follows: "Any product containing more than the upper limit of the U.S. RDA per serving or, where appropriate, per daily recommended quantity of a vitamin or mineral as specified in § 80.1(f)(1) is a drug, except for conventional foods which contain naturally occurring amounts in excess of these upper limits, and except for foods provided for in Part 125, such as infant formulas or foods which are represented for use solely to meet nutritional requirements in specific medical conditions."

12. Exceptions were also filed concerning § 125.1(h) stating that the Commissioner had exceeded his authority in classifying products containing a vitamin or mineral in excess of the upper limits of the U.S. RDA's as drugs. The basis for such exceptions was the claim that the term "drug" is defined by the Federal Food, Drug, and Cosmetic Act, which should be controlling in this matter. The Commissioner recognizes that the act is controlling, and, upon further review of the hearing record and the findings of fact for Parts 80 and 125, concludes that those products which contain vitamins or minerals in excess of the upper limits of the U.S. RDA's are in fact articles intended for use in the cure, mitigation, treatment, or prevention of disease in man and therefore, pursuant to the definition contained in 21 U.S.C. 321(g)(1)(B), are properly classified as drugs, with the exceptions noted above in Exception number 11. The hearing record discloses no known food or nutrition use of nutrients at such high levels, and no such uses were shown in the exceptions.

13. Exceptions were received stating that the agency has no authority to promulgate regulations which prohibit certain claims as provided for in § 125.2(b) (21 CFR 125.2). The Order Staying the Effective Date of the Regulations published in the FEDERAL REGISTER on December 14, 1966 (31 FR 15730), as well as the tentative final order published in the FEDERAL REGISTER on January 19, 1973 (38 FR 2149), as they pertained to § 125.2(b), relies on sections 201(n), 403(a), and 403(j) of the act for authority to prohibit false and misleading statements on foods represented to be for special dietary uses. The Commissioner has reviewed these exceptions and finds ample authority for these prohibitions in sections 201(n), 403(a) and 403(j).

14. Exceptions were received concerning the prohibition in § 125.2(b)(1) against labeling claims that the vitamin or mineral properties of a food are adequate or effective in the prevention or treatment of any disease or symptom. Some exceptions erroneously interpreted this as prohibiting virtually any discussion of nutritional usefulness of all vitamins and minerals.

The hearing record establishes and the Commissioner recognizes that all vitamins and minerals inherently assist in preventing nutrient deficiencies and thus, in that sense, prevent disease. The prohibition in no way prohibits truthful representation that a given nutrient is essential to human nutrition and good health and well-being. At the same time it must be recognized that explicit claims related to prevention or treatment of specific disease conditions render a product a drug under section 201(g)(1)(B) of the act. The statutory definitions of "food" and "drug" are not mutually exclusive in this respect.

This prohibition was required because the hearing record, as noted in paragraphs 29, 30, 32 and 35 of the Proposed Findings of Fact, demonstrated widespread promotional practices stating or implying that a vitamin or mineral should be consumed in order to prevent a specific disease. As evidenced by paragraph 35 of the Proposed Findings of Fact, it has been common practice to promote nutrients by stating that a deficiency of a particular vitamin or mineral leads to a specific disease, thus implying that a consumer who fails to purchase the product in question may suffer from that disease or that the vitamin or mineral in question will prevent that disease.

The Commissioner concludes that reliance upon scare promotional claims, designed to panic the public into believing that nutrient supplementation is necessary to prevent the onset of severe deficiency diseases, neither is supported by the Hearing Record nor fosters good nutritional practices. Informative labeling designed to educate the public about the need for basic nutrition planning, and to emphasize the importance of essential nutrients to good health, is truthful, supported by the Hearing Record, and encouraged by the agency. The Commissioner concludes that no change in § 125.2(b)(1) is warranted.

15. Exceptions were received objecting to § 125.2(b)(2), which prohibits the use of labeling claims suggesting that ordinary foods in the diet are inadequate to meet nutritional needs, as being contrary to the Hearing Examiner's findings. No evidence, except for testimony which related to specific segments of the population, such as that contained in paragraph 45 of the Proposed Findings of Fact, is contained in the Hearing Record to establish that a diet of ordinary foods cannot satisfy all nutrition needs.

Since the early 1940's, and continuing to the present time, certain labeling, promotion, advertising, and lay literature concerning dietary supplements of

vitamins and minerals and other foods offered for special dietary use based on their vitamin and/or mineral qualities has repeatedly represented that ordinary foods are incapable of supplying adequate amounts of vitamins and minerals to meet human needs. (Weissenberg, Tr. 6560–61, 6571–72, 6304, 6358, 6375, 6447–50, 6579). Individual case determinations have shown that the use of this theme in the labeling of foods for special dietary uses is false and misleading. (Exhibit P–670, 670(a), 671).

To clarify this issue, the Commissioner concludes that a Finding of Fact 46 should be added to the Findings of Fact for Part 125 as published on January 19, 1973 (38 FR 2145), to read as follows:

Since the early 1940's, and continuing to the present time, certain labeling, promotion, advertising, and lay literature concerning dietary supplments of vitamins and minerals and other foods offered for special dietary use based on their vitamin and/or mineral qualities has repeatedly represented that ordinary foods are incapable of supplying adequate amounts of vitamins and minerals to meet human needs. (Weissenberg, Tr. 6560–61, 6571–72, 6304, 6358, 6375, 6447–50, 6579). Individual case determinations have shown that the use of this theme in the labeling of foods for special dietary uses is false and misleading. (Exhibit P–670, 670(a), 671).

To further clarify this prohibition, the phrase "balanced diet" will be substituted for "diet", since it is obvious that an unbalanced or poor diet could be deficient in nutrients. The Commissioner concludes that § 125.2(b)(2) should be modified to read "That a balanced diet of ordinary foods cannot supply adequate amounts of nutrients".

16. Exceptions were received expressing concern that the labeling prohibitions in § 125.2(b)(3) and (4) would preclude factual supportable statements that certain losses may be due to improper handling or that certain products may be lower in nutrient content due to the soil upon which the food was grown. This is not the intent of these prohibitions, nor are they so worded. Any truthful claims, supported by adequate scientific data, relating to the specific nutrient value of a product will be permitted.

These prohibitions are intended to prohibit unsupported generalization that there is a general deficiency in the daily diet because of soil in which the food was grown, or transportation, or processing methods used in preparing food. These prohibitions are clearly supported by paragraphs 37, 39, 40, and 41 of the Proposed Findings of Fact.

For clarification purposes and uniformity, § 125.2(b)(4) is amended by substituting the phrase "the daily diet" for the word "diets".

17. Exceptions were received objecting to those provisions which prohibit the inclusion of certain ingredients in dietary supplements and other forms of foods for special dietary uses which have not been shown to be essential in human nutrition, such as rutin, other bioflavonoids, para-aminobenzoic acid, inositol and similar ingredients, products and compounds. No evidence was submitted to show that these ingredients are of nutritional value. This matter was discussed in detail in paragraph B of the proposed Conclusions of Law with respect to § 125.2 supported by paragraph 4 of the Proposed Findings of Fact in respect to Part 125 and paragraphs 8, 19, 21, and 32 of the Proposed Findings of Fact in respect to Part 80.

The Commissioner has carefully reconsidered the Hearing Record, and reiterates his conclusion that it is not nutritionally sound, and results in false or misleading labeling, to permit inclusion of these ingredients in dietary supplements or other forms of foods for special dietary uses. Such ingredients may properly be marketed as separate foods.

18. Exceptions were received stating that § 125.2(b)(5), concerning unacceptable labeling and marketing practices, requires clarification. The Commissioner concurs with the need for clarification of this paragraph. Therefore, the last sentence of § 125.2(b)(5) is replaced with the following:

Ingredients or products of this type may be marketed as individual products or mixtures thereof: *Provided*, That the possibility of nutritional, dietary or therapeutic value is not stated or implied. Examples of false or misleading statements or implications are: (i) label statements to the effect that the products' need or usefulness in human nutrition has not been established; (ii) label statements which otherwise disclaim nutritional, dietary or therapeutic value. (paragraphs 3, 4 and 33 of the Proposed Findings of Fact)

19. Exceptions were received objecting to § 125.2(b)(6) which prohibits any suggestion that a natural vitamin is superior to a synthetic vitamin. The basis for such objection is the allegation that the consumer will know the source (natural or synthetic) of the vitamin.

This is not the intent of the prohibition nor is it so worded. A factual and true statement of the origin of a nutrient is permitted, and only a claim of superiority is prohibited. This prohibition was included because of widespread claims that nutrients of natural origin are superior to synthetic nutrients. Paragraphs 26 and 27 of the Proposed Findings of Fact clearly establish that there is no valid scientific evidence to support such claims of superiority. The required list of ingredients will also in all instances enable the consumer to determine the source of the nutrient. The Commissioner concludes that no changes are warranted.

20. Exceptions were received pointing out that there is a need to specify that a synthetic vitamin must be in a form equivalent to the naturally occurring compound. The Commissioner notes that within a family of compounds exhibiting a specific vitamin's activity, there may be differences in biological activity for equal weights of the various compounds. For the purpose of declaring potency of a vitamin in a uniform manner, the Commissioner concludes that it is necessary to express the potency in terms of the weight of a specific reference compound equivalent in biological activity to the amount of the vitamin form actually present in the product. Therefore a list of appropriate reference forms has been added as a new paragraph § 125.1(b)(2).

21. Exceptions were received objecting to paragraph 34 of the Proposed Findings of Fact which states that vitamin or mineral deficiencies are unrelated to the great majority of symptoms like tiredness, nervousness, and a rundown condition. The Commissioner has reviewed this finding of fact and the hearing record concerning this issue and concludes that the evidence clearly establishes that over the years there have been widespread promotional practices stating or implying that a vitamin or mineral should should be consumed in order to prevent tiredness, nervousness, etc.

The Commissioner concludes that reliance upon promotional claims designed to induce the public into believing that nutrient fortification or supplementation will prevent such physical conditions, is neither supported by the hearing record nor fosters good nutritional practices. The Commissioner concludes that paragraph 34 of the Proposed Findings of Fact is fully supported by the record and therefore no change is warranted.

22. Exceptions were filed stating that the proposed regulations were invalid as the agency had failed to follow the requirements as set forth in 21 U.S.C. 371(e) for amending a regulation because no notice of proposal to revise the regulations was ever published prior to the order revising the regulations for foods for special dietary use published in the FEDERAL REGISTER on June 18, 1966 (31 FR 8521).

In the FEDERAL REGISTER on June 20, 1962, (27 FR 5815), under the heading "Food and Drug Administraton, (21 CFR Parts 1, 125), Dietary foods, Notice of Proposal to Revise Regulation," the Commissioner of Food and Drugs published a proposal to amend the regulations dealing with special dietary foods in general and dealing specifically with food supplements or dietary supplements. The Commissioner therefore finds no merit in the exception.

23. Several exceptions stated that the Hearing Examiner, David Harris, was improperly appointed because he was not assigned to the hearing in rotation from a designated group of Food and Drug Administration hearing examiners as required by the Administrative Procedures Act, 5 U.S.C. 3105. Further exceptions were expressed to the fact that he was appointed hearing examiner on April 2, 1968 and then sworn in as a hearing examiner on April 15, 1968.

Review of these exceptions reveals that in early 1967 it became apparent that the hearing on the regulations would take at least a year to complete because of the numerous parties involved. In view of the scope of the hearing and the matters to be covered therein, and in light of the fact that the Food and Drug Administration's only Hearing Examiner was otherwise engaged, it became apparent that another Hearing Examiner would be needed. Because the Civil Service Commission discouraged the borrowing of examiners from other agencies for hearings ex-

pected to exceed a period of six months, the Commission, pursuant to the Food and Drug Administration's request on June 6, 1967, certified a list of eligible candidates for the position. Of the seven recommended, four indicated that they were not interested in the appointment and one failed to respond. Following personal interviews with the two remaining candidates, David H. Harris was offered the position, which he accepted on February 23, 1968. On April 2, 1968, a Notice of Hearing and Prehearing Conference published in the FEDERAL REGISTER announced his designation as the Hearing Examiner for the dietary foods proceeding (33 FR 5268). Mr. Harris was formally sworn in on April 15, 1968. On May 4, 1968 a notice confirming that Mr. Harris had been appointed as a Food and Drug Hearing Examiner effective April 15, 1968, was published in the FEDERAL REGISTER (33 FR 6828).

During the prehearing conference which began on May 7, a motion to set aside Mr. Harris' assignment and designation was denied. A subsequent request that the motion be certified to the Commissioner was similarly denied.

This exception has been previously ruled on in the case of National Dietary Foods Assn. v. Cohen, 68 Civ. 2368 (S.D. N.Y. 1968), wherein the court said:

> Considering the increased caseload before the FDA, the scope of the present proceedings, the fact that FDA had only one Hearing Examiner, and the degree of discretion permissible under 5 U.S.C. 3105 regarding the selection process, it is the opinion of this Court that the FDA acted in consonance with the statutory mandate. To require the application of the mechanical rotation method where the agency employs but one examiner would not be at all "practicable".

The Commissioner, having reviewed the facts and the ruling of the court, is of the opinion that the Agency acted within the bounds of its statutory authority and that no prejudice or harm was suffered by any participant in the hearings.

24. Exceptions were filed stating that the rights of certain participants in the hearing were violated in that, following the termination of the government's case, the Hearing Examiner precluded cross-examination of the opponent witnesses by any other opponent unless a request in writing was filed stating the subject matter the party intended to go into on cross-examination. It is further asserted that the Hearing Examiner, as a matter of course, refused any further cross-examination from certain opponents, and that such denials were precipitated by pressure to speed up the hearing, exerted upon the Hearing Examiner by the Commissioner's Office and the General Counsel's Office.

The Commissioner recognizes that each participant in a hearing is entitled to a full and fair hearing and that such a hearing occurs when ample opportunity is afforded to all parties to make, by evidence and oral presentation, a sufficient record and to be heard in support of its issues. Boston & M.R.R. v. United States, 208 F. Supp. 661 (D.C. Mass., 1962), affirmed 371 U.S. 26 (1962).

The question of whether a hearing officer's actions are arbitrary, and thus constitute a denial of due process, depends upon the circumstances. Shachtman v. Dulles, 225 F.2d 938 (C.A. D.C., 1955). Determination of what cross-examination is necessary and proper is with the sound judicial discretion of the Hearing Examiner. N.L.R.B. v. Miami Coca-Cola Bottling Co., 360 F.2d 569 (C.A. 5, 1966).

The Commissioner, having reviewed the record, is of the opinion that the Hearing Examiner acted within the scope of discretion provided for in 5 U.S.C. 556 in restricting the cross-examination, in view of the fact thata each of the opponents was given the opportunity to present his views, and make a full and complete record, by whatever direct oral and written testimony he wished to present.

25. Exceptions were received stating that fresh fruits and vegetables should not be subject to the provisions of Part 125, as foods for special dietary use. The Commissioner agrees and has so stated in the preamble to the tentative order on nutrition labeling published in the FEDERAL REGISTER on January 19, 1973 (38 FR 2125) that it is inappropriate to label conventional general purpose foods such as fresh fruits and vegetables under Part 125. When a claim with respect to nutritional properties of such foods is included in labeling, the full nutrition labeling established in § 1.17 (21 CFR 1.17) must be utilized.

26. Exceptions were received stating that failure to include § 125.6, relating to low caloric foods, in the tentative orders of January 19, 1973, makes it difficult to plan labeling of such foods that would not be in conflict with Part 125 or §§ 1.17 and 1.18. The Commissioner recognizes the need to finalize regulations related to claims based upon the caloric content of food. Section 125.6 is presently under review, and the Commissioner intends to publish a tentative order later this year related to the issue of claims based upon the caloric content of a food, in the context of the proposals which were the subject of the Special Dietary Food Hearings.

27. Exceptions were received objecting to Proposed Findings of Fact in paragraphs 31, 35, 36, and 44 on the ground that these findings indicate the appropriate uses of therapeutic formulations of vitamins and minerals. The exceptions argued that the appropriate uses of therapeutic formulations should be determined during the course of the OTC drug review and not in this proceeding. The Commissioner has reviewed each of the Findings of Fact in question and concludes no change or modification is required. None of those findings relate to drug products. To clarify this issue, an additional finding of fact 47 will be added which provides that it is the intent of the Commissioner that the appropriate uses of therapeutic formulations of vitamins and minerals (i.e., those defined as a drug under § 125.1(h)), are to be determined during the course of the OTC drug review:

> These regulations interpret and apply sections 403(a) and (j), by prescribing requirements for label information necessary in order fully to inform purchasers of the value of foods for special dietary uses, and to prevent false or misleading labeling for foods. Neither the findings of fact nor the regulations relate to or affect vitamin-mineral products which are classified as "drugs". It is the intent of the Food and Drug Administration that the safety, effectiveness, and labeling of OTC vitamin-mineral drugs be determined through the separate OTC drug review for vitamin-mineral drugs as provided in 21 CFR 130.301. The OTC vitamin-mineral drug review panel will make its own independent inquiry on these matters.

28. Certain exceptions were filed to various findings of fact stating that said findings were improper interpretations of the hearing testimony and were otherwise contrary to the evidence presented in the Hearing Examiner's Findings of Fact. The Commissioner has reviewed the Findings of Fact and is of the opinion that, except where modified, they are a proper interpretation and application of the hearing testimony. The Commissioner further points out that it is the Agency's function, not the Examiner's, to develop findings of fact and make the ultimate selection, and where there is substantial evidence in the record, it is the agency's choice that governs. Greater Boston Television Corp. v. F.T.C. 444 F.2d 841, (C.A. D.C. 1970), cert. denied 403 U.S. 923 (1970).

29. A number of the exceptions and letters raised general questions about the Food and Drug Administration's overall policy on vitamin-mineral products. These general questions were also the subject of an inquiry from five members of Congress, the response to which has been reprinted in the Congressional Record of July 12, 1973 (119 Cong. Rec. S13214–S13220). In lieu of reiterating the lengthy discussion in that response, the Commissioner hereby incorporates it by reference and advises that it accurately reflects the basis for and his interpretation and application of these regulations.

Having considered the evidence received at the hearing, the hearing examiner's report, and all the exceptions and written arguments which were filed, the Commissioner, pursuant to the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 401, 403(a) and (j), 701(a) and (e), 52 Stat. 1046, 1048, 1055, 1056, as amended by 70 Stat. 919; 21 U.S.C. 321(n), 341, 343(a) and (j), 371(a) and (e)) and under authority delegated to him (21 CFR 2.120), issues the following Findings of Fact, Conclusions, and Final Order:

FINDINGS OF FACT[1]

1. Since enactment, in 1941, of the currently effective regulations concerning foods for special dietary uses, the definition of special dietary use contained therein (21 CFR 1.11) has proved inadequate, in certain respects, to meet the needs of the Food and Drug Administration in its regulatory activity. (Swain, Tr. 115, 116, 125–127, 153–155, 168, 169)

2. The term "special dietary use," as applied to food including dietary supplements used by man, means a particular use for which a product purports or is represented to be used, including but not limited to the following uses:

(a) Supplying a special dietary need that exists by reason of a physical, physiological, or other condition, including but not limited to the conditions of convalescence, pregnancy, lactation, infancy, allergic hypersensitivity to food, underweight, overweight, diabetes mellitus, or the need to control the intake of sodium;

(b) Supplying a vitamin, mineral, or other dietary property for use by man to supplement his diet by increasing the total dietary intake.

(c) Supplying a special dietary need by reason of being a food for use as the sole item of the diet. (Mickelsen, Tr. 2508; WD–G–Ross, Q&A 55, 56; WD–G–Moses, Q&A 17–19)

3. To fully inform the purchaser of the product's value for such use, the label of a food for a special dietary use should bear a statement of usefulness consisting of a list of the dietary properties upon which the special use is based. (Grollman, Tr. 1766; Hodges, Tr. 2969–70; Mickelsen, Tr. 2518–19; WD–G–Moses, Q&A 33) Many dietary supplements include named ingredients which are of no value as supplements to the human diet. (Grollman, Tr. 1626, 1675–77, 1707, Exhibit P–125, Mickelsen, Tr. 2464–65, Exhibit P–172, 2469, Exhibit P–173, Hodges, Tr. 2933, Exhibit P–179, 2936, Exhibit P–180, Herbert, Tr. 9891, Exhibit P–113, 9899, Exhibit P–468, Swain, Tr. 185–191, 213, 220, 221, 223, 229–231, 255, 264, 269, 336, 397, 442, 447, 455, 469, 475, 476, 487, Weissenberg, Tr. 8761, 6402, 5949, Exhibit P–576, P–591) However, many consumers will purchase such products with long lists of ingredients, believing them to be of better value than products with a lesser number of ingredients. (WD–G–Perloff, Q&A 38–41; Exhibit P–1151, page B9). Such consumers believe that if an ingredient is listed, it must significantly contribute to the value of the product as a dietary supplement. (WD–G–Perloff, Q&A 18, 19; Exhibit P–737) The label of a dietary supplement, as a food for special dietary use, should bear a statement of usefulness consisting of a list of the nutrient ingredients which provide the special use characteristics. The list of such ingredients should be limited to those which are of significant value and need in human nutrition as components of dietary supplements. (Grollman, Tr. 1766; Hodges, Tr. 2969–2970; Mickelsen, Tr. 2518–2520; WD–G–Moses, Q&A 33; WD–C–Ross, Q&A 59–61)

4. It is scientifically inaccurate to list a dietary property of a food for special dietary use that is of no significance in human nutrition, and listing of dietary properties should be limited to ingredients of significant value and need in human nutrition. (WD–G–Ross, Q&A 59–61; Grollman, Tr. 1766; Mickelsen, Tr. 2518–19; Hodges, Tr. 2969–70)

5. In addition to statements on the container label of a food for special dietary use it is necessary to consider the label in its entire setting including statements made in the labeling, promotional material, and advertising for such food, to determine whether the label bears a statement concerning properties of the food which are of no significance in human nutition. (WD–G–Perloff, Q&A 10, 16, 17; WD–G–Swanson, Q&A 50; WD–G–Ross, Q&A 61; Section 201(n), FDCA)

6. The term "minimum daily requirement" was adopted by the Food and Drug Administration in 1940 as a means of fully informing consumers about vitamins and minerals in food for special dietary uses. (Boehne, Tr. 2702–03; Swain, Tr. 170) The term "minimum daily requirements," as it has been used since 1940, in the labeling and promotional material for foods with special dietary uses has led to some confusion among consumers. Consumers believe that the "minimum" requirements may be, or may nearly be, inadequate in terms of the nutrient content provided. (Boehne, Tr. 2704; Weissenberg, Tr. 5891, 7734, 8783; WD–G–Gullberg, Q&A 20; WD–G–Perloff, Q&A 35, 37; Exhibit P–737) The continued existence of the term "minimum daily requirement" has led to the production, promotion, and sale of a variety of dietary supplements, that contain large multiples of the minimum daily requirements for vitamins and minerals, and by far exceed the adequate human total daily dietary requirements for these nutrients. (Boehne, Tr. 2739; Grollman, Tr. 1682 (Exhibit P–84), 1685 (Exhibit P–85); Hodges, Tr. 2933–37 (Exhibit P–181), 2939–40; Herbert, Tr. 9898 (Exhibit P–232), 9899–9901 (Exhibit P–468); Mickelsen, Tr. 2448 (Exhibit P–167); Hodges, Tr. 2942 (Exhibit P–183); Swain, Tr. 171–175, 180–182; Weissenberg, Tr. 8760 (Exhibit P–575, P–583))

7. It will prove beneficial to consumers and simplify the task of consumer education to provide for use of the term "recommended daily allowance" (RDA) as a substitute for "minimum daily requirement" (MDR). (Sebrell, Tr. 26181; WD–G–Gullberg, Q&A 21)

8. The "Recommended Dietary Allowances," revised periodically by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, represent established nutrient levels that are quantitatively high enough to provide for the adequate intake of essential nutrients under the wide variety of conditions that exist in this country for essentially all of the normal healthy persons in the United States. Furthermore, these levels are reviewed, discussed, and accepted by numerous scientists and, therefore, are considered to be extremely reliable. (Hodges, Tr. 2880, 2919, 2964–65; Grollman, Tr. 1670, 1763; Mickelsen, Tr. 2438–39; Herbert Tr. 9865–67; WD–G–Harrison, Q&A 23; Schweigert, Tr. 8257, 8260; WD–G–Gullberg, Q&A 19; Exhibit P–651; Sebrell, Tr. 26, 181)

9. Publication No. 1694 of the National Academy of Sciences entitled "Recommended Dietary Allowances, Seventh Revised Edition, 1968, A Report of the Food and Nutrition Board, National Research Council," and subsequent editions, should be used as the source of authentic and reliable information on which to base recommended daily allowances of nutrients. (WD–3A–Sebrell, Q&A 9, 10, 18, 19, Tr. 26181; Hodges, Tr. 2917; Herbert, Tr. 9865; WD–G–Harrison, Q&A 14, 23, 26, 27; WD–G–Ross, Q&A 65)

10. Recommended dietary allowances adapted from publication No. 1694 of the National Academy of Sciences are sufficiently above the average requirement for particular nutrients to cover the needs of between 95 percent and 99 percent of the normal healthy population. (Hodges, Tr. 7083; WD–46–Olsen, page 7, Tr. 29466–67; Jukes, Tr. 28688; Briggs, Tr. 28761; Mayer, Tr. 28865–66; Stokstad, Tr. 26742; Goodhart, Tr. 30169–70; Stare, Tr. 29280; WD–G–Ross P–5)

11. The essential vitamins are: Vitamins A, C (ascorbic acid), D, E, K, B_1 (thiamine), B_2 (riboflavin), niacin, vitamin B_6, folic acid (folacin), pantothenic acid, vitamin B_{12}, biotin, and choline. (WD–3A–Sebrell, Q&A 4; WD–G–Harrison, Q&A 20)

12. The essential mineral nutrients are: Calcium, chlorine, iron, magnesium, phosphorus, potassium, sodium, sulfur, copper, fluorine, iodine, manganese, and zinc. (WD–3A–Sebrell, Q&A 4)

13. The values for vitamins and minerals in the table entitled "Recommended Daily Dietary Allowances," in publication No. 1694 of the National Academy of Sciences, and values for essential nutrients derived from sections in the text when no values are given in the aforementioned table, may be used as a basis for fully informing the purchaser of the nutrient value of a food for special dietary use. A reasonable and scientifically accurate adaptation of the table and text referred to above reads as follows:

[1] The abbreviations in the citations are:
Tr.—For transcript pages of the hearing.
P.—For exhibits introduced by the Government, the proponent.
O.—For exhibits introduced by opponents.
WD–G—For written direct testimony by a witness for the Government.
WD–3A—For written direct testimony by a witness for the designated opponent (e.g., "3A").
Q. & A.—Question and answer.

Vitamins & minerals	Unit of measurement	Infants	Children under 4 years of age	Adults and children 4 or more years of age	Pregnant or lactating women
Vitamin A	International units.	1,500	2,500	5,000	8,000
Vitamin D	do	400	400	400	400
Vitamin E	do	5	10	30	30
Vitamin C	Milligrams	35	40	60	60
Folic acid	do	0.1	0.2	0.4	0.8
Thiamine	do	0.5	0.7	1.5	1.7
Riboflavin	do	0.6	0.8	1.7	2.0
Niacin	do	8	9	20	20
Vitamin B_6	do	0.4	0.7	2.0	2.5
Vitamin B_{12}	Micrograms	2	2	6	8
Biotin	Milligrams	0.05	0.15	0.30	0.30
Pantothenic acid	do	3	3	10	10
Calcium	Grams	0.6	0.8	1.0	1.3
Phosphorus	do	0.5	0.8	1.0	1.3
Iodine	Micrograms	45	70	150	150
Iron	Milligrams	15	10	18	18
Magnesium	do	70	200	400	450
Copper	do	0.6	1.0	2.0	2.0
Zinc	do	5	8	15	15

(WD-3A-Sebrell, Q&A 15; Lowe, Tr. 12568-70)

14. There are scientific and medical justifications for selecting an age separation at under 4 years of age for the purpose of establishing a basis for dietary supplements. (WD-33-Krehl, pages 5-8; WD-33-Emerson, pages 4-5; WD-43-Filer, page 21) The recommended daily dietary allowance of the Food and Nutrition Board, NAS-NRC, for 2- to 3-year olds can safely be used by infants and 1- to 2-year olds, and the maximum values for the under-4-years-old group can be used for all infants and children under 4 years of age. (WD-33-Krehl, pages 6-7; Tr. 2, 877-8, Hodges; WD-43-Graham; and WD-43-Filer, page 21)

15. There are demonstrable distinctions among the nutritional requirements of infants and young children, and pregnant or lactating women, as compared to the nutritional requirements of adults. (Michelsen, Tr. 2424-2427; Grollman, Tr. 1665; Hodges, Tr. 2877-2878; Herbert, Tr. 9944; WD-3A-Sebrell, Q&A 15, 16, 19, and 28; WD-G-Ross, Q&A 23, Boehne, Tr. 2741-2759)

16. The label of a food purported or represented to be for special dietary use by reason of its vitamin or mineral properties, should bear a statement revealing the proportion or percentage of the recommended daily allowance of the particular vitamins or minerals contained in a specified quantity of the product when consumed during a period of 1 day. This is both reasonable and necessary for an intelligent scientific evaluation of the article. (Herbert, Tr. 9944-5; Grollman, Tr. 1762; Hodges, Tr. 2964-6; WD-G-Ross, Q&A 63; Michelsen, Tr. 2635-7)

17. When a food is purported or represented to be for special dietary use because of certain vitamin or mineral properties, and is offered for use by more than one of the groups for which the recommended daily allowances for the vitamins and minerals are set, it then becomes necessary to state the percent or proportion of the recommended daily allowances for each group separately. (Herbert, Tr. 9945-6; WD-G-Gullberg, Q&A 17; Hodges, Tr. 2966-7)

18. It makes no difference from a scientific point of view when the proportion of the recommended daily allowance amounts to a whole number and a fraction, if the fraction is discarded. (Herbert, Tr. 9946)

19. The term "artificial sweetener" means a sweetening substance not used in normal metabolism as a source of calories. (WD-G-Levine, Q&A 75-77, 81; WD-G-Ricketts, Q&A 34-35, 39)

20. Occasionally, in the manufacturing of foods not intended for special dietary uses, it is possible to achieve certain food characteristics only through the use of an artificial sweetener as a constituent of the food. When this situation exists, it is reasonable to consider the use of the artificial sweetener in such a food not to be for the purpose of reducing or maintaining body weight, or for use in the diet of diabetics: *Provided*, That no label reference is made to the caloric reduction or presence of the artificial sweetener in the food, other than the simple listing of the artificial sweetener as an ingredient. (WD-G-Moses, Q&A 21, 23-31; WD-G-Levine, Q&A 213, 214)

21. For the purposes of dietary evaluation and nutritional characteristics an infant should be considered to be a person 12 months of age or less. (Mickelsen, Tr. 2511; Lowe, Tr. 12, 568-70)

22. The term "serving" means that reasonable quantity of food suitable for or practicable of consumption as a part of a meal by an adult male engaged in light physical activity, or by an infant or child when the article purports or is represented to be for infant feeding or child consumption. (WD-G-Dawson, Q&A 17-20; Mickelsen, Tr. 2514, Exhibit P-718, P-723; WD-G-Gullberg, Q&A 42, 43; WD-G-Ross, Q&A 57)

23. Among dietitians and nutritionists it is customary to describe quantities of foods in units of measure thought to be readily understood by consumers such as teaspoonfuls, tablespoonfuls, cupfuls, and slices. (WD-G-Dawson, Q&A 21; WD-G-Gullberg, Q&A 42; WD-G-Ross, Q&A 58; Mickelsen, Tr. 2514)

24. The standard measuring cup is 8 fluid ounces or approximately 240 milliliters. A tablespoonful is the equivalent of 3 teaspoonfuls, approximately one-half fluid ounce, or about 15 milliliters. A teaspoon holds one-sixth fluid ounce or about 5 milliliters. (WD-G-Dawson, Q&A 22-25; WD-G-Gullberg, Q&A 44-47, 49)

25. Persons suffering from diabetes mellitus are known as "diabetics." (WD-G-Ricketts, Q&A 85; WD-G-Levine, Q&A 171; Exhibit P-1082)

26. There is no nutritional difference between a vitamin provided by a synthetic source and the same vitamin provided by a natural source, but the natural source may contain other ingredients which may limit the absorbability of the vitamin provided by the natural source. (Herbert, Tr. 9937-38, 9984, 10050)

27. A large number of dietary supplements on our domestic market advertise or otherwise call attention to the claim that their ingredients are "natural" or derived from "natural sources." (Swain, Tr. 234-477; Weissenberg, Tr. 6554-56, 8757-58; Exhibit P-35, P-40-43, P-54, P-66-68, P-70, P-74)

28. More than half of the people in the United States are likely to choose foods for special dietary uses that contain ingredients described as "natural" or derived from "natural sources" in the belief that "natural" foods are superior to "synthetic foods." (P-1151, pages B10-11, Q 16, Q 16a, Q 16b; WD-G-Perloff, A 44, 45, 46, 49)

29. For a considerable time, the labeling, promotion, and advertising of various foods offered for special dietary uses have contained statements claiming or suggesting that these products were adequate or effective, by virtue of their vitamin or mineral content, for the treatment, prevention, or mitigation of a large variety of diseases and symptoms. (Swain, Tr. 153, 157-8, 192-3, 199-200, 212-3, 224-5, 239, 254, 255, 264-72, 276-7, 286, 288-9, 314, 352, 354-6, 379, 385, 394, 396, 443-6, 453, 469-71, 478, 487-9; Weissenberg, Tr. 5819, 5980, 6017, 6027, 6049, 6152, 6193, 6347, 6416, 6436, 6443, 6450)

30. There is no rationale for allowing or encouraging the promotion and sale of dietary supplements of vitamins and/or minerals to the general American population for the purpose of treating, preventing, or curing diseases or symptoms. To the contrary, there is ample reason to discourage such methods of promoting foods for special dietary use. (Grollman, Tr. 1771-2; Mickelsen, Tr. 2520; Schweigert, Tr. 8233-4; Herbert, Tr. 9961; WD-G-Ross, Q&A 62; Hodges, Tr. 2994-5; Thiessen, Tr. 26,755-6; Briggs, Tr. 28,-750-1; Unglaub, Tr. 28,942-3; Wallerstein, Tr. 28,986-90; Mayer, Tr. 28,868, 28,892-8; Gershoff, Tr. 29,108-9)

31. Lay persons are incapable of determining, by themselves, whether they have, or are likely to develop, vitamin or mineral deficiencies. (Grollman, Tr. 1771-2, 1782; Herbert, Tr. 9961, 9979-80, 10,029; Unglaub, Tr. 28,942; Wallerstein, Tr. 28,989; Hodges, Tr. 2994-5; Mickelsen, Tr. 2520; Mayer, Tr. 28,892-3)

32. Since there are persons in the United States who are receptive to the suggestions that human ailments, to a great degree, can be prevented, treated, and cured by using vitamins and minerals, it is clear that representations or suggestions that certain symptoms, ailments, or diseases result from failure to ingest adequate amounts of vitamins and minerals will lead substantial numbers of the population to conclude that they

must buy dietary supplements or other foods promoted for their vitamin or mineral qualities in order to prevent, cure, or treat certain diseases or symptoms. (WD–G–Perloff, Q&A 23–5; Weissenberg, Tr. 7738–9, 8474–7; WD–G–Gullberg; Q&A 14)

33. Literally true and scientifically accurate statements concerning the ultimate physiological result of vitamin or mineral deficiencies can mislead when made in connection with foods offered for special dietary use based upon their vitamin or mineral content. (Mayer, Tr. 28892–3; Gershoff, Tr. 29120)

34. Vitamin or mineral deficiencies are unrelated to the great majority of symptoms like tiredness, nervousness, and rundown condition. (Herbert, Tr. 10029)

35. When consumers read a label, promotional material, or advertising wherein a literally true statement is made, e.g., "Night blindness is caused by a lack of vitamin A," they may frequently conclude that the symptom will appear in them unless they use the product being promoted, or, on the basis that, even though they may not suffer from the specific symptoms described, the product will be generally good for improving their vision. (WD–G–Perloff, Q&A 30–31)

36. Vitamin and mineral deficiency are considered to be abnormal conditions resulting from inadequate consumption, absorption, transport, or utilization of one or more essential vitamins or minerals. The conditions are characterized by specific clinical signs, symptoms, and/or abnormalities observed in biochemical tests, and used together by physicians to establish the diagnosis. The term "subclinical" and similar ill-defined terms when used to refer to vitamin or mineral deficiencies, in the labeling of foods for special dietary use, are neither informative nor meaningful to consumers. (Mickelsen, Tr. 2537–9; WD–G–Schaefer, Q&A 23, 32–7; Herbert, Tr. 9880–5, 9984–5; Hodges, Tr. 2993–4, 3025; Grollman, Tr. 2023, 2252)

37. Scientifically it is inaccurate to state that the quality of soil in the United States causes abnormally low concentrations of vitamins or minerals in the food supply produced in this country. (Allaway, Tr. 12, 109; Herbert, Tr. 10,003)

38. There is no relationship between the vitamin content of foods and the chemical composition of the soil in which they are grown. (Allaway, Tr. 12,061, 10–063; Mickelsen, Tr. 2620)

39. Mineral nutrients in foods are not significantly affected by storage, transportation, cooking, and other processing. (Schweigert, Tr. 8200, 8223–4; Mickelsen, Tr. 2621)

40. While some vitamins are susceptible to partial destruction through the effects of heat, light, oxidation, and other physical and chemical reactions (Schweigert, Tr. 8200–8223), loss of nutrients from the ordinary effects of cooking, processing, transportation, and storage have not significantly impaired the nutritional qualities of food in the United States. There is no need or scientific justification for recommending, for example, the routine use of dietary supplements of vitamins and minerals to offset losses that occur as a result of these processes. (Schweigert, Tr. 8227–8, 8231; Mickelsen, Tr. 2527, 2642; Herbert, Tr. 9869–70)

41. It is reasonable to prohibit representation or suggestions in labeling, promotional material, or advertising of foods offered for special dietary use based on vitamin and mineral qualities, that imply that a dietary deficiency of vitamins or minerals exists or is threatened in the United States by virtue of loss of nutrients which occur from processing, transportation, storage, and cooking. (Schweigert, Tr. 8233–4)

42. Table salt has been fortified with iodine in the United States for many years. The usual level of fortification with potassium iodide is 0.01 percent by weight, which is equivalent to 0.0076 percent iodine (or about 0.01 percent iodine). This is commonly known as iodized salt. (Boehne, Tr. 2777–8; Herbert, Tr. 9948)

43. There is no necessity for iodized salt to contain on its label a statement of the percent or proportion of the recommended daily allowance for iodine provided in a specified serving, particularly since there is no specific serving size for salt and it is used in widely varying quantities. (Herbert, Tr. 9948; WD–G–Dawson, Q&A 29)

44. The use of dietary supplements of vitamins and minerals to ensure against a specific inadequacy of intake of these nutrients is a function clearly distinguished from the use of vitamin and mineral preparations for therapeutic purposes by the administration of large amounts of specific nutrients for the correction of disorders in humans, and the same product should not be used for both functions. (Grollman, Tr. 1680–82; Herbert, Tr. 9896; Hodges, Tr. 2937–40, 2970–71; WD–G–Harrison, Q&A 22; WD–3A–Sebrell, Q&A 44; WD–G–Schaefer, Q&A 36, 37).

45. It is often impractical to supply the iron needs of adult women with conventional foods, and iron supplementation is often advisable. (WD–3A–Sebrell, p. 17, Tr. 26088–89; Hodges, Tr. 3068–69; WD–46–Olson, pp. 10–11; WD–46–Wallerstein, pp. 12–13; WD–46–White, pp. 13–14; WD–46–Schwartz, pp. 6–7; WD–46–Margen, p. 7, Tr. 28713–14; Exhibit P–651, p. 59). Many women of childbearing age, particularly including those who are pregnant, ingest inadequate amounts of iron in the diets which they consume (WD–46–Mayer, pp. 14–17; Hodges, Tr. 6738; WD–65–Vitale, p. 5, Tr. 31914; WD–46–Unglaub, p-30; WD–46–Schwartz, pp. 6–10; WD–46–Wallerstein, pp. 9, 11–12, Tr. 28976; WD–46–Olson, p. 11; WD–46–Margen, p. 10; Goodhart, Tr. 30179; WD–46–Briggs, p. 27; WD–46–White, pp. 12–14; Krehl, Tr. 27218–19; Exhibit P–651, pp. 58–59). The iron intake of many adolescent girls and menstruating women is 10 milligrams or less each day. This value is consistent with the 1,500 to 2,000 calorie diet of sedentary women. In addition, the iron requirements of infancy and of the latter half of pregnancy are clearly in excess of what may be obtained from a conventional unfortified diet. (Exhibit 0–612–46, pp. 120–121).

46. Since the early 1940's, and continuing to the present time, certain labeling, promotion, advertising, and lay literature concerning dietary supplements of vitamins and minerals and other foods offered for special dietary uses based on their vitamin and/or mineral qualities has repeatedly represented that ordinary foods are incapable of supplying adequate amounts of vitamins and minerals to meet human needs. (Weissenberg, Tr. 6560–61, 6571–72, 6304, 6358, 6375, 6447–50, 6579) Individual case determinations have shown that the use of this theme in the labeling of foods for special dietary uses is false and misleading. (Exhibit P–670, 670(a), 671)

47. These regulations interpret and apply sections 403 (a) and (j), by prescribing requirements for label information necessary in order fully to inform purchasers of the value of foods for special dietary uses, and to prevent false or misleading labeling for foods. Neither the findings of fact nor the regulations relate to or affect vitamin-mineral products which are classified as "drugs". It is the intent of the Food and Drug Administration that the safety, effectiveness, and labeling of OTC vitamin-mineral drugs be determined through the separate OTC drug review for vitamin-mineral drugs as provided in 21 CFR 130.301. The OTC vitamin-mineral drug review will make its own independent inquiry on these matters.

Conclusions of Law

A. With respect to § 125.1 *Definitions and interpretations of terms:*

The Commissioner has carefully reviewed the history of the "special dietary" designation for foods to which nutrients have been added. At the time the original regulations relating to "special dietary" foods were being developed, it appeared reasonable, on the basis of nutrition knowledge, to classify fortified foods as special, and to require labeling under 21 CFR Part 125. Over the years the science of nutrition has moved forward, and the general requirement for nutrients, on a daily basis, have been better established. In addition, foods of all kinds are recognized as the preferred source of nutrients. The majority of those foods categorized as "special dietary foods" in the past for purposes of requiring nutrient labeling are in fact intended for consumption by the general population as conventional foods.

The development of general nutrition labeling regulations, available for use on all foods, has become of primary concern to all consumers, because of the ever increasing complexity of the conventional food supply. The use of the special dietary labeling under 21 CFR Part 125 for conventional foods with added nutrients can no longer be considered adequate to provide the consumer with a complete understanding of proper use of such foods in the diet. The Commissioner has, therefore, established that nutrition labeling (21 CFR 1.17) is the

required form of labeling for foods with added nutrients, or for which the manufacturer makes nutritional claims or provides nutrition information on the label or in the labeling or advertising.

It is recognized that high levels of nutrient additions may occur for which labeling for special dietary uses is appropriate. Thus, a relationship between nutrition labeling (21 CFR 1.17) and the standard of identity for dietary supplements (21 CFR 80.1) has been established, providing that food with nutrients added up to levels of 50 percent of the U.S. Recommended Daily Allowance (U.S. RDA) will be labeled under 21 CFR 1.17, and that food with nutrients added at levels between 50 percent and 150 percent of the U.S. RDA or greater will be subject to the provisions of 21 CFR 80.1 and labeled under 21 CFR 1.17.

Within 4 broadly defined groups (infants, children under 4 years of age, adults and children 4 or more years of age, and pregnant or lactating women) values can be selected from the almost 390 RDA values, as well as information on the needs of each group for 4 nutrients for which there are no RDA's. In order to provide the consumer meaningful labeling it is necessary to provide a single level of RDA values for each of the above groups.

Selection of reasonable values for labeling purposes was done primarily by choosing the highest RDA value for each of the three groups. This was done so that the needs of all individuals in the age group would be included, recognizing that the needs of many would be surpassed by the selected value. Since there is no danger to health inherent in this approach, and it does not significantly affect the traditional concept of teaching consumers about the nutrient contribution of specific foods, the selection which is made is reasonable for the purpose stated.

The Commissioner realizes that legal challenge may be brought against the new approach to nutrition labeling in 21 CFR 1.17. If 21 CFR 1.17 is found invalid for any reason it will be necessary to resume the labeling of foods with added nutrients, or for which nutritional claims are made, under 21 CFR Part 125. The Commissioner is therefore keeping the record on this portion of the hearing open, for this limited purpose, in the event that it becomes necessary to amend this final order or to issue a supplemental final order to provide for labeling of this type pursuant to 21 CFR Part 125 in lieu of 21 CFR 1.17.

Accordingly, the Commissioner concludes, based on the foregoing statement in conjunction with the findings of facts herein published, that:

1. It is reasonable and necessary, in order to fully inform purchasers of the value of foods for special dietary uses, to define "special dietary use" as set forth in § 125.1(a).

2. It is reasonable and necessary, in order to fully inform purchasers of the value of foods for special dietary uses, to establish "recommended daily allowances" for essential nutrients as set forth in § 125.1(b).

3. The "recommended daily allowances" as set forth in § 125.1(b) are reasonable.

4. The definition of "artificial sweetener," as set forth in § 125.1(c), is reasonable.

B. With respect to § 125.2 *General label statements; dietary properties; value; placement:*

Over the years there have been a number of ingredients or products marketed as nutrients and nutritional supplements, which have not been shown to be essential in human nutrition. This point was discussed in considerable detail during the 1968–70 special dietary hearings held by the Food and Drug Administration. Among ingredients or products of this type are rutin, other bioflavonoids, paraaminobenzoic acid, inositol, and similar ingredients, products, and compounds. These ingredients or products have frequently been combined with vitamins and minerals or otherwise represented as a type of nutritional supplement. In these situations there is a false representation that these ingredients or products have nutritional value. The Commissioner has concluded that ingredients or products of this type may not properly make direct or implied nutritional claims, and that in no instances can these be represented in any way that suggests a nutritional value. Combining these products with added vitamins and/or minerals in any food, or adding these ingredients to any food for which nutrition labeling is used, or calling attention to these products in any manner which would be considered to imply some nutritional benefit, is inherently misleading. See, e.g., United States v. Vitasafe, 226 F. Supp. 266 (D.N.J. 1964), aff'd 345 F. 2d 864 (3d Cir. 1965), cert. denied 382 U.S. 918 (1965); United States v. Nuclomin, No. 71 C 585 (E.D. Mo. 1972), aff'd No. 72–1626 (8th Cir. 1973).

Labeling of such ingredients or products may not state that their usefulness in human nutrition has not been established, or otherwise disclaim dietary or therapeutic value, since such statements are also misleading and fail to correct an otherwise false or misleading statement or implication. See, e.g., the Vitasafe and Nuclomin cases; United States v. 47 Bottles. . . Jenasol RJ Formula, 320 F.2d 564 (3d Cir. 1963), cert. denied 375 U.S. 953 (1963); United States v. Millpox, Inc., 313 F.2d 152 (7th Cir. 1963), cert. denied 373 U.S. 903 (1963); United States v. 3 Cartons . . . No. 26 Formula GM, 132 F. Supp. 569 (S.D. Cal. 1952); United States v. Nutrition Service, Inc., 227 F. Supp. 375 (W.D. Pa. 1964), aff'd 347 F.2d 233 (3d Cir. 1965). The Commissioner recognizes that there are individuals who desire to purchase ingredients or products of this type for various reasons. These individuals have a right to obtain these ingredients or products as long as they are truthfully labeled. Thus, ingredients or products of this type may properly be marketed as individual ingredients, or products, or mixtures thereof, provided no nutritional or dietary supplement claims are made.

Accordingly, the Commissioner further concludes, based on the foregoing statement in conjunction with the finding of facts herein published, that it is reasonform and necessary, in order to fully inform purchasers of the value of foods for special dietary uses, to require that the labels of such foods bear a statement as required and limited by § 125.2 as set forth in this final order.

C. With respect to § 125.3 *Label statements relating to vitamins and minerals:*

With the development of nutrition labeling (21 CFR 1.17) the use of special dietary labeling under 21 CFR Part 125 will be for all practical purposes limited to those articles which purport or are represented to supply a special dietary need that exists by reason of a physical or physiological condition, food represented for use as the sole item of the daily diet, and dietary supplements as provided for in 21 CFR 80.1.

The Commissioner recognizes there are foods which by their nature may contain nutrients in excess of 100 percent of the U.S. RDA per serving or reasonable daily intake. The Commissioner further recognizes the need for reasonable ranges for individual nutrients in dietary supplements above and below the U.S. RDA. The Commissioner further recognizes that departures from the U.S. RDA are appropriate for certain types or classes of foods for special dietary uses, e.g., chemically defined diets used to provide sound nutrition to critically ill patients.

Accordingly, the Commissioner concludes, having considered the findings of fact and other relevant information, that it is reasonable and necessary, in order to fully inform purchasers of the value of foods for special dietary uses, to require that the labels of such foods, by reason of their vitamin or mineral content, bear a statement of the percentages of the recommended daily allowances for such vitamins and minerals. Nutrition labeling under 21 CFR 1.17 is not sufficiently precise for these special types of food.

Final Order

Therefore, on the basis of the foregoing findings of fact and conclusions of law drawn therefrom: *It is ordered*, That the stay of effective date of §§ 125.1 through 125.3, promulgated December 14, 1966 (31 FR 15730), be ended, and that Parts 1, 3, and 125 of Title 21 of the Code of Federal Regulations be amended as follows:

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

§ 1.11 [Revoked]

1. The provisions of § 1.11 *Special dietary uses* are hereby revoked.

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

§ 3.9 [Revoked]

2. The provisions of § 3.9 *Label declaration of vitamin E in food for special dietary use* is hereby revoked.

§ 3.32 [Revoked]

3. The provisions of § 3.32 *Label declaration of vitamin B_{12} and folic acid in food for special dietary uses* is hereby revoked.

§ 3.46 [Revoked]

4. The provisions of § 3.46 *Interpretations of orders relating to dietary supplements; vitamin and mineral-fortified foods; foods for special dietary use* are hereby revoked.

PART 125—LABEL STATEMENTS CONCERNING DIETARY PROPERTIES OF FOOD PURPORTING TO BE OR REPRESENTED FOR SPECIAL DIETARY USES

5. The provisions of §§ 125.1, 125.2, and 125.3 are revised to read as follows:

§ 125.1 Definitions and interpretations of terms.

The definitions and interpretations of terms contained in section 201 of the Federal Food, Drug, and Cosmetic Act shall be applicable with the following additions:

(a) The term "special dietary use" as applied to food (including dietary supplements) used by man means a particular use for which an article purports or is represented to be used, including but not limited to the following:

(1) Supply a special dietary need that exists by reason of a physical, physiological, or other condition, including but not limited to the conditions of convalescence, pregnancy, lactation, infancy, allergic hypersensitivity to food, underweight, overweight, diabetes mellitus, or the need to control the intake of sodium. The use of an artificial sweetener in a food, except when specifically and solely used for achieving a physical characteristic in the food which cannot be achieved with sugar or other nutritive sweetener, shall be considered a use for regulation of the intake of calories and available carbohydrate, or for use in the diets of diabetics.

(2) Supplying a vitamin, mineral, or other dietary property for use by man to supplement his diet by increasing the total dietary intake, except for foods for which nutrition labeling is used as required pursuant to § 1.17 of this chapter.

(3) Supplying a special dietary need by reason of being a food for use as the sole item of the diet.

(b) The term "U.S. Recommended Daily Allowance (U.S. RDA)" means the following daily amounts of the following vitamins and minerals:

Vitamins & minerals	Unit of measurement	Infants	Children under 4 years of age	Adults and children 4 or more years of age	Pregnant or lactating women
Vitamin A	International units.	1,500	2,500	5,000	8,000
Vitamin D	do	400	400	400	400
Vitamin E	do	5	10	30	30
Vitamin C	Milligrams	35	40	60	60
Folic acid	do	0.1	0.2	0.4	0.8
Thiamine	do	0.5	0.7	1.5	1.7
Riboflavin	do	0.6	0.8	1.7	2.6
Niacin	do	8	9	20	20
Vitamin B_6	do	0.4	0.7	2.0	2.5
Vitamin B_{12}	Micrograms	2	3	6	8
Biotin	Milligrams	0.15	0.15	0.30	0.30
Pantothenic acid	do	3	5	10	10
Calcium	Grams	0.6	0.8	1.0	1.3
Phosphorus	do	0.5	0.8	1.0	1.3
Iodine	Micrograms	45	70	150	150
Iron	Milligrams	15	10	18	18
Magnesium	do	70	200	400	450
Copper	do	0.6	1.0	2.0	2.0
Zinc	do	5	8	15	15

[1] The following synonyms may be added in parentheses immediately following the name of the vitamin:

Vitamin	*Synonym*
Vitamin C	Ascorbic acid
Folic acid	Folacin
Riboflavin	Vitamin B_2
Thiamine	Vitamin B_1

(1) The U.S. Recommended Daily Allowances (U.S. RDA's) have been derived by the Food and Drug Administration from "Recommended Dietary Allowances", published by the Food and Nutrition Board, National Academy of Sciences-National Research Council, and are subject to amendment when new authentic and reliable information on human nutrient needs appears in new editions of the above publication.

(2) For determining the percentage of the U.S. RDA's of vitamins in a quantity of food, as required in § 125.3(a), the quantitative content of the following vitamins shall be calculated in terms of the following chemically identifiable reference forms:

REFERENCE FORM

Vitamin	Name	Empirical formula	Molecular weight
Vitamin C	*L*-Ascorbic acid	$C_6H_8O_6$	176.12
Folic acid	Pteroyl mono-*L*-glutamic acid	$C_{19}H_{19}N_7O_6$	441.41
Niacin	Nicotinic acid	$C_6H_5NO_2$	123.11
Riboflavin	Riboflavin	$C_{17}H_{20}N_4O_6$	376.37
Thiamine	Thiamine chloride hydrochloride	$C_{12}H_{17}ClN_4OS.HCl$	337.28
Vitamin B_6	Pyridoxine	$C_8H_{11}NO_3$	169.18
Vitamin B_{12}	Cyanocobalamin	$C_{63}H_{88}CoN_{14}O_{14}P$	1,355.40
Biotin	*D*-Biotin	$C_{10}H_{16}N_2O_3S$	244.31
Pantothenic acid	*D*-Pantothenic acid	$C_9H_{17}NO_5$	219.23

(c) In addition to the vitamins and minerals listed in paragraph (b) of this section, vitamin K, choline, and the minerals chlorine, potassium, sodium, sulfur, fluorine, and manganese are recognized as essential in human nutrition, but no U.S. Recommended Daily Allowance (U.S. RDA) has been established for these nutrients. These nutrients are not appropriate for addition to general purpose foods or dietary supplements of vitamins and minerals but may be added to such other foods for special dietary use as infant formulas, and foods represented for use solely under medical supervision to meet nutritional requirements in specific medical conditions.

(d) The term "artifical sweetener" means a sweetening substance not used in normal metabolism as a source of calories.

(e) The term "infant" means a person not more than 12 months of age.

(f) The term "serving" means that reasonable quantity of food suited for or practicable of consumption as part of a meal either by an adult male engaged in light physical activity, or by an infant or child when the article purports or is represented to be for infant feeding or child consumption. A label statement regarding a serving, as used in this part, shall be in terms of a convenient unit of such food or a convenient unit of measure that can be readily understood by purchasers of such food, e.g., a serving may be expresed in terms of slices, cookies, or wafers, or in terms of ounces, fluid ounces, teaspoonfuls, tablespoonfuls, or cupfuls. A teaspoonful shall be considered to mean 5 milliliters (approximately ⅙ fluid ounce) in volume; a tablespoonful shall be considered to mean 15 milliliters (approximately ½ fluid ounce) in volume; and a cupful shall be considered to mean 240 milliliters (approximately 8 fluid ounces) in volume.

(g) The term "diabetic" means a person having diabetes mellitus.

(h) Any product containing more than the upper limit of the U.S. RDA per serving (or, where appropriate, per daily recommended quantity) of a vitamin or mineral as specified in § 80.1(f)(1) of

this chapter is a drug, except for conventional foods which contain naturally-occurring amounts in excess of these limits or which contain added amounts in excess of these limits pursuant to § 1.8 (e) of this chapter so that it is not nutritionally inferior to the food for which it substitutes and which it resembles, and except as provided for in a specific regulation for such special dietary foods as infant formulas or foods which are represented for use solely under medical supervision to meet nutritional requirements in specific medical conditions.

§ 125.2 General label statements; dietary properties; value; placement.

(a) If a food purports or is represented to be for any special dietary use, covered by other regulations, the principal display panel of its label shall bear a conspicuous statement of the usefulness of the food, limited to a listing of the dietary properties upon which such use is based: *Provided, however,* That if insufficient space is available on the principal display panel, the information panel may be used (21 CFR 1.8d), if such use is consistent with § 1.9 of this chapter. Such statement shall show the presence or absence of any substance, any alteration of the quantity or character of any constituent, and any other special dietary property of such food upon which such use is based.

(b) A food which purports or is represented to be a food for special dietary use shall be deemed to be misbranded under sections 201(n), and 403(a) and (j) of the act (21 U.S.C. 321(n), 343(a) and (j)), if its labeling bears any statement, vignette, or other printed graphic matter that represents, suggests or implies:

(1) That the food, because of the presence or absence of certain vitamins and/or minerals, is adequate or effective in the prevention, cure, mitigation, or treatment of any disease or symptom, except that the label may state that the food is a source of an essential nutrient and that this nutrient is important for good nutrition and health, and except that this provision shall not apply to foods represented for use solely under medical supervision in the dietary management of specific diseases and disorders.

(2) That a balanced diet of ordinary foods cannot supply adequate amounts of nutrients.

(3) That the lack of optimum quality of a food, by reason of the soil on which that food is grown, is or may be responsible for an inadequacy or deficiency in the quality of the daily diet.

(4) That the storage, transportation, processing, or cooking of a food is or may be responsible for an inadequacy or deficiency in the quality of the daily diet.

(5) That the food has dietary properties when such properties are of no significant value or need in human nutrition. Ingredients or products such as rutin, other bioflavonoids, para-aminobenzoic acid, inositol, and similar substances which have in the past been represented as having nutritional properties but which have not been shown to be essential to human nutrition may not be combined with vitamins and/or minerals, added to food labeled in accordance with this section, or otherwise used or represented in any way which states or implies nutritional benefit. Ingredients or products of this type may be marketed as individual products or mixtures thereof: *Provided,* That the possibility of nutritional, dietary or therapeutic value is not stated or implied. Examples of false or misleading statements or implications are:

(i) Label statments to the effect that their need or usefulness in human nutrition has not been established.

(ii) Label statements which otherwise disclaim nutritional, dietary or therapeutic value.

(6) That a natural vitamin in a food is superior to an added or synthetic vitamin, or that there is a difference between vitamins naturally present and those that have been added.

§ 125.3 Label statements relating to vitamins and minerals.

(a) If a food purports or is represented to be for special dietary use because of vitamin or mineral properties, the label shall bear a statement of the percentage of the U.S. RDA of such vitamins and minerals, as set forth in § 125.1(b), supplied by such food when consumed in a specified quantity during a period of 1 day. The quantity specified shall be a reasonable quantity suitable for and practicable of consumption within 1 day. The order in which the nutrients appear on the label shall be in the order listed in § 125.1(b), except when other regulations indicate otherwise. Immediately preceding the declaration of vitamin and mineral content, the following heading shall be stated, "Percentage of U.S. Recommended Daily Allowances (U.S. RDA)". If such purported or represented special dietary use is for persons within one or more groups for which the recommended daily allowance is set, such statement shall include the percentage for each age group. When such proportion or percentage is a whole number and a fraction or a whole number and a decimal, it shall be expressed as the whole number disregarding the fraction or decimal. The total quantity of vitamins or minerals in a food shall be no less than the amount declared, and no more than a reasonable amount above the declared quantity. Reasonable variations caused by heat, light, oxidation, storage, transportation, or unavoidable deviations in good manufacturing practice are recognized.

(b) The requirements of this section shall not apply to iodized salt, when the declared content of the iodine compound in the salt is equivalent to 0.01 percent by weight iodine.

Effective date. Labeling may be changed to comply with this regulation beginning on August 2, 1973. All labeling ordered after December 31, 1973, and all labeling used on products shipped in interstate commerce after December 31, 1974, shall comply with this regulation; *Provided,* That infant formulas and foods represented for use solely under medical supervision to meet nutritional requirements in specific medical conditions shall not be subject to § 125.1(c) until a further FEDERAL REGISTER order so provides.

(Secs. 201(n), 401, 403(a) and (j), 701(a) and (e), 52 Stat. 1046, 1048, 1055, 1056, as amended by 70 Stat. 919; 21 U.S.C. 321(n), 341, 343(a) and (j), 371(a) and (e))

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

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PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

Food Labeling; Spices, Flavorings, Colorings and Chemical Preservatives

In the FEDERAL REGISTER of January 19, 1973 (38 FR 2139), the Commissioner of Food and Drugs published a proposal to revoke §§ 3.10, 3.23(b), and 3.201 (21 CFR 3.10, 3.23(b), and 3.201) and to amend § 1.12 (21 CFR 1.12). Fifty-seven comments were received from industry, trade associations, consumer and professional groups, individual consumers and government agencies (Federal and city). One consumer and two trade associations agreed with the proposal in its entirety. Other comments suggested modifications or requested clarification. The points raised and the Commissioner's responses are as follows:

1. One comment requested clarification about the relationship between the proposal and the standard of identity for soda water (21 CFR 31.1). Another comment suggested that the regulation should apply to the labeling of ice cream, since it improves upon the flavor labeling provisions in the standard of identity for that food (21 CFR 20.1(g)(2)).

The Commissioner advises that this regulation will apply to all foods, including standardized foods. The Commissioner intends to propose revisions in all standards with different flavor labeling requirements to incorporate the provisions of this regulation. In the interim, all standardized foods with different labeling provisions may voluntarily be labeled to conform to the labeling requirements of § 1.12.

2. Several comments were received requesting modification of the definition for "artificial flavor" or "artificial flavoring:"

(a) Eggs and dairy products should be considered sources of natural flavors.

(b) One comment stated that under the present wording a chemical derivative of one of the materials listed could be used to imitate natural vanilla without being considered artificial and suggested that the definition be amended as follows: "* * * derived from the spice * * * or poultry it seeks to imitate." Another comment proposed that the definition should be modified to exclude substances

listed under §§ 121.101(g) and 121.1164 (b) (21 CFR 121.101 and 121.1164) since some of these substances are "natural" as defined in § 1.12(a)(3).

(c) It was suggested that the definition provide a classification of synthesized "nature-identical" flavors and that such a classification also be included in § 1.12(g)(4). It was further suggested that such action would be consistent with the Food and Drug Administration's practice of equating synthetic and natural vitamins.

The Commissioner agrees that eggs and dairy products are properly considered a source of natural flavor, and the definitions of artificial and natural flavor are amended accordingly. The Commissioner does not agree that the definition of artificial flavor should be expanded to include flavors derived from natural sources but used to simulate foods other than their source. Such flavors, derived from natural sources, are properly identified as natural flavors in a list of ingredients. The term "artificial" connotes a synthetic source. However, labeling concerning the presence of such natural flavor in a food cannot be misleading to the consumer. When a natural flavor is used in a food product to simulate a flavor of a food, other than the one from which the flavor is derived, the food to which the flavor is added must be labeled as "artificially flavored". Thus a "lemon" type pie made with natural flavor derived predominantly from other citrus fruits could not be identified simply as "lemon pie" without misleading the consumer. It must be labeled as "citrus" pie or as "artificially flavored lemon pie."

The Commissioner agrees that some of the flavors listed in §§ 121.101(g) and 121.1164(b) could be derived from natural sources. However, the concern is whether a particular flavor is in fact derived from a natural or a synthetic source. If the flavor originates from a natural source, it is considered a natural flavor. Section 1.12(a)(1) has therefore been changed to reflect this.

The Commissioner does not agree with the comment which suggests that the definition for "artificial flavor" provide for a classification of "nature-identical" flavors. Such substances are synthetic products and properly classified as artificial. Section 403(k) of the Federal Food, Drug, and Cosmetic Act requires that when a food bears or contains artificial flavoring it must bear labeling stating that fact.

3. One comment requested clarification of § 1.12(a)(2) on the basis that horseradish and parsley may have been erroneously listed as spices under § 121.101(e) of this chapter. The Commissioner disagrees. These substances are well known and commonly used as spices in foods, and the Commissioner concludes that they are properly listed in § 121.101(e) of this chapter and in § 1.12(a)(2).

4. One comment requested that § 1.12(a)(2) be amended to coincide with the policy of the Department of Agriculture with regard to the use of paprika. It was asserted to be the policy of that Department that paprika in cured and smoked meats need not be declared as such, or as a coloring, provided it is used at a level which does not impart color.

The Commissioner advises that this regulation is not in conflict with any regulation of the United States Department of Agriculture (USDA). Paprika is widely used for its colorant and mild spice properties in foods other than meats. When so used in sufficient quantities to impart flavor, the Commissioner is not aware of any situation where the paprika would not also impart color. If it is declared as "spice and coloring" it need not be declared by name. The Commissioner concludes that there is no reason to modify § 1.12(a)(2).

5. One comment requested clarification with regard to the definition for "spice" as "* * * any aromatic vegetable substance in the whole, broken, or ground form; * * *" whose significant function in food is seasoning rather than nutritional. The comment states that there is an apparent conflict with § 1.12(h)(3) which states that powdered or granulated onion, garlic powder and celery powder are foods rather than flavor. In addition, clarification was requested with regard to listing of seeds such as celery, cumin, fennel, caraway, and dill, etc., as spices while celery powder is listed as a food.

Several comments suggested changes under § 1.12(h)(3) with respect to the declaration of powdered onions, powdered garlic, powdered celery, and juices of onions or garlic. Most objected to their declaration by common or usual name and suggested that these substances be declared as "flavoring," "spices," or "other seasoning materials." They reasoned that these substances are used as "flavorings" and that there is no significant nutritional contribution. One comment did not object to declaring onions and garlic by their common name because of individual dislikes and allergies.

The commissioner has amended the regulation so that there is no conflict between § 1.12(a)(2) and (h)(3) with regards to onions, garlic, and celery. These products are commonly regarded by consumers to be vegetables, in addition to providing seasoning, and thus must be labeled by their common or usual names. The Commissioner advises that juices of onions and garlic are "natural flavors" as defined under § 1.12(a)(3) and that seeds such as celery seeds, cumin seed, fennel seed, etc. are commonly understood to be spices.

6. Uncertainty was expressed as to the scope of the phrase "hydrolysate, distillate, or other reaction product," and the propriety of including this phrase in the definition of "natural flavor" was questioned.

The phrase has been retained to assure that all flavors derived from natural sources are classified as "natural flavor."

7. One comment suggested the addition of a new § 1.12(a)(6) defining the word "flavor."

The Commissioner does not consider it necessary to define "flavor" as used in this regulation because its meaning is no different than the accepted meaning commonly understood and found in standard dictionaries.

8. One comment objected to the proposed mutually exclusive definitions of "spices" and "natural flavors." It was stated that the term "natural flavor" has long been used by food processors as a generic term including both spices and natural flavorings and that current regulations of the Department of Agriculture permit a manufacturer of meat or meat products to include spices within the declaration of "natural flavor."

Spices and flavorings are treated as distinct substances in Section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act. The Commissioner therefore rejects this comment.

9. The United States Department of Agriculture opposed the provision in the definition of "natural flavor" which would allow meat extracts to be labeled as flavors. The USDA stated that "meat extract" and "fluid extract of meat" are standardized by USDA's meat inspection regulations and must bear names as specified by the regulations. The Commissioner concludes that there is no conflict between the USDA regulations and this regulation, since these substances when sold as such must still be labeled as "meat extract" and "fluid extract of meat." Only when these substances are used as ingredients without significant nutritional function, but rather to impart flavor, may they be declared as "natural flavor."

10. Several comments stated that the word "vital" in the definition of "natural flavor" does not have a clear meaning. The Commissioner agrees and the term has been deleted.

11. The Commissioner rejects suggestions for deletion of the last sentence in § 1.12(a)(3). The reference in that sentence to §§ 121.101(e) and 121.1163 provides useful and accurate listings of substances properly classified as natural flavorings.

12. Four respondents commented on the definition of artificial color in § 1.12(a)(4) of the proposal. It was asserted that a dye or natural pigment extracted from a plant or other material in which such dye or natural pigment is naturally produced is properly classified as a natural and not an artificial coloring. One respondent objected to natural colors such as annatto, curcumin, and beet being designated as artificial colors asserting that it is not the colors that are artificial but the products that are artificially colored with natural colors. Another comment stated that the distinction between coal tar colors and natural colors was eliminated by the Color Additive Amendments of 1960, and pink lemonade is just as artificially colored by beet juice as by a synthetic dye. One comment stated that under the proposed definition, oleoresins of spices are artificial colors whereas turmeric, paprika and saffron are considered natural colorings and their oleoresins are considered natural flavors.

The Commissioner agrees that substances such as beet juice, paprika, tur-

meric, and saffron are not artificial colors per se. The Commissioner also agrees that when such substances are used to color articles of food of which the substance used is not naturally present as a constituent, such food is artifically colored.

Similarly, the designation "spice and coloring" in § 1.12(a)(2) for paprika, turmeric and saffron is not intended to indicate that foods colored by these spices are not artificially colored. Even though oleoresins of these spices are artificial colors, it is not inconsistent to consider them as natural flavors. When used as ingredients in foods, oleoresins of spices may be designated as natural flavors in accordance with the provision of § 1.12(h) of the regulation.

The Commissioner agrees that the Color Additive Amendments of 1960 does not make a distinction between coal tar colors and natural colors. Therefore, the regulation has been amended by redefining the terms "artificial color" or "artificial coloring" to mean any "color additive" as this term is defined in § 8.1(f) of this chapter.

13. Comments concerning § 1.12(g) were as follows:

(a) The labeling requirements for flavors shipped to manufacturers and processors should also apply to flavors sold at retail. Another comment suggested that all reference to "retail sale" be deleted because the phrase implies that manufacturers of flavoring must determine the end use of their products, which they cannot do.

(b) This paragraph should be revised to specifically provide that a flavor must be labeled such that a food manufacturer using the flavor as an ingredient can properly label his products with regard to flavor.

(c) An exemption from the labeling requirements of this section was requested in those cases where a firm manufactures a flavor and ships it to another of its own plants to be used in manufacturing other products.

(d) The alternative label statement authorized by § 1.12(g)(2) should be expanded to include those flavor ingredients listed in an industry association list of ingredients.

(e) The terminology "* * * shall be so labeled" in § 1.12(g)(4) should be made more specific.

(f) The word "flavor" should be reserved for artificial flavors or combinations of natural and artificial flavors, on the premise that there would be difficulty in applying and enforcing the criterion of predominance between "natural" and "artificial" flavors as proposed in the regulations.

(g) A definition for "predominates" was suggested, as follows: "The natural flavor from the source(s) named shall be deemed to predominate, if when used by itself in the same amount as is present in the blend, it provides a characterizing flavor in the finished food." Another comment stated that the distinction made on the basis of natural or artificial flavor predominating is not meaningful to the consumer and is detrimental to the manufacturer. A number of comments stated that a predominance test is unenforceable.

The Commissioner concludes that the provisions of § 1.12(g) should not be extended to flavors intended for retail sale. Those provisions are intended to protect trade secrets concerning flavor formulas, and the Commissioner is not aware of any flavor sold as such to consumers for which the qualitative formula could be shown to be a trade secret.

The reference to "retail sale" in § 1.12(g) has been deleted.

The Commissioner concludes that the labeling authorized by § 1.12(g) as revised in the final regulation will provide the manufacturer who uses flavor ingredients with sufficient information for the proper labeling of his finished products in virtually all situations. If further information is necessary in a particular instance it may be obtained from the manufacturer.

Where a firm manufactures a flavoring and ships it to another of its own plants for use in manufacture of a food product, the Commissioner advises that the labeling authorized by § 1.12(g) may be used.

The Commissioner concludes that the label statement authorized by § 1.12(g)(2) should not be expanded to include flavor ingredients listed in an industry association list of ingredients. Only ingredients which have been reviewed for safety by the Food and Drug Administration and approved for use in a regulation after an opportunity for public comment are properly exempted from specific label declaration.

However, the effective date of this provision has been extended to December 31, 1974, provided that the label of the product bears a statement certifying that the ingredients are listed as being generally recognized as safe on a reliable published industry association list. This will provide the industry sufficient time to file petitions seeking the affirmation of GRAS status or a food additive regulation covering the safe use of any ingredient not covered by a Food and Drug Administration regulation. Consideration of these petitions will be expedited.

Section 1.12(g)(4) has been redesignated as § 1.12(g)(3) and has been revised to provide examples of appropriate labeling.

The Commissioner agrees that there would be great difficulty in enforcing the criteria for "predominance" necessary to determine the proper labeling of a combination of natural and artificial flavors as contained in § 1.12(i)(2) of the proposal. The absence of chemical analytical methodology to distinguish a natural flavor from its synthetic counterpart makes the enforcement of the criteria for predominance wholly dependent on organoleptic determination, and thus on inspection of company records. It would be impossible for the Food and Drug Administration to review all of the records of food manufacturers and flavor suppliers to determine compliance. Enforcement of the provision as proposed would therefore not be feasible.

The Commissioner is also aware that the term "flavored" does not explicitly convey to consumers the incorporation of artificial flavor in a product. This term might, indeed, be misconstrued to imply the presence solely of natural flavor. The purpose of flavor labeling is to distinguish between the use of natural and artificial flavoring in as clear and concise terminology as is possible. A number of comments specifically objected to the three-fold system of flavor designation contained in the proposal on the ground that it would not readily be understood by consumers, in addition to being unenforceable.

The Commissioner has therefore concluded that the proposal should be revised to eliminate the concept of "predominates," and to require that any food containing any amount of artificial flavor shall be labeled "artificially flavored." In the event that natural flavor is included in the product at some level, the presence of such natural flavor will be shown in the statement of ingredients. The Commissioner believes that this two-fold system of flavor designation will be more enforceable as well as more readily understandable by consumers. It will also more accurately reflect the statutory mandate to inform consumers of the presence of artificial flavor.

The Commissioner recognizes that there will continue to be situations where, because of analytical and enforcement difficulties, the addition of artificial flavors to natural flavors will remain undetected. However, this problem will be substantially reduced by the two-fold flavor designation system adopted in the final regulation. The Commissioner urges the industry to apply this regulation with honesty, and advises that violations will be the subject of severe regulatory action. Many food manufacturers regularly cooperate with the Food and Drug Administration by providing sufficient records to document the truthfulness of label statements.

14. Several consumers suggested that spices, flavorings, and colorings be declared by individual common name rather than by the generic terms. A manufacturer suggested that spices be declared under the term "natural flavor." One comment suggested that the source be declared when sweeteners are used as flavors. Another suggested that the term "MSG" be used as an alternative designation for monosodium glutamate.

Section 403(i) of the act specifically provides that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings and colorings without naming each. Section 403(i) also makes a specific distinction between spices and flavors. Sweeteners are not spices or flavors, and when used as an ingredient in a food must be declared by common or usual name. Simlarly monosodium glutamate is not a spice or flavor, and it must be declared by its common or usual name. The Commissioner does not agree that "MSG" used alone to designate monosodium glutamate as an ingredient would be recognized by consumers as a designation for monosodium glutamate. However, there is no objection to its being used parenthetically immediately following the words "monosodium glutamate."

15. Several comments were received concerning the proposed labeling of incidental additives which originate in a spice or flavor ingredient used in manufacture of a food but which have no functional effect in the finished food.

The Commissioner concludes that incidental additives in a food, originating in a spice or flavor ingredient used in manufacture of the food, should be labeled in the same manner as incidental additives originating in any other ingredient. A proposal to provide general rules governing this situation was published in the FEDERAL REGISTER of January 19, 1973 (38 FR 2141), and a final order establishing 21 CFR 1.10a(a)(4) is published elsewhere in this issue of the FEDERAL REGISTER. Section 1.12(h)(2) has been revised to incorporate by reference this general rule.

16. Several comments objected to the label declaration of pyroligneous acid. The comments also observed that the proposal failed to consider the labeling of smoke flavorings other than pyroligneous acid.

The Commissioner has amended the regulation to provide that pyroligneous acid and other artificial smoke flavors may be declared as "artificial flavor" or "artificial flavoring." There is no reason to treat the labeling of these flavor substances differently than any other artificial flavor. Of course, where a manufacturer chooses to characterize a product containing any of these substances with labeling references to smoke, the labeling must prominently state that the smoke flavor is artificial. Failure to do so would make the label false or misleading.

The Commissioner advises that when true smoke is absorbed in a liquid or other medium, and that medium is added to a food to provide a smoke flavor, such a flavor ingredient may be identified as "natural flavor" or natural smoke flavor." It would be misleading, however, to characterize such a food as "smoked," although a label statement such as "with added smoke flavor" or with "natural smoke flavor" would be permissible.

17. Several comments objected to the labeling requirements under § 1.12(i). These comments and the Commissioner's responses are as follows:

(a) Several comments objected to the provision of § 1.12(i)(1) requiring use of the term "flavored" whenever a product contains natural flavor in addition to the characterizing ingredient because this implies that the product may be merely flavored and does not contain, or contains only a small amount of, the characterizing ingredient.

The Commissioner recognizes that there may be situations where a food contains a characterizing ingredient and the manufacturer adds natural flavoring to maintain consistent flavor characteristics. In such instances it is not appropriate to require such food to be labeled as "flavored," e.g., "strawberry flavored shortcake," when in fact the food contains the expected amount of the characterizing ingredient. The regulation has been revised to require that in such cases the phrase "flavor added" follow the name of the food, e.g., "strawberry shortcake, flavor added." However, if such product does not contain the expected amount of the characterizing ingredient, the regulation requires that the word "flavored" must follow the name of the characterizing flavor.

(b) One comment urged the prohibition of vignettes and depictions for a characterizing ingredient not present in a food. The Commissioner concludes that the labeling requirements of § 1.12(i) of the regulation are sufficient to inform the consumer of the nature of a characterizing flavor.

(c) One comment urged application of the labeling requirements of the ice cream standard to all other food products. The Commissioner concludes that the present regulation substantially adopts and improves upon the labeling rules for ice cream. The three-fold flavor designation system adopted for ice cream has been enforceable because of minimum standards for characterizing ingredients and the analytical methods to enforce them. The lack of such standards and methods precludes the adoption of that system for all foods. In order to achieve consistent labeling, the Commissioner will propose to amend the ice cream standard to conform to this regulation.

(d) One comment asked that the provision of the standard of identity for ice cream which defines when artificial vanilla flavor predominates be added to this regulation. The Commissioner concludes that this is unnecessary in view of the deletion of the criteria of "predominates."

(e) One comment contended that the proposal failed to provide for appropriate labeling of foods containing a characterizing flavor predominantly of natural origin but not derived from the food simulated, e.g., a textured vegetable protein food containing a beef-like flavor derived from a natural source other than beef. Several comments favored a labeling category for natural flavor derived only from the simulated food.

The Commissioner advises that section 403(i) of the act allows flavor ingredients to be declared generically as "flavoring," except that, pursuant to section 403(k), artificial (synthetic) flavors are to be declared as "artificial flavoring." Thus a flavor of natural origin may be declared in the statement of ingredients as "flavoring" or "natural flavoring" even though that flavor may simulate a food other than the one from which it is derived.

However, section 403(a) of the act prohibits labeling which is false or misleading in any respect. Where a natural flavor is used in a food to simulate a flavor of a product other than the one from which the flavor is derived, the food to which the flavor is added must be labeled either with the flavor of the product from which it is derived or as "artificially flavored." Failure to include such information in a conspicuous manner on the principal display panel would result in a violation of section 403(a) of the act in that the label would be false and misleading for failure to reveal a material fact within the meaning of section 201(n) of the act.

(f) One comment suggested that chewing gum be excluded from the proposal, even though it is defined as a "food" under the act. It was reasoned that this product is not intended to be ingested as food, but merely serves as a delivery system for an organoleptically satisfying flavor sensation. In addition, it was claimed that difficulties would be encountered in the labeling requirements because of type size and package size.

Section 201(f)(2) of the act defines chewing gum as a food. The Commissioner concludes that there is insufficient justification for exempting chewing gum or other similar products from the labeling requirements of the regulation.

(g) Several other comments suggested additional terms or different meanings for proposed terms.

The Commissioner recognizes that there are many possible variations that could be used in prescribing the manner by which natural and artificial flavors are to be designated in the labeling of foods. However, he concludes that the terminology of § 1.12(i) as revised in the final regulation can be applied by industry, that the required labeling will be informative to consumers, and that the terminology employed is otherwise fair, reasonable, and as enforceable as can reasonbly be achieved. Accordingly, changes other than those discussed above are not necessary.

18. The Commissioner is aware of the Resolution adopted June 21, 1973, by the Association of Food and Drug Officials of the United States at this year's annual conference in Rapid City, South Dakota in which opposition to his January 19, 1973, proposal is set forth. The views of that organization as well as the views of the State officials which were individually expressed through their own response to the proposal have been thoroughly considered in arriving at this final order.

19. The Commissioner has decided to adhere to the proposed effective dates for the regulation. Accordingly, all labeling ordered on or after December 31, 1973, and all other products shipped in interstate commerce on or after December 31, 1974, shall comply with these rules. Although one trade association objected to these dates, the Commissioner concludes that they provide a reasonable time for compliance by industry and that further delay would not be in the interest of the consumer.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 403, 701(a), 52 Stat. 1047, 1055; 21 U.S.C. 343, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 1 and 9 are amended as follows:

1. In Part 1 by amending § 1.12 by revising the section title, by revising paragraph (a)(1), by redesignating existing paragraphs (a)(2) and (a)(3) as new paragraphs (a)(5) and (a)(6), by adding new paragraphs (a)(2), (a)(3) and (a)(4) and by adding new paragraphs (g), (h), and (i) to read as follows:

§ 1.12 Food labeling; spices, flavorings, colorings and chemical preservatives.

(a)(1) The term "artificial flavor" or "artificial flavoring" means any substance, the function of which is to impart flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof. Artificial flavor includes the substances listed in §§ 121.101(g) and 121.1164(b) of this chapter except where these are derived from natural sources.

(2) The term "spice" means any aromatic vegetable substance in the whole, broken, or ground form, except for those substances which have been traditionally regarded as foods, such as onions, garlic and celery; whose significant function in food is seasoning rather than nutritional; that is true to name; and from which no portion of any volatile oil or other flavoring principle has been removed. Spices include the spices listed in § 121.101(e) of this chapter, such as the following:

Allspice	Marjoram
Anise	Mustard flour
Basil	Nutmeg
Bay leaves	Oregano
Caraway seed	Paprika
Cardamon	Parsley
Celery seed	Pepper, black
Chervil	Pepper, white
Cinnamon	Pepper, red
Cloves	Rosemary
Coriander	Saffron
Cumin Seed	Sage
Dill seed	Savory
Fennel seed	Star aniseed
Fenugreek	Tarragon
Ginger	Thyme
Horseradish	Turmeric
Mace	

Paprika, turmeric, and saffron are also colors which, under § 1.10(c), shall be declared as "spice and coloring" unless declared by their common or usual name.

(3) The term "natural flavor" or "natural flavoring" means the essential oil, oleoresin, essence or extractive, hydrolysate, distillate, or other reaction products which contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof, whose significant function in food is flavoring rather than nutritional. Natural flavors include the natural essence or extractives obtained from plants listed in § 121.101(e) and the substances listed in § 121.1163 of this chapter.

(4) The term "artificial color" or "artificial coloring" means any "color additive" as defined in § 8.1(f) of this chapter.

(5) The term "chemical preservative" means any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

* * * * *

(g) A flavor shall be labeled in the following way when shipped to a food manufacturer or processor (but not a consumer) for use in the manufacture of a fabricated food, unless it is a flavor for which a standard of identity has been promulgated, in which case it shall be labeled as provided in the standard:

(1) If the flavor consists of one ingredient, it shall be declared by its common or usual name.

(2) If the flavor consists of two or more ingredients, the label either may declare each ingredient by its common or usual name or may state "All flavor ingredients contained in this product are approved for use in a regulation of the Food and Drug Administration." Any flavor ingredient not contained in one of these regulations, and any nonflavor ingredient, shall be separately listed on the label.

(3) In cases where the flavor contains a solely natural flavor(s), the flavor shall be so labeled, e.g., "strawberry flavor," "banana flavor," or "natural strawberry flavor." In cases where the flavor contains both a natural flavor and an artificial flavor, the flavor shall be so labeled, e.g., "natural and artificial strawberry flavor." In cases where the flavor contains a solely artificial flavor(s), the flavor shall be so labeled, e.g., "artificial strawberry flavor."

(h) The label of a food to which flavor is added shall declare the flavor in the statement of ingredients in the following way:

(1) Spice, natural flavor, and artificial flavor may be declared as "spice," "natural flavor," or "artificial flavor," or any combination thereof, as the case may be.

(2) An incidental additive in a food, originating in a spice or flavor used in the manufacture of the food, need not be declared in the statement of ingredients if it meets the requirements of § 1.10a(a)(4).

(3) Substances obtained by cutting, grinding, drying, pulping, or similar processing of tissues derived from fruit, vegetable, meat, fish, or poultry, e.g., powdered or granulated onions, garlic powder, and celery powder, are commonly understood by consumers to be food rather than flavor and shall be declared by their common or usual name.

(4) Any salt (sodium chloride) used as an ingredient in food shall be declared by its common or usual name "salt."

(5) Any monosodium glutamate used as an ingredient in food shall be declared by its common or usual name "monosodium glutamate."

(6) Any pyroligneous acid or other artificial smoke flavors used as an ingredient in a food may be declared as artificial flavor or artificial smoke flavor. No representation may be made, either directly or implied, that a food flavored with pyroligneous acid or other artificial smoke flavor has been smoked or has a true smoked flavor, or that a seasoning sauce or similar product containing pyroligneous acid or other artificial smoke flavor and used to season or flavor other foods will result in a smoked product or one having a true smoked flavor.

(i) If the label, labeling, or advertising of a food makes any direct or indirect representations with respect to flavor, by word, vignette, e.g., depiction of a fruit, or other means, or if for any other reason the manufacturer or distributor of a food wishes to designate the type of flavor in the food other than through the statement of ingredients, the flavor of the product shall be declared in the following way:

(1) If the food contains no artificial flavor, the name of the food on the principal display panel or panels of the label shall be accompanied by the common or usual name of the characterizing flavor, e.g., "vanilla," in letters not less than one-half the height of the letters used in the name of the food, except that:

(i) If the food is one that is commonly expected to contain a characterizing food component e.g., strawberries in "strawberry shortcake," and the food contains a sufficient quantity of that ingredient to characterize the food independent of any added natural characterizing flavor derived from such ingredient and the food contains added natural flavors derived from such ingredient, the name of the food shall be immediately followed by the words "flavor added" in letters not less than one-half the height of the characterizing ingredient, or

(ii) If the food is one that is commonly expected to contain a characterizing food component, e.g., strawberries in "strawberry shortcake," and the food contains natural flavor derived from such ingredient and an amount of characterizing ingredient insufficient to independently characterize the food, or the food contains no such ingredient, the name of the characterizing flavor shall be immediately followed by the word "flavored" in letters not less than one-half the height of the letters in the name of the characterizing flavor.

(iii) If a natural flavor is used in a food to simulate a flavor of a product other than the one from which the flavor is derived, the food in which the flavor is used shall be labeled either with the flavor of the product from which the flavor is derived or as "artificially flavored."

(2) If the food contains any artificial flavor, the name of the food on the principal display panel or panels of the label shall be accompanied by the common or usual name of the characterizing flavor, in letters not less than one-half the height of the letters used in the name of the food preceded by the word(s) "artificial" or "artificially flavored," in letters not less than one-half the height of the letters in the name of the characterizing flavor, e.g., "artificial vanilla," or "artificially flavored strawberry."

(3) Wherever the name of the characterizing flavor appears on the label (other than in the statement of ingredients) so conspicuously as to be easily seen under customary conditions of pur-

chase, the words prescribed by this paragraph shall immediately and conspicuously precede or follow such name, except:

(i) Where the characterizing flavor and a trademark or brand are presented together, other written, printed, or graphic matter that is a part of or is associated with the trademark or brand may intervene if the required words are in such relationship with the trademark or brand as to be clearly related to the characterizing flavor; and

(ii) If the finished product contains more than one flavor subject to the requirements of this paragraph, the statements required by this paragraph need appear only once in each statement of characterizing flavors present in such food, e.g., "artificially flavored vanilla and strawberry."

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

§ 3.10 [Revoked]

2. The provisions of § 3.10 are hereby revoked.

§ 3.23(b) [Revoked]

3. The provisions of § 3.23(b) are hereby revoked.

§ 3.201 [Revoked]

4. The provisions of § 3.201 are hereby revoked.

Effective date. Labeling may be changed to comply with this regulation beginning August 2, 1973. All labeling ordered on or after December 31, 1973, and all labeling used for products shipped in interstate commerce on or after December 31, 1974, shall comply with this regulation; provided, that the label of a flavor need not conform to paragraph (g)(2) of this regulation prior to December 31, 1974, if it bears a statement certifying that the ingredients are listed as being generally recognized as safe on a reliable published industry association list.

(Secs. 403, 701(a), 52 Stat. 1047, 1055; 21 U.S.C. 343, 371(a))

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15700 Filed 8-1-73;8:45 am]

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

Status of Vitamin A and Vitamin D

In the FEDERAL REGISTER of December 14, 1972 (37 FR 26618) the Commissioner of Food and Drugs proposed that preparations containing vitamin A in excess of 10,000 international units (IU) per dosage unit and preparations containing vitamin D in excess of 400 IU per dosage unit shall be dispensed on prescription. A correction, which did not alter the intent of the proposal, was published in the FEDERAL REGISTER of January 4, 1973 (38 FR 799). Sixty days were allowed for comment.

Approximately 2,500 comments and 1,000 signatures on petitions were received in response to the proposal. Comments were received from a wide segment of the public, including individual consumers, physicians, nurses, pharmacists, dietitians, home economists, nutritionists, nine pharmaceutical manufacturers, a number of vitamin preparation distributors, and health food store operators. Comments from the medical profession were presented by the American Academy of Pediatrics and the American Medical Association. Organized consumer groups that responded were the National Health Federation, Oregon Student Public Interest Research Group, Committee Against Health Fraud, Inc., Committee for the Cessation of "Fortification" of Food Products with Calciferol Hormones, Virginia Citizens Consumer Council, Inc., Consumers Cooperative of Berkeley, Inc. Comments were also submitted by the Wisconsin Alumni Research Foundation, The Ann Arbor Dietetic Association, the American Dietetic Association, and five trade associations: The Pharmaceutical Manufacturers Association, East Coast Health Food Corporation, the National Food, Drug and Cosmetic Association of Manufacturers and Distributors, Inc., the National Nutritional Foods Association and the National Association of Pharmaceutical Manufacturers.

GENERAL COMMENTS

The proposal was controversial and generated widely ranging comments regarding broad issues raised by the use of vitamins in foods and drugs. Many of these comments are not appropriate for consideration of the more limited issues raised in the proposed regulation regarding vitamin A and vitamin D. With respect to the broad issues of vitamin and mineral use the Commissioner notes that several regulations including comprehensive discussion of these issues have been published in the FEDERAL REGISTERS of January 19 and March 14, 1973 (38 FR 2124, 6950) and elsewhere in this issue of the FEDERAL REGISTER.

The majority of responses from individual consumers were opposed to the proposal. In reviewing such comments, the Commissioner is concerned that the public is not fully aware of the provisions and medical basis of the proposal. For example, the tenor of many comments was that vitamin A and vitamin D would be available only on prescription. Form letters and several petitions, which were submitted with a number of signatures, contained key statements, presumably the basis on which the signatures were obtained, that bear very little, if any, resemblance to the actual provisions of the proposal. It is clear that the majority of individual consumers responding had been improperly or inadequately informed.

The comments fall into three general categories:

(1) Those who agree that the action proposed by the Food and Drug Administration is necessary and that the prescription levels proposed for vitamin A and vitamin D are suitable. Those who agreed included the American Academy of Pediatrics, the American Medical Association, the American Dietetic Association, five consumer groups, a number of physicians, dietitians, nutritionists, home economists and other professionals in the scientific and health care community, and a few individual consumers.

(2) Those who agree that such vitamins can be toxic, but only at levels higher than those levels proposed by the Food and Drug Administration. The majority of the drug manufacturers and trade associations, and some consumers, made responses that were in this category.

(3) Those who disagree with the proposal entirely, stating that such vitamins are foods and that individuals should have the right to ingest any amount desired. The comments from most individual consumers, operators of health food establishments and a consumer group, were in this category.

SPECIFIC COMMENTS

1. A number of comments contended that "natural" vitamins (including vitamin A and vitamin D) and minerals are foods rather than drugs and should not be treated as drugs. Some viewed "natural" vitamins as safe whereas synthesized vitamins may be (or are) toxic.

The question regarding whether a vitamin is a food or drug generated considerable discussion. The tentative and final orders promulgating §§ 80.1, 125.1, and 125.3 (21 CFR 80.1, 125.1 and 125.3), published in the January 19, 1973 FEDERAL REGISTER (38 FR 2143, 2152) and elsewhere in this issue of the FEDERAL REGISTER discuss this matter in detail. The Commissioner concludes, on the basis of all the available evidence, that vitamins between the upper and lower limits as specified in § 80.1 are adequate for all known nutritional needs for normal individuals and that nutrients at these levels are dietary supplements which are foods for special dietary use. No evidence was submitted in the comments to establish a food or nutritional use of vitamin A or vitamin D at higher levels, except for a limited number of persons with poor vitamin D absorption who need up to 1000 IU of this vitamin for nutritional purposes under medical supervision. With that one exception, which is recognized in the revised regulation, intake of vitamins at levels exceeding the upper limits as specified in § 80.1 are therefore appropriate only for therapeutic purposes and thus are properly classed as drugs.

This position is entirely consistent with the Food and Drug Admnistration's long-standing interpretation and application of the act. See, e.g., Kordel v. United States, 335 U.S. 345 (1948), in which the Supreme Court upheld the conviction of an individual for marketing "health food products" consisting of "various vitamins, minerals, and herbs" on the ground that they were misbranded drugs. See also United States v. 3 Cartons * * * "No. 26 Formula GM etc.," 132 F. Supp. 569 (S.D. Calif. 1952).

Alleged differences in vitamins based on their source is also discussed in the

tentative and final orders promulgating §§ 80.1 and 125.1–125.3. There is no scientific evidence to suggest that there is a difference in the metabolic actions or toxic effects of synthetically produced vitamins as compared with those from natural sources.

2. Several manufacturers and trade associations objected to the proposal on the ground that the proper classification of OTC drug levels of vitamins would be made in the near future by the appropriate OTC drug advisory review panel and that levels established now by the Food and Drug Administration would only be on interim measure. These comments expressed the opinion that deferring action on this proposal would not result in any signficant hazard to the public health.

In the preamble of the proposal the Commissioner stated his reasons for separating vitamin A and vitamin D from the other vitamins at this time and establishing levels above which these vitamins are limited to prescription distribution. The continuing information available to the Commissioner regarding the toxicity of vitamin A and vitamin D and the continuing reports of promotion of large amounts of these vitamins for a variety of purposes makes this action necessary at this time in the public interest.

3. A number of comments from individual consumers and those representing the vitamin industry agreed that vitamin A and vitamin D are toxic in amounts in excess of known requirements, but stated that such levels are much higher than the limitations proposed. Some comments offered a level of 25,000 IU of Vitamin A and 1,000 IU of Vitamin D as providing a sufficient safety margin for known toxicity. Other comments contended that the proposed levels were suitable for children, but higher levels would be more appropriate for adults. A number of comments felt the proposed levels were arbitrary and without scientific merit or support. Several of the comments had made a review and provided their own analysis of the bibliography prepared by the Food and Drug Administration at the time the proposal was published in the FEDERAL REGISTER. Generally, these comments stated that toxicity below 50,000 IU daily for vitamin A was rare and that vitamin D toxicity reports would not support the vitamin D level proposed.

Several other comments recommended lower levels than those proposed. A comment from a physician at a university School of Medicine, Department of Biochemistry, supported the proposal, but stated that 5,000 IU for vitamin A would be a more judicious level. Another comment from the Department of Chemical Pathology, the United Liverpool Hospitals, Liverpool, England, included a reference to a paper written by the respondent regarding self-medication with multivitamin preparations and recommended that 100 IU of vitamin D per dosage unit be the limit for non-prescription marketing.

The Commissioner has carefully reviewed the comments and analysis regarding the medical/scientific justification for establishing the proposed vitamin A and vitamin D limits and finds that such comments do not sufficiently support a revision of the proposed limits. No evidence refuted the toxicity findings on which the proposal was based, and further reports of toxicity continue to accumulate. Based on consultation with the most knowledgeable experts available, the Commissioner finds that the scientific consensus is that the proposed limits are appropriate at this time.

The Commissioner of Food and Drugs will soon publish in the FEDERAL REGISTER a request for submission of all data and information relevant to the safety and effectiveness of vitamins and minerals for OTC drug use, pursuant to the procedures established in 21 CFR 130.301, published in the FEDERAL REGISTER on May 11, 1972 (37 FR 9464). The members of the OTC drug review panel for vitamin-mineral drugs are presently being selected. This panel will have full authority to review and re-evaluate the proper dividing line between OTC and prescription levels of vitamin A and vitamin D, and to recommend to the Commissioner any changes in the regulations promulgated by this order, in its report. Thus, the levels of vitamin A and vitamin D for prescription use in this regulation are established on an interim basis only. These regulations will be revoked upon promulgation of a final OTC drug monograph for vitamin-mineral drugs incorporating final prescription levels for these two vitamins.

4. A number of comments, particularly those from individual consumers, state that it is not logical to require a prescription for dosage levels of vitamins that may be lower than the vitamin content of an average serving of certain foods. A few comments expressed concern that normal diets with or without appropriate vitamin supplementation may lead to toxic conditions.

The Commissioner recognizes that many common foods contain a variety of vitamins and minerals in widely ranging amounts, and that some common foods contain vitamin A in excess of 10,000 IU per serving. It is also recognized, however, that these foods particularly rich in vitamin A are rarely consumed daily in sufficient quantity over the long periods of time required to lead to toxic manifestations. The concern of the Food and Drug Administration is the availability of vitamin A and vitamin D in large dosage units in medicinal forms, i.e. capsules and tablets, particularly in view of the multiplicity of other sources of this vitamin in the daily diet. The convenience of ingestion in this form on a routine basis encourages excessive intake of these vitamins far beyond the average amounts ingested in normal diets of conventional food over extended periods of time. Adequate amounts of vitamin A and vitamin D will continue to be available as dietary supplements and are not being removed from the market place. The margins of safety provided in the levels established by this proposal were developed to take into account the wide ranges of vitamin content in foods and the dosage levels of vitamin A and vitamin D preparations that are usually implicated in toxic conditions.

5. Comment was received that consumers would be able to ingest as many dosage units as they desired and therefore the proposed limits would have no effect. The Commissioner cannot agree with this concept. Today's consumers are increasingly knowledgeable and are concerned about the health and safety of themselves and their family. The Commissioner believes that most consumers will carefully consider the advisability of taking dosage units in excess of suitable recommended daily dosages. Conscientious consumers will have a basis upon which to make a judgment as to their intake of these vitamins. The fact that a small number of consumers will abuse their health by excessive intakes of drugs, regardless of regulatory and other approaches to curtail such abuse, is no reason to forego a reasonable regulation that will afford appropriate public health protection for the vast majority of the public.

6. The Committee on Nutrition, American Academy of Pediatrics, and several other respondents commented on the special needs for vitamin D in foods for special dietary use in specific medical conditions. Foods designed to provide sound nutrition to individuals with poor vitamin D absorption require higher than normal levels of vitamin D. Such individuals may require dietary intakes up to 1000 IU as part of their overall dietary management.

The Commissioner recognizes that foods represented solely for use under medical supervision to meet nutritional requirements in specific medical conditions have a place in medical care of a select group of individuals who have diagnosed conditions that will benefit from the use of complete foods containing up to 1000 IU of vitamin D. The marketing of such foods is permitted in compliance with § 125.1(h) being published elsewhere in this issue of the FEDERAL REGISTER. The regulation for vitamin D has been revised to allow this limited use of a higher amount of vitamin D without a prescription.

7. Comments received from the Council on Foods and Nutrition, American Medical Association, endorse the proposal and include reference to the possible relationship between excess vitamin D and hypercholesterolemia, in addition to the classic form of vitamin D toxicity. The Council also commented that the proposal fails to mention that there is no recommended dietary allowance for vitamin D for adults, since their needs are considered to be met by ordinary mixed diets and exposure to sunlight. The Council, along with other respondents, raised a question regarding a controlled "overage" to assure compliance with label declarations of the amounts present.

The Food and Drug Administration recognizes that there is no recommended dietary allowance for vitamin D in adults except during pregnancy and lactation and therefore considers vitamin D as an

optional component of dietary supplements of vitamins and minerals for adults and older children (21 CFR 80.1). The Commissioner notes that within good manufacturing practices reasonable overages are permissible in formulating drugs and these are recognized in the specification ranges used in determining whether or not a product meets its labeled potency.

8. In response to the proposal, the Wisconsin Alumni Research Foundation resubmitted comments directed to a proposal regarding vitamin D published in the FEDERAL REGISTER of August 28, 1965 (30 FR 11140). The previous proposal was more restrictive than the present one and contained several provisions not currently being considered. Of significance in this comment was concern by the Wisconsin Alumni Research Foundation that the requirements as proposed in 1965 would have the effect of decreasing the vitamin D intake by the general public to a level below their nutritional needs.

The Commissioner concludes that such a situation is clearly not possible as a result of the current proposal, which is directed only at the use of vitamin D as a drug. As a result of the vitamin D content of milk and other foods, and the availability of vitamin D in dietary supplements, the national food supply provides ample vitamin D.

9. Several manufacturers commented that the effective date of any final order with respect to vitamin A and vitamin D should be the same uniform effective date established for recent food labeling revisions. Such an effective date would permit interstate shipments of existing high potency products through December 31, 1974. Several comments also requested that those vitamin A and vitamin D preparations already in commercial channels be allowed continued marketing until existing supplies are exhausted.

Because of the known toxicity and continuing reports of toxic conditions resulting from large dosages over a period of time, the Commissioner concludes that protracted continuation of manufacture and marketing of preparations that do not meet the requirements of this order is not justified. However, a reasonable period of time to allow for orderly reformulation and relabeling, where necessary, is in the public interest to assure continued availability of vitamin A and vitamin D preparations. Therefore, this order shall become effective for products labeled beginning October 1, 1973. No recall of existing stocks is deemed necessary.

10. One comment from a manufacturer stated that the proposal conflicts with the limits for vitamin A established by the food labeling regulations published in the January 19, 1973 FEDERAL REGISTER (38 FR 2124). The Commissioner finds no conflict between this drug regulation and the food regulations. Those vitamin A preparations within the ranges specified in § 80.1 are considered foods and must be labeled as dietary supplements. Those preparations containing vitamin A in excess of the upper limit of these ranges, but less than the proposed prescription drug level, are OTC drugs. Those preparations containing in excess of 10,000 IU of vitamin A per dosage unit are prescription drugs.

11. Several comments requested that a public hearing be held to consider the issues and objections. A hearing on these matters is not mandatory under section 701(a) of the act. The Commissioner concludes that a hearing is inappropriate at this time and that any further delay in promulgation of these regulations is not in the public interest. A hearing on this issue will be available before both the advisory drug panel and the Commissioner under the OTC drug review procedures.

Having considered the comments received, the Commissioner concludes that the proposed regulations are in the public interest and should be adopted as set forth below.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502(a), (f), and (j), 503(b), 701(a), 52 Stat. 1050–1052, as amended, 1055; 21 U.S.C. 352(a), (f), and (j), 353(b), 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 3 is amended by adding thereto the following new sections:

§ 3.94 Vitamin A preparations for oral use as drugs.

(a) Vitamin A is an essental nutrient for humans. It is widely recognized that large amounts of vitamin A can cause adverse effects, some of which are serious. The U.S. Recommended Daily Allowance (U.S. RDA) for vitamin A is 1500 International Units, (IU) for infants, 2500 IU for children under 4 years of age, 5000 IU for adults and children 4 or more years of age, and 8000 IU for pregnant or lactating women.

(b) In view of the toxicity of excessive consumption of vitamin A, the Food and Drug Administration finds that, in order to protect the public health, oral preparations containing vitamin A in excess of 10,000 IU per dosage unit or recommended daily intake are drugs subject to section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act and shall be restricted to prescription sale. Such products will be regarded as misbranded if at any time prior to dispensing the following conditions are not met:

(1) The label bears the legend, "Caution: Federal law prohibits dispensing without a prescription"; and

(2) The labeling bears full disclosure information as required by § 1.106(b)(3)(i) of this chapter, and especially appropriate warnings regarding vitamin A toxicity.

(c) Preparations containing 10,000 or less IU of vitamin A per dosage unit will be regarded as misbranded if their recommended daily intake exceeds 10,000 IU.

§ 3.95 Vitamin D preparations for oral use as drugs.

(a) Vitamin D is an essential nutrient for humans. It is widely recognized that vitamin D, when ingested daily in large amounts, is toxic. The U.S. Recommended Daily Allowance (U.S. RDA) for vitamin D is 400 International Units (IU).

(b) In view of the toxicity of the excessive consumption of vitamin D, the Food and Drug Administration finds that, in order to protect the public health, oral preparations containing vitamin D in excess of 400 IU per dosage unit or recommended daily intake are drugs subject to section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act and shall be restricted to prescription sale. Such products will be regarded as misbranded if at any time prior to dispensing the following conditions are not met:

(1) The label bears the legend, "Caution: Federal law prohibits dispensing without a prescription"; and

(2) The labeling bears full disclosure information as required by § 1.106(b)(3)(i) of this chapter, and especially appropriate warnings regarding vitamin D toxicity.

(c) Preparations containing 400 or less IU of vitamin D per dosage unit will be regarded as misbranded if their recommended daily intake exceeds 400 IU.

(d) Foods which are represented for use solely under medical supervision to meet nutritional requirements of persons with poor vitamin D absorption may contain vitamin D not in excess of 1000 IU per dosage unit or recommended daily intake.

Effective date. This order shall become effective on October 1, 1973 for products labeled on or after that date.

(Secs. 502(a), (f), and (j), 503(b), 701(a), 52 Stat. 1050–1052, as amended, 1055; 21 U.S.C. 352(a), (f), and (j), 353(b), 371(a))

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15703 Filed 8-1-73;8:45 am]

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Folic Acid, Potassium Iodide and Kelp

In the FEDERAL REGISTER of January 19, 1973, the Commissioner of Food and Drugs published tentative orders revising regulations for food for special dietary uses and establishing a definition and standard of identity for dietary supplements of vitamins and minerals (38 FR 2143, 2152). In the preamble to the tentative order revising the regulations for foods for special dietary uses, the Commissioner stated that other regulations governing the levels of the food additives folic acid and iodine would be revised at a later date to make them consistent with the levels of these nutrients permitted in foods for special dietary uses and in dietary supplements of vitamins and minerals (38 FR 2145).

No exceptions were received objecting to the provisions of the two tentative orders relating to the levels for folic acid and iodine. Elsewhere in this issue of the FEDERAL REGISTER the Commissioner is publishing a final order promulgating those new regulations with the levels for folic acid and iodine unchanged.

The Commissioner, having evaluated the Hearing Record in the proceeding that led to adoption of the new regulations, the Recommended Dietary Allowances established by the National Academy of Sciences, and other relevant information, concludes that the applicable regulations should be amended to provide for the safe use of folic acid and iodine.

The statement of policy on the status of folic acid contained in § 3.42 (21 CFR 3.42) was adopted in 1964 in order to emphasize that incorporation of any level of folic acid in excess of the permitted food additive level would require the sale of the product as a prescription drug. Pending review of the status of folic acid by the OTC vitamin-mineral drug panel pursuant to the procedures established in § 130.301 (21 CFR 130.301), the Food and Drug Administration will continue this policy. Thus, any product containing more than the levels of folic acid established in this regulation in the daily dosage recommended or suggested will be classified as a prescription drug on an interim basis until a final OTC drug monograph on this ingredient becomes effective. In order to make it clear that the OTC vitamin-mineral drug panel is entirely free to reexamine the status of folic acid at levels greater than those established in this regulation, however, the Commissioner has concluded that § 3.42, which is now obsolete, should be revoked.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 409, 701(a), 52 Stat. 1049, 1055; 21 U.S.C. 348, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 3 and 121 are amended as follows:

§ 3.42 [Revoked]

1. In Part 3 existing § 3.42 is hereby revoked.

2. In Part 121:

a. Section 121.1134 is revised to read as follows:

§ 121.1134 Folic acid (folacin).

Folic acid (folacin) may be safely added to a food for its vitamin property, provided the maximum intake of the food as may be consumed during a period of one day, or as directed for use in the case of a dietary supplement, will not result in daily ingestion of the additive in excess of 0.4 milligram for foods labeled without reference to age or psysiological state; and when age or the conditions of pregnancy or lactation are specified, in excess of 0.1 milligram for infants, 0.3 milligram for children under 4 years of age, 0.4 milligram for adults and children 4 or more years of age, and 0.8 milligram for pregnant or lactating women.

b. Section 121.1073 is amended by revising paragraph (a) to read as follows:

§ 121.1073 Potassium iodide.

* * * * *

(a) Potassium iodide may be safely added to a food as a source of the essential mineral iodine, provided the maximum intake of the food as may be consumed during a period of one day, or as directed for use in the case of a dietary supplement, will not result in daily ingestion of the additive so as to provide a total amount of iodine in excess of 225 micrograms for foods labeled without reference to age or physiological state; and when age or the conditions of pregnancy or lactation are specified, in excess of 45 micrograms for infants, 105 micrograms for children under 4 years of age, 225 micrograms for adults and children 4 or more years of age, and 300 micrograms for pregnant or lactating women.

* * * * *

c. Section 121.1149 is amended by revising the first sentence to read as follows:

§ 121.1149 Kelp.

Kelp may be safely added to a food as a source of the essential mineral iodine, provided the maximum intake of the food as may be consumed during a period of one day, or as directed for use in the case of a dietary supplement, will not result in daily ingestion of the additive so as to provide a total amount of iodine in excess of 225 micrograms for foods labeled without reference to age or physiological state; and when age or the conditions of pregnancy or lactation are specified, in excess of 45 micrograms for infants, 105 micrograms for children under 4 years of age, 225 micrograms for adults and children 4 or more years of age, and 300 micrograms for pregnant or lactating women. * * *

Any person who will be adversely affected by the foregoing order may at any time on or before September 4, 1973, file with the Hearing Clerk, Food and Drug Administration, Rm. 6-88, 5600 Fishers Lane, Rockville, MD 20852, 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. 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. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on August 2, 1973.

(Secs. 409, 701(a), 52 Stat. 1049, 1055; 21 U.S.C. 348, 371(a))

Dated: July 25, 1973.

A. M. Schmidt,
Commissioner of Food and Drugs.

[FR Doc.73-15704 Filed 8-1-73;8:45 am]

PART 11—STANDARDS OF QUALITY FOR FOODS FOR WHICH THERE ARE NO STANDARDS OF IDENTITY

A notice of proposed rulemaking was published in the Federal Register of September 23, 1972 (37 FR 20038) which set forth general principles for the establishment of microbiological quality standards for foods. The notice also contained proposed microbiological quality standards for frozen ready-to-eat banana, coconut, chocolate, or lemon cream-type pies and food grade gelatin. Interested persons were invited to submit coments on the proposal within 60 days.

A total of 25 comments were received. In support of the proposal were 6 consumer comments, and one comment each from a consumer organization, a health association, a State official and a food consultant. In opposition to the proposal were 12 comments from industry and industry associations, and one comment each from a consumer organization, a university research organization, and a food bacteriologist.

1. One comment stated it would be confusing to establish a standard of quality without defining the product in a standard of identity. Another comment considered it unreasonable to establish a standard of quality without establishing a standard of identity because of the close interrelationship between identity and quality. One comment questioned the establishment of microbiological quality standards only for foods having no standard of identity.

The Commissioner of Food and Drugs concludes that section 401 of the act authorizes the promulgation of a standard of quality for a food without establishing a standard of identity. The Commissioner also concludes that the product descriptions of cream-type pies and food grade gelatin in the regulations setting microbiological quality standards for those foods are sufficient to describe the foods subject to the standards. No comment indicated any confusion as to the foods to be subject to these first quality standards.

Creation of new Part II standards of quality for foods for which there are no standards of identity does not limit establishment of microbiological or other quality standards to nonstandarized foods. When a standard of identity exists for a food a microbiological quality standard for that food will be codified in the same part of the Code of Federal Regulations as the standard of identity. In the absence of a standard of identity, a microbiological or other quality standard will be included in the new Part II established by this order.

2. Comments opposing the proposal contended that microbial levels are not indicators of food quality because of the absence of a perceptible difference in organoleptic quality between a food with a microbial content within the proposed limits and a food having a microbial content in excess of the limits.

The Commissioner does not agree with these comments. The courts have long

recognized that the proper scope of the act in regulating the quality of food is not limited to factors which are organoleptically perceptible to the consumer. Thus, for example, the Commissioner has established defect action levels for unavoidable filth in food in the FEDERAL REGISTER of January 5, 1973 (38 FR 854), although organoleptically imperceptible to the consumer and posing no health risk. Indeed, those factors which a consumer cannot detect for himself, but which are important to him, are perhaps most deserving of attention by the Food and Drug Administration. The Commissioner concludes that it is reasonable and in the interest of consumers to establish microbiological quality standards for foods so that the consumer may have some assurance, where such standards have been promulgated, that only reasonable levels of microorganisms exist in the food. Microbial levels in foods are indicative of such elements of quality as the excellence of the raw materials and ingredients used, the degree of control present at the time of processing, and the distribution and storage conditions experienced by the food.

3. One comment suggested listing, for each food, bacteria that are considered pathogenic. One comment suggested that the proposal include the microbial level at which the product is considered adulterated. One comment considered certain statements in the preamble concerning pathogenic microorganisms inappropriate and inaccurate because the proposal does not pertain to public health matters. Two comments considered the reference to the Grade A milk standard as misleading and inappropriate for the reason that the Grade A milk standard was designed to protect the public health.

Pathogens in food are covered under the adulteration provisions of the act, and are not within the scope of these regulations which are limited to quality factors not involving adulteration. The purpose of statements in the proposal concerning pathogenic microorganisms is to draw the distinction between pathogenic microorganisms and microbiological quality standards. The reference made in the proposal to the Grade A milk standard was intended only to point out an existing microbial limit for a food.

4. A common suggestion of most of the opposing comments was that microbial limits should be established as guidelines under the good manufacturing practices (GMP) regulations (Part 128 of this chapter) in lieu of being promulgated as quality standards. The comments stressed that the establishment of microbial limits as GMP guidelines would place the emphasis and responsibility for microbial levels in food on the manufacturing process and the manufacturer.

The Commissioner concludes that mircobiological quality standards should be promulgated separately from the GMP regulations for several reasons. The GMP regulations are promulgated for the efficient enforcement of the adulteration provisions of the act, while the microbiological quality standards are not based on consideration of adulteration. The GMP regulations are generally limited to manufacturing procedures and usually do not extend to distribution and retail sale, while the consumer is entitled to be informed of excessive levels of microbial organisms regardless whether they result from manufacturing, distribution, or retailing practices. Where the need and sufficient data exist for the promulgation of a quality standard, it would not be in the interest of consumers to delay promulgation until an appropriate GMP could also be developed.

As stated in the proposal, compliance with the microbiological quality standards does not excuse failure to observe either the requirements of section 402(a)(4) of the act or the GMP regulations. Evidence obtained through a factory inspection indicating a violation of the GMP regulations renders the food unlawful, even though the food contains levels of microorganisms lower than those promulgated in a microbiological quality standard. Conversely, compliance with the GMP regulations and other requirements of the act does not excuse failure of a product to meet the microbiological quality standards.

5. Most of the comments opposing the proposal objected to the microbiological quality standards being applicable to a food after it leaves the direct control of the manufacturer. It was stated that a food in compliance with the standards when it leaves the manufacturer's control may subsequently experience an increase in microbial level causing it to fail to meet the standards.

The Commissioner is aware this situation could occur, as a result of abuse during shipping, storage, or retail sale. However, restricting application of the standards to the limited time the product is under the manufacturer's control would not assure that the product would be in compliance with the standards when it reached the consumer, and therefore, would not be in the interest of the consumer. The consumer rightly expects the quality of food to be adequately and continuously protected through the point of retail sale. Regulatory action can and will be taken against a product that is substandard in quality and which fails to bear the label statement of substandard quality, regardless whether the product deterioration occurred during manufacture or subsequently during distribution or retailing. This will provide incentive to manufacturers, distributors, and retailers to take positive measures to insure that foods are handled properly.

6. All but two of the opposing comments objected to the label statement of substandard quality. Many comments stated that a product so labeled would be unsaleable to the consumer. Some comments stated substandard food would be sold only in salvage stores and institutions to be used only by the underprivileged or unaware consumers. Several comments indicated that manufacturers would destroy substandard food rather than use the proposed label statement resulting in the loss of wholesome food, the cost of which would ultimately be borne by the consumer. Objections were made to the use of the word "bacteria" in the proposed label statement of substandard quality because it suggests a danger to health to the consumer. Suggestions were made that the statement of substandard quality provided for by § 10.7 (21 CFR 10.7) be used. One comment suggested use of the statement "This product does not meet the bacteria standards but is considered safe for human consumption."

The Commissioner agrees that many consumers will choose not to buy a substandard quality food labeled as such. Past experience indicates that few manufacturers destroy large lots of substandard quality food. Substandard quality food, when properly labeled as such, is a legitimate article of commerce and has been marketed for years. The marketing of food substandard in microbiological quality would be likely to follow the marketing patterns that already exist for substandard quality food. It is in the interest of consumers that an explicit informative label statement of substandard quality be required.

The statement of substandard quality provided in § 10.7 is not considered appropriate for foods substandard in microbiological quality for the reasons stated in the proposal. The Commissioner agrees that some consumers may relate the term "excessive bacteria" with danger to health. However, it is not possible to state that excess bacteria cannot create a health hazard. Therefore, the Commissioner concludes that this statement of substandard quality should not be changed.

7. Several comments objected that no reference was made to the fact that in certain foods microorganisms are deliberate, desirable ingredients. One comment stated that microbiological quality standards should not apply to canned foods.

The Commissioner recognizes that certain microorganisms are deliberate, desirable ingredients in some foods and in such instances cannot be considered as inverse factors of quality. The controlled use of microorganisms is useful and desirable to impart a particular flavor, odor or other desirable characteristic to food such as cheese and other dairy products. The proposal was not intended to effect any change in current good manufacturing practices in such controlled use of microorganisms, and microbiological quality standards would not be established which would prohibit the use of such desirable microorganisms. Microbiological quality standards would not be appropriate for sterilized foods or food processed and packaged to maintain commercial sterility, such as canned foods.

8. One of the opposing comments objected to the concept of microbiological quality because it does not conform to the definitions of "condition" and "quality" contained in the United States Department of Agriculture (USDA) regulations for food grades.

The terms "quality" and "condition" as used by USDA usually pertain to factors that are noticeable to the consumer. New Part 11 concerns factors of

quality which will usually be imperceptible to the consumer. Therefore, the Commissioner concludes that there is no conflict between the proposal and USDA regulations concerning food grades.

9. One comment indicated that microbiological quality standards could prevent a manufacturer currently using artificial ingredients from using natural flavors and spices that usually have higher microbial levels. Several comments questioned the proposal on the basis that the microbial level increases in some foods and decreases in others during storage. However, no data were submitted supporting the concept that the microbiological quality standards would limit the choice of ingredients and none were submitted concerning the change in microbial content during storage or distribution.

The Commissioner is aware that the microbial level in foods can be changed by storage and other conditions and is aware of variations in microbial levels of different ingredients. The existence of such variables was considered and is reflected in the microbial limits contained in the proposal. The existence of variations in microbial levels does not, however, justify excessive microbial levels above the quality standards, without a label statement advising consumers.

10. One comment questioned the application of microbiological quality standards for a food, such as food grade gelatin, which is often used as an ingredient of another food.

The Commissioner concludes that a standard of quality applies regardless whether the food is intended to be used or sold as such or is intended for use as an ingredient in another product. The standard of quality applies only to the food described in the standard and does not apply to another food solely on the basis that it contains the standardized food as an ingredient.

11. One comment suggested the use of a limit for enterococci in place of the coliform organism limit in the proposed standards because coliform organism counts are sharply reduced by freezing.

A limit for enterococci cannot be used at this time for frozen cream-type pies and food grade gelatin since the study providing the basis for the proposed standards did not include data on enterococci. Although coliform organisms may be more susceptible than enterococci to freezing temperatures, the level of coliforms is nevertheless a reasonable indicator of quality. The Food and Drug Administration has not used enterococcus determinations routinely because of limitations in determination procedures. Recent information indicates the methodology has improved and the routine use of enterococcus determinations is being studied.

12. Several comments claimed that the time required for microbial testing, production delays pending the test results, and the relabeling of a packaged lot would increase the cost of the food and could potentially cause higher microbial levels in the food. It was stated that it is impractical to delay the production process until the microbial test results of a lot in production are completed. It was further stated that if production was not delayed and the tests subsequently revealed a lot to be in excess of a microbial standard, each package in the lot would have to be uncased and relabeled.

Microbiological quality control testing of foods is not new or unique and the Commissioner concludes that such testing by food manufacturers is practicable. Adequate processing controls should make it unnecessary to delay production of a lot pending test results since the use of adequate quality controls would make the production of a substandard quality lot an infrequent occurrence. The time required for microbial tests does not exceed 96 hours and will not cause a serious problem for the manufacturer in holding a finished lot under his control until the test results are completed. The labeling of packaged lots is impractical on a routine basis but is a common method of correcting infrequent labeling errors. Although there will be some additional cost in establishing quality control procedures for those firms that do not now have adequate quality control procedures, it is not expected that significant increased costs would result from implementation of the proposal.

13. One industry comment suggested that the proposal allow the manufacturer to reprocess substandard quality lots for food use or to divert them to non-food use. No specific reprocessing procedures were suggested in the comment.

The Commissioner will not agree to any reprocessing procedure to bring substandard quality food into compliance with these standards unless it is clearly evident that such procedure will not cause the reprocessed food to be inferior in any respect. The diversion of substandard quality food to non-food use is not precluded by the regulation.

14. Some of the comments objected to the sampling and testing procedures of the proposal, stating that they were inflexible and required excessive testing. One comment suggested the terms "lot" and "unit" be defined.

The sole purpose of the sampling plan contained in the proposal is to specify the plan that will be used by the Food and Drug Administration to determine whether a lot is in compliance with the standard. The proposal does not require manufacturers or others to use the sampling plan. Manufacturers and others may use any type of sampling and testing plan they choose, but they should make certain that any plan used to check compliance with the standards will produce results compatible with those of the compliance plan contained in the regulation. Failure to institute adequate quality control procedures may substantially increase a manufacturer's risk of producing foods not in compliance with the proposed standards.

The terms used in the sampling and testing procedures of the proposal have been defined. For purposes of determining quality factors related to manufacture, processing, or packing, a lot is defined as a collection of primary containers or units of the same size, type, and style produced under conditions as nearly uniform as possible and usually designated by a common container code or marking, or in the absence of any common container code or marking a day's production. For purposes of determining quality factors related to distribution and storage, a lot is defined as a collection of primary containers or units transported, stored, or held under conditions as nearly uniform as possible. Examples of a "lot" are containers or units produced during the same shift or day, transported or stored as a single item of trade. A "sample" is a composite of 10 subsamples (consumer units), taken one from each of 10 different randomly chosen shipping cases, to be representative of a given lot. An "analytical unit" is defined as a portion of food taken from a subsample of a sample for the purpose of analysis.

15. One comment objected that the use of a microbial count limit does not allow the occasional high count lots to meet the standard. Another comment objected to the microbial limits being expressed as geometric means because this allows a sample with some very high count units to meet the standard. One comment stated that insufficient data were provided to properly evaluate the proposed microbial limits. One comment stated that it is not clear if the microbial limits apply to each individual unit or to the 10 units totally. Another comment suggested the proposal provide for a resampling of the lot to confirm the initial test.

Complete assurance that every container or unit of a lot is in compliance with the proposed standards would of course require destructive analysis of the entire lot. Therefore, a statistical approach involving analysis of a representative sample from the lot is appropriate. The Commissioner concludes that the proposed microbial limits, when applied to a lot sampled and tested in the manner set forth in the regulation, afford a reasonable basis for judgment of the microbiological quality of the lot and that it is not necessary or appropriate to conduct confirmatory resampling and retesting.

The sampling and analytical procedure requires that the microbiological quality of a lot be determined on the basis of the "geometric mean" (rather than a simple arithmetic average) of the analytical results derived from the ten analytical units. Microbial growth increases according to geometric progression. The most appropriate method of expressing the average of a group of data representing a geometric progression such as microbial levels is by the geometric mean. Also the geometric mean is less subject to distortion by the occasional high or low extreme encountered in microbial counts than is the more common arithmetic average. The Commissioner concludes that the sampling and testing procedures contained in the proposal have been evaluated statistically and judged to be satisfactory. Additional information in this regard may be obtained from the statistical staff of the Food and Drug Administration's Bureau of Foods. Should additional information become available that justifies any change in

these procedures the standard will be amended.

16. Two comments questioned the disparity between the 5,000 grams aerobic plate count (APC) limit for pharmaceutical gelatin contained in the United States Pharmacopoeia (U.S.P.), 18th revision, and the 3,000 grams APC that is contained in the proposal for food grade gelatin.

These values cannot be compared directly since (a) the standard for food grade gelatin is based upon a geometric mean of the aerobic plate counts of the 10 units tested per sample, whereas the standard for pharmaceutical gelatin is based upon a count obtained from a dry composite of 1 gram portions from not less than 10 packages or containers of gelatin; (b) the bacterial growth medium used for pharmaceutical gelatin is not the same as that used for food grade gelatin, and (c) the incubation temperature specified for pharmaceutical grade gelatin is 30–35° C, whereas, 35° C is specified for food grade gelatin.

Both the plating medium and the incubation temperature used to determine the aerobic plate count will affect the apparent count. The selection of an aerobic plate count done using Standard Methods Agar and an incubation period of 35° C was made for food grade gelatin so that the methodology used for this food would be similar to that commonly used for other foods. The data on food grade gelatin used to create the proposed standard included aerobic plate count values for all manufacturers of food grade gelatin in the United States at the time of the survey and the data are based upon aerobic plate counts using Standard Methods Agar at 35° C. The Commissioner concludes that there is no conflict with the U.S.P. standard and that no change in the proposal is warranted.

17. One comment stated that the 3,000 APC is not feasible because of wide variability of plate counts on gelatin.

The data on food grade gelatin fully support the 3,000 grams APC level of the proposal. A higher APC level cannot be statistically justified based on the food grade gelatin data. The variability of plate count values was considered in establishing the proposed microbial levels.

18. One comment inquired if the microbial tests for cream-type pies are to be made on the entire pie including the crust or only on the pie filling.

The Commissioner advises that tests are to be made on the entire pie including the crust.

19. A comment from a food consultant recommended significantly lower microbial limits for frozen ready-to-eat cream-type pies and food grade gelatin.

Data were not submitted and the recommendation cannot be accepted without adequate supporting data.

20. After publishing this proposal, the Commissioner published an additional proposal for a standard of quality covering bottled water, for a food for which there is no standard of identity, in the FEDERAL REGISTER of January 8, 1973 (38 FR 1019). That proposed standard of quality relates to both microbiological and other quality factors. The Commissioner concluded that new Part 11 should be utilized for all standards of quality for foods for which there is no standard of identity, regardless whether the quality factors involve microbiological or other considerations. Accordingly, the term "microbiological" has been deleted from the heading of the new Part and Subpart A has been revised accordingly. The standard of quality for bottled water will be published in the FEDERAL REGISTER in the near future.

All comments and other relevant material have been carefully considered by the Commissioner and, where deemed to be appropriate, have been incorporated in the final regulation. Accordingly, the Commissioner concludes that standards should be promulgated as set forth below.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 403, 701, 52 Stat. 1046, 1047, and 1055–1056, as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 343, 371) and under the authority delegated to the Commissioner (21 CFR 2.120), Chapter I of Title 21 of the Code of Federal Regulations is amended by establishing a new Part 11 as follows:

Subpart A—General

Sec.
11.1 General principles.
11.2 Definitions.

Subpart B—Standards of Quality

11.5 Frozen ready-to-eat banana, coconut, chocolate, or lemon cream-type pies.
11.6 Food grade gelatin.

AUTHORITY: Secs. 401, 403, 701, 52 Stat. 1046, 1047, and 1055–1056, as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 343, 371.

Subpart A—General

§ 11.1 General principles.

(a) The quality of a food depends upon numerous characteristics including but not limited to the levels of microorganisms and such physical factors as turbidity, color, flavor, and odor. Such characteristics are indicative of the quality of the raw materials and ingredients, the degree of quality control used in manufacture, processing, and packing, and the conditions of distribution and storage. The diversity of raw materials, food processing, and distribution practices, as well as the variation in quality factors important to consumers, requires that individual standards of quality be established for different types of food.

(b) A food which fails to meet the requirements of an applicable standard of quality promulgated pursuant to this Part shall be labeled as follows:

(1) The label shall bear the following statement of substandard quality: "Below Standard in Quality— _____", the blank to be filled in with whichever of the following are applicable:

(i) "Contains Excessive Bacteria".
(ii) "Excessively Turbid".
(iii) "Abnormal Color".
(iv) The phrase specified in the applicable standard of quality to describe any other quality deviation.

(2) The statement of substandard quality shall appear on the principal display panel or panels and shall immediately and conspicuously precede or follow, without intervening written, printed or graphic matter, the name of the food. The statement shall be printed in two lines of Cheltenham bold condensed caps. The words "Below Standard in Quality" constitute the first line and the specific quality deviation(s) constitutes the second and subsequent line(s) which immediately follows. The words shall be in letters which are not less in height than those required for the declaration of the net quantity of contents as specified in § 1.8b of this chapter. The statement shall be enclosed within lines, not less than one-sixteenth inch in width, forming a rectangle. The statement with enclosing lines, shall be printed on a strongly contrasting, uniform background.

(3) The general statement of substandard quality provided for by § 10.7 of this chapter may not be used to designate a food which fails to meet the requirements of an applicable standard of quality promulgated pursuant to this Part unless the applicable standard specifically provides for such use.

(c) Product descriptions included in a standard of quality promulgated pursuant to this Part are intended only to designate the class of foods to which the standards apply, and are not standards of identity for the products involved. Should a standard of identity later be established for any of these foods, the standard of quality will be recodified to appear in the same part of the regulations.

(d) The food characteristics included in a standard of quality published in this Part relate only to the quality of the food and not to compliance with any of the adulteration provision of section 402 of the act. Compliance with a standard of quality promulgated pursuant to this Part does not excuse failure to observe either the requirement of section 402(a)(4) of the act that food may not be prepared, packed, or held under insanitary conditions, or the provisions of Part 128 of this chapter requiring that food manufacturers must observe current food manufacturing practices. For example, evidence obtained through factory inspection indicating such a violation renders the food unlawful, even though the food contains levels of microorganisms lower than those prescribed by an applicable standard.

(e) The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may publish a proposal to establish, amend, or repeal, under Subpart B of this Part, a regulation prescribing a standard of quality for a food. Any such petition shall include a proposed regulation together with an adequate factual basis to support the petition in the form set forth in § 2.65 of this chapter and will be published in the FEDERAL REGISTER for comment if it contains reasonable grounds for the proposed regulation.

§ 11.2 Definitions.

(a) A "lot" is:

(1) For purposes of determining quality factors related to manufacture, processing, or packing, a collection of primary containers or units of the same size, type, and style produced under conditions as nearly uniform as possible and usually designated by a common container code or marking, or in the absence of any common container code or marking, a day's production.

(2) For purposes of determining quality factors related to distribution and storage, a collection of primary containers or units transported, stored, or held under conditions as nearly uniform as possible.

(b) A "sample" is a composite of 10 subsamples (consumer units), taken one from each of 10 different randomly chosen shipping cases, to be representative of a given lot, unless otherwise specified in a specific quality standard in this Part.

(c) An "analytical unit" is a portion of food taken from a subsample of a sample for the purpose of analysis.

Subpart B—Standards of Quality

§ 11.5 Frozen ready-to-eat banana, coconut, chocolate, or lemon cream-type pies.

(a) For the purposes of this section a frozen ready-to-eat banana, coconut, chocolate, or lemon cream-type pie is a frozen ready-to-eat pie that is labeled as and/or has the physical and compositional characteristics of a cream-type pie, including but not limited to semi-solid filling and/or topping, and contains flavoring and/or fruit ingredients corresponding to the banana, coconut, chocolate, or lemon flavor representation made for such pie. It is made with or without a crust.

(b) A sample of a frozen ready-to-eat banana, coconut, chocolate, or lemon cream-type pie, as defined § 11.2(b) when examined by the methods described in sections 41.015 and 41.016 of the "Official Methods of Analysis of the Association of Official Analytical Chemists" 11th Ed. (1970),[1] shall meet standards of microbiological quality as follows:

(1) Aerobic plate count (geometric mean) $\leq$50,000 per gram.

(2) Coliform count (geometric mean) $\leq$50 per gram, MPN.

(c) If the microbiological quality of the cream-type pies described in paragraph (a) of this section falls below the standard prescribed by paragraph (b) of this section, the label shall bear the statement of substandard quality specified in § 11.1(b)(1)(i).

§ 11.6 Food grade gelatin.

(a) For the purposes of this section food grade gelatin is the high quality edible ground product that is labeled as and/or has the physical and compositional characteristics of gelatin. It is extracted from animal bones and tissues in accordance with current good manufacturing practices. In hot solution it does not have a foreign odor, is clear and of light color.

(b) A sample of food grade gelatin, as defined in § 11.2(b), when examined in accordance with the methods described in sections 41.015 and 41.016 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970),[1] shall meet standards of microbiological quality as follows:

(1) Aerobic plate count (geometric mean) $\leq$3,000 per gram.

(2) Coliform count (geometric mean) $\leq$ 10 per gram, MPN. In the preparation for examination of an analytical unit, as defined in § 11.2(c), 10 grams are weighed out aseptically into a 90 milliliter sterile water blank containing glass beads held at 45° C., with intermittent shaking for not more than 15 minutes.

(c) If the microbiological quality of gelatin falls below the standard as prescribed by paragraph (b) of this section, the label shall bear the statement of substandard quality specified in § 11.1(b)(1)(i).

Any person who will be adversely affected by the foregoing order may at any time on or before September 4, 1973 file with the Hearing Clerk, Food and Drug Administration, Room 6–88, 5600 Fishers Lane, Rockville, MD 20852, 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. 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. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall be effective on February 4, 1974.

(Secs. 401, 403, 701, 52 Stat. 1046, 1047, and 1055–1056, as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 343, 371)

Dated: July 25, 1973.

NOTE. Incorporation by reference provisions approved by the Director of the Federal Register March 26, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15705 Filed 8-1-73;8:45 am]

[1] Copies may be obtained from: Association of Official Analytical Chemists P.O. Box 540, Benjamin Franklin Station Washington, DC 20044

PART 80—DEFINITIONS AND STANDARDS OF IDENTITY FOR FOOD FOR SPECIAL DIETARY USE

Dietary Supplements of Vitamins and Minerals

In the matter of establishing a definition and standard of identity for dietary supplements of vitamins and minerals:

The Commissioner of Food and Drugs published proposed findings of fact, proposed conclusions, and a tentative order in the FEDERAL REGISTER of January 19, 1973 (38 FR 2152), and allowed 60 days for the filing of written exceptions by any interested person whose appearance was filed at the hearing. The published document also included a history of the proceedings in the matter and an explanation of the scope of this action. Time for the filing of exceptions was subsequently extended through April 20, 1973 by notice published in the FEDERAL REGISTER on March 9, 1973 (38 FR 6396).

Exceptions to the order and the findings of fact were received from 35 persons whose appearance was filed at the hearing and one person who did not file such an appearance. In addition, approximately 790 postcards, form letters, and individual letters representing 1200 persons were received by the Hearing Clerk, objecting to the order. Over 20,000 similar letters objecting to the order, submitted to other government offices, were forwarded to the agency. None of these provided any substantive reasons for modifying the order. All exceptions filed have been considered and have been the basis of modification in the findings and in the order as set forth below. The Commissioner is aware of the Resolution adopted June 21, 1973, by the Association of Food and Drug officials of the United States at this year's annual conference in Rapid City, South Dakota, in which opposition to his January 19, 1973, tentative order is set forth. The views of that organization, as well as the views of the State officials which were individually expressed through their own response to the tentative order have been thoroughly considered in arriving at this final order.

1. Exceptions were received stating that the Commissioner was without authority to establish a standard of identity under section 401 of the act because standards of identity may be established only for individual food items and not for a class of foods, and because the authority to regulate foods for special dietary uses is limited to the authority expressly granted by section 403(j) of the act, which provides only for the use of informative labeling of this class of foods.

Section 401 of the act provides for the establishment of standards of identity for "any food". A full reading of the section reveals that the term "any food" includes a class of food, and is not limited to one specific food item. The section refers to a class of food as follows: "In prescribing a definition and standard of identity for any food or class of food . . .". In particular, this section specifically authorizes the establishment of a standard of identity for "citrus fruits" and "melons" both of which are classes of foods and not a specific food. It is also clear that the regulation of dietary supplements is not limited to the use of informative labeling as required by 21 U.S.C. 343(j). As was stated in Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 230 (1943):

Both the text and legislative history of the present statute plainly show that its

purpose was not confined to a requirement of truthful and informative labeling. False and misleading labeling had been prohibited by the Pure Food and Drug Act of 1906, 21 U.S.C.A. 1 et seq. But it was found that such a prohibition was inadequate to protect the consumer from "economic adulteration", by which less expensive ingredients were substituted, or the proportion of more expensive ingredients diminished, so as to make the product, although not in itself deleterious, inferior to that which the consumer expected to receive when purchasing a product with the name under which it was sold. * * * The remedy chosen was not a requirement of informative labeling. Rather it was the purpose to authorize the Administrator to promulgate definitions and standards of identity "under which the integrity of food products can be effectively maintained" * * *

The Commissioner concludes that the establishment of a standard of identity is necessary to insure that rational dietary supplements, containing essential vitamins and minerals at proper levels and in scientifically justified combinations, are provided to the consumer. Paragraphs 1, 8, 9, 11, 12, and 13 of the Proposed Findings of Fact clearly demonstrate that informative labeling standing alone is not sufficient to protect the consumer from the deception referred to by the supreme Court in the *Quaker Oats* Case. Therefore, the Commissioner considers the exception to be unfounded and unwarranted.

2. Exceptions were received stating that the standard of identity for dietary supplements of vitamins and minerals will impede further research and development of new knowledge relative to dietary supplementation, including recognition of the possible essentiality of additional nutrients in human nutrition. The Commissioner is of the opinion that the standard of identity in no way impedes such research and development. Changes in the regulation will be proposed as more information on human nutrition becomes available, as provided in §§ 80.1(f)(2) and 80.1(b)(4). The Commissioner concludes that no changes are justified on this basis.

3. Exceptions were received stating that combinations of vitamins and minerals other than those specifically provided for in § 80.1(b) should be allowed. The Commissioner points out that this possibility was previously recognized in the discussion published in the FEDERAL REGISTER on January 19, 1973 (38 FR 2158), and that § 80.1(b)(4) of the tentative order specifically provided for petitions to be filed for addition to or amendment of the permissible combinations of vitamins and minerals contained in § 80.1(b)(1). The Commissioner has reviewed the record of the hearing and finds no persuasive justification for additional combinations at this time. The evidence strongly supports the inclusion of all vitamins and/or minerals in a dietary supplement as a means of eliminating the bewildering combinations now found in the market place. (Paragraph 10 of the Proposed Findings of Fact.) No evidence was submitted with the exceptions to support a sound scientific rationale for additional combinations. Therefore, no change in the final order is warranted.

4. Exceptions were received stating that the specific combinations provided for in § 80.1(b) are too restrictive in that certain persons may have allergies to one or more vitamins and thus would have to purchase and ingest each nonallergenic vitamin separately to adequately supplement the diet with a full complement of such vitamins. The exception is without merit. Allergies to certain vitamin preparations are not caused by a vitamin per se, but rather are due to constituents other than the vitamin in the source or ingredient which provides the vitamin. Section 80.1 requires full disclosure of the ingredients of each supplement, and thus the source of each vitamin or mineral supplied by a given product will be indicated to the consumers. Therefore, the consumer will be able to determine if the product contains any ingredient to which he may be allergic.

5. Exceptions were filed to the requirement that optional vitamins or optional minerals must be included as a group if present at all. The stated basis for these exceptions was the absence of the issue in the stayed regulation subject to public hearing, or the lack of testimony on the matter. The Commissioner notes that the concept of optional ingredients was a part of the stayed regulation published in the FEDERAL REGISTER December 14, 1966 (31 FR 15732), and that extensive testimony was received on the importance of completeness of formulation (paragraph 10 of the Proposed Findings of Fact) and on minimizing the multiplicity of formulations available to the public (paragraphs 3, 7, 10, 23, and 29 of the Proposed Findings of Fact). On the basis of these findings of fact and related information, the Commissioner concludes that no change is justified.

6. A request was received for clarification as to whether phosphorus may be omitted when zinc and copper are included in dietary supplements for pregnant or lactating women. As stated in the discussion on § 80.1 (38 FR 2159), "Phosphorus is not mandatory in dietary supplements for pregnant or lactating women because of evidence that supplemental phosphorus may increase the problem of leg cramps during pregnancy." It was thus intended that phosphorus may be omitted when zinc and copper are included in dietary supplements for pregnant or lactating women. For purposes of clarification, § 80.1(b)(1)(v) has been rewritten as follows:

"Inclusion of the optional ingredients vitamin D and/or phosphorus in a multivitamin, multimineral, or multivitamin and multimineral supplement does not require inclusion of any additional optional ingredients. Inclusion of the optional ingredients biotin and pantothenic acid and/or copper and zinc in such products does not require inclusion of vitamin D and/or phosphorus when the latter two nutrients are optional. The inclusion of any of the other optional ingredients (biotin or pantothenic acid for vitamins and copper or zinc for minerals) requires the inclusion of both such optional ingredients if the product is a multivitamin or multimineral supplement, and requires the inclusion of all four such ingredients if the product is a multivitamin and multimineral supplement."

7. Review of § 80.1(b)(5) has revealed that reference to § 125.1(c) was inconsistent with § 80.1(b)(5)(i) in that no U.S. Recommended Daily Allowances (RDA's) or compositional limits have been established for the nutrients listed in § 125.1(c). The Commissioner therefore finds that the words "and/or (c)" should be deleted from the first sentence of § 80.1(b)(5).

8. Exceptions were filed pointing out the inconsistency between § 80.1(b)(5)(i), which exempts foods containing nutrients at levels below the lower limits established pursuant to § 80.1(f)(1), and § 1.17(a)(2) (nutrition labeling), which provides that foods to which nutrients have been added that contain 50 percent or more of the U.S. RDA per serving of one or more of the added nutrients are dietary supplements and subject to the provisions of § 80.1. Since the lower limits do not equal 50 percent of the U.S. RDA's in all cases, the Commissioner concurs, and therefore § 80.1(b)(5)(i) is reworded as follows: "No such nutrient is contained at a level of 50 percent or more of the adult U.S. RDA per serving for that nutrient."

9. Review of § 80.1(b)(5)(iii) concerning foods in other than conventional forms reveals that such a provision is unnecessary. The Agency is unaware of any food other than dietary supplements which should exist in unconventional food forms. Therefore, § 80.1(b)(5)(iii) is deleted, and § 80.1(b)(5)(iv) is renumbered as § 80.1(b)(5)(iii).

10. Exceptions were received stating that the U.S. RDA's for specific consumer groups failed to insure that the special dietary requirements of infants (i.e., persons not more than 12 months of age) are properly identified and recognized. Noting the numerous exceptions concerning this issue, at the urging of the American Academy of Pediatrics, and after review of the Hearing Record and the Hearing Examiner's Report, the Commissioner concludes that, although the U.S. RDA's for infants and children under four years of age can safely be used by this entire group, as stated in paragraph 14 of the Proposed Findings of Fact for Part 125 and paragraph 15 of the Proposed Findings of Fact for § 80.1, there is a need to establish infant U.S. RDA's for the labeling of those foods intended for use primarily or solely by infants. (WD-3A-Sebrell Q&A 15, Lowe Tr. 12568-70). Therefore the Commissioner concludes that § 80.1(d) should be amended by including a separate group designation for infants and revising the designation for the group entitled "Infants and children under 4 years of age" to read "Children under 4 years of age". Elsewhere in this issue of the FEDERAL REGISTER appropriate U.S. RDA's for infants are being added to § 125.1(b), for the reasons stated. There-

fore, beginning with the third line, § 80.1 (d) is amended to read as follows:

For labeling purposes:
(1) Infants.
(2) Children under 4 years of age.
(3) Adults and children 4 or more years of age.
(4) Pregnant or lactating women.

11. Exceptions were received which stated that it was unclear how to classify a food which naturally contains one or more nutrients at a level of 50 percent or more of the applicable U.S. RDA's. Section 80.1(e) presently provides that any food which contains vitamins and minerals which are naturally occurring in the food at any level may be labeled as a conventional food. Such foods shall meet the requirements of § 80.1 or the drug labeling requirements only in the event that the food is represented as a dietary supplement or as a drug product for the treatment or prevention of disease. The Commissioner concludes that no change is warranted in § 80.1(e).

12. Exceptions were received requesting exemption of infant cereals fortified at levels equal to or in excess of 50 percent of the U.S. RDA's per serving. Review of the Hearing Record provides no support for such an exemption. The Commissioner reiterates that it is inappropriate to provide for fortification of conventional foods at nutrient levels which would result in gross overconsumption of vitamins and minerals in the diet, and that, with certain exceptions, any conventional food fortified in a way that any nutrient achieves a level of 50 percent or more of its U.S. RDA per serving will be regarded as a dietary supplement. No change in this provision is justified.

13. As a result of the establishment of separate U.S. RDA's for nutrients for infants in § 125.1(b), and the concommitant recognition that it is appropriate to provide for a dietary supplement designated for infants, either as a specified single user group or as one of several groups intended to be users of the product, the Commissioner amends the table in paragraph 36 of the Proposed Findings of Fact and in § 80.1(f)(1) by revising the heading for the group entitled "Infants and children under 4 years of age" to read "Children under 4 years of age", and by inserting the superscript "1" after this column heading. The footnote designated by this superscript reads:

When labeled for use by infants, a dietary supplement shall contain not less than the lower limit designated for a nutrient in this column nor more than 100% of the infant U.S. RDA for a nutrient as prescribed in § 125.1(b), except that the level of biotin, when used, shall be 0.05 mg per daily recommend quantity.

In effecting this amendment, the superscripts appearing in the table as previously published are changed to the next higher number. In addition, for the purpose of expanding the provisions of this section as indicted above, the Commissioner is further amending § 80.1(h)(3) to read as follows:

(3) The phrases used to designate the group(s) for which a dietary supplement is intended shall be as follows: (i) "For infants"; (ii) "For children under 4 years of age"; (iii) "For adults and children 4 or more years of age"; and (iv) "For pregnant and lactating women".

14. Exceptions were filed to the effect that the upper limits of nutrient content permitted for dietary supplements of vitamins and minerals were inadequate to meet the requirements of a proportion of the population for whom dietary supplements are intended. The primary basis of this objection was that the Recommended Daily Dietary Allowances (RDA's) of the Food and Nutrition Board, National Academy of Sciences—National Research Council, upon which most of the U.S. RDA's are based, are considered by those objecting to be inadequate to meet all of the vitamin and mineral requirements of this population segment. However, no evidence was presented at the hearing or with the exceptions to show that 150 percent of the U.S. RDA's is inadequate to meet the nutritional needs of all healthy individuals.

The Commissioner concurs with the conclusion of the Food and Nutrition Board that the RDA's represent levels that will provide for the adequate intake of essential nutrients in practically all normal healthy persons in the United States (paragraph 16 of the Proposed Findings of Fact). In order to provide for those few healthy individuals whose requirements may be higher, the upper limits were set at 150 percent of the U.S. RDA's except for those nutrients known to have significant toxic properties or side-effects.

The Commissioner notes that dietary supplements of vitamins and minerals are intended, as the name states, to be taken to supplement the diet as insurance in the event that an individual's diet may not include a full complement of essential vitamins and minerals, are not intended to be the sole source of vitamins and minerals, and are not intended for medicinal or therapeutic purposes. (Paragraph 4 of the Proposed Findings of Fact and discussion of proposed findings.) Thus, the 150 percent of the U.S. RDA for a nutrient available from a dietary supplement at the upper limit is in addition to the usually adequate amount of that nutrient available from a balanced diet of ordinary foods. Drugs containing higher levels of vitamins and minerals are also available without a prescription. It is therefore apparent that the nutritional needs of all normal healthy persons are quite adequately met.

15. Exceptions were filed objecting to the permissible ranges of nutrient content of dietary supplements, and to the permissible variability between nutrients in the same product. Statements were made recommending that all dietary supplements be limited to 100 percent of the U.S. RDA's, or that, if ranges are permitted, all nutrients in the same product should be present at the same U.S. RDA levels. The Commissioner refers to this matter in the discussion of the proposed findings for the tentative order published in the FEDERAL REGISTER January 19, 1973 (38 FR 2158) relating to paragraph 36 of the Proposed Findings of Fact. The Commissioner concludes that it is reasonable to permit up to 150 percent of the U.S. RDA's (except for vitamins A and D and folic acid) in order to cover the nutritional needs of all healthy persons and to provide a degree of flexibility in the composition of dietary supplements to exist at this time within the limits of modern nutrition knowledge. If abuses occur, changes in the regulation will be proposed.

16. Exceptions were received recommending that the nomenclature of certain of the water-soluble vitamins be changed to reflect the newer nomenclature accepted by the American Institute of Nutrition and the International Union of Nutrition Sciences, e.g., spelling thiamine without the "e", and writing "Vitamin B," as "Vitamin B-1". The Commissioner recognizes that it is highly desirable ultimately to standardize nomenclature for all of the vitamins. The Food and Drug Administration uses the nomenclature of the United States Pharmacopeia and of the National Academy of Sciences. The Commissioner welcomes the continuing efforts to standardize nomenclature, but concludes that, for the present, the nomenclature should remain as stated.

17. Exceptions regarding folic acid requested clarification of nomenclature, levels set for the U.S. RDA's, the reference form, and analytical methodology. In regard to nomenclature, the Commissioner recognizes that the nutrition and biochemical scientific communities do not have a system of standard nomenclature for the family of compounds with folic acid activity. Review of the Hearing Record reveals considerable interchangeability in the use of terms relative to "folic acid" and "folacin". Until such time as the nomenclature matter is resolved by the scientific community, the Commissioner concludes that it is appropriate to continue the primary use of the most familiar term, "folic acid", and the optional additional use of the synonym, "folacin". In regard to the levels set for the U.S. RDA's, the Commissioner understands that the Recommended Daily Dietary Allowances (upon which most of the U.S. RDA's are based) set by the National Academy of Sciences are based upon the human requirements for pteroylmonoglutamic acid as the standard reference form. In regard to analytical methodology for folic acid, the method described in "Official Methods of Analysis of the Association of Official Analytical Chemists", Eleventh Ed., 1970 (pages 785–786) is an acceptable method for measurement of free forms of folic acid. Other methods are more appropriate for conjugated forms, an example of which is Ford, I. E. and Scott, K. J., *Journal of Dairy Research 35*, 85–90 (1968).

18. Exceptions were filed relative to the quantitative content of biotin, not on the basis of the U.S. RDA for the

nutrient but upon the fact that there exists a limited supply of the nutrient available to manufacturers as well as a limited production capacity. The Commissioner recognizes the existence of a temporary shortage in commercial production of the nutrient, and therefore concludes that, until December 31, 1976, biotin when present in the product may be present in quantities down to a lower limit of 0.05 milligram per daily recommended quantity. Therefore, § 80.1(f)(1) is modified by adding the following footnote relative to biotin in the table in the paragraph: "'Lower limit may be 0.05 milligram until December 31, 1976."

19. Exceptions were filed recommending changes as to which nutrients are included in the mandatory and optional groups specified in the table in § 80.1(f)(1), e.g., the inclusions of zinc and copper in the mandatory group of minerals, the inclusion of pantothenic acid in the mandatory group of vitamins, and the inclusion of manganese in the optional group of minerals. As discussed in paragraphs 10 and 23 of the Proposed Findings of Fact (38 FR 2154–55) and in the discussion of the proposed findings, the mandatory and optional categories are based upon the presence or absence of specific quantitative requirements in human nutrition established by the National Academy of Sciences. The Commissioner reiterates, as stated in the tentative order for § 80.1(f)(2), that the components of the quantitative levels in the mandatory and optional groups of nutrients are subject to amendment from time to time as more information on human nutrition becomes available. At this time the Hearing Record and the exceptions provide no scientific basis of a change in these provisions.

20. Exceptions were received recommending that, for technological purposes, the lower permissible limits for calcium, phosphorus, and magnesium be set at 10 percent of the respective U.S. RDA's, on the basis that individual units might otherwise be excessively large for consumption and that 10 percent of the U.S. RDA has been recognized by the Food and Drug Administration as a significant contribution to the daily intake of a given nutrient. The Commissioner has reexplored the technological matters and concludes that the quantitative amounts established are reasonable, and that the Hearing Record and exceptions present no technological problems of significance likely to be encountered with these lower limits. The Commissioner reemphasizes that dietary supplements should contain a minimum of 50 percent of the U.S. RDA's of the essential vitamins and/or minerals per recommended daily quantity wherever possible. The lower limits for calcium, phosphorous, and magnesium are already at 12.5, 12.5, and 25 percent respectively, for purely technological reasons. The Commissioner concludes that no changes are warranted relative to this matter.

21. Exceptions were received recommending that the ratio of calcium to phosphorus in dietary supplements be equal to or greater than 1.0. The primary basis for this recommendation was the desirability of avoiding a situation wherein dietary supplements could adversely effect the calcium-to-phosphorus ratio of the daily diet. This is in accord with the basic nutrition principle that the dietary calcium-to-phosphorus ratio should be equal to or greater than 1.0, as pointed out in the discussion of the Proposed Findings of Fact. The Commissioner concurs that this is a reasonable adaptation of the 1968 Recommended Daily Dietary Allowances as published by the NAS–NRC (WD–3A–Sebrell, Q&A 15). Therefore, § 80.1(f)(1) is modified by adding the following sentence to footnote 5 relative to both mandatory and optional phosphorus in the table in the paragraph: "When present, the quantity of phosphorus may be no greater than the quantity of calcium."

22. Exceptions were received stating that the requirement for the common name of a dietary supplement to include a phrase or phrases designating the specific group(s) for which the supplement is represented was not at issue during the hearings and is not supportable by the published findings of fact. The Commissioner notes that one of the primary functions of the Hearing was to develop a fully informative labeling system for dietary supplements. Paragraphs 3, 14, 15 and 29 of the Proposed Findings of Fact clearly establish the need for a common or usual name which includes both the general composition of the supplement and the consumer group(s) for which the product is represented as suitable. Unless the specific group is designated it will be impossible for consumers to choose the correct product. Therefore, the Commissioner concludes that no changes in § 80.1(h)(1) are required or justified.

23. Exceptions were received stating that the Agency did not have authority to require a complete listing of all of the vitamins and minerals on the label if the product in fact meets the standard of identity. The exceptions specifically referred to recent Agency opinions which state that the Federal Food, Drug, and Cosmetic Act contains no authority to require the listing of mandatory ingredients in the standardized food.

Under section 401 of the act, all optional ingredients in the product may be required to be named on the label. Section 80.1(b) clearly states that the manufacturer at his option may include all vitamins, all minerals, all vitamins and minerals, all vitamins and the mineral iron, or any single vitamin or mineral. Because each of the combinations of vitamins and/or minerals chosen to be included in a dietary supplement is optional, all such nutrients in the combination chosen may be required to be named on the label pursuant to section 401 of the act. Section 403(j) of the act specifically provides that, as determined by the Secretary to be necessary, all foods for special dietary uses must bear on the label the vitamin, mineral, and other dietary properties which are necessary to fully inform purchasers of their nutritive value. Such a need has long been recognized in § 125.3, and paragraphs 3 and 16 of the Proposed Findings of Fact clearly demonstrate the need to continue such a requirement. The Commissioner therefore concludes that no change in the requirement for the listing of the vitamins and minerals is warranted.

24. Exceptions were received that, because of the small package size of many dietary supplements, use of both principal display and information panels for the listing of vitamins, minerals and ingredients should be allowed. The Commissioner points out that § 80.1(i)(1), as well as § 1.8d, provides for use of the information panel for such a listing if insufficient space is available on the principal display panel. Therefore, the requirement remains unchanged.

25. Exceptions were received stating that there was no evidence at the hearing to support the incorporation of § 1.8d requirements into § 0.1(i) and (1). The Commissioner concludes that paragraphs 31, 32, and 34 of the Proposed Findings of Fact support the need to require that dietary supplements be labeled in compliance with § 1.8d.

The information required to appear on the label or labeling could be misleading and lack sufficient prominence and conspicuousness to render it likely to be read and understood unless it appears in compliance with the requirement of § 1.8d. The Commissioner again wishes to emphasize that he recognizes that type size is only one element which determines conspicuousness (38 FR 6950). Section 1.8d specifically provides that any interested person may petition for a smaller type size or an alternative means of disseminating mandatory label information to the consumer, based on a showing of impracticability or economic hardship. Therefore, no modification is appropriate.

26. Exceptions were received indicating a need to clarify the intent of the first sentence in § 80.1(i)(4), and stating that the hearing evidence did not support any requirement to repeat the listing of the nutrients in the ingredient statement required in this paragraph.

The label for dietary supplements must contain a list of nutrients and a full statement of ingredients. The Commissioner recognizes that, by using the term "nutrient ingredients" exclusively in § 80.1(i)(4) and in § 80.1(l)(2), there may be a misunderstanding as to what substances are to be listed on the label pursuant to these provisions. It is the Commissioner's intent that all ingredients, i.e., those which are nutrients or the source of nutrients as well as those which serve only a technological function, be stated together in order of predominance in one ingredient statement. The natural source or chemical form of each individual nutrient present in the product must be stated rather than the nutrients themselves. To clarify this matter, the Commissioner amends the first sentence in both §§ 80.1(i)(4) and 80.1(l)(2) by deleting the word "nutrient".

27. Exceptions were made to § 80.1(k), which requires the product to contain not

less than the quantity of each vitamin and/or mineral as set forth in its label when consumed. It is contended that such a requirement fails to recognize variances due to manufacturing and storage practices. Such exception is without exception is without merit. The total quantity of vitamins or minerals in a supplement when consumed should be no less than the amount declared. The manufacturer will be allowed reasonable overages to insure that the vitamin and mineral content of a product does not fall below the declared amount due to heat, light, oxidation, storage, transportation, or unavoidable deviation in good manufacturing practices (paragraph 35 of the Proposed Findings of Fact). The Commissioner concludes no change is warranted.

28. Exceptions were received concerning § 80.1(m) which states that the labeling for a dietary supplement shall be subject to the prohibitions contained in § 125.2(b). All of these exceptions have been fully discussed in the final order on Part 125 which is published elsewhere in this issue of the FEDERAL REGISTER. The Commissioner, in addition to the findings of fact relied upon there, relies also upon paragraphs 8, 21, 32 and 33 of the Proposed Findings of Fact for Part 80 as hearing evidence which clearly demonstrates the necessity of retaining § 80.1(m).

29. Exceptions were received objecting to paragraphs 4, 8 and 11 of the Proposed Findings of Fact on the ground that these findings indicate the appropriate uses of therapeutic formulations of vitamins and minerals. The exceptions argued that the appropriate uses of therapeutic formulation should be determined during the course of the OTC drug review and not in this proceeding. The Commissioner has reviewed each of the findings of fact in question and concludes no change or modification is required. None of these findings relate to drug products. To clarify this issue, an additional Finding of Fact 37 will be added which provides that it is the intent of the Commissioner that the appropriate uses of therapeutic formulations of vitamins and minerals (i.e., those defined as a drug under § 125.1(h) are to be determined during the course of the OTC drug review):

These regulations interpret and apply sections 403 (a) and (j) of the act, by prescribing requirements for label information necessary in order fully to inform purchasers of the value of dietary supplements, which are foods for special dietary use, and to prevent false or misleading labeling of such foods. Neither the findings of fact nor the regulations relate to or affect vitamin-mineral products which are classified as "drugs". It is the intent of the Food and Drug Administration that the safety, effectiveness, and labeling of OTC vitamin-mineral drugs be determined through the separate OTC drug review for vitamin-mineral drugs as provided in 21 CFR 130.301. The OTC vitamin-mineral drug review panel will make its own independent inquiry on these matters.

30. A number of the exceptions and letters raised general questions about the Food and Drug Administration's overall policy on vitamin-mineral products. These general questions were also the subject of an inquiry from five members of Congress, the response to which has been reprinted in the Congressional Record of July 12, 1973 (119 Cong. Rec. S13214–S13220). In lieu of reiterating the lengthy discussion in that response, the Commissioner hereby incorporates it by reference and advises that it accurately reflects the basis for and his interpretation and application of these regulations.

Having considered the evidence received at the hearing, the Hearing Examiner's Report, and all the exceptions and written arguments which were filed, the Commissioner, pursuant to the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 401, 403(a) and (j), 701(a) and (e), 52 Stat. 1046, 1048, 1055, as amended by 70 Stat. 919; 21 U.S.C. 321(n), 341, 343(a) and (j), 371(a) and (e)) and under authority delegated to him (21 CFR 2.120), issues the following findings of fact, conclusions and final order:

FINDINGS OF FACT[1]

1. The hearings have shown that there is a need to establish a definition for dietary supplements, and to describe what is a rational composition for dietary supplements in terms of the vitamins and minerals present, and the quantities allowed.

2. The apparent appeal to consumers which results from the addition of vitamins and minerals to food articles, with concurrent promotion calling attention to this fact, has resulted in ever increasing amounts, qualitatively and quantitatively, of these nutrients being added to various foods (Weissenburg, Tr. 8569–8570; Exhibit P–1151, page C1). In many cases, foods, particularly some cereal products, have become the equivalent of multivitamin/multimineral dietary supplements in terms of their added nutrient contents (Weissenberg, Tr. 8584; WD–G–Gullberg, Q&A 35).

3. The establishment of a standard of identity and quantitative limits for the nutrient ingredients in dietary supplements will reduce consumer confusion concerning choice of dietary supplements by insuring a basically rational formula for all products (Mayer, Tr. 28868; WD–G–Gullberg, Q&A 31).

4. Dietary supplements are articles purporting to be or represented for special dietary use by man to supplement his diet by increasing the total dietary intake of vitamins and/or minerals. They may be prepared as tablets, capsules, pills, wafers, or similar uniform units, and/or in powder, granular, flake or liquid form (Grollman, Tr. 1660; Mickelsen, Tr. 2421–2424; Hodges, Tr. 2874; Herbert, Tr. 9859; Garrett, Tr. 10943; WD–G–Ross, Q&A 14). The proper use of dietary supplements of vitamins and/or minerals is for short-term correction of specific inadequacy of intake (Hodges, Tr. 2874–2875; Herbert, Tr. 9860, 9922–9923). They are not intended for therapeutic use for the correction of disorders in humans by the administration of large amounts of specific nutrients (Grollman, Tr. 1680–1682; Herbert, Tr. 9896; Hodges, Tr. 2937–2940, 2970–2971; WD–G–Harrison, Q&A 22; WD–3A–Sebrell, Q&A 44; WD–G–Schaefer, Q&A 36, 37).

5. Vitamins are organic substances, present in foods, which are essential for the maintenance of human life and the activity of the cells of the body (Grollman, Tr. 1624–1625; WD–3A–Sebrell, Q&A 4). These include vitamins A, D, E, K, C (ascorbic acid), B_1 (thiamine), B_2 (riboflavin), B_6, and B_{12}, niacin, folic acid (folacin), biotin, and pantothenic acid (Exh. P–651; Grollman, Tr. 1625–1627).

6. Essential mineral nutrients include the inorganic elements calcium, phosphorus, iodine, iron, magnesium, copper, zinc, sodium, potassium, and manganese. They are needed by the human body in varying amounts, and are utilized in a variety of metabolic processes (WD–3A–Sebrell, Q&A 4).

7. The sale and use of vitamin/mineral preparations in the United States are extensive, running into hundreds of millions of dollars annually in wholesale bulk value, and involve three-fourths of American households (Exh. P–735; Exh. P–1151, pages B1 and B2). The majority of such preparations differ qualitatively and quantitatively from each other, presenting a bewildering variety to the consumer (Weissenberg, Tr. 5998, 6551–6552, 8752–8756; WD–G–Gullberg, Q&A 14, 26; Exhibits P–2, P–3, P–8, P–9, P–40–42, P–47, P–51–54, P–57–59, P–61–70, P–72–74, P–76–78, P–80–153, P–156–163, P–165–174, P–188, P–194–349, P–398, P–399, P–400, P–402–404, P–468, P–471, P–564, P–567, P–575–579, P–582–594, P–596–597, P–599, P–600, P–613).

8. Many dietary supplements are nutritionally irrational, in that they provide quantitative levels and qualitative combinations of nutrients for which no human individual need could possibly exist, if the products are used only as dietary supplements (Grollman, Tr. 1683 (Exhibit P–84), 1686 (Exhibit P–89), 1688 (Exhibit P–94), 1691 (Exhibit P–95), 1696 (Exhibit P–102), 1699 (Exhibit P–113), 1701–1702 (Exhibit P–113), 1707–1709 (Exhibit P–124), 1713 (Exhibit P–157), 1714 (Exhibit P–158); Mickelsen, Tr. 2447–2447A (Exhibit P–166), 2448–2450 (Exhibit P–168), 2451–2452 (Exhibit P–169), 2455–2457 (Exhibit P–171); Hodges, Tr. 2942 (Exhibit P–183); Herbert, Tr. 9898–9899 (Exhibit P–232); Weissenberg, Tr. 6553–6554; WD–G–Gullberg, Q&A 26; Exhibits P–588, P–595). Lay persons are incapable of determining, by themselves, whether they have or are likely to develop vitamin or mineral deficiencies (Grollman, Tr. 1771–2, 1782; Herbert, Tr. 9961, 9979–80, 10,029; Unglaub, Tr. 28,942; Wallerstein,

[1] The abbreviations in the citations are:
Tr.—For transcript pages of the hearing.
P.—For exhibits introduced by the Government, the proponent.
O.—For exhibits introduced by opponents.
WD–G—For written direct testimony by a witness for the Government.
WD–3A—For written direct testimony by a witness for the designated opponent (e.g. "3A").
Q&A—Question and answer.

Tr. 28,989; Hodges, Tr. 2994–5; Mickelsen, Tr. 2520; Mayer, Tr. 28,892–3).

9. Although approximately 20 percent of the users of dietary supplements of vitamins and minerals actually use those articles to supplement or balance their diet, more than 40 percent of those persons admit they have no idea which vitamins or minerals, if any, are not sufficiently supplied by their diet (Exhibit P–1151, page B4, Q&A 4b).

10. Certain basic vitamins and/or minerals should be included in all articles offered as multivitamin and/or multimineral supplements. The remaining group of appropriate vitamins and/or minerals are considered to be scientifically optional for inclusion (Herbert, Tr. 9880–9882). The mandatory group of vitamins and/or minerals found in multivitamin and/or multimineral supplements should include all those listed in the table entitled "Recommended Daily Dietary Allowances, Revised 1968" in publication 1694 of the National Academy of Sciences (WD–43–Filer, pp. 19–20; WD–33–Coursin, p. 23; WD–33–Emerson, p. 9; WD–33–Brin, pp. 23–24; WD–33–Krehl, pp. 8–9, Tr. 27216–27217, 27255–27256; WD–33–Horwitt, pp. 12–14; Hodges, Tr. 2878–2879, 2945–2946, 6813, 7007).

11. Many dietary supplements contain such high amounts of nutrients that they are appropriate only for therapeutic use, for persons already in a deficiency state (Hodges, Tr. 2939–40). Some of these contain potentially toxic amounts of certain vitamins (Herbert, Tr. 9891; Grollman, Tr. 1711; Exhs. P–113, P–183, P–594). There is a sound scientific basis for establishing quantitative maximums on the nutrient ingredients in a dietary supplement (Herbert, Tr. 9900–9904; WD–G–Ross, Q. & A. 17, 18; WD–G–Harrison, Q. & A. 22). This is based on the rapid excretion of excesses of certain nutrients without benefit to the consumer, as well as on the potential problems of toxicity or nutritional imbalances due to excessive ingestion of certain nutrients (Grollman, Tr. 1666–1669; Herbert, Tr. 9861–9862; Mickelsen, Tr. 2433–2434; WD–3A–Sebrell, Q. & A. 24, 25; Polack, Tr. 4954–4955; Exh. P–1142).

12. Some dietary supplements contain so little of a named nutrient as to be insignificant in human nutrition (Swain, Tr. 233, 488; Grollman, Tr. 1695–1696 (Exh. P–102); Mickelsen, Tr. 2448 (Exh. P–167), 2451 (Exh. P–169), 2456 (Exh. P–171), 2469 (Exh. P–173); Hodges, Tr. 2935 (Exh. P–180); WD–G–Gullberg, Q&A 26). There is a sound scientific basis for establishing quantitative minimums on the nutrient ingredients for dietary supplements since only substantial amounts of nutrients should be represented for purposes of dietary supplementation (Herbert, Tr. 9867; WD–G–Harrison, Q&A 24; Boehne, Tr. 2764; WD–3A–Sebrell, Q&A 26, 27, 39).

13. Certain dietary supplements are objectionable because they must be taken in large numbers of units for the user to get the designated amounts of the nutrients involved (Grollman, Tr. 1685 (Exhibit P–89); Hodges, Tr. 2936 (Exhibit P–180); Exhibits P–179, P–359, P–368, P–383, P–395). In establishing a standard of identity for dietary supplements it is medically and pharmacologically sound to establish a standard of identity for dietary supplements on the basis of units suitable for and practical of consumption in one day (Grollman, Tr. 1661; Hodges, Tr. 2956).

14. There are demonstrable distinctions among the nutritional requirements of infants and young children, and pregnant or lactating women, as compared to the nutritional requirements of adults (Michelsen, Tr. 2424–2427; Grollman, Tr. 1665; Hodges, Tr. 2877–2878; Herbert, Tr. 9944; WD–3A–Sebrell, Q&A 15, 16, 19 and 28; WD–G–Ross, Q&A 23; Boehne, Tr. 2741–2759).

15. There is scientific or medical justification for selecting an age separation at 4 years of age for the purpose of establishing a basis for dietary supplements (WD–33–Krehl, pp. 5–8; WD–33–Emerson, pp. 4–5; WD–43–Filer, p. 21). The recommended daily dietary allowances of the Food and Nutrition Board, NAS–NRC, for 2- to 3-year-olds can safely be used by infants and 1- to 2-year-olds, and the maximum values for the under 4-year-old group can be used for all infants and children under 4 years of age (WD–33–Krehl, pp. 6–7; Hodges, Tr. 2, 877–8; WD–43–Graham; and WD–43–Filer, p. 21).

16. The "Recommended Dietary Allowances," revised periodically by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, represent established nutrient levels that are quantitatively high enough to provide for the adequate intake of essential nutrients under the wide variety of conditions that exist in this country for essentially all of the normal healthy persons in the United States. Furthermore, these levels are reviewed, discussed, and accepted by numerous scientists and, therefore, are considered to be extremely reliable. (Hodges, Tr. 2880, 2919, 2964–65; Grollman, Tr. 1670, 1763; Mickelsen, Tr. 2438–39; Herbert, Tr. 9865–67; WD–G–Harrison, Q&A 23; Schweigert, Tr. 8257, 8260; WD–G–Gullberg, Q&A 19; Exhibit P–651; Sebrell, Tr. 26, 181).

17. Publication No. 1694 of the National Academy of Sciences entitled "Recommended Dietary Allowances, Seventh Revised Edition, 1968, A Report of the Food and Nutrition Board, National Research Council," and subsequent editions, should be used as the source of authentic and reliable information on which to base recommended daily allowances of nutrients (WD–3A–Sebrell, Q&A 9, 10, 18, 19, Tr. 26181; Hodges, Tr. 2917; Herbert, Tr. 9865; WD–G–Harrison, Q&A 14, 23, 26, 27; WD–G–Ross, Q&A 65).

18. Recommended dietary allowances adapted from publication 1694 of the National Academy of Sciences are sufficiently above the average requirement for particular nutrients to cover the needs of between 95 percent and 99 percent of the normal healthy population (Hodges, Tr. 7083; WD–46–Olsen, page 7, Tr. 29466–67; Jukes, Tr. 28668; Briggs, Tr. 28761; Mayer, Tr. 28865–66; Stokstad, Tr. 26742; Goodhart, Tr. 30169–70; Stare, Tr. 29280; WD–G–Ross p. 5).

19. The identity and levels of nutrients in the NAS–NRC Recommended Dietary Allowances are extremely reliable since they are reviewed and discussed by large numbers of scientists and brought up for revision approximately every 5 years (Mickelsen, Tr. 2438–2439); Hodges, Tr. 2880; Sebrell, Tr. 26181). They are the best basis on which to establish a standard of identity for dietary supplements of vitamins and minerals in the United States (Grollman, Tr. 1670; Mickelsen, Tr. 2438; Herbert, Tr. 9864–9865; WD–3A–Sebrell, Q&A 5–7; Sebrell, Tr. 26181; WD–G–Ross, Q&A 19). Publication 1694 of the National Academy of Sciences, entitled "Recommended Dietary Allowances, Seventh Revised Edition, 1968, A Report of the Food and Nutrition Board, National Research Council" should be used as the source of authentic and reliable information on which to base a standard of identity for dietary supplements of vitamins and minerals (Exhibit P–651). Values for essential nutrients (to be designated as "U.S. Recommended Daily Allowances (U.S. RDA's)") may reasonably be derived from the table and sections in the text of this publication (WD–3A–Sebrell, Q&A 15).

20. The human body has the capacity to store varying amounts of almost all vitamins as reserves to be drawn upon when needed (Mickelsen, Tr. 2436). Fat-soluble vitamins, particularly vitamins A and D, are readily stored for relatively long periods of time, while excesses of the water-soluble vitamins are excreted more rapidly (Grollman, Tr. 1628–1629; Mickelsen, Tr. 2645; WD–3A–Sebrell, Q&A 4). The excessive ingestion of the fat-soluble vitamins A and D, because of their relatively high retention by the human body, poses a potential danger of toxicity (Mickelsen, Tr. 2644–2645; Hodges, Tr. 2956; WD–G–Ross, Q&A 18; WD–G–Harrison, Q&A 22; Herbert, Tr. 9891).

21. The nutrients which are scientifically appropriate for inclusion in dietary supplements in the United States are (1) the vitamins A, C, D, E, folic acid, niacin, riboflavin, thiamine, B_6, B_{12}, biotin, and pantothenic acid; and (2) the minerals calcium, phosphorus, iodine, iron, magnesium, copper, and zinc (Hodges Tr. 2879; Grollman, Tr. 1662; Mickelsen, Tr. 2427–2430; Herbert, Tr. 9861, 9868, 9881; Krehl, Tr. 27, 216–27, WD–G–Ross, Q. & A. 15, 16; WD–G–Harrison, Q. & A. 20; Exhibit P–651).

22. The establishment of qualitative and quantitative limits on the composition of dietary supplements will reduce consumer confusion concerning choice of dietary supplements by ensuring a basically rational formula for all products (WD–G–Gullberg, Q. & A. 31, Weissenberg, Tr. 7737).

23. From among these nutrients, appropriate for inclusion in dietary supplements, certain basic vitamins and/or minerals should be included in all articles offered as multivitamin and/or multimineral supplements (Herbert, Tr. 9880–81). Conversely, certain vitamins and minerals are, scientifically, optional in

terms of whether or not they should be included in a multivitamin and/or multimineral supplement (Herbert, Tr. 9882).

24. A gross excess of folic acid intake on the part of human beings can interfere with the diagnosis of pernicious anemia as it masks the hematological manifestations of vitamin B_{12} deficiencies. (Herbert, Tr. 9872–73.)

25. While people in the United States appear to have some understanding of the comparatively greater requirements for iron experienced by many women during their child-bearing years, this appears to have affected opinion about other nutrients, since well over a third of the population believes that women need more vitamins than men (Exhibit P–1151, page B13, questions 20, 20a, 21, 21a). However, when iron is not named, only 16 percent of the population expresses an opinion that there is any difference in the mineral requirements of men and women (Exhibit P–1151, page B14, question 22).

26. All vitamins are specific chemical compounds. Each has the same composition and effect whether it is synthetically produced or derived from natural sources. (Grollman, Tr. 1758–1759; Mickelsen, Tr. 2471; Hodges, Tr. 2958–2959, 2962; Herbert, Tr. 9937–9938; WD–G–Harrison, Q&A 36).

27. It is pharmacologically necessary to allow, in a standard of identity for dietary supplements, for the inclusion of preservatives, stabilizers, colors, sweeteners, seasoning, carriers, bases, vehicles, and other substances which facilitate preparation of the product. However, no greater quantity of any such substances should be allowed to be included than is necessary to establish the desired physical or technical effect. Furthermore, the biological availability of the nutrients in the dietary supplement should not be impaired by the presence of such substances. (Grollman, Tr. 1752; Garrett, Tr. 11039).

28. Lack of a common language for identifying nutrients in dietary supplements has resulted in use of highly inappropriate names, having no or imprecise scientific meaning. The resultant wide variation in the manner of qualitatively naming and quantitatively declaring the nutrients in a dietary supplement on its label also extends to artificial colors, artificial flavors, and preservatives used in producing the supplement. (Grollman, Tr. 1698–1699, 1724; Herbert, Tr. 9891, 9896–9897; Weissenberg, Tr. 6623–6626, 8763–8764, 8789–8791; Exhs. P–113, P–161, P–311, P–95, P–152).

29. The use of standardized common names for various forms of dietary supplements will aid in more fully informing purchasers of the nature and value of these articles. The following common names are scientifically meaningful and accurate designations for the various supplements involved:

(a) "Multivitamin and multimineral supplement", for a dietary supplement which contains all of the mandatory vitamins and mandatory minerals listed in the table under § 80.1(f).

(b) "Multivitamin supplement", for a dietary supplement which contains all of the mandatory vitamins listed in the table under § 80.1(f).

(c) "Multimineral supplement", for a dietary supplement which contains all of the mandatory minerals listed in the table under § 80.1(f).

(d) "Multivitamin and iron supplement" or "multivitamin supplement with iron", for a dietary supplement which contains all of the mandatory vitamins listed in the table under § 80.1(f) plus the mineral iron.

(e) "_____ supplement", for a dietary supplement which contains a single vitamin or mineral listed in the table under § 80.1(f), the blank to be filled in with the name of the vitamin or mineral which the supplement purports or is represented to contain. (Grollman, Tr. 1753; Hodges, Tr. 2945–54; Mickelsen, Tr. 2487; Herbert, Tr. 9882, 9884–91; WD–G–Ross, Q&A 28–33; WD–G–Harrison, Q&A 30–33.

30. It is scientifically correct and necessary for the purpose of determining the value of a dietary supplement as a food which is purported to be or is represented for a special dietary use that the label thereof bear a statement stating the amount and percentage of the recommended daily allowance of each vitamin and/or mineral which the supplement contains in a specified daily quantity, such a statement being given for each consumer group for which the supplement is offered (Herbert, Tr. 9944–9946; Grollman, Tr. 1762; Hodges, Tr. 2964–2967; WD–G–Ross, Q&A 63; Mickelsen, Tr. 2685–2687). It is also necessary that clear directions for frequency of ingestion be stated on the label (Grollman, Tr. 1758; Hodges, Tr. 2955–2956; Herbert, Tr. 9937).

31. Reasons for a consumer desiring to know the sources of the nutrients in a dietary supplement include: (1) A medical need to have exact knowledge of all potential allergens encountered by a patient (WD–23–Kailin, Q&A 22; Lowe, Tr. 12579); and (2) religious or philosophical needs to know the components of one's total diet (WD–58–Morgan; WD–58–Prazenka; WD–58–Pietz; WD–23–Desmond; WD–23–Singer; WD–58–Pelc; WD–58–Curtis; WD–58–Taylor; WD–32–Hill).

32. Many dietary supplements include named ingredients which are of no value as supplements to the human diet (Grollman, Tr. 1626, 1675–77, 1707, Exhibit P–125; Mickelsen, Tr. 2464–65 (Exhibit P–172), 2469 (Exhibit P–173); Hodges, Tr. 2933 (Exhibit P–179), 2936, (Exhibit P–180); Herbert, Tr. 9891 (Exhibit P–113), 9899 (Exhibit P–468; Swain, Tr. 185–191, 213, 220, 221, 223, 229–231, 255, 264, 269, 336, 397, 442, 447, 455, 469, 475, 476, 487; Weissenberg, Tr. 8761, 6402, 5949, Exhibits P–576, P–591). However, many consumers will purchase such products with long lists of ingredients, believing them to be of better value than products with a lesser number of ingredients (WD–G–Perloff, Q&A 38–41; Exh. P–1151, page B9, questions 13, 14). Such consumers believe that if an ingredient is listed, it must significantly contribute to the value of the product as a dietary supplement (WD–G–Perloff, Q&A 18, 19; Exh. P–737). The label of a dietary supplement, as a food for special dietary use, should bear a statement of usefulness consisting of a list of the nutrient ingredients which provide the special use characteristics. The list of such ingredients should be limited to those which are of significant value and need in human nutrition as components of dietary supplements (Grollman, Tr. 1766; Hodges, Tr. 2969–2970; Mickelsen, Tr. 2518–2520; WD–G–Moses, Q&A–33; WD–G–Ross, Q&A 59–61).

33. A large proportion of the population of the United States is likely to choose dietary supplements, the ingredients of which are described as "natural" or from "natural sources", on the basis that "natural" constituents are superior to "synthetic" constituents (WD–G–Perloff, Q&A 44–46; Exhibit P–1151, pages B–10 and B–11, questions 16, 16a, 16b). There are many dietary supplements on the market which stress the "natural" source of their constituents (Swain, Tr. 234, 477; Weissenberg, Tr. 6554–6556, 8757–8758; Exhibits P–6, P–35, P–40–43, P–54, P–66–68, P–70, P–74), although this fact is of no nutritional significance (Grollman, Tr. 1758–1759; Mickelsen, Tr. 2471; Hodges, Tr. 2933, 2958–2959, 2962; Herbert, Tr. 9937–9938; WD–G–Harrison, Q&A 36).

34. It is medically and nutritionally appropriate to identify, on the label, chemical preservatives used in a dietary supplement, as well as to indicate on the label that artificial sweetener, artificial coloring, or artificial flavoring has been added to the article, if such is the case. In addition to these and the identification of the nutrients in the supplement, there is also the necessity for identifying alcohol, if present (Grollman, Tr. 1758; Hodges, Tr. 2956–2957; Herbert, Tr. 9941–9942). When alcohol is included as an ingredient in a dietary supplement, it is necessary, from a medical point of view, that the amount of alcohol contained in the dietary supplement by expressed on the label as a percent by volume (Grollman, Tr. 1705, 1760–1761; Hodges, Tr. 2956; Herbert, Tr. 9942).

35. Dietary supplements have been found on the market containing levels of vitamins below declared strength (Weissenberg, Tr. 8769–8770; Deutsch, Tr. 11147–11151; Garrett, Tr. 10986). Under certain ordinary and usual conditions of shipment, storage, and shelf-life, some vitamins and minerals in dietary supplements deteriorate, affecting the nutritional quality of the supplement (Grollman, Tr. 1761; Mickelsen, Tr. 2489; Hodges, Tr. 2963–2964; Herbert, Tr. 9942–9943; Garrett, Tr. 10943 et seq.). Based upon known rates of deterioration, it is technologically feasible to determine an appropriate expiration date for dietary supplements beyond which they should not be sold in the event deterioration actually occurs (Garrett, Tr. 10981 et seq.; Exhs. P–659, P–660). In the interest of consumers, it is reasonable and necessary to require that a manufacturer, packer, or distributor of dietary supplements containing vitamins and/or minerals determine an appropriate expiration date for his prod-

uct, based on deterioration data under specified or customary conditions of handling and storage as indicated on the label, and that the expiration date be indicated when the supplement is offered for sale. (Garrett, Tr. 10978–10981, 11013–11015; Grollman, Tr. 1762; Hodges, Tr. 2963–2964; Mickelson, Tr. 2489–2490; Herbert, Tr. 9943; WD–G–Gullberg, Q&A 17, 33; WD–G–Ross, Q&A 40–42; WD–G–Harrison, Q&A 34, 35).

36. The following table represents a reasonable and scientifically accurate adaptation of the 1968 Recommended Dietary Allowances as published by the Food and Nutrition Board of the National Academy of Sciences-National Research Council (WD–3A–Sebrell, Q&A 15). Upper and lower limits for the listed nutrients are appropriate for dietary supplements of vitamins and minerals (Herbert, Tr. 9900–04, 9867; WD–G–Ross, Q&A 17, 18; WD–G–Harrison, Q&A 22, 24; Boehne, Tr. 2764; WD–3A–Sebrell, Q&A 26, 27, 39).

U.S. GOVERNMENT RECOMMENDED DAILY ALLOWANCES (U.S. RDA'S) AND PERMISSIBLE COMPOSITIONAL RANGES FOR DIETARY SUPPLEMENTS OF VITAMINS AND MINERALS

	Unit of Measurement	Children under 4 years of age [1]—U.S. RDA		Adults and children 4 or more years of age—U.S. RDA			Pregnant or lactating women—U.S. RDA		
		Lower Limit	Upper Limit	Lower Limit		Upper Limit	Lower Limit		Upper Limit
Vitamins									
Mandatory									
Vitamin A	International Units	1,250	2,500	2,500	5,000	5,000	5,000	8,000	8,000
Vitamin D [2]	do	200	400	400			400	400	400
Vitamin E	do	5	10	15	15	30	45	30	30	60
Vitamin C	Milligrams	20	40	60	30	60	90	60	60	120
Folic acid [3]	do	0.1	0.2	0.3	0.2	0.4	0.4	0.4	0.8	0.8
Thiamine	do	0.35	0.70	1.05	0.75	1.50	2.25	1.50	1.70	3.00
Riboflavin	do	0.4	0.8	1.2	0.8	1.7	2.6	1.7	2.0	3.4
Niacin	do	4.5	9.0	13.5	10.0	20.0	30.0	20.0	20.0	40.0
Vitamin B_6	do	0.35	0.70	1.05	1.00	2.00	3.00	2.00	2.50	4.00
Vitamin B_{12}	Micrograms	1.5	3.0	4.5	3.0	6.0	9.0	6.0	8.0	12.0
Optional									
Vitamin D	International Units				200	400	400			
Biotin [4]	Milligrams	0.075	0.150	0.225	0.150	0.300	0.450	0.300	0.300	0.600
Pantothenic acid	do	2.5	5.0	7.5	5.0	10.0	15.0	10.0	10.0	20.0
Minerals									
Mandatory									
Calcium	Grams	0.125	0.800	1.200	0.125	1.000	1.500	0.125	1.300	2.000
Phosphorus [5]	Do	0.125	0.800	1.200	0.125	1.000	1.500			
Iodine	Micrograms	35	70	105	75	150	225	150	150	300
Iron	Milligrams	5	10	15	9	18	27	18	18	60
Magnesium	Do	40	200	300	100	400	600	100	450	800
Optional										
Phosphorus [5]	Grams							0.125	1.300	2.000
Copper	Milligrams	0.5	1.0	1.5	1.0	2.0	3.0	1.0	2.0	4.0
Zinc	Do	4.0	8.0	12.0	7.5	15.0	22.5	7.5	15.0	30.0

[1] When labeled for use by infants, a dietary supplement shall contain not less than the lower limit designated for a nutrient in this column nor more than 100% of the infant U.S. RDA for a nutrient as prescribed in §125.1(b) except that the level of biotin, when used shall be 0.05 mg per daily recommended quantity.
[2] Optional for adults and children 4 or more years of age.
[3] Optional for liquid products.
[4] Lower limit may be 0.05 milligram until December 31, 1976.
[5] Optional for pregnant or lactating women. When present, the quantity of phosphorus may be no greater than the quantity of calcium.

37. These regulations interpret and apply sections 403(a) and (j) of the act, by prescribing requirements for label information necessary in order fully to inform purchasers of the value of dietary supplements, which are foods for special dietary use, and to prevent false or misleading labeling of such foods. Neither the findings of fact nor the regulations relate to or affect vitamin-mineral products which are classified as "drugs". It is the intent of the Food and Drug Administration that the safety, effectiveness, and labeling of OTC vitamin-mineral drugs be determined through the separate OTC drug review for vitamin-mineral drugs as provided in 21 CFR 130.301. The OTC vitamin-mineral drug review panel will make its own independent inquiry on these matters.

CONCLUSIONS OF LAW

Based on the foregoing statements in conjunction with the findings of fact herein published the Commissioner concludes, that:

1. It will promote honesty and fair dealing in the interest of consumers, and will assist in carrying out the purpose of the law of providing full information to consumers as to the value of such foods for special dietary use, to promulgate a standard of identity for dietary supplements of vitamins and minerals as hereinafter set forth in § 80.1.

2. Such standard should limit the nutrients contained therein to those listed in § 80.1(f).

3. Such standard should limit the lower and upper amounts of nutrients supplied, to those listed in § 80.1(f).

4. The label of the dietary supplement should bear the statement as hereinafter prescribed by § 80.1(h), "multivitamin and multimineral supplement", "multivitamin supplement", "multimineral supplement", "multivitamin and iron supplement", or "multivitamin supplement with iron", or "---------- supplement" (the blank to be filled in with the name of the vitamin or mineral which the supplement purports or is represented to contain). In addition, such standard should specify the nutrients which shall comprise "multivitamin and multimineral supplements", "multivitamin supplements", "multimineral supplements", " multivitamin and iron supplements", or "multivitamin supplements with iron", and single nutrient supplements as hereinafter prescribed by § 80.1(b).

5. The label of the dietary supplement should bear the name and amount of each vitamin and mineral supplied by the supplement as prescribed by § 80.1(i).

6. The label of the dietary supplement also should name the natural source or chemical form of the nutrient ingredients used.

7. The label of a dietary supplement containing one or more nutrients subject to deterioration should bear an expiration date which will assure that the supplement contains the full declared level of the nutrients when consumed.

FINAL ORDER

Therefore, on the basis of the foregoing findings of fact, discussion, and conclusions of law drawn therefrom: *It is ordered*, That the stay of effective date of § 80.1, which stay was promulgated December 14, 1966 (31 FR 15730), be ended and that § 80.1 be modified to read as follows:

PART 80—DEFINITIONS AND STANDARDS OF IDENTITY FOR FOOD FOR SPECIAL DIETARY USES

§ 80.1 Dietary supplements of vitamins and minerals; definition, identity, label statements.

(a) The dietary supplements of vitamins and/or minerals for which definitions and standards of identity are prescribed by this section are prepared and offered as tablets, capsules, wafers, or other similar uniform units; in powder, granular, flake, or liquid form; or in the physical form of conventional foods; and purport to be or are represented for special dietary use by man to supplement his diet by increasing the total dietary intake of one or more of the essential vitamins and/or minerals specified in paragraph (f) of this section. The dietary supplements of vitamins and/or minerals are henceforth referred to as "dietary supplements" in this section.

(b) Classifications of dietary supplements.

(1) A dietary supplement shall contain only those vitamins and/or minerals listed in paragraph (f) of this section and shall be offered for its vitamin and/or mineral content only in the following combinations, with the provision that any vitamin or mineral defined as optional in paragraph (f) of this section may be omitted:

(i) All vitamins and minerals.

(ii) All vitamins.

(iii) All minerals.

(iv) All vitamins and the mineral iron.

(v) Inclusion of the optional ingredients vitamin D and/or phosphorus in a multivitamin, multimineral, or multivitamin and multimineral supplement does not require inclusion of any additional optional ingredients. Inclusion of the optional ingredients biotin and pan-

tothenic acid and/or copper and zinc in such products does not require inclusion of vitamin D and/or phosphorus when the latter two nutrients are optional. The inclusion of any of the other optional ingredients (biotin or pantothenic acid for vitamins and copper or zinc for minerals) requires the inclusion of both such optional ingredients if the product is a multivitamin or multimineral supplement, and requires the inclusion of all four such ingredients if the product is a multivitamin and multimineral supplement.

(2) A dietary supplement may also be composed of any single vitamin or mineral listed in paragraph (f) of this section.

(3) Folic acid is optional for liquid dietary supplements because of instability of the vitamin in liquid preparations. Liquid dietary supplements containing multivitamins but not containing folic acid shall bear the following statement on the label, "This product does not contain the essential vitamin folic acid" which shall immediately follow the listing of vitamins, and minerals as prescribed in paragraph (i) of this section.

(4) Addition to or amendment of the list of permissible combinations of vitamins and/or minerals contained in paragraph (b)(1) of this section may be proposed by the Commissioner of Food and Drugs, on his own initiative, or upon petition by an interested person in accordance with the procedures set forth in Part 2 of this chapter. Any such petition shall be submitted in the form set forth in § 2.65 of this chapter, and shall include scientific data of a human nutritional and/or technological nature to support such addition or amendment as being consistent with the definition and purpose of dietary supplements as described by this section. The Commissioner, upon request, may extend the effective date of this section with respect to any particular product or class of products pending consideration and any administrative or court proceedings relating to any such petition, and may set a new effective date upon completion of the matter.

(5) The provisions of this section shall not apply to any food which contains or consists of any vitamin or mineral listed in § 125.1(b) of this chapter, or any combination thereof, provided that all of the following requirements are met: (i) No such nutrient is contained at a level of 50 percent or more of the adult U.S. RDA per serving for that nutrient, (ii) No direct or implied representation is made on the label, in labeling, or in advertising that the product is a dietary supplement or is adequate or appropriate for supplementing the daily diet with essential nutrients, and (iii) The product is labeled pursuant to the provisions of § 1.17 of this chapter.

(c) General definitions.

(1) Subject to good manufacturing practices, dietary supplements described in this section shall contain in the specified daily quantity no less than the lower limit nor more than the upper limit of any nutrient specified in paragraph (f) of this section for the group(s) for which the supplement is offered.

(2) For the purposes of this section, the term "daily quantity" means the quantity of a dietary supplement that shall be specified in the labeling of the dietary supplement for consumption in a period of 1 day, and which shall be an amount or number of units reasonably suitable for and practicable of consumption in 1 day.

(3) In the event a dietary supplement is offered for more than one specific group, the specified daily quantity for each group shall be stated separately on the label.

(d) The different groups described in § 125.1(b) of this chapter shall be designated as follows: For labeling purposes:

(1) Infants,

(2) Children under 4 years of age,

(3) Adults and children 4 or more years of age,

(4) Pregnant or lactating women.

(e) Section 80.1 does not apply to:

(1) Other standardized foods.

(2) Foods the composition of which is defined by other regulations or statutes.

(3) Any food represented for use as the sole item of a meal or of the diet.

(4) Foods represented for use solely under medical supervision to meet nutritional requirements in specific medical conditions.

(5) Raw agricultural commodities (including marine products) and fabricated and other conventional foods to which single or multiple vitamins and/or minerals are added to improve nutritional quality, unless the total level (including any naturally occurring amounts) of any added vitamin or mineral per single serving attains or exceeds 50 percent of the U.S. Recommended Daily Allowance (U.S. RDA) for adults and children 4 years or more of age as specified in § 125.1(b) of this chapter, in which case the provisions of both this section and § 1.17 of this chapter shall apply. If the provisions of both this section and § 1.17 apply to a food, the labeling of such food shall conform to the labeling established in this section except that the labeling established in paragraph (c) of § 1.17 of this chapter, including the order for listing vitamins and minerals established in paragraph (c)(7)(iv) of that section, shall be used in lieu of the labeling established in paragraph (i)(1) of this section.

(6) Raw agricultural commodities (including marine products) which by their nature are sources of a specific vitamin(s) and/or mineral(s) at a level that, if it had been added, would have brought them within the definition of a dietary supplement. Such shall meet all the requirements of this section if they are represented as dietary supplements. Such foods may also be used as a source of specific vitamins and/or minerals in dietary supplements meeting the requirements of this section.

(7) A food with nutrients restored to pre-processing levels or added pursuant to § 1.8(e) of this chapter so that it is not nutritionally inferior to the food for which it substitutes and which it resembles.

(f) Permissible qualitative and quantitative composition of dietary supplements.

(1) The following table sets forth the permissible qualitative and quantitative composition of dietary supplements of vitamins and/or minerals:

U.S. GOVERNMENT RECOMMENDED DAILY ALLOWANCES (U.S. RDA'S) AND PERMISSIBLE COMPOSITIONAL RANGES FOR DIETARY SUPPLEMENTS OF VITAMINS AND MINERALS

	Unit of Measurement	Children under 4 years of age [1]—U.S. RDA		Adults and children 4 or more years of age—U.S. RDA		Pregnant of lactating women—U.S. RDA	
		Lower Limit	Upper Limit	Lower Limit	Upper Limit	Lower Limit	Upper Limit
Vitamins							
Mandatory							
Vitamin A	International Units	1,250	2,500	2,500	5,000	5,000	8,000
Vitamin D [2]	do	200	400			400	400
Vitamin E	do	5	10	15	30	30	60
Vitamin C	Milligrams	20	40	60	90	60	120
Folic acid [4]	do	0.1	0.2	0.3	0.4	0.4	0.8
Thiamine	do	0.35	0.70	1.05	1.50	1.50	3.00
Riboflavin	do	0.4	0.8	1.2	1.7	1.7	3.4
Niacin	do	4.5	9.0	13.5	20.0	20.0	40.0
Vitamin B_6	do	0.35	0.70	1.05	1.00	2.00	4.00
Vitamin B_{12}	Micrograms	1.5	3.0	4.5	3.0	6.0	12.0
Optional							
Vitamin D	International Units			200	400	400	
Biotin [4]	Milligrams	0.075	0.150	0.225	0.150	0.300	0.450
Pantothenic acid	do	2.5	5.0	7.5	5.0	10.0	15.0
Minerals Mandatory							
Calcium	Grams	0.125	0.800	1.200	0.125	1.000	1.500
Phosphorus [5]	Do	0.125	0.800	1.200	0.125	1.000	1.500
Iodine	Micrograms	35	70	105	75	150	225
Iron	Milligrams	5	10	15	9	18	27
Magnesium	Do	40	200	300	100	400	600
Optional							
Phosphorus [5]	Grams					0.125	1.300
Copper	Milligrams	0.5	1.0	1.5	1.0	2.0	3.0
Zinc	Do	4.0	8.0	12.0	7.5	15.0	22.5

[1] When labeled for use by infants, a dietary supplement shall contain not less than the lower limit designated for a nutrient in this column nor more than 100% of the infant U.S. RDA for a nutrient as prescribed in §125.1(b) except that the level of biotin, when used, shall be 0.05 mg per daily recommended quantity.

[2] Optional for adults and children 4 or more years of age.

[3] Optional for liquid products.

[4] Lower limit may be 0.05 milligram until December 31, 1976.

[5] Optional for pregnant or lactating women. When present, the quantity of phosphorus may be no greater than the quantity of calcium.

(2) The U.S. Recommended Daily Allowances (U.S. RDA's) have been derived by the Food and Drug Administration from the "Recommended Dietary Allowances," published by the Food and Nutrition Board, National Academy of Sciences—National Research Council, and are subject to amendment from time to time as more information on human nutrition becomes available.

(g) Acceptable ingredient sources for dietary supplements:

(1) A vitamin or mineral used in a dietary supplement may be supplied by any suitable chemically synthesized or naturally produced substance which is not a food additive as defined in section 201(s) of the act; or if it is a food additive as so defined, it shall be used in conformity with regulations established pursuant to section 409 of the act.

(2) Any safe and suitable substance may be used as a preservative, stabilizer, flavor, sweetener, color, seasoning, carrier, base, or vehicle, or to facilitate preparation of the vitamin and mineral substances. A dietary supplement shall be prepared so that any such substance contained therein does not exceed the amount reasonably required to accomplish its intended physical or technical effect, and so that the biological availability of the vitamin(s) or mineral(s) is not impaired by the presence of such substance. Any such substance shall not be a food additive or color additive as defined in section 201 (s) or (t) of the act; or if it is a food additive or color additive as so defined, it shall be used in conformity with regulations established pursuant to section 409 or 706 of the act.

(h) Nomenclature.

(1) The common name of a dietary supplement shall consist of a term descriptive of the vitamin and/or mineral composition of the product, as established in paragraph (h)(2) of this section, together with a phrase or phrases designating the group(s) for which the supplement is represented, as established in paragraph (h)(3) of this section (e.g., "multivitamin and multimineral supplement for children under 4 years of age"). The name of the dietary supplement shall appear prominently and conspicuously on the principal display panel(s) of the label. The letters of the phrase(s) designating the consumer group(s) for which the product is represented shall be no less than one-third the size of those used in the term descriptive of the composition of the product. In addition to the common name prescribed by this paragraph, a dietary supplement may be labeled with a proprietary name: *Provided*, That it is not false or misleading in any particular.

(2) The terms used to describe the vitamin and/or mineral composition of dietary supplements listed in paragraphs (b) (1) and (2) of this section shall be as follows: (i) "Multivitamin and multimineral supplement" for a dietary supplement containing all vitamins and minerals, (ii) "multivitamin supplement" for a dietary supplement containing all vitamins, (iii) "multimineral supplement" for a dietary supplement containing all minerals, (iv) "multivitamin and iron supplement" or "multivitamin supplement with iron" for a dietary supplement containing all vitamins and the mineral iron, (v) "———supplement" for a dietary supplement containing a single vitamin or mineral listed as a mandatory or optional ingredient in the table contained in paragraph (f)(1) of this section (the blank to be filled in with the name of the vitamin or mineral).

(3) The phrases used to designate the group(s) for which a dietary supplement is intended shall be as follows: (i) "For infants"; (ii) "For children under 4 years of age"; (iii) "For adults and children 4 or more years of age"; and (iv) "For pregnant or lactating women".

(i) Format for listing vitamins and minerals, and ingredients: (1) Immediately following the name and group designation on the principal display panel, as required by paragraph (h) of this section, or on the information panel (21 CFR 1.8d) if insufficient space is available on the principal display panel, the label shall bear a listing in tabular form of each of the vitamins and/or minerals supplied by the specified daily quantity of the dietary supplement, such daily quantity being specified at the top of the list. The vitamins and/or minerals shall be described by the names appearing in paragraph (f) of this section, shall appear in the order listed in paragraph (f) of this section, and shall be grouped and identified separately as "vitamins" and/or "minerals" without reference to "mandatory" or "optional." The quantity of each vitamin and/or mineral present in a specified daily quantity of the dietary supplement shall be stated as a part of this list and expressed in percentage of the U.S. RDA for each specific group for which the supplement is offered. The quantity of each vitamin and/or mineral present in the specified daily quantity of the dietary supplement shall also appear in the tabular listing in terms of the units of measure specified in paragraph (f) of this section.

(2) For determining the percentage contents of the U.S. RDA's present in the dietary supplement, the quantitative content of the following vitamins shall be calculated in terms of the following chemically identifiable reference forms:

REFERENCE FORM

Vitamin	Name	Empirical formula	Molecular weight
Vitamin C	*L*-Ascorbic acid	$C_6H_8O_6$	176.12
Folic acid	Pteroyl mono-*L*-glutamic acid	$C_{19}H_{19}N_7O_6$	441.41
Niacin	Nicotinic acid	$C_6H_5NO_2$	123.11
Riboflavin	Riboflavin	$C_{17}H_{20}N_4O_6$	376.37
Thiamine	Thiamine chloride hydrochloride	$C_{12}H_{17}ClN_4OS.HCl$	337.28
Vitamin B_6	Pyridoxine	$C_8H_{11}NO_3$	169.18
Vitamin B_{12}	Cyanocobalamin	$C_{63}H_{88}CoN_{14}O_{14}P$	1,355.40
Biotin	*D*-Biotin	$C_{10}H_{16}N_2O_3S$	244.31
Pantothenic acid.	*D*-Pantothenic acid	$C_9H_{17}NO_5$	219.23

(3) The following synonyms may be added in parentheses immediately following the name of the vitamin in the statement described in paragraph (i)(1) of this section:

Vitamin	*Synonym*
Vitamin C	Ascorbic acid.
Folic acid	Folacin.
Riboflavin	Vitamin B_2.
Thiamine	Vitamin B_1.

(4) A separate list of ingredients in the product shall be included on the label pursuant to the requirements of Part 1 of this chapter. Such list shall include the natural source or chemical form of each individual nutrient present in the dietary supplement.

(j) When the dietary supplement is in liquid form and contains alcohol, the label shall state the percent-by-volume of alcohol present.

(k) A dietary supplement containing one or more nutrients, subject to deterioration below the labeled value before consumption shall bear on its outside wrapper or container, as well as on the label of its immediate container, the statement: "Expiration date ———", the blank to be filled in by the month and year. The expiration date shall be the date selected by the manufacturer, packer, or distributor of the dietary supplement on the basis of tests or other information showing that the dietary supplement, until that date, under the conditions of handling, storage, and use prescribed by directions appearing on its label, or, in the absence of such prescribed directions, under customary or usual conditions of handling, storage, and use will contain not less than the quantity of each vitamin and/or mineral, as set forth on its label, when consumed.

(l) All labeling information required by this section shall comply with the conspicuousness required by section 403(f) of the act and § 1.8d of this chapter. In addition, the following labeling requirements shall be met.

(1) The list of nutrients required by paragraph (i)(1) of this section shall appear in uniform type size.

(2) The synonyms permitted by paragraph (i)(3) of this section, if used, and the list of ingredients required by paragraph (i)(4) of this section shall appear in uniform type size, and in type size no larger than that used for the list of nutrients required by paragraph (i)(1) of this section.

(m) In addition to the requirements of this section, the labels and labeling for a dietary supplement is subject to the prohibitions contained in § 125.2(b) of this chapter.

Effective date. Labeling may be changed to comply with this regulation beginning August 2, 1973. All labeling for dietary supplements that is ordered after

December 31, 1973, and all labeling used for such products shipped in interstate commerce after December 31, 1974, shall comply with the provisions of this section; and if not so labeled, such product shall be deemed to be misbranded under section 403(a), (g) and (j) of the act.

(Secs. 201(n), 401, 403(a) and (j), 701(a) and (e), 52 Stat. 1046, 1048, 1055–1056, as amended by 70 Stat. 919; 21 U.S.C. 321(n), 341, 343(a) and (j), 371(a) and (e))

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15706 Filed 8-1-73;8:45 am]

PART 100—NUTRITIONAL QUALITY GUIDELINES FOR FOOD

General Principles

In the FEDERAL REGISTER of March 14, 1973 (38 FR 6969) the Commissioner of Food and Drugs published a new Part 100 which included new § 100.1 *General principles* for the establishment by regulation of nutritional quality guidelines for foods.

Paragraph (c)(1) of § 100.1 states that "The label of the product shall bear the common or usual name of the food in accordance with the provisions of the guideline and §§ 1.8 and 102.1 of this chapter".

Based on comments received the Commissioner of Food and Drugs concludes that the reference to § 102.1 in paragraph (c)(1) should be amended as set forth below for the purpose of clarification.

Therefore, pursuant to provisions of the Federal Food, Drugs, and Cosmetic Act (secs. 201, 403, 701(a), 52 Stat. 1040–1042, as amended, 1047–1048, as amended, 1055; 21 U.S.C. 321, 343, 371(a)), and under authority delegated to the Commissioner (21 CFR 2.120) § 100.1 is amended in paragraph (c)(1) to read as follows:

§ 100.1 General principles.

* * * * *

(c) * * *

(1) The label of the product shall bear the common or usual name of the food in accordance with the provisions of the guideline and §§ 1.8 and 102.1(a) of this chapter.

* * * * *

As this amendment merely clarifies an existing regulation, notice and public procedure and a delayed effective date are not necessary prerequisites to the promulgation of this order.

Effective date. This order shall become effective on August 2, 1973.

(Secs. 201, 403, 701(a), 52 Stat. 1040–1042, as amended, 1047–1048, as amended, 1055; 21 U.S.C. 321, 343, 371(a))

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15686 Filed 8-1-73;8:45 am]

PART 102—COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOODS

Foods Packaged for Use in Preparation of "Main Dishes" or "Dinners"

In the FEDERAL REGISTER of March 14, 1973 (38 FR 6975) the Commissioner of Food and Drugs proposed a new § 102.12, defining the common or usual name for foods packaged and represented for use in the preparation of a "dish," "dinner," or other food serving, and to which meat or other valuable characterizing ingredients or components, not included in the package, must be added.

A total of fourteen comments were received in response to the proposal. Eleven of the comments were from manufacturers and trade associations, two were from consumer groups, and one was from a professional association. Twelve of the fourteen comments supported the proposal, although nine of these requested modification, clarification, or additional requirements. Two comments opposed the proposal.

The comments and the Commissioner's conclusions are as follows:

1. A manufacturer and a trade association recommended that the proposal be withdrawn and replaced by a statement of policy. One comment based this recommendation on the contention that there is no evidence of consumer confusion resulting from present labeling practices for "add meat" dinners, and the other comment questioned the authority of the Food and Drug Administration to establish common or usual names.

The Commissioner rejects the recommendations to withdraw the proposal. The Food and Drug Administration has already found it necessary to take regulatory action against certain products of this type whose labeling was misleading. This regulation is intended to assure the consumer of informative labeling regarding the product and to provide manufacturers with objective criteria for compliance. The Commissioner has discussed the legal authority for establishing common or usual names in the preamble to the order promulgating Part 102 of this Chapter, published in the FEDERAL REGISTER of March 14, 1973 (38 FR 6964). As the Supreme Court recently stated in upholding the Food and Drug Administration's rule making authority under section 701(a) of the act, "A decision that FDA lacks authority to determine in its own proceedings the coverage of the Act it administers, subject of course to judicial review, would seriously impair FDA's ability to discharge the responsibilities placed on it by Congress." CIBA Corp. v. Weinberger, No. 72-394 (decided June 18, 1973).

2. Several comments requested revision of the regulation so that it would apply only to products intended for use as "main dishes" and "dinners," not to such products as seasoning mixes, sauce or gravy mixes, or cake mixes. This was the intent of the proposal, and the term "dish" has been revised to read "main dish."

3. Two manufacturers stated that the common or usual name for the products involved should not be required to contain all three elements of the name described in § 102.12(a)(1), (2) and (3) of the proposal. One stated that the common or usual name should be limited to the name that it is reasonably expected that consumers will use. However, both comments acknowledged that all the information described in § 102.12(a)(1), (2) and (3) of the proposal should appear prominently on the principal display panel.

Including all three elements in the common or usual name should not cause difficulty for manufacturers of main dishes or dinners. The regulation as modified in this order permits the separate elements of the name to be placed in different locations on the principal display panel, and the comments did not find difficulty with the prominence requirements in the proposal. As for the name that consumers might use, the regulation does not preclude use of fanciful names for such products, in addition to the required common or usual name, as long as such fanciful names are not false or misleading.

4. One comment stated that the name of the dish to be prepared by use of the package contents is unnecessary if the vignette on the principal display panel shows the food as prepared, accompanied by the statement described in § 102.12(a)(3), indicating that the food as shown contains a characterizing ingredient not contained in the package. The comment contended that such a vignette is more informative than the written name of the dish.

The Commissioner disagrees. A picture of the type of food to be prepared would be insufficient to meet the requirements of the act that the product bear a common or usual name and fully informative labeling.

5. Some manufacturers requested that § 102.12(a)(3) be reworded so that the requirement for a statement that additional ingredient(s) or component(s) must be added would be limited to "major" or "important" or "characterizing" missing ingredient(s). These comments stated that the proposed regulations could be interpreted as requiring the listing of such ingredients as salt or water, while the preamble refers to "valuable characterizing" or "significant characterizing" ingredients.

The Commissioner agrees with this suggestion and § 102.12(a)(3) of the final regulation is limited to "characterizing" ingredients.

6. One manufacturer suggested that it would be in the consumer's interest to permit the designation of the finished product to be in a type size slightly larger and more prominent than the list of the components in the package.

The Commissioner rejects this suggestion because it could result in misleading labeling. Such a presentation would tend to draw the consumer's eye to the name of the finished food and may mislead him to expect the package

to contain all components necessary to prepare the finished food.

7. Several manufacturers requested that the prominence requirements in § 102.12(b)(2) be stated in that paragraph and not incorporated by reference to § 102.1 (21 CFR 102.1). They also disagreed with the requirement that all of the elements of the common or usual name appear in a prescribed order on the principal display panel. The manufacturers stated that they should have the option to arrange the elements of the common or usual name anywhere on the principal display panel.

The Commissioner has concluded that a prescribed order for the elements of the common or usual name for these food products is not necessary for informative labeling. Manufacturers may arrange such elements as they choose, provided the prominence requirements of the regulation are met and provided the resulting overall presentation on the principal display panel is not misleading. The regulation has been modified accordingly. In the interest of clarity, the full prominence requirements are stated in § 102.12(b)(2).

8. Several manufacturers objected to the requirement in § 102.12(c) that any vignette which shows any food or characterizing ingredient(s) not included in the package shall be accompanied either by the statement required by § 102.12(a)(3) or by a similar statement that such item is not included. Their objections and suggestions were:

a. The statement required in § 102.12(a)(3) might be required to appear twice on the principal display panel, in the common or usual name and with the vignette.

b. Section 102.12(c) would require listing of such unimportant missing ingredients as garnishments.

c. Section 102.12(c) should be revised to permit use of "serving suggestion," as is current practice, in lieu of its present requirement.

d. The statement required by § 102.12(a)(3) should not be required to accompany a vignette on the principal display panel where such statement in the common or usual name is in type as large as that used for the name of the finished "dish."

The Commissioner has considered these points and has concluded that the requirement as stated in this order is reasonable and appropriate. The arrangement of the elements of the common or usual name is no longer prescribed, and thus the part of the common or usual name required by § 102.12(a)(3) can be placed in sufficient proximity to a vignette that the requirement in § 102.12(c) will also be met.

The Commissioner also concludes that use of the term "serving suggestion" is not sufficient to inform the consumer that depicted foods or components are not included in the package. Use of such a term without indicating which foods or components are included or must be added would indicate, indeed, that everything shown in the vignette is in the package.

9. Comments also objected to the requirement in § 102.12(d) that wherever the name of the finished food appears other than on the principal display panel, the entire common or usual name must be used. The objections and suggestions were as follows:

a. Repetition of the entire common or usual name on panels other than the principal display panel is unnecessarily restrictive to package design.

b. This provision should be limited to the requirement that the elements of the common or usual name in § 102.12(a)(2) and (a)(3) appear on other panels.

c. The entire common or usual name should be required only once on each panel, and should appear with the most prominent reference to the "dish" name.

d. Section 102.12(d) should apply only when the "dish" name is used as a product identification statement on other panels.

The Commissioner accepts the suggestion that the entire common or usual name should be required on panels other than the principal display panel only when the name of the finished "dish" is used as a product identification on such panels. For example, a statement identifying the food to be prepared appearing on a side panel in the text of directions for use of the package, or in a suggested recipe, would not require use of the entire common or usual name on that panel. However, such a statement in bold type likely to be read by consumers at the point of purchase must be accompanied on the same panel by the full common or usual name. This should provide fully informative labeling without undue restriction of manufacturers. The Commissioner further advises that the entire common or usual name need appear only once on a panel unless for some particular reason failure to repeat the entire name would result in false or misleading labeling.

10. Another manufacturer suggested the additional requirement that when a brand name of a product specifies the missing ingredient, such name should not be more conspicuous than the part of the common or usual name required in § 102.12(a)(1) of the proposal, i.e., the names of all important ingredients or components in the package.

The Commissioner concurs in the intent of this comment. Prominent emphasis of a missing ingredient or component in a brand name would constitute false or misleading labeling in violation of section 403(a) of the act. The Commissioner believes that it is sufficient to require that the explanatory element of the common or usual name required by § 102.12(a)(3) be labeled next to, and in at least half the type size used for, the brand name under these circumstances. The regulation has been modified accordingly.

11. A consumer group asked whether a survey or other data would be used in determining whether a missing ingredient is emphasized in a misleading manner in a brand name. In view of the type size requirement for the explanatory element of the common or usual name required by § 102.12(a)(3) in the final regulation, the Commissioner believes that this will not be a problem. If survey data show that any label is misleading or confusing, however, the Commissioner will consider revision of the regulation. Survey data are helpful but are not required for the Food and Drug Administration to determine that labeling is misleading.

12. The Commissioner has concluded that the same effective date should be adopted for this regulation as for all of the other food labeling regulations adopted at this time. The Commissioner is also concerned, however, that there is currently a serious problem of misleading labeling among the foods subject to this regulation, as shown by the regulatory action already taken against several of these products. Accordingly, the adoption of the uniform effective date for this regulation does not authorize continued use of existing labeling that is false or misleading. It is recommended that manufacturers adopt the labeling established in this regulation as quickly as possible in order to avoid further regulatory action.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041, as amended, 1047–1048, as amended, 1055; 21 U.S.C. 321(n), 343, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 102 is amended by adding thereto a new section to read as follows:

§ 102.12 Foods packaged for use in the preparation of "main dishes" or "dinners".

(a) The common or usual name of a packaged food which is represented on the principal display panel by word or vignette to be used in the preparation of a "main dish", "dinner", or other such food serving, and to which some other important characterizing ingredient(s) or component(s) not present in the package must be added, consists of all the following:

(1) The common or usual name of each important ingredient or component in the package, in descending order of predominance by weight (e.g., "noodles and tomato sauce").

(2) An appropriate informative statement identifying the food to be prepared by use of the package contents (e.g., "for preparation of chicken casserole").

(3) An appropriate informative statement that additional characterizing ingredient(s) or component(s) must be added and which names the additional characterizing ingredient(s) or component(s) (e.g., "you must add _____ to complete the recipe," the blank to be filled in with the name(s) of the important characterizing ingredient(s) or component(s) that must be added).

(b) The labeling required by paragraph (a) of this section shall appear on the principal display panel.

(1) No word in the statement required by paragraph (a)(2) of this section may appear on the principal display panel more conspicuously or in larger type than the smallest and least conspicuous type employed on the panel for any word, phrase or statement within the scope of paragraph (a)(1) of this section.

(2) Every word in the statement required by paragraph (a)(3) of this section shall appear on the principal display panel in easily legible bold face print or type in distinct contrast to other printed or graphic matter, and in a height not less than the larger of the following alternatives:

(i) Not less than one-sixteenth inch in height on packages having a principal display panel with an area of 5 square inches or less and not less than one-eighth inch in height if the area of the principal display panel is greater than 5 square inches; or

(ii) Not less than one-half the height of the largest type appearing in the part of the common or usual name of the food required by paragraphs (a)(1) and (a)(2) of this section.

(c) Any vignette which shows any food or characterizing ingredient(s) or component(s) not included in the package shall be accompanied either by the statement required by paragraph (a)(3) of this section or by a separate statement specifying the food or characterizing ingredient(s) or component(s) shown in the vignette but not included in the package.

(d) If the statement specified in paragraph (a)(2) of this section is used on any panel in addition to the principal display panel as a product identification statement, the complete common or usual name shall appear on such panel in the manner specified in paragraph (b) of this section.

(e) When a brand name or other prominent product designation contains a word or words that includes or suggests an important characterizing ingredient(s) or component(s) that must be added, or otherwise states or implies that the package contains a complete main dish, dinner, or other food serving, the part of the common or usual name of the food required by paragraph (a)(3) of this section shall appear in direct conjunction with such brand name or other designation and in type size not less than one-half the height of the largest type appearing in such brand name or other designation.

Effective date. Labeling may be changed to comply with this regulation beginning August 2, 1973. All labeling ordered after December 31, 1973, and all labeling used for products shipped in interstate commerce after December 31, 1974, shall comply with this regulation.

(Secs. 201(n), 403, 701(a), 52 Stat. 1041, as amended, 1047–1048, as amended, 1055; 21 U.S.C. 321(n), 343, 371(a))

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15689 Filed 8-1-73;8:45 am]

PART 102—COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOODS

Noncarbonated Beverages Containing No Fruit or Vegetable Juice

In the FEDERAL REGISTER of March 14, 1973 (38 FR 6974) the Commissioner of Food and Drugs published a proposal to establish a common or usual name for noncarbonated beverages containing no fruit or vegetable juice.

Five responses were received in response to the proposal. The comments and the Commissioner's conclusions are as follows:

1. One comment from a consumer and three comments from consumer associations favored the proposal, stating that the regulation is a vital and appropriate step toward providing the consumer sufficient information to make rational decisions at the point of purchase.

2. A manufacturer of powdered beverage mixes opposed the proposal on the ground that the regulation will saddle the entire food industry with negative labeling requirements. This comment opposed particularly the inclusion of powdered beverage products within the scope of the regulation.

The Commissioner concludes that the regulation as proposed is a reasonable and appropriate measure for the prevention of consumer confusion and deception in the purchase of beverages which contain no fruit or vegetable juice. The Commissioner also concludes that there is no reason to treat powdered beverage products differently from other forms of beverage base to which water is added. Informative labeling is as necessary for accurate identification of this product as it is for any other type of beverage product. The comment offered no other more appropriate means of accurately informing the consumer about the nature of the product.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 403, 701(a), 52 Stat. 1040–1042, as amended, 1047–1048, as amended, 1055; 21 U.S.C. 321, 343, 371(a)) and under authority delegated to the Commissioner, the following new section is added to Part 102 of this chapter.

§ 102.10 Non-carbonated beverage products containing no fruit or vegetable juice.

(a) The common or usual name of noncarbonated beverage products (including a concentrated, dehyrated, powdered, or other counterpart) containing no fruit or vegetable juice shall include the following:

(1) A decriptive name for the product meeting the requirements of § 102.1(a); and

(2) When the labeling or the color and flavor of the beverage represents, suggests, or implies that any fruit or vegetable juice may be present (e.g., the product label bears the name or a variation of the name or any pictorial representation of any fruit or vegetable, or the product contains color and flavor which give the beverage the appearance and taste of containing a fruit or vegetable juice) the statement "Containing (or contains) no _____ juice", or "no _____ juice", or "does not contain _____ juice", the blank to be filled in with the name of the fruit(s) or vegetable(s) represented, suggested, or implied, in the manner set forth in § 102.1(c). If a nonspecific fruit or vegetable juice content is represented, suggested, or implied, the blank shall be filled in with the word "fruit" or "vegetable" as applicable.

Effective date. Labeling may be changed to comply with this regulation beginning on August 2, 1973. All labeling ordered after December 31, 1973, and all labeling used for products shipped in interstate commerce after December 31, 1974, shall comply with this regulation.

(Secs. 201, 403, 701(a), 52 Stat. 1040–1042, as amended, 1047–1048, as amended, 1055; 21 U.S.C. 321, 343, 371(a))

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15688 Filed 8-1-73;8:45 am]

PART 102—COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOODS

Frozen "Heat and Serve" Dinners

In the FEDERAL REGISTER of March 14, 1973 (38 FR 6974), the Commissioner of Food and Drugs proposed to establish a common or usual name for frozen "heat and serve" dinners.

Seven comments were received in response to this proposal, three from manufacturers, two from trade associations, one from a consumer group and one from a dietetic association. The consumer organization agreed with the proposed regulation in its entirety. The other comments opposed it or suggested modification. The comments received and the Commissioner's conclusions are as follows:

1. It was asserted in all of the responses submitted by food producers that the Federal Food, Drug, and Cosmetic Act does not authorize the Food and Drug Administration to establish common or usual names. The Commissioner has concluded that authority is provided by sections 201(n), 403, and 701(a) of the Federal Food, Drug, and Cosmetic Act to establish common or usual names for foods. This matter is discussed in the preamble to the final order promulgating a procedure for the establishment of a common or usual name published in the FEDERAL REGISTER on March 14, 1973 (38 FR 6964). As the Supreme Court recently stated in upholding rule making authority of the Food and Drug Administration under section 701(a) of the act, "A decision that FDA lacks authority to determine in its own proceedings the coverage of the Act it administers, subject of course to judicial review, would seriously impair FDA's ability to discharge the responsibilities placed on it by Congress. CIBA Corp. v. Weinberger, No. 72–394 (decided June 18, 1973).

2. One respondent contended that the term "dinner" is not sufficiently defined and is so vague as to violate the due process clause of the United States Constitution. The Commissioner concludes that the meaning of the term "dinner," as applied to frozen "heat and serve" dinners, is understood both by manufac-

turers and by consumers, and that it is not unconstitutionally vague.

3. Two comments stated that since the United States Department of Agriculture has jurisdiction over meat and poultry there is no need for additional regulations by the Food and Drug Administration.

The Food and Drug Administration and the United States Department of Agriculture have cooperated in the development of this regulation. It would be inappropriate to have different labeling requirements for frozen dinners depending upon whether, for example, they contain meat or fish as a principal component. The Commissioner concludes that uniformity of labeling to prevent consumer confusion is in the public interest.

4. One comment suggested that compositional standards for an entire class of products should be the subject of a standard of identity under section 401 of the act. The Commissioner has concluded that standards of identity are appropriate and useful, and will continue to be promulgated where there is a need to prescribe the entire compositional requirements for a food, in addition to the name of the food. However, in this case there is a need simply to establish a uniform and informative name for the frozen dinner type of food product and consequently a standard of identity is neither necessary nor appropriate.

5. One comment objected to the fact that the proposal does not guarantee a nutritionally balanced meal. The purpose of the proposal was to establish a uniform and informative name for frozen dinner products, not to establish nutritional requirements. A regulation establishing a nutritional quality guideline for frozen dinners, § 100.5 (21 CFR 100.5), was published in the FEDERAL REGISTER of March 14, 1973 (38 FR 6972).

6. Two comments objected to what one manufacturer termed the "compositional approach" of paragraph (a) of the proposed regulation. It was stated that the proposal requires certain foods to be included in the dinner, thereby limiting selection and precluding certain products, such as ethnic dinners or vegetarian dinners.

There appears to have been some misinterpretation of the requirements of this regulation. The regulation would allow the term "frozen heat and serve dinner" to be used for any product meeting the minimal identifying criteria set forth in § 102.11(a)(1). Essentially, the effect of this regulation is to provide that a product may not be called a "frozen heat and serve dinner" unless it contains at least three traditional dinner components. The nutritional quality guideline in § 100.5 prescribes minimum nutritional requirements which must be met for a frozen dinner to be allowed to bear the statement: "This product provides nutrients in amounts appropriate for this class of food as determined by the U.S. Government."

Certain traditional frozen heat and serve dinner products may not be able to bear the guideline statement because of nutritional insufficiencies. However, compliance with the guideline is not required to use the name "frozen heat and serve dinner."

The question was raised whether three vegetable dishes could constitute a dinner. The Commissioner has concluded that, while such a product might well be designated as a "vegetable platter," it is not commonly regarded as a "dinner." The regulation has therefore been revised to require that one of the components be a significant source of protein.

The question was also raised whether any of the three dishes could be combined with each other. The Commissioner concludes that such combinations are reasonably expected by consumers, e.g., a Chinese dinner combining rice, chicken, and vegetables. The regulation has therefore been revised to refer to "components" rather than "separate" and different dishes (recipes)."

7. It was suggested by one manufacturer that the proposed regulation has the indirect effect of making producers comply with the nutritional quality guidelines. As previously stated, this is not the case. The manufacturer may prepare a dinner of any combination of three dishes as prescribed in § 102.11(a)(1) and sell it as a "frozen heat and serve dinner." As long as no guideline claim is made, the dinner may be sold without meeting the nutritional guideline requirements.

8. It was suggested in one comment that the regulation should distinguish between frozen products considered "dinners" and those described as "entrees" or "breakfasts." The Commissioner concludes that the present regulation provides a reasonable and appropriate description of "frozen heat and serve dinner," sufficient to distinguish the product from "breakfasts" or products containing only part of a dinner. The proper name of an "entree" or a "breakfast" is beyond the scope of the proposal.

9. An objection was raised by one respondent that fruit was excluded from the foods listed in § 102.11(a)(1). The Commissioner concludes that because of the established practice and consumer acceptance of the use of apples and other fruit as components of frozen dinners, the list of foods prescribed in § 102.11(a)(1) should be expanded to include fruit, and it is so amended.

10. One manufacturer argued that the words "frozen" in § 102.11(b)(1) and "containing" in § 102.11(b)(2) should be made optional. The Commissioner has concluded that the regulation should be amended to allow optional use of the word "frozen" in the common or usual name, provided that the words "Keep Frozen" or the equivalent are placed prominently and conspicuously on the principal display panel in type size not less than that specified in § 102.1(b)(2)(i) (21 CFR 102.1). The Commissioner has also determined that the word "containing" (or "contains") should be made optional. The regulation has been so revised.

11. The United States Department of Agriculture and other respondents requested that the proposal allow use of a term indicating the primary or principal component of the dinner in the common or usual name, as "Beef Dinner" or "Cheese Enchilada Dinner." The Commissioner has concluded that such designations or other appropriately descriptive terms should be permitted and has amended § 102.11(b)(1) to so provide.

12. Two manufacturers suggested that the proposal be modified to allow use of a vignette to substitute for the list of the contents of the dinner as required by § 102.11(b)(2). The Commissioner is of the opinion that a vignette which depicts the contents of the dinner would not be sufficient clearly to inform the consumer of the contents. To be fully informative, the Commissioner concludes that a listing of the components of the dinner must be included in the common or usual name.

13. One manufacturer commented that all components of the dinner should be listed in order of descending predominance, instead of the proposed requirement that the components listed in § 102.11(a)(1) be listed in order of descending predominance, followed by a listing, also in order of descending predominance, of any servings specified in § 102.11(a)(2). The Commissioner concludes that the proposed requirement is preferable, since it highlights the principal dinner components expected to be present by placing them first. A complete listing of all ingredients in descending order of predominance by weight will also be present on the label, as required by section 403(i)(2) of the act and § 1.10(h) (21 CFR 1.10).

14. The United States Department of Agriculture and other respondents expressed opposition to paragraph (b)(3) of the proposal, requiring a statement that other foods must be consumed to obtain a complete meal when the package contains less than two of the servings set forth in § 102.11(a)(2). After considering these objections, the Commissioner has concluded that such a requirement relates more to nutritional quality than to a statement of the identity of the dinner, and that the intent and purpose of that part of the proposal is adequately satisfied by requiring the prominent listing of the major components of the product. Consumers will be able readily to compare the components of one dinner with those in another. The Commissioner has therefore deleted this provision from the proposal. However, since one reason for the use of common or usual names is to prevent consumer deception, the Commissioner is amending § 102.11(b)(3) to provide that if the labeling implies that the package contains any servings of food which are not included in the pacakage, e.g., a "serving suggestion" vignette depicting foods not present in the package, the principal display panel must bear a prominent statement that such servings are not present, in type size not less than that specified in § 102.1(b)(2)(i).

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047–1048, as amended, 1055; 21 U.S.C. 321(n), 343, 371(a)) and

under authority delegated to the Commissioner (21 CFR 2.120), Part 102 of Title 21 of the Code of Federal Regulations is amended by adding thereto the following new section:

§ 102.11 Frozen "heat and serve" dinner.

(a) A frozen "heat and serve" dinner:

(1) Shall contain at least three components, one of which shall be a significant source of protein and each of which shall consist of one or more of the following: meat, poultry, fish, cheese, eggs, vegetables, fruit, potatoes, rice, or other cereal based products (other than bread or rolls).

(2) May also contain other servings of food (e.g., soup, bread or rolls, beverage, dessert).

(b) The common or usual name of the food consists of all of the following:

(1) The phrase "frozen 'heat and serve' dinner," except that the name of the predominant characterizing ingredient or other appropriately descriptive term may immediately precede the word "dinner" (e.g., "frozen chicken dinner" or "frozen heat and serve beef dinner"). The words "heat and serve" are optional. The word "frozen" is also optional, provided that the words "Keep Frozen" or the equivalent are prominently and conspicuously placed on the principal display panel in type size not less than that specified in § 102.1(b)(2)(i).

(2) The phrase "containing (or contains) ————" the blank to be filled in with an accurate description of each of the three or more dish components listed in paragraph (a)(1) of this section in their order of descending predominance by weight (e.g., ham, mashed potatoes, and peas), followed by any of the other servings specified in paragraph (a)(2) of this section contained in the package (e.g., onion soup, enriched white bread, and artificially flavored vanilla pudding) in their order of descending predominance by weight. This part of the name shall be placed immediately following or directly below the part specified in paragraph (b)(1) of this section in the manner set forth in § 102.1(c)(3). The words "contains" or "containing" are optional.

(3) If the labeling implies that the package contains other foods and these foods are not present in the package, e.g., if a vignette on the package depicts a "serving suggestion" which includes any foods not present in the package, the principal display panel shall bear a statement that such foods are not present, in type size not less than that specified in § 102.1(b)(2)(i).

Effective date. Labeling may be changed to comply with this regulation beginning on August 2, 1973. All labeling ordered after December 31, 1973 and all labeling used on products shipped in interstate commerce after December 31, 1974, shall comply with this regulation.

(Secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047–1048 as amended, 1055; 21 U.S.C. 321(n), 343, 371(a))

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15687 Filed 8-1-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 1]

LABELING OF CHEMICAL PRESERVATIVES IN FOOD

Notice of Proposed Rule Making

Section 403(i) of the Federal Food, Drug, and Cosmetic Act requires the common or usual name of each ingredient used in a fabricated food to be listed on the label, and section 403(k) of the act requires that any food containing a chemical preservative bear labeling stating that fact. The Food and Drug Administration has consistently interpreted these requirements to mean that a preservative ingredient contained in a food must be designated in the statement of ingredients by both the common or usual name of the ingredient and a separate designation of that ingredient as a preservative (e.g., "BHA (a preservative)" or "calcium proprionate (to retard spoilage)").

At one time, the United States Department of Agriculture permitted the label designation of preservatives in meat and poultry products by the use of such general designations as "oxygen interceptor" and "freshness preserver," without the specific name of the ingredient. The USDA regulations have now been changed, and require that the label designation of preservatives in meat and poultry products identify the substance by both its common name and its purpose (9 CFR 317.2(f)(1), (j)(10), (12) published in the FEDERAL REGISTER on October 3, 1970 (35 FR 15551, 15581, 15583)).

The Food and Drug Administration is therefore aware of no exception to the rule that every preservative in food must be labeled both by its common or usual name and its function. Because some food labels presently do not comply with these requirements, and because new food labels are now being prepared for compliance with food labeling regulations published in the FEDERAL REGISTERS of January 19 and March 14, 1973, and elsewhere in this issue of the FEDERAL REGISTER, the Commissioner of Food and Drugs has concluded that it is appropriate to propose a specific regulation covering this matter.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 403, 701(a), 52 Stat. 1047–1048, 1055; 21 U.S.C. 343, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that Part 1 be amended in § 1.12 by adding thereto a new paragraph (j) to read as follows:

§ 1.12 Food; labeling; spices, flavorings, colorings and chemical preservatives.

* * * * *

(j) A food to which a chemical preservative(s) is added shall, except when exempt pursuant to § 1.10a, bear a label declaration stating both the common or usual name of the ingredient(s) and a separate description of its function, e.g., "preservative," "to retard spoilage," "a mold inhibitor," "to help protect flavor," or "to promote color retention."

Interested persons may, on or before, September 4, 1973, file with the Hearing Clerk, Food and Drug Administration, Rm. 6–88, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food, and Drugs.

[FR Doc.73–15692 Filed 8–1–73;8:45 am]

[21 CFR Part 1]

FOOD; NUTRITION LABELING

Proposed U.S. Recommended Daily Allowances for Infants

In paragraph 38 of the preamble to the order on nutrition labeling (21 CFR 1.17) published in the FEDERAL REGISTER of March 14, 1973 (38 FR 6951), the Commissioner of Food and Drugs concluded that the U.S. Recommended Daily Allowances (U.S. RDA) for infants and children under four years of age were reasonable interim standards for use in labeling food represented for use by infants. He recognized that the U.S. RDA for infants and children under four years of age were not wholly adequate for the labeling of foods marketed solely for infants under 12 months of age, however, and invited interested persons to consider appropriate new U.S. RDA's for this age level for incorporation into § 1.17 and Part 125.

The Commissioner received comments on this matter in relation to the tentative order for §§ 125.1 and 125.3, published in the FEDERAL REGISTER of January 19, 1973 (38 FR 2143). The American Academy of Pediatrics provided considerable information supporting their view that such a separate U.S. RDA should be established at this time. A review of the comments and information provided is presented in the preamble to the order on Part 125. On the basis of these comments and information the Commissioner has concluded that it is reasonable to establish a separate U.S. RDA for infants under 12 months of age. Elsewhere in this issue of the FEDERAL REGISTER the final order promulgating §§ 125.1 and 125.3 is published, establishing a separate U.S. RDA for infants.

Accordingly, as anticipated in paragraph 38 of the preamble to the order promulgating § 1.17, the Commissioner is revising § 1.17(h)(1) to utilize the U.S. RDA for infants established in § 125.1(b) for the nutrition labeling of foods marketed solely for infants, except for those formula products expressly covered by § 125.5.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 403, 701(a), 52 Stat. 1040–1042 as amended, 1047, 1055; 21 U.S.C. 321, 343, 371(a)) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes to amend § 1.17 (h)(1) to read as follows:

§ 1.17 Food; nutrition labeling.

* * * * *

(h) * * *

(1) Except where expressly covered by § 125.5 of this chapter, infant, baby, and junior-type food marketed and promoted primarily for infants shall include nutrition information on the label and in labeling in compliance with this section except that the U.S. RDA levels for infants contained in § 125.1(b) of this chapter shall be used in lieu of the U.S. RDA contained in paragraph (c)(7)(iv) of this section. For the purposes of labeling these foods with a percent of the U.S. RDA for protein, a value of 20 grams of protein shall be the U.S. RDA value for protein with a protein efficiency ratio (PER) equal to or greater than casein, and 28 grams if the PER of the protein is less than the PER of casein but greater than 20 percent of casein.

* * * * *

Interested persons may, on or before September 4, 1973, file with the Hearing Clerk, Food and Drug Administration, Rm. 6–88, 5600 Fishers Lane, Rockville, MD, 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73–15961 Filed 8–1–73;8:45 am]

[21 CFR Part 20]

PROPOSED STANDARDS OF IDENTITY FOR MELLORINE AND PAREVINE

Extension of Time for Filing Comments

In the matter of establishing identity standards for mellorine, a vegetable fat frozen dessert made in semblance of ice cream, and for parevine, a food resembling ice cream but containing no milk, meat, or ingredients derived from milk or meat:

A notice of proposed rule making in the above-identified matter published in the FEDERAL REGISTER of January 19, 1973 (38 FR 2150), provided for the filing of comments within 60 days following its publication date.

Eight comments were received on the proposal. Some comments were of the opinion that the 6 percent minimum fat level proposed for mellorine should be raised. These comments believed that the minimum fat requirements should parallel those for ice cream, but with substitution of other fats for the milk fat of ice cream.

Other comments stated that mellorine sold best in those states where compositional requirements resulted in a product more closely resembling ice milk, and

requested that the 6 percent minimum fat requirement of the proposal be lowered still further to permit continued marketing of a lower fat content mellorine.

Available information indicates that the compositional range for the vegetable fat frozen desserts now available in various states is too wide to be encompassed by a single identity standard, and that separate identity standards, parallel to those that now exist for ice cream and ice milk, may be required. Some states have established regulations to provide for the marketing of a mellorine-like product having a lower fat and total solids content. Another alternative would be to establish only one standard, and require declaration of the fat content as a part of the name of food so that consumers could choose between high and low fat mellorine.

The Commissioner of Food and Drugs concludes that this issue is of such importance that further comments on the alternative ways of handling matter (including proposed names for an ice milk counterpart) should be invited. Therefore, the period for filing comments is reopened until September 4, 1973. This extension will not affect the common effective date proposed in the FEDERAL REGISTER of January 19, 1973 (38 FR 2163) for compliance with various new labeling requirements for packaged food.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (Secs. 401, 701, 52 Stat. 1046, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15693 Filed 8-1-73;8:45 am]

[21 CFR Part 102]

RESTRUCTURED FOODS

Proposal To Establish Common or Usual Names

A number of convenience foods recently introduced on the market have the appearance of the traditional foods whose names they often carry, but are manufactured by new processes. One such group of foods is made by chopping, grating, or otherwise reducing a food substance into small units which are then formed or extruded into a uniform shape. In many cases, the restructured food resembles a product which traditionally has been made from either the whole product or a slice or segment of the product and not comminuted. For example, onion rings traditionally made from ringed slices of onions are now often composed of fresh chopped onions extruded into a ring. Dehydrated potatoes are now formed into the shape of potato chips traditionally made from potato slices. Fried clams traditionally made by breading a whole clam are now sometimes made from chopped clam pieces in semblance of whole fried clams. Fish sticks are often made not from segments of fish fillets, but from minced fish pieces formed into the shape of sticks.

Unless the labeling of foods constructed in this manner clearly specifies that the product is made from chopped food or small units of a food, the consumer may be led to believe that the product is made in the traditional manner. The Commissioner of Food and Drugs has concluded that any confusion and deception resulting from such new products can be prevented by adoption of informative common or usual names pursuant to 21 CFR Part 102. He proposes that such names include a qualifying statement describing the composition of the product in words which are not less than half the type size of the rest of the product name, in order to make this portion of the name sufficiently prominent and conspicuous.

The Commissioner believes that in establishing common or usual names for these products only one term should be used for the comminuted form in the name to avoid further consumer confusion resulting from the use of more than one term for the same comminuted form in the names of products on the market. For example, it is proposed that the term "minced" be designated as the comminuted form from which fried clams, nonstandardized breaded shrimp, fish sticks, and portions are made and that "diced" be used as the name for the comminuted form used in the ringed onion product.

The standard of identity for Frozen Raw Breaded Shrimp (21 CFR 36.30) does not provide for "minced" shrimp to be used in composite units of shrimp. Therefore, in addition to proposing a common or usual name for nonstandardized breaded shrimp products, a proposal to amend the standard to provide for minced shrimp will be published at a future date to avoid any inconsistency between the proposed common or usual name and the names prescribed by the standard.

The Commissioner proposes that a common or usual name be established for comminuted forms of the following products: onion rings, fish sticks or portions, fried clams, breaded shrimp and potato chips.

ONION RINGS MADE FROM DICED ONIONS

Traditionally, the food product known as "onion rings" has been made from ringed slices of onion. Some processors are now producing a product which is composed of fresh chopped onions which are breaded and extruded into a ring. The Food and Drug Administration is informed that the comminuted products contain as much, if not more, onion than the product composed of sliced whole onions.

The Commissioner proposes that onion products which are made from diced fresh or dehydrated onions which are breaded and shaped into a ring may be labeled as "Onion Rings" provided that this designation is immediately followed by a qualifying statement indicating the composition of the product. The words "Made from Diced Fresh (or Dehydrated) Onions" must be in type size no less than half that of the words "Onion Rings."

A proposal to establish a common or usual name for onion rings has been submitted to the Commissioner by Mrs. Paul's Kitchens, Inc., 5830 Henry Ave., Philadelphia, PA 19128, a frozen food processing company. Petitioner proposes the following common or usual name for onion rings:

Section ------ *Onion rings.* The common or usual name for a food product prepared from fresh onion bulbs, sliced and separated into rings coated with batter or breading and fried in a suitable fat or oil bath.

In its statement of grounds, petitioner maintains that products made with diced fresh onions should not be labeled or sold as onion rings, whether or not there is a qualifying statement. It is stated that the United States Department of Agriculture and other technical and cookbook references define onion rings as fresh onion bulbs, sliced and separated into rings, coated with batter and breading and fried in a fat or oil bath, and that this is also the understanding of the consumer.

Petitioner contends that the statement that the product is made from fresh chopped onions is inconsistent with the term "onion rings" and that this leads to consumer deception, which is not rectified by a statement that the product is made from fresh chopped onions.

Petitioner states that until 1972, it was Food and Drug Administration policy to consider a product mislabeled if it was made from fresh chopped onions and labeled "onion rings," whether or not there was a qualifying statement accompanying the term. It is argued that the change in policy made by the Food and Drug Administration in November 1972, allowing comminuted onions formed into rings to be labeled "onion rings" provided that these words were followed by the statement "Made from Diced Fresh Onions" in the same type size, color and prominence, was contrary to the requirements of the Administrative Procedure Act and is a nullity. As grounds for this conclusion, petitioner states that this policy change had a substantive, not merely procedural, effect on an entire industry, thus requiring consultation with or opportunity for comment by the onion ring industry, which was not afforded it when the change was made.

The full petition submitted by Mrs. Paul's Kitchens, Inc. is available at the Office of the Hearing Clerk, Food and Drug Administration, Rm. 6–88, 5600 Fishers Lane, Rockville, MD 20852.

FISH STICKS OR PORTIONS MADE FROM MINCED FISH

Traditionally, fish sticks or fish portions have been made from segments of fish fillets. These products are now sometimes made by forming minced fish into the desired shape. The Commissioner proposes to allow use of the terms "Fish Sticks" or "Fish Portions" for this type of product provided that these words are

immediately followed by the statement "Made From Minced Fish." These qualifying words must be in type size no less than half that of the words "Fish Sticks" or "Fish Portions."

On December 21, 1972, a notice was published in the FEDERAL REGISTER (37 FR 28189) by the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, proposing label designations for fish sticks and fish portions made from mechanically separated fish flesh. The Food and Drug Administration submitted a comment on the proposal, stating that the qualifying statement should be in the same type size as the words "Fish Sticks" or "Fish Portions." This view was reiterated in a letter to NOAA commenting on a draft of the final order, and as a result of this suggestion the final order, published in the FEDERAL REGISTER on May 11, 1973 (38 FR 12334), requires the same type size for all words in the name. This policy has been reconsidered and the Commissioner is now proposing that the qualifying statement should be in type size not less than half that of the words "Fish Sticks" or "Fish Portions." Except for the inconsistency in type size requirements, the regulation now proposed by the Commissioner conforms with the NOAA regulation.

FRIED CLAMS MADE FROM MINCED CLAMS

The traditional fried clam has been made by breading a whole clam and frying it. This food product is now sometimes made by combining chopped clam pieces, breading, forming into a clam shape and frying. The Commissioner proposes to allow this new product to be labeled "Fried Clams," provided that this term is followed by the words "Made From Minced Clams" in type that is no less than half the size of the words "Fried Clams."

NONSTANDARDIZED BREADED COMPOSITE SHRIMP UNITS

Section 36.30(c)(6) (21 CFR 36.30) prescribes a standard of identity for frozen raw breaded shrimp which consists of two or more whole shrimp or pieces of shrimp formed into composite units. This standard does not provide for "minced" shrimp nor does it cover any type of shrimp other than frozen raw shrimp. The Commissioner now proposes to designate a common or usual name for comminuted breaded shrimp units not included under § 36.30(e)(6), and to provide that the name to be used must be one prescribed under § 36.30(e)(6), either "Breaded Shrimp Sticks," "Breaded Shrimp Cutlets," depending upon the shape of the product, or if prepared in a shape other than that of sticks or cutlets, "Breaded Shrimp _____", the blank to be filled by a word or phrase that accurately describes the shape, but which is not misleading. The words "Made From Minced Shrimp" must follow in type size not less than half that of the words chosen to name the product.

The common or usual names proposed are intended to cover shrimp products that are not frozen raw. In order to avoid any inconsistency between this proposed common or usual name and the names prescribed by the standard, a proposal to amend the standard to include minced shrimp will be published at a future date.

POTATO CHIPS MADE FROM DEHYDRATED POTATOES

Traditionally, the name "potato chips" has been applied to thin slices of potato fried in deep fat. In recent years products have been introduced into the market which are made not from potato slices but from dehydrated potatoes, combined with small amounts of other ingredients and formed into the traditional potato chip shape.

Since 1969, the Food and Drug Administration has allowed use of the term "potato chips" for products made from dehydrated potatoes, as long as the term is accompanied by a prominent declaration that it is made from dehydrated potatoes. The Commissioner proposes to establish a common or usual name for potato chips made from dehydrated potatoes formed into the shape of traditional potato chips. The words "Made From Dehydrated Potatoes" must follow the term "Potato Chips" and must be in type size not less than half the size of the largest type used in the words "Potato Chips."

Three petitions have been submitted to the Commissioner proposing to establish a common or usual name for potato chips. The following proposal has been received by the Commissioner from General Mills, Inc., 9200 Wayzata Blvd., Minneapolis, MN 55440.

Section 102. _____. The common or usual name of "potato chips" shall include the type of potatoes from which the chips are made. In the case of potato chips made from raw potatoes the statement shall be "Made from Raw Potatoes." In the case of potato chips made from dried or dehydrated potatoes the statement shall be "Made from Dried Potatoes." The statement shall follow the words "Potato Chips" and shall be in type not less than 25 percent the size of the largest type used in the words "Potato Chips."

As grounds for its proposal, petitioner cites both a July 1969 Food and Drug Administration compliance policy guideline and a court ruling that "potato chips" accompanied by a qualifying statement indicating the type of potatoes used is an appropriate name, Potato Chip Institute v. General Mills, Inc., 333 F. Supp. 173 (D. Neb. 1971), aff'd 461 F.2d 1088 (8th Cir. 1972). Petitioner also argues that consumer acceptance of the new product is indicated by the estimate that has been made that in markets where both types of potato chips are sold, the product made from dehydrated potatoes has as much as 25 percent of the market. It is in the interest of the consumer, petitioner maintains, that both subclasses of potato chips are identified.

A petition to establish separate common or usual names for potato chips and for potato snacks has also been submitted by the Potato Chip Institute International (PCII), 940 Hanna Building, Cleveland, OH 44115:

Section _____. *Potato chips.* The common or usual name for a food consisting of thin slices of raw potato fried until crisp shall be potato chips.

Section _____. *Potato snacks.* The common or usual name for a food resembling potato chips, made from dried or dehydrated potatoes or dried or dehydrated potato granules, shall be potato _____, the blank to be filled in with a word or words such as "snacks" or "bites" but not with any word or words containing the word "chip" or "chips."

In support of its proposal that products made from dried potatoes or potato granules not be sold or labeled as potato chips, with or without a qualifying statement, petitioner argues that by dictionary definition and common consumer understanding, potato chips are thin slices of raw potatoes, fried until crisp. Consequently, PCII maintains, it is deceptive and misleading to call products made from dried potatoes "potato chips." This deception, it is contended, cannot be rectified by the addition of a qualifying statement.

PCII argues that the Compliance Policy Guideline issued in July 1969 by the Food and Drug Administration, was a complete reversal of previous policy and that the decision to change the policy was made without consultation with or opportunity for comment by the potato chip industry. The petition alleges that since the action had a substantive and not merely procedural effect on an entire industry, the provisions of the Administrative Procedure Act were violated and the guideline is a nullity.

The Procter & Gamble Company, Cincinnati, OH, has also submitted to the Commissioner a proposal establishing a common or usual name for potato chips. The proposal states:

Section 102. _____. The common or usual name for a product made from potatoes which are thinly-formed and deep-fat fried shall be "potato chips." The name shall be accompanied (a) in the case of potato chips made from raw potatoes, by a prominent declaration that the product is "made from raw potatoes"; and (b) in the case of potato chips made from dried or dehydrated potatoes, by a prominent declaration that the product is "made from dried potatoes." In either case, the declaration shall immediately follow the words "potato chips" on any principal display panel and shall be in type size not less than that required for the product's net content declaration pursuant to the Fair Packaging and Labeling Act.

Petitioner initially states that it does not concede the validity of 21 CFR Part 102 or the authority of the Commissioner to establish regulations under it. It is argued that Part 102 seems to authorize substantive regulations that are tantamount to standards of identity for food products, and that this is an impermissible attempt to extend the Commissioner's authority to set such standards beyond the authority accorded to him under section 401 of the act.

Procter & Gamble asserts that the establishment of a common or usual name is unnecessary since the Food and Drug Administration in its Compliance Policy Guideline and the court in the Potato

Chip Institute case, concluded that the name "potato chips" includes chips made from dried or dehydrated potatoes provided that a prominent declaration that the product is made from dried potatoes accompanies the name "potato chips."

In its statement of grounds supporting its proposed regulation, petitioner maintains that there is no qualitative difference between the two types of potato chips, since potato is the raw material for both, with one less processing step involved with raw potatoes. Procter & Gamble contends that if the product made from dried potatoes were called something other than "potato chips" it would mislead the consumer into thinking that this product was significantly different from the traditional product.

Petitioner cites research done by an independent firm which showed that the great majority of consumers voluntarily recognize as "potato chips" the product made from dried potatoes, even when put on notice of the processing difference. It was also noted in the petition that many other food products, standardized and nonstandardized, such as ice cream and corn flakes, use alternate physical forms of their basic ingredients without any prominent labeling declaration.

In support of its proposal that the qualifying statement should be no less than the size of the net content declaration for foods under the Fair Packaging and Labeling Act, Procter & Gamble argues that the declaration need only be large enough to be read at a distance of about three or four feet. There is no reason, petitioner argues, that compels the size of the qualifying statement to bear any specific relation to the size of the words "potato chips," and an excessively large declaration would be unnessary and would unduly emphasize the form of the ingredients used.

The full petitions submitted by General Mills, Inc., Potato Chip Institute International, and the Procter & Gamble Co. are available for inspection at the Office of the Hearing Clerk, Food and Drug Administration, Rm. 6-88, 5600 Fishers Lane, Rockville, MD 20852.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041, as amended, 1047-1048, as amended, 1055; 21 U.S.C. 321(n), 343, 371(a)) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes to amend Part 102 of Chapter I of Title 21 of the Code of Federal Regulations, by adding thereto the following new sections:

§ 102.13 Onion rings made from diced onion.

The common or usual name of a food product consisting of diced fresh or dehydrated onion products which are mixed with binders and formed, shaped or extruded into rings, shall be: "Onion Rings Made From Diced Onions," the blank to be filled in by the word "Fresh" when diced fresh onions are used or with the word "Dehydrated" when dehydrated onions are used. The words "Made From Diced Onions" shall appear on the label in type size that complies with § 102.1(b)(2)(i) and (ii). Such food product shall contain a quantity of onions not less than the quantity present in the similar product made from rings of sliced whole onion.

§ 102.14 Fish sticks or portions made from minced fish.

The common or usual name of a food product manufactured from fish blocks composed entirely of mechanically separated fish flesh combined with binders shaped in the form of fish sticks or portions and breaded shall be "Fish Made From Minced Fish" the blank to be filled in by the word "Sticks" or "Portions" as the case may be. The words "Made From Minced Fish" shall appear on the label in type size that complies with § 102.1(b)(2)(i) and (ii). Such food product shall contain a quantity of fish not less than the quantity present in the similar product made from cut whole fish.

§ 102.15 Fried clams made from minced clams.

The common or usual name of a food product consisting of breaded comminuted clams shall be "Fried Clams Made From Minced Clams." The words "Made From Minced Clams" shall appear on the label in type size that complies with § 102.1(b)(2)(i) and (ii). Such food product shall contain a quantity of clams not less than the quantity present in the similar product made from whole clams.

§ 102.16 Nonstandardized breaded composite shrimp units.

The common or usual name for breaded composite shrimp units that do not conform to the definition and standard of identity prescribed by § 36.30(c)(6) of this chapter by reason that the food is not marketed in the frozen, raw form shall be "_____ Made From Minced Shrimp," the blank to be filled with the words prescribed for the shape of the product by § 36.30(e)(6) of this chapter, either "Breaded Shrimp Sticks," "Breaded Shrimp Cutlets," depending upon the shape of the product, or if prepared in a shape other than that of sticks or cutlets, "Breaded Shrimp _____ Made From Minced Shrimp" the blank to be filled by a word or phrase that accurately describes the shape, but which is not misleading. The words "Made From Minced Shrimp" shall appear on the label in type size that compiles with § 102.1(b)(2)(i) and (ii). Such food product shall contain a quantity of shrimp not less than the quantity present in the similar frozen, raw breaded composite shrimp unit product made in accordance with provisions of the standard of identity.

§ 102.17 Potato chips made from dehydrated potatoes.

The common or usual name of a food product consisting of dehydrated potatoes combined with other ingredients formed into the shape of traditional potato chips shall be "Potato Chips Made From Dehydrated Potatoes." The words "Made From Dehydrated Potatoes" shall appear on the label in type size that complies with § 102.1(b)(2)(i) and (ii). Such food product shall contain a quantity of potatoes not less than the quantity present in the similar product made from sliced whole potatoes.

Interested persons may, on or before October 1, 1973, file with the Hearing Clerk, Food and Drug Administration, Rm. 6-88, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate), regarding the petitions and the Commissioner's proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc. 73-15695 Filed 8-1-73;8:45 am]

[21 CFR Part 102]

FILLED MILK PRODUCTS

Proposed Common or Usual Name

On November 9, 1972, the United States District Court for the Southern District of Illinois handed down a decision in *Milnot Co.* v. *Richardson*, 350 F. Supp. 221 (S.D. Ill. 1972), holding the Filled Milk Act unconstitutional. The Filled Milk Act of 1923 (42 Stat. 1486), 21 U.S.C. 61-64, prohibits the shipment of any filled milk in interstate commerce. A filled milk is defined as a combination of any milk, cream or skimmed milk (whether or not condensed, evaporated, concentrated, powdered, dried or desiccated) with any fat or oil other than milk-fat, so that the resulting product is in imitation or semblance of milk, cream, or skimmed milk.

The court in the *Milnot* case concluded that, since other substitute milk and dairy products may lawfully be shipped in interstate commerce, the prohibition against interstate shipment of filled milk products was an unconstitutional discrimination against these products. The White House Conference on Food, Nutrition and Health recommended in 1969 that the Filled Milk Act be repealed, and the Food and Drug Administration has concurred in that recommendation. Accordingly, it has been concluded that the decision in the *Milnot* case will not be appealed. On February 1, 1973, a protective notice of appeal filed in the case was withdrawn, and the appeal was dismissed.

This notice will serve to inform the public that, pursuant to the court decision in this case, the Filled Milk Act will no longer be enforced. Henceforth, filled milk products may lawfully be shipped in interstate commerce and will be regulated under the provisions of the Federal Food, Drug, and Cosmetic Act, just as any other foods.

In view of these developments, the Commissioner of Food and Drugs concludes that appropriate labeling for filled milk products should promptly be considered. The Food and Drug Adminis-

tration is now studying the possibility of establishing a standard of identity for these products. In the interim, the Commissioner has concluded that a regulation should be promulgated governing the common or usual name of these products.

During this interim the Commissioner invites interested persons to comment on the suitability and meaning to them of the word "filled" in the name of the food. Alternate words or phrases which are more meaningful and are not deceptive and misleading may be suggested.

Milk products are a major source of nutrients in the diet. Pursuant to § 1.8(e) of this chapter, published elsewhere in this issue of the FEDERAL REGISTER, any filled milk product which is not nutritionally equivalent to the product that it resembles and for which it is intended as a substitute shall be labeled as an "imitation". The proposed regulation set out below provides that if a product as defined in paragraph (a) is made nutritionally equivalent to a counterpart milk or cream product by meeting the nutrient specifications in paragraph (b), the common or usual name of the product will be "filled_____", the blank to be filled in with the name of the counterpart milk product (e.g., milk, cream, skimmed milk, and so forth).

The significant nutritional qualities of milk which should be preserved in a milkfat-replaced product are vitamin A, vitamin E, and polyunsaturated fatty acids of the linoleic acid series. An additional quality which should be provided is vitamin D because beverage milk products are recognized as the preferred food vehicle for this vitamin in the American diet. The terminology used for polyunsaturated fatty acids of the linoleic acid series in the recently published regulation on fat labeling, § 1.18 of this chapter (38 FR 6961) is *cis, cis*-methylene-interrupted polyunsatured fatty acids. Some vegetable fats or fat blends which may be used to replace milkfat in producing filled milk have a fatty acid pattern which is deficient in this fatty acid group. Providing for a level equivalent to 4 percent of the fat in the product will correct this deficiency.

Labeling requirements of § 1.17 of this chapter (38 FR 6951) apply to all filled milk products to which descrete nutrients are added or for which a claim or information with respect to nutritional properties (including the nature or content of the fat and fatty acids, in which case the requirements of § 1.18 also apply) is made.

Accordingly, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041, as amended, 1047–1048, as amended, 1055; 21 U.S.C. 321(n), 343, 371(a)), and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that a new § 102.18 be added to Part 102, as follows:

§ 102.18 Filled milk products.

(a) The common or usual name of the food made from milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, from which all or part of the fat has been removed and to which has been added, or which has been blended or compounded with, any fat or oil other than milkfat, shall be "filled_____", the blank being filled in with the name of the counterpart milk product as defined in Part 18 of this chapter.

(b) A product meeting the definition of paragraph (a) of this section but which is nutritionally inferior to the counterpart milk product shall be labeled as an imitation pursuant to § 1.8(e) of this chapter. For purposes of § 1.8(e) of this chapter, a filled milk product shall be considered nutritionally equivalent to its counterpart milk product if it meets all of the following requirements:

(1) It contains the minimum milk solids not fat required for the counterpart milk product as prescribed in Part 18 of this chapter.

(2) If it is filled milk, filled lowfat milk, filled skim milk, or the condensed, evaporated, concentrated, powdered, dried or desiccated form of these fluid products:

(i) Vitamin A shall be present in such quantity that each quart (or reconstituted quart, in the case of the condensed or dried products) of the food contains 2,000 International Units thereof.

(ii) Vitamin D shall be present in such quantity that each quart (or reconstituted quart, in the case of the condensed or dried products) of the food contains 400 International Units thereof.

(iii) *Cis,cis* - methylene - interrupted polyunsaturated fatty acids (as glycerides) shall be present at a level equivalent to 4 percent of the fat in the product.

(iv) Vitamin E shall be present at a level equivalent to 1 International Unit per gram of total polyunsaturated fatty acids (as glycerides) in the product.

(3) If it is filled half-and-half, filled light cream, filled light whipping cream, filled heavy cream, or the condensed, evaporated, concentrated, powdered, dried or desiccated form of these fluid products;

(i) Vitamin A shall be present at a level equivalent to 40 International Units per gram of fat.

(ii) *Cis,cis* - methylene - interrupted polyunsaturated fatty acids (as glycerides) shall be present at a level equivalent to 4 percent of the fat in the product.

(iii) Vitamin E shall be present at a level equivalent to 1 International Unit per gram of total polyunsaturated fatty acids (as glycerides) in the product.

(c) This section shall not apply to an infant formula that is labeled as such and that is represented for feeding infants and young children.

Interested persons may, on or before October 1, 1973, file with the Hearing Clerk, Food and Drug Administration, Rm. 6–88, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73–15694 Filed 8–1–73;8:45 am]

[21 CFR Part 125]

USE OF INTERNATIONAL UNITS FOR VITAMINS A AND D

Notice of Proposed Rule Making

Elsewhere in this issue of the FEDERAL REGISTER the Commissioner of Food and Drugs is promulgating final regulations for food for special dietary uses. Exceptions filed to the tentative order in that proceeding pointed out that § 125.5(c)(5) uses "U.S.P. Units" as the units of measurement for vitamins A and D, whereas the tentative order used "International Units" for these vitamins.

The Commissioner has concluded that International Units should be used as the standard units of measurement for vitamins A and D. Accordingly, it is proposed that § 125.5(c)(5) (21 CFR 125.5) be revised to refer to "International Units" rather than "U.S.P. Units" for vitamins A and D.

The Commissioner recognizes that this is a technical change and that there will be no need to require immediate label changes to reflect this revision. The Commissioner therefore proposes that, when adopted, this revision may be reflected in labeling when other labeling changes are made, in order to prevent any unnecessary costs to consumers.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 403, 701, 52 Stat. 1047–1048, 1055; 21 U.S.C. 343, 371) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes to amend Part 125 in § 125.5(c)(5) to insert "International Units" in lieu of "U.S.P. Units" as the units of measurement for vitamins A and D.

Interested persons may, on or before September 1, 1974, file with the Hearing Clerk, Food and Drug Administration, Rm. 6–88, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: July 25, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73–15696 Filed 8–1–73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 5897]

FOLIC ACID PREPARATIONS, ORAL AND PARENTERAL FOR THERAPEUTIC USE

Drugs for Human Use; Drug Efficacy Study Implementation; Amendment

In the FEDERAL REGISTER of April 9, 1971 (36 FR 6843), the Commissioner of Food and Drugs published conclusions concerning the effectiveness of folic acid for therapeutic use pursuant to reports received from the National Academy of Sciences-National Research Council.

It was concluded that there is no evidence that doses of folic acid greater than 1 mg. daily have greater efficacy than do those of 1 mg., and that the usual therapeutic dose, oral or parenteral, should be 0.25 mg. to 1.0 mg. daily, and the maintenance dose should ordinarily be 0.1 to 0.25 mg. daily. The notice allowed 180 days for manufacturers and distributors to reformulate products of higher strength than 1.0 mg.

That notice also stated, in accord with regulations then in effect (21 CFR 3.42), that oral preparations supplying more than 0.1 mg. folic acid per dosage unit would be restricted to prescription dispensing and that a dietary supplement furnishing 0.1 mg. could be prescribed when a maintenance level of 0.1 mg. per day was indicated.

Elsewhere in this issue of the FEDERAL REGISTER the Commissioner of Food and Drugs has published orders revising regulations for foods for special dietary use and promulgating a standard of identity for dietary supplements and an order revoking § 3.42 and amending the food additive regulations as they apply to folic acid. The effect of these orders is to increase the amount of folic acid which may be added to a food or used in a dietary supplement above the level previously allowed. The maximum daily amount of folic acid now permitted for such use is 0.1 mg. for infants, 0.3 mg. for children under 4 years of age, 0.4 mg. for adults and children 4 or more years of age, and 0.8 mg. for pregnant or lactating women.

Pending review of the status of folic acid by the OTC vitamin-mineral drug panel pursuant to procedures established in § 130.301, the Food and Drug Administration will continue on an interim basis its previous policy of regarding any preparation containing folic acid in excess of the permitted food additive level as a prescription drug.

Therefore, the Commissioner finds it appropriate to amend certain parts of the previous DESI notice for folic acid and republish it as follows:

The Food and Drug Administration has evaluated reports of the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, as well as other available evidence, and concludes that folic acid administered orally or parenterally:

1. Is effective for the treatment of megaloblastic anemias of tropical and nontropical sprue, nutritional origin, pregnancy, infancy, and childhood.

2. Lacks substantial evidence of effectiveness in "macrocytic anemias associated with pellagra and similar deficiency states" and such vague, unspecific conditions as "macrocytic anemia of gastrointestinal origin" and "megaloblastic anemias other than pernicious anemia."

The Food and Drug Administration also concludes that there is no evidence that doses of folic acid greater than 1 mg. daily have greater efficacy than do those of 1 mg. The maintenance level of folic acid permitted in food and dietary supplements is up to 0.1 mg. for infants, 0.3 mg. for children under four years of age, 0.4 mg. for adults and children four or more years of age, and 0.8 mg. for pregnant or lactating women. The usual therapeutic dose, oral or parenteral, is up to 1.0 mg. daily.

Dietary supplement preparations are available without a prescription (21 CFR 121.1134). Levels higher than dietary supplement amounts are available only with a prescription.

Parenteral drug products and those oral dosage form products which by reason of containing in excess of 0.8 mg. per dosage unit or per recommended daily dosage or because of a recommended use are limited to prescription dispensing, are regarded as new drugs (21 U.S.C. 321(p)). The Food and Drug Administration is prepared to approve abbreviated new-drug applications and abbreviated supplements to previously approved applications providing for these articles under the conditions described herein.

A. *Form of drug.* Folic acid preparations are in (1) tablet form suitable for oral administration and contain no more than 1.0 mg. folic acid per tablet or (2) solution form suitable for parenteral administration in the dosages recommended in the labeling guidelines below.

B. *Labeling conditions.* 1. The label bears the statement "Caution: Federal law prohibits dispensing without prescription."

2. The drug is labeled to comply with all requirements of the Act and regulations promulgated thereunder, and those parts of its labeling indicated below are substantially as follows: (Optional additional information applicable to the drug, may be proposed under other appropriate paragraph headings and should follow the information set forth below.)

FOLIC ACID

DESCRIPTION

(To be supplied by the manufacturer. This is to be confined to an appropriate description of the physical and chemical properties of the drug, and the formulation.)

ACTIONS

(To be supplied by the manufacturer. This is to be confined to an appropriate statement of the demonstrated pharmacologic/physiologic actions of the active ingredients of the drug in humans. When the mode of action has not been determined, this should be clearly indicated.)

INDICATIONS

Folic acid is effective in the treatment of megaloblastic anemias due to a deficiency of folic acid as may be seen in tropical or nontropical sprue, in anemias of nutritional origin, pregnancy, infancy, or childhood.

WARNINGS

Folic acid alone is improper therapy in the treatment of pernicious anemia and other megaloblastic anemias where vitamin B_{12} is deficient.

PRECAUTIONS

Folic acid especially in doses above 1.0 mg. daily may obscure pernicious anemia in that hematologic remission occur while neurological manifestations remain progressive.

ADVERSE REACTIONS

Allergic sensitization has been reported following both oral and parenteral administration of folic acid.

DOSAGE AND ADMINISTRATION

Oral administration. Folic acid is well absorbed and may be administered orally with satisfactory results except in severe instances of intestinal malabsorption.

Parenteral administration. Intramuscular, intravenous, and subcutaneous routes may be used if the disease is exceptionally severe, or if gastrointestinal absorption may be, or is known to be, impaired.

Usual therapeutic dosage—In adults and children (regardless of age) up to 1.0 mg. daily. Resistant cases may require larger doses.

Maintenance level. When clinical symptoms have subsided and the blood picture has become normal, a maintenance level should be used, i.e., 0.1 mg. for infants and up to 0.3 mg. for children under four years of age, 0.4 mg. for adults and children four or more years of age, and 0.8 mg. for pregnant and lactating women, per day, but never less than 0.1 mg. per day. Patients should be kept under close supervision and adjustment of the maintenance level made if relapse appears imminent.

In the presence of alcoholism, hemolytic anemia, anticonvulsant therapy, or chronic infection, the maintenance level may need to be increased.

Holders of new-drug applications and abbreviated new-drug applications approved for folic acid-containing preparations limited to prescription sale shall submit supplements by October 1, 1973 to provide for revised labeling in accord with that given in paragraph B.2, above.

Any identical, related, or similar product, not the subject of a new drug application, is covered by the new drug applications reviewed and is subject to this notice. See 21 CFR 130.40 (37 FR 23185, October 31, 1972). Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD-300), 5600 Fishers Lane, Rockville, MD 20852.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–53, as amended; 21 U.S.C. 352, 355) and the Administrative Procedure Act (5 U.S.C. 554) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 26, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73-15699 Filed 8-1-73;8:45 am]

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PART III

ENVIRONMENTAL PROTECTION AGENCY

■

AIR QUALITY STANDARDS

Approval and Promulgation of Implementation Plans

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

COLORADO; APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Notice of Proposed Rule Making

On May 31, 1972 (37 FR 19842), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved, with specific exceptions, State plans for implementation of the National Ambient Air Quality Standards. On that date, the Governor of Colorado was advised that in order to complete the requirements of §§ 51.11(b) and 51.14, a transportation and/or land use control strategy for the Metropolitan Denver Intrastate Air Quality Control Region (hereinafter, the Metropolitan Denver Region) was to be submitted to the Administrator by February 15, 1973.

On January 31, 1973, the U.S. Court of Appeals for the District of Columbia Circuit (Natural Resources Defense Council, Inc., et al. v. Environmental Protection Agency (civil action No. 72-1522) found that the Administrator did not conform to the strict requirements of the Clean Air Act of 1970 in permitting several States to delay submission of transportation control portions of their implementation plans until February 15, 1973, and in granting extensions until mid-1977 for attainment of the national primary ambient air quality standards without following the procedures established in section 110, 42 U.S.C. 1857c-5 (e). Accordingly, the court ordered that the Administrator rescind the extension granted the States for implementation of the transportation and/or land use control portion of their implementation plans. The affected States, including Colorado, were required to submit a control plan by April 15, 1973. The plan was to show attainment of the National Ambient Air Quality Standards for photochemical oxidants (hydrocarbons) and carbon monoxide as expeditiously as practicable but no later than May 31, 1975.

This proposal is a result of certain deficiencies which have been noted by the Administrator in his preliminary review of the Colorado Transportation Control Plan. Following the expiration of the 21-day comment period on the supplemental information submitted by the Governor of Colorado on July 16, 1973, the Administrator will announce a decision on the approvability of the Colorado Plan prior to the public hearings scheduled on September 10, 1973. Additional proposals by EPA may be submitted to the public in the FEDERAL REGISTER or portions of this proposal deleted if appropriate.

POLLUTION IN THE METROPOLITAN DENVER REGION

The Metropolitan Denver Region lies within the South Platte River drainage basin. Pollution problems associated with motor vehicle generated carbon monoxide and photochemical oxidants (hydrocarbons) occur during periods of stable atmospheric conditions with light winds. The South Platte River flows from southwest to northeast through the center of Denver, with land elevation generally decreasing toward the northeast. The mountains rise to about 8,000 ft. above sea level to the west and 6,000 to 7,000 ft. to the southwest. This topographic pattern results in downslope or drainage winds from the south through the southwest during the night and into the morning hours. As daytime heating takes effect, upslope or toward-the-mountains wind flow occurs, and maybe over a considerably wider range from north-northeast to south-southeast. This local wind regime is strongest when the general weather situation is quiet and under the influence of a weak pressure gradient.

The Primary National Ambient Air Quality Standard for photochemical oxidants is 160 $\mu g/m^3$ (0.08 part per million (ppm) average) maximum 1-hour concentration, not to be exceeded more than once per year. The standard, promulgated on April 30, 1971 (36 FR 8186), is intended to avoid adverse effects on human visual and respiratory systems that have been observed on days when estimated hourly average concentration of photochemical oxidants reach 0.10 ppm. A level of 0.08 ppm was therefore judged necessary by the Administrator to protect public health with an adequate margin of safety, as required by the Act.

The second highest recorded 1-hour average concentration of oxidants in the Metropolitan Denver Region was 0.18 ppm. This concentration was recorded in 1971 and using the relationship between hydrocarbons emissions and ambient photochemical oxidant concentration, as defined in Appendix J, 40 CFR 51, a 60 percent reduction in hydrocarbon emissions is required.

The Primary National Ambient Air Quality Standards for carbon monoxide are 35 ppm maximum 1-hour concentration and 9 ppm maximum 8-hour concentration, each not to be exceeded more than once per year. These standards are intended to prevent adverse effects caused by the absorption of carbon monoxide by blood hemoglobin.

The second highest 1-hour and 8-hour carbon monoxide concentrations were recorded in 1971 in the Metropolitan Denver Region. The concentrations are 51 ppm and 24.7 ppm respectively. Control measures adequate to ensure meeting the 8-hour carbon monoxide standard will also ensure meeting the 1-hour carbon monoxide standard. Utilizing a proportional rollback technique a 64 percent reduction in carbon monoxide emissions is required.

Colorado faces a unique situation. The high altitude provokes and intensifies the air pollution problem, particularly that associated with mobile sources. Because of Colorado's high altitude (an average elevation of 6,800 ft. above sea level) problems are compounded between pollutant levels, density of atmosphere, and effects on human health. Acquiring data which accurately reflects true emissions at Denver's altitude creates problems in selection of appropriate control strategies for the Metropolitan Denver Region.

SUMMARY OF CONTROL REQUIREMENTS

The best information available to the Administrator indicates that the anticipated decrease in motor vehicle emissions from the Federal Motor Vehicle Control Program (FMVCP) will be insufficient to permit meeting the National Standards by May 31, 1975. This information indicates further that the degree of control of hydrocarbon emissions necessary to meet the 1-hour photochemical oxidant standard is greater than the degree of control necessary to meet either the 1-hour or 8-hour carbon monoxide standards. Stationary sources of hydrocarbons contribute significantly to the photochemical oxidant problem in the Metropolitan Denver Region, and control of these sources will contribute to the necessary emissions reductions for hydrocarbons. The balance of reduction necessary will come from controls on mobile source emissions. The same amount of control necessary to meet the photochemical oxidants standards will ensure meeting the 8-hour standard for carbon monoxide.

The State of Colorado submitted to the Environmental Protection Agency on June 4, 1973 a plan for attainment of the standards and a request for an extension of 2 years. EPA is currently reviewing this plan. The strategies in the Colorado submittals appear to be approvable in concept. Colorado's strategies together with those proposed here should assure attainment of the standard. The Administrator, however, is withholding approval at this time pending the evaluation of supplemental information which has been received from the State of Colorado and the expiration of the public comment period.

Should the Administrator approve the Colorado plan, such approval would represent EPA sanction of a plan which is less specific as to individual strategies than would be acceptable from a sea level region. The altitude of the Denver area precludes the arbitrary selection of a retrofit device or a particular inspection/maintenance program. Data to justify such a selection does not exist. Accordingly, the Administrator is considering approval of the Colorado plan to develop those strategies for high altitude areas. A firm commitment from the State has been received to undertake this development effort and has now been mandated by Colorado Senate Bill 893 which is submitted to the Administrator as part of the supplemental information received on July 16, 1973. Because of the lack of data at high altitude, EPA development of these strategies would require essentially the levels of effort and amount of time required in the State plan. EPA is now cooperating in the effort to develop a suitable retrofit device for pre-1968 vehicles, high altitude modification and tuning specifications, and a high altitude inspection/maintenance program.

The commitment expressed by the Colorado legislature in Senate Bill 393 allocates resources to the Colorado pollu-

tion control program at a level which is reasonable and proper.

Prior to the submission of the supplemental information, this commitment did not exist nor was a commitment to implement compliance schedules included in the original submittal. Even though the combined State of Colorado plan and the proposed EPA plan have considered all reasonable strategies, the standards can not be met by 1975. Accordingly, an extension will be required for the Metropolitan Denver Region.

The transit improvements, bikeway development, and bus/carpool lanes proposed by the state will provide a nonautomotive increase in mobility for residents of the Metropolitan Denver Region. This increase will be absorbed by a shift away from the private automobile due to the vehicle restraints to be imposed by the State and the measures being proposed by EPA.

The supplemental information includes three additional strategies together with information which relates to the specific methods or techniques by which the strategies proposed by the State of Colorado will be implemented. The strategies which are being proposed here represent those additional strategies which are necessary to achieve and maintain the standards by May 31, 1977. Control plans will not be promulgated in final form until the opportunity for public participation, including public hearings, has taken place. The measures being proposed represent EPA's best judgment of the most reasonable methods currently available to meet air quality standards. However, they may be amended, others may be added, or entirely new measures may be chosen in their place if the comments received on this notice or EPA's own reexamination of the problem indicates that such action would be warranted.

The State of Colorado has in its plan a proposed regulation for the control of stationary hydrocarbon emissions. Only transportation and land use controls may be submitted in proposed form (40 CFR 51.22). EPA must, therefore, propose stationary hydrocarbon emission control regulations. If the State of Colorado adopts suitable regulations in the future, the EPA regulations can be withdrawn.

The stationary source hydrocarbon regulations proposed herein are for the stationary hydrocarbon emission. Only control of hydrocarbon emissions from a variety of sources. The regulations limit emissions in the areas of transportation manufacturing and processing. Regulations are also provided for control of gasoline sales and marketing operations.

The emissions of carbon monoxide affecting ambient concentration within the areas of concern come almost entirely from motor vehicle sources, so that reductions required beyond those provided by the FMVCP will need to be effected by transportation controls that reduce total motor vehicle emissions. The two general types of transportation controls available are those that reduce the average emission per mile of vehicle travel and those that reduce the number of vehicle miles traveled (VMT). The Colorado control plan together with the EPA proposal set forth here includes strategies selected from both these major categories.

Summary of the Transportation Control Plan

Of the strategies listed below, the first three were proposed in the original Colorado transportation control plan submitted on June 4, 1973. The second three were proposed in the submittal of supplemental information on July 16, 1973. The strategies are:

(1) Semi-annual inspection and maintenance program using the idle test mode to be fully implemented by December 1, 1975.

(2) Air bleed retrofit for pre-1968 vehicles to be fully implemented by July 1, 1976.

(3) High altitude modification and tuning specifications for 1968–1975 vehicles to be fully implemented by July 1, 1976.

The following strategies are to be implemented by December 1, 1974:

(4) Designation of mandatory bus/carpool lanes.

(5) Limitation on the construction of future parking facilities.

(6) Removal of on-street parking in the core area.

The State of Colorado has also included improvements in public transit and expanded bikeway development and use to reduce the number of vehicle miles traveled. EPA has determined that an additional measure to reduce VMT is necessary. Accordingly, EPA is proposing a limitation on gasoline sales at fiscal year 1973 levels to be effective on July 1, 1974, and a 31 percent reduction in VMT attained by the same method to be effective on May 31, 1977.

The 31 percent reduction is not mandated in the proposed regulations. The State is required by January 1, 1977 to evaluate the reductions in VMT achieved through other strategies prior to that date, and project the necessary VMT reduction to be achieved through gasoline sales limitation. The 31 percent represents EPA's best estimate of this required reduction based on current data.

The statement of a requirement for a 31 percent VMT reduction is somewhat misleading when viewed in the context of the gasoline sales limitations to be imposed earlier. The 31 percent is a reduction from projected 1977 levels rather than 1971 levels. The sales limitation on gasoline should effectively stop growth in VMT, hence the actual reduction from current levels should be somewhat less than 31 percent.

Gasoline limitation was selected because it was originally included in the Colorado submittal as one of the State's strategies and seemed most practical particularly in view of its low cost of implementation. Furthermore, implementation of the strategy to account for a significant VMT reduction might not be necessary. The required VMT reduction may be achieved by the State through other means such as mass improvements. The relative ease of implementation of gas limitation compared to many other strategies makes it attractive in a situation such as Colorado's where there is a significant chance that it may not have to be implemented. Eight of the alternative strategies would probably require more cost and capital expenditure prior to implementation than gas limitation and similarly would require more lead time.

A system for the limitation of auto use by means of colored license plates or stickers is one alternative to the limitation of gasoline. In such a system, the vehicle population would be divided randomly into five groups. Each group would be assigned a colored sticker or license plate. One working day each week one color group would be excluded from the Denver core area. Such a limitation would lessen congestion in the downtown area, and serve to encourage carpooling, bicycle utilization and the use of transit. In other areas where such a system has been proposed by EPA, however, the period of operation of the system has been limited to that part of the annual season when air quality is worse. If instituted in Denver, preliminary indications reflect that poor air quality is somewhat less seasonal than in other cities. Accordingly, the license plate or sticker system could be required throughout the year.

The second alternative to gasoline limitation involves the use of catalytic converter retrofit. This retrofit package is applicable to controlled (post 67) cars, and is estimated to have a cost of $100 to $200. Reductions which can be achieved through this retrofit are substantial, but longer lead times for the development of the program would require institution of other control measures prior to the retrofit. One of the primary reasons for the initial rejection of this approach is that there is considerable uncertainty surrounding the effectiveness of a catalyst in a high altitude environment. Current indications are that the catalysts would be available in sufficient quantity by the necessary time to allow retrofitting the affected vehicle population in the Metropolitan Denver Region. Comments are particularly solicited from the public regarding the desirability of gasoline sales limitations versus the alternatives of auto use limitation by stickers or license plate and the catalytic retrofit.

As shown in Table I, the proposed EPA regulations, together with the strategies proposed by the State of Colorado in their Transportation Control Plan, ensure attainment of the National Ambient Air Quality Standards for carbon monoxide and photochemical oxidants (hydrocarbons) by May 31, 1977. If the reductions for the hardware devices, as determined by actual investigation, are found to be less than those claimed by the State of Colorado, a plan revision will be necessary to implement strategies to compensate for the loss.

The three strategies proposed by the Governor of Colorado in the submission of supplemental information are de-

signed to reduce vehicle miles of travel in the Region. These proposals are similar to those that have been proposed by EPA in other areas.

Economic and Social Impact of the Transportation Control Plan

Congress recognized that the achievement of the goals of the Clean Air Act would have a significant impact on many urban areas. A thorough quantitative assessment of the impact of the plan on the economic and social fabric of the community has not been possible due to the lack of time and the innate complexity of the issues. In the judgment of the Administrator, the following impact may occur. First, vehicle owners may have to assume the direct cost of emission abatement equipment required to bring their vehicle into compliance. Second, reduction in the mobility of workers and consumers could have some impact on the economic fabric of the community. Third, interferences with the ability of citizens to move as freely as before may slightly alter the life style of the region. Obviously, the severity of the impact depends on the degree of vehicle use restriction, the manner in which direct costs of abatement equipment is financed, and the degree to which the effects can be ameliorated by improvement of the transit system.

Table I

Compilation of Control Strategy Effects on Carbon Monoxide and Hydrocarbon Emissions

Control Strategy	Emission Reduction in Addition to the Federal Motor Vehicle Control Program (FMVCP)							
	Carbon Monoxide Tons Per Year				Hydrocarbons Tons Per Year			
	1971	1975	1976	1977	1971	1975	1976	1977
State Strategies								
1. Inspection/Maintenance			4,342	4,380			1,512	1,842
2. Air Bleed (Pre-1968)			3,217	2,346			756	670
3. High Altitude Modification (1968-1974)			8,524	8,917			2,459	3,071
4. VMT Reductions								
a. bus/car pool lanes b. parking lot construction limitation c. limitation of on-street parking d. gasoline limitation		3,301	1,766	1,395		1,729	1,224	969
EPA Ppposal								
5. Stationary Hydrocarbon control						10,339	10,339	10,339
6. Gasoline limitation		836	589	656		432	408	462
Uncontrolled Emissions (includes EMVCP)	54,106	46,483	42,513	47,105	43,397	38,219	35,993	33,445
Total Reduction from strategies		4,130	18,438	17,694		12,500	16,608	17,353
Remaining Emissions	54,106	42,353	24,075	19,411	43,397	25,719	19,285	16,092
Allowable Emissions	19,802	19,802	19,802	19,802	17,378	17,378	17,378	17,378

Any direct or indirect effects of the plan on the economy of the area are primarily dependent on the extent of the necessary reduction in VMT. Since the degree of restriction is relatively small, it is expected that the principal effects will be more a matter of social adjustment than of serious economic consequences.

EPA Efforts to Mitigate the Effects of Proposed Regulations

Together with the Colorado Implementation Plan, the effect of these proposed regulations will eliminate the air pollution danger to human health and welfare that exists in the Metropolitan Denver Region. They may, however, have adverse economic and social impacts, and the Administrator will make every effort possible to mitigate the effects of his final promulgation. He will be in contact with the Department of Transportation and with other departments as necessary. The Administrator of EPA will request that the departments and agencies give special attention to the need for funding adequate mass transit to replace the automobile travel eliminated by any promulgated control measures.

Public Comments Solicited

The Administrator intends that the finally adopted plans be as responsive as possible to the needs of the Metropolitan Denver Region. He therefore desires to obtain the comments and suggestions of the public on the problems of achieving the Ambient Air Quality Standards. Comments are particularly invited pertaining to other measures that may be taken by Federal, State or local authorities to support or supplement these measures, and pertaining to the comparative social and economic effects of alternative pollution control measures. A public hearing will be held on September 10, 1973, at 10:00 a.m., Denver Post Office Auditorium, Denver, Colorado.

The Administrator's final promulgation of transportation controls for the Metropolitan Denver Region will be influenced by the comments and testimony he receives, as well as by the supplemental information which has been submitted by the State of Colorado, and by any further approvable strategies which are submitted by the State as part of the Colorado Implementation Plan. These influences, and the additional analysis of alternative strategies that can be made in the time between this proposal and final promulgation, may lead the Administrator to adopt final regulations that differ in important ways from this proposal.

Submittal of Comments

Interested persons may participate in this rule making by submitting written comments, preferably in triplicate, to the Regional Administrator, EPA, Region VIII, Suite 900, 1860 Lincoln Street, Denver, Colorado 80203. All relevant comments received on or before September 4, 1973 will be considered. Comments on the supplemental information submitted by the State will also be accepted during the same time period. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at the EPA Region VIII Office and at the Freedom of Information Center, EPA, 401 M Street, SW., Washington, D.C. 20460. The changes proposed by this notice with appropriate modification will be effective as noted. This notice of proposed rule making is issued under the authority of section 110(c) and 301(a) of the Clean Air Act.

(42 U.S.C. 1857c et seq.)

Dated: July 24, 1973.

Robert W. Fri,
Acting Administrator.

It is proposed to amend Part 52 of Chapter I, Title 40, of the Code of Federal Regulations as follows:

Subpart G—Colorado

1. Subpart G is amended by adding §§ 52.329 through 52.338 as follows:

§ 52.329 Gasoline limitations.

(a) Definitions:

(1) "Base year" means the consecutive 12-month period commencing on July 1, 1972, and ending June 30, 1973.

(2) "Distributor" means any corporation, partnership, or sole proprietorship which transports or stores or causes the transportation or storage of gasoline between any refinery and any retail outlet.

(3) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the public, or introduced into any vehicle.

(b) This section is applicable within the Metropolitan Denver Intrastate Air Quality Control Region (hereafter referred to as the Region) to all distributors of gasoline, to any retail outlet in this area, and to the owners or operators of all retail outlets in this area.

(c) Beginning July 1, 1974, the State of Colorado shall implement regulations limiting the total gallonage of gasoline delivered to retail outlets in the Region to the amount delivered to such outlets during the base year.

(d) Beginning May 31, 1977, the State of Colorado shall implement regulations limiting the total gallonage of gasoline delivered to retail outlets to that amount which, when combusted, will not result in the ambient air quality standard being exceeded. The State shall by January 1, 1977, submit to the Administrator regulations to accomplish this limitation. The amount of limitation required shall also be specified.

(e) In order for the State to determine the amount of gasoline delivered during the base year and years during which control is in effect, all distributors to which this section applies shall provide the State with a detailed accounting of

the amount of gasoline delivered to each retail outlet in the Region during the base year and years during which control is in effect. For each year during which control is in effect, the owner or operator of each retail outlet to which this section applies shall provide the State with a detailed accounting of gasoline received from each distributor, the total amount of gasoline sold during the year, and the amount of gasoline on hand at the beginning and end of the year. The State may require any other reports as it may deem necessary for the implementation of this section.

(f) The State of Colorado shall submit no later than November 1, 1973, a detailed compliance schedule showing steps it will take to establish and enforce the limitation program specified in paragraphs (c) and (d) of this section including:

(1) The text of needed statutory proposals and needed regulations which it will propose for adoption.

(2) A date by which the State shall adopt procedures to ensure that no more than the amount of gasoline specified in paragraph (c) of this section is delivered to retail outlets in the Region. Such date shall be no later than March 30, 1974.

(3) A date by which the State shall determine the total gallonage deliverable to limit the vehicle miles traveled in the Region by light duty gasoline fueled vehicles to that amount specified in paragraph (d) of this section. Such date shall be no later than March 1, 1977.

(4) A date by which any report necessary for establishing such procedures will be furnished to the State by the distributors. Such date shall be no later than January 1, 1974.

(5) Designation of an agency responsible for implementation and monitoring of this program.

(g) Failure to comply with any provision of this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, a State will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.330 Control of dry cleaning solvent evaporation.

(a) "Drycleaning operation" means that process by which an organic solvent, as defined in § 52.332(k), is used in the commercial cleaning of garments and other fabric material.

(b) This section is applicable in the Metropolitan Denver Intrastate Air Quality Control Region.

(c) No person shall operate a drycleaning operation unless the uncontrolled organic emissions from such operation have been reduced at least 85 percent except that drycleaning operations emitting less than 3 pounds per hour and less than 15 pounds per day of uncontrolled organic materials are exempt from the requirements of this section.

(d) If incineration is used as a control technique, 90 percent or more of the carbon in the organic compounds being incinerated must be oxidized to carbon dioxide. Compliance with this requirement shall be in accordance with the provisions of § 52.338.

(e) Any owner or operator of a stationary source subject to this section shall achieve compliance with the requirements of paragraph (c) of this section by discontinuing the use of photochemically reactive solvents as defined by § 52.332(1) no later than January 31, 1974, or by controlling emissions in accordance with the requirements of § 52.338.

§ 52.331 Degreasing Operations.

(a) "Degreasing" means the operation of using an organic solvent as a surface cleaning agent prior to fabricating, surface coating, electroplating, or any other process.

(b) This section is applicable in the Metropolitan Denver Intrastate Air Quality Control Region.

(c) No person shall use for degreasing any organic solvent other than perchloroethylene or saturated halogenated hydrocarbons after January 31, 1974.

§ 52.332 Organic solvent usage.

(a) This section is applicable in the Metropolitan Denver Intrastate Air Quality Control Region. Compliance with the requirements of paragraphs (b) through (i) of this section shall be in accordance with the provisions of § 52.338.

(b) A person shall not discharge more than 15 pounds of organic materials into the atmosphere in any one day from any article, machine, equipment or other contrivance in which any organic solvent or any material containing organic solvent comes into contact with flame or is baked, heat-cured or heat polymerized, in the presence of oxygen, unless all organic materials discharged from such article, machine, equipment or other contrivance have been reduced either by at least 85 percent overall or to not more than 15 pounds in any one day.

(c) A person shall not discharge more than 40 pounds of organic material into the atmosphere in any one day from any article, machine, equipment or other contrivance used under conditions other than described in paragraph (b) of this section for employing, applying, evaporating or drying any photochemically reactive solvent, as defined in paragraph (1) of this section, or material containing such solvent, unless all organic materials discharged from such article, machine, equipment or other contrivance have been reduced either by at least 85 percent overall or to not more than 40 pounds in any one day.

(d) Any series of articles, machines, equipment or other contrivances designed for processing a continuously moving sheet, web, strip or wire which is subjected to any combination of operations described in paragraphs (b) or (c) of this section involving any photochemically reactive solvent, as defined in paragraph (1) of this section, or material containing such solvent, shall be subject to compliance with paragraph (c) of this section. Where only non-photochemically reactive solvents or material containing only non-photochemically reactive solvents are employed or applied, and where any portion or portions of said series of articles, machines, equipment or other contrivances involves operations described in paragraph (b) of this section, said portions shall be collectively subject to compliance with paragraph (b) of this section.

(e) Emissions of organic materials to the atmosphere from the cleanup with photochemically reactive solvent, as defined in paragraph (1) of this section, of any article, machine, equipment or other contrivance described in paragraphs (b), (c) or (d) of this section shall be included with the other emissions of organic materials from that article, machine, equipment or other contrivance for determining compliance with this section.

(f) Emissions of organic materials to the atmosphere as a result of spontaneously continuing drying of products for the first 12 hours after their removal from any article, machine, equipment or other contrivance described in paragraphs (b), (c), or (d) of this section shall be included with other emissions of organic materials from that article, machine, equipment or other contrivance for determining compliance with this section.

(g) Emissions of organic materials into the atmosphere required to be controlled by paragraphs (b), (c), or (d) of this section shall be reduced by:

(1) Incineration: *Provided*, That 90 percent or more of the carbon in the organic material being incinerated is oxidized to carbon dioxide, or

(2) Adsorption, or

(3) Processing in a manner determined by the Administrator to be not less effective than the methods described in paragraphs (g) (1) or (2) of this section.

(h) A person incinerating, adsorbing, or otherwise processing organic materials pursuant to this section shall provide, properly install and maintain in calibration, in good working order and in operation, devices as specified in the authority to construct or the permit to operate, or as specified by the Administrator, for indicating temperatures, pressures, rates of flow or other operating conditions necessary to determine the degree and effectiveness of air pollution control.

(i) Any person using organic solvents or any materials containing organic solvents shall supply the Administrator, upon request and in the manner and form prescribed by him, written evidence of the chemical composition, physical properties and amount consumed for each organic solvent used.

(j) The provisions of this section shall not apply to:

(1) The manufacture of organic solvents, or the transport or storage of or-

ganic solvents or materials containing organic solvents.

(2) The spraying or other employment of insecticides, pesticides or herbicides.

(3) The employment, application, evaporation or drying of saturated halogenated hydrocarbons or perchloroethylene.

(4) The use of any material, in any article, machine, equipment or other contrivance described in paragraphs (b), (c), (d), or (e) of this section, if:

(i) The volatile content of such material consists only of water and organic solvents, and

(ii) The organic solvents comprise not more than 20 percent by volume of said volatile content, and

(iii) The volatile content is not photochemically reactive as defined in paragraph (1) of this section, and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame.

(5) The use of any material, in any article, machine, equipment or other contrivance described in paragraphs (b), (c), (d), or (e) of this section, if:

(i) The organic solvent content of such material does not exceed 20 percent by volume of said material, and

(ii) The volatile content is not photochemically reactive as defined in paragraph (1) of this section, and

(iii) More than 50 percent by volume of such volatile material is evaporated before entering a chamber heated above ambient application temperature, and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame.

(6) The use of any material, in any article, machine, equipment or other contrivance described in paragraphs (b), (c), (d), or (e) of this section, if:

(i) The organic solvent content of such material does not exceed 5 percent by volume of said material, and

(ii) The volatile content is not photochemically reactive as defined in paragraph (1) of this section, and

(iii) The organic solvent or any material containing organic solvent does not come into contact with flame.

(k) For the purposes of this section, organic solvents include diluents and thinners and are defined as organic materials which are liquids at standard conditions and which are used as dissolvers, viscosity reducers or cleaning agents.

(l) For the purpose of this section, a photochemically reactive solvent is any solvent with an aggregate or more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, referred to the total volume of solvent:

(1) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers or ketones having an olefinic or cyclo-olefinic type of unsaturation: 5 percent;

(2) A combination of aromatic compounds with eight or more carbon atoms to the molecule except ethylbenzene: 8 percent;

(3) A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichloroethylene or toluene: 20 percent.

(m) Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the above groups of organic compounds, it shall be considered as a member of the most reactive chemical group, that is, that group having the least allowable percent of the total volume of solvents.

(n) For the purpose of this section, organic materials are defined as chemical compounds of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

(o) This section shall be effective on the date of its adoption as to any article, machine, equipment or other contrivance not then completed and put into service. As to all other articles, machines, equipment or other contrivances, this section shall be effective in accordance with § 52.338.

§ 52.333 Storage of petroleum products.

(a) This section is applicable in the Metropolitan Denver Intrastate Air Quality Control Region. Compliance with the requirements of paragraph (b) of this section shall be in accordance with the provisions of § 52.338.

(b) A person shall not place, store or hold in any stationary tank, reservoir or other container of more than 40,000 gallons capacity any gasoline or any petroleum distillate having a vapor pressure of 1.5 pounds per square inch absolute (psia) or greater under actual storage conditions, unless such tank, reservoir or other container is a pressure tank maintaining working pressures sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or is designed and equipped with one of the following vapor loss control devices, properly installed, in good working order and in operation:

(1) A floating roof, consisting of a pontoon type or double deck type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and tank wall. The control equipment provided for in this paragraph shall not be used if the gasoline or petroleum distillate has a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(2) A vapor recovery system, consisting of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight, except when gauging or sampling is taking place.

(3) Other equipment of equal efficiency, provided such equipment is approved by the Administrator.

§ 52.334 Organic liquid loading.

(a) This section is applicable in the Metropolitan Denver Intrastate Air Quality Control Region. Compliance with the requirements of paragraphs (b) through (d) of this section shall be in accordance with the provisions of § 52.338.

(b) No person shall load organic liquids having a vapor pressure of 1.5 psia or greater under actual loading conditions into any tank truck, trailer, or railroad tank car from any loading facility unless the loading facility is equipped with a vapor collection and disposal system or its equivalent approved by the Administrator.

(c) Loading shall be accomplished in such a manner that all displaced vapor and air will be vented only to the vapor collection system. Measures shall be taken to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected.

(d) The vapor disposal portion of the vapor collection and disposal system shall consist of one of the following:

(1) An absorber system or condensation system which processes all vapors and recovers at least 90 percent by weight of the organic vapors and gases from the equipment being controlled.

(2) A vapor handling system which directs all vapors to a fuel gas system.

(3) Other equipment of an efficiency equal to or greater than subparagraph (1) or (2) of this paragraph if proved by the Administrator.

(e) This section shall apply only to the loading of organic liquids having a vapor pressure of 1.5 psia or greater under actual loading conditions at a facility from which at least 20,000 gallons of such organic liquids are loaded in any one day.

(f) "Loading facility" means any aggregation or combination of organic liquid loading equipment which is both possessed by one person, and located so that all the organic liquid loading outlets for such aggregation or combination of loading equipment can be encompassed within any circle of 300 feet in diameter.

§ 52.335 Gasoline transfer vapor control.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Metropolitan Denver Intrastate Air Quality Control Region.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 95 percent by weight of organic compounds in the said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight vapor return line from the storage container to the delivery vessel and a device that will ensure that the vapor return line is connected

before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 95 percent by weight of the organic compounds in the displaced vapor.

(2) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling.

(d) The provisions of paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity of less than 550 gallons used exclusively for agricultural operations, provided, however, said containers are equipped with submerged fill pipes.

(2) Any container having a capacity of less than 2,000 gallons installed prior to promulgation of this section.

(3) Transfer made to storage tanks equipped with floating roofs or their equivalent.

(e) Compliance with this section shall be in accordance with the provisions of § 52.338.

§ 52.336 Control of evaporative losses from the filling of vehicular tanks.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Metropolitan Denver Intrastate Air Quality Control Region.

(c) No person shall transfer gasoline to an automotive fuel tank from gasoline dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Effect a vapor-tight fit between the fill nozzle and filler neck of the automotive fuel tank so as to prevent discharge of hydrocarbon vapors to the atmosphere.

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 95 percent by weight of the organic compounds in the displaced vapors are recovered.

(3) Prevent automotive fuel tank overfills or spillage on fill nozzzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle-filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, or refrigeration-condensation system or equivalent.

(e) Components of the systems required by § 52.335(c) can be used for compliance with paragraph (c) of this section.

(f) If demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of fill neck configuration, location, or other design features, the provisions of this paragraph shall not apply to tanks on vehicles existing at the time of promulgation of this regulation.

(g) Compliance with this section shall be as follows:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-side construction or installation of emission control equipment or process change must begin not later than July 31, 1975.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1976.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(h) Paragraph (g) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by September 15, 1973. The Administrator may request whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by September 15, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1976. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(i) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (g) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

§ 52.337 Paint and varnish manufacturing.

(a) This section is applicable in the Metropolitan Denver Intrastate Air Quality Control Region. Except as provided in paragraph (b)(1) of this section, compliance with paragraphs (b) and (c) of this section shall be in accordance with the provision of § 52.338.

(b) All persons engaged in the manufacturing of paints shall fulfill one of the following requirements:

(1) Reformulate paint to replace a photochemically reactive (§ 52.332(1)) solvent with a non-photochemically reactive solvent by January 31, 1974.

(2) Produce water-base coatings.

(3) Condense and absorb by scrubbing with alkali or acid washes.

(4) Scrub and adsorb by activated charcoal or other adsorbants.

(5) Combust organic emissions.

(c) Any manufacturer engaged in the production of varnish shall not engage in such activity unless the manufacturer fulfills the following requirements:

(1) Remove copal vapors through installation of a condensation unit which has been approved by the Administrator.

(2) Remove varnish vapors through installation of a combustion unit which has been approved by the Administrator.

§ 52.338 Federal compliance schedules.

(a) Except as provided in paragraph (c) of this section, the owner or operator of any stationary source subject to the requirements of §§ 52.330, 52.332, 52.333, 52.334, 52.335, and 52.337 shall comply with the compliance schedule in paragraph (b) of this section.

(b) Compliance Schedule:

(1) September 17, 1973—Submit to the Administrator a final control plan, which describes at a minimum the steps which will be taken by the source to achieve compliance with the regulations cited in paragraph (a) of this section.

(2) November 16, 1973—Negotiate and sign all necessary contracts for emission control systems or process modifications, or issue orders for the purchase of component parts to accomplish emission control or process modification.

(3) April 1, 1974—Initiate on-site construction or installation of emission control equipment or process modification.

(4) April 1, 1975—Complete on-site construction or installation of emission control equipment or process modification.

(5) May 31, 1975—Final compliance with the regulations cited in paragraph (a) of this section.

(6) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(c) Paragraph (b) of this section shall not apply:

(1) To a source which is presently in compliance with the regulations cited in paragraph (a) of this section and which has certified such compliance to the Administrator by September 15, 1973. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by September 15, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975. If promulgated by the Administrator such schedule shall satisfy the requirements of this paragraph for the affected source.

(d) Nothing in this paragraph shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15 (b) and (c) of this chapter.

[FR Doc.73-15625 Filed 8-1-73;8:45 am]

[40 CFR Part 52]

DISTRICT OF COLUMBIA; APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Notice of Proposed Rule Making

The transportation control plan submitted by the District of Columbia for attainment of the primary National ambient air quality standards for carbon monoxide (CO) and photochemical oxidants for the District of Columbia portion of the National Capital Interstate Region was disapproved in part on June 15, 1973 (38 FR 16556). This Notice of Proposed Rulemaking sets forth regulations which in the Administrator's judgment could be implemented in addition to the approvable portions of the District of Columbia plan to attain and maintain the National standards for carbon monoxide and photochemical oxidants in the District of Columbia portion of the National Capital Interstate Region.

If revisions to the District plan are submitted and determined to be approvable prior to Federal promulgation, these proposed regulations will be withdrawn. If revisions to the District plan are submitted and determined to be approvable after Federal promulgation, then those Federal regulations will be rescinded. It is the desire of the Environmental Protection Agency that the plan to attain and maintain the carbon monoxide and photochemical oxidant standards in the District of Columbia portion of the National Capital Interstate Region be a Regional plan carried out by the District or its designated representative.

Transportation Control Alternatives

Analysis of the air quality problems in the National Capital Interstate Region, of which the District of Columbia is a part, reveals that both photochemical oxidants and carbon monoxide exhibit unacceptably high levels in the region, with the former being the pacing pollutant.

Since a substantial proportion of the photochemical oxidant problem and almost all of the carbon monoxide problem are the result of automotive vehicle emissions, measures to reduce emissions from individual vehicles and measures to reduce vehicular travel can be effective in improving air quality. Since a significant percentage of the oxidant-producing hydrocarbon emissions stem from the vehicle-related sources associated with gasoline handling operations, measures to reduce these operational losses can also provide a measurable improvement in the regional air quality.

Reductions in emissions from vehicles can be obtained through inspection and maintenance programs, and from incorporation of various retrofit devices. Reductions in Vehicle Miles Traveled (VMT) can be achieved through various pricing and taxing schemes for road use, adoption of parking restrictions, and/or limitations of available number of parking spaces, restrictions on idling or cruising of fleet vehicles, selective control of goods movement, the establishment of vehicle-free zones, establishment of a four-day week, and programs promoting the use of carpools or alternative modes of transportation and limitations on gasoline usage. It must be emphasized that, in order to be effective, each VMT control measure proposed or adopted by the District of Columbia must be reflected by identical or equivalent measures in the neighboring jurisdictions of Maryland and Virginia for their portions of the National Capital Interstate Region.

In effecting substantial improvements in air quality, improvements in and expansion of public transportation facilities are a necessary and effective complement facilitating use of this alternative to the private automobile. Clearly, public transit improvements must be implemented in concert with the appropriate level of vehicle restraints, as determined by the regional characteristics of the private automobile use demand elasticity. Such improvements as greater coverage, increased frequency of service, improved reliability, increased comfort and convenience, a reasonable cost, and adequate personal security will further encourage the use of public transit alternatives to the private automobile.

Summary

The District of Columbia plan, as amended by the July 9, 1973 and July 16, 1973 submissions, in its demonstration of the attainment of the photochemical oxidant and carbon monoxide air quality standards, utilizes the following general measures: the Federal Motor Vehicle Control Program, a Motor Vehicle Inspection Program for all gasoline powered vehicles, improvements in public transportation, increased "terminal" (or parking) charges, a bus/car pool locator program, selective control of goods movement, restrictions on aircraft ground operations, and increased control of stationary source emissions.

According to the District of Columbia plan, which utilizes data compiled by the Metropolitan Washington Council of Governments for the entire National Capital Interstate Region, peak period hydrocarbon emissions were 63.3 tons for the Region as a whole and peak period carbon monoxide emissions were 1133.5 tons in 1972. In order to demonstrate attainment of standards, the Council of Government calculations indicate that hydrocarbon emissions must be reduced by 67 percent of the 1972 emissions in the National Capital Interstate Region to a level of 20.9 tons/peak period, and that carbon monoxide emissions must be reduced by 55.6 percent of the 1972 emissions in the Region to a level of 501 tons/peak period.

Including projected increases in vehicle miles of travel the Federal Motor Vehicle Control Program will reduce hydrocarbon peak period emissions by 47 percent to 33.6 tons and will reduce carbon monoxide emissions by 49 percent to 576 tons/peak period by 1977. These estimates are adjusted to reflect the 1975 interim motor vehicle emission standards as announced on April 11, 1973.

Since the 21-day period for public comment on the additional submissions has not been completed, it is impossible for the Administrator to make a final decision on approval or disapproval of the strategies included in the District of Columbia plan at this time. This decision must take into consideration all comments received during this time. However, preliminary review by EPA indicates that certain strategies are likely to be approvable. Accordingly, the Agency is proposing only those items which, when added to the approvable measures, are necessary to attain the National Ambient Air Quality Standards.

If an apparently approvable strategy is determined not to be approvable additional measures will be proposed.

The information contained in the additional submissions by the District appears to remedy many of the deficiencies on which the Administrator's June 15 decision was based.

The following is a summary of the actions EPA is proposing to take with respect to the District of Columbia Plan:

Federal Motor Vehicle Control Program—Reductions appear to be approvable, based on projected vehicle populations and emission factors.

Motor Vehicle Inspection Program—Appears to be approvable based upon proposed regulation and supporting data.

Improvements in Public Transit—(a) District participation in the area wide addition of 750 buses to current fleet—appears to be approvable, contingent upon clarification of certain administrative details.

(b) Exclusive Bus Lanes—appears to be approvable.

(c) System Improvements (i.e., shelters, fringe parking, improved scheduling)—appears to be approvable.

Increased Terminal Charges—(a) Elimination of free employee parking for District of Columbia Government employees and private employees in certain areas—appears to be approvable.

(b) Elimination of on-street long-term parking in certain areas—appears to be approvable.

(c) $2.00 parking surcharge (or an equivalent measure)—appears to be approvable.

Bus/Carpool Locator Program—Appears to be approvable.

Selective control of goods movement (heavy duty gasoline powered vehicle use ban 6:00–9:30 a.m. and 4:00–6:30 p.m.)—Appears to be approvable.

Restrictions on aircraft ground operations—Partial reductions are allowable; appears to be partially approvable.

Increased Control of Stationary Source Emissions—Not approvable at this time due to lack of adopted regulations.

Since full reductions claimed for aircraft emissions do not appear to be allowable, and the controls over stationary sources cannot be approved at this time, EPA is proposing the following measures:

Retrofit by 1975 of all pre-1968 vehicles with a vacuum spark advance disconnect kit.

Retrofit of light-duty 1971–1975 fleet vehicles (including federal government

vehicles) and taxicabs and certain 1975 model light-duty vehicles with an oxidizing catalyst retrofit—beginning in mid-1976 to be completed by mid-1977.

Further controls over emissions of hydrocarbons due to gasoline handling; both from delivery truck to underground tank, and from the pump to the vehicle. Implementation begins in 1974 and is fully completed by 1977.

Further controls over drycleaning operations beginning in 1974.

The District plan also indicated that the elimination of free Federal employee parking was essential to the success of their transportation control strategy. It further encouraged the Federal Government to take direct action to implement this portion of the strategy.

Accordingly, EPA is also proposing to institute commercial type parking rates or reduce by 12 percent the available spaces at any federal facility which is in a high density employment area and which is well serviced by public transit. The commercial rates would go into effect January 1, 1975, and the reduction would be phased, beginning November 30, 1974 and ending on May 31, 1975.

Finally, since the $2.00 surcharge proposed by the District is integral to the success of this plan, EPA is proposing contingency strategies to be implemented if appropriate steps are not taken to implement the surcharge. These contingency measures are:

A ban on the construction, modification or enlargement of any parking facility without having first obtained a permit from the Administrator.

A phased 15 percent reduction in the number of off-street parking spaces.

The Administrator invites comments on these and any other measures which may be used to achieve the national ambient air quality standards for photochemical oxidants and carbon monoxide.

Two-Year Extension to Achieve Standards

The Administrator proposes to give a two-year extension for the attainment of the standard in the District of Columbia. To attain the standards in 1975 would require stringent restraints on vehicle miles traveled which could not be considered to be "reasonably available" within the meaning of section 110(e) of the Clean Air Act, or the implementation of a widespread catalytic retrofit program which could not be implemented due to technological problems before 1977. Although some measures have not been proposed here which have appeared in some other proposals, such as gasoline limitations and a selective vehicle exclusion program involving colored tags, the reduction in vehicle miles traveled expected from measures contained herein appears to be substantial and adequate to fulfill the requirement that reasonably available alternative measures be employed before an extension is given for any strategy. The plan proposed herein, along with the apparently approvable measures submitted by the District of Columbia, apply the reasonably available alternative means of control at the earliest possible dates. Comment is invited on any measures which have not been considered and applied and which can be considered to be reasonably available.

Summary of Effects

The following table is a summary of the effect of the proposed strategies on the total reductions required.

Compilation of Control Strategy Effects for the National Capital Interstate Region on May 31, 1977

	Carbon Monoxide		Hydrocarbons	
	Tons per Peak Period	Percent of Total Reduction Required	Tons per Peak Period	Percent of Total Reduction Required
Stationary Source Emissions Without Control Strategy	78		14.3	
Expected Reductions From:				
(a) Dry Cleaning Vapor Recovery	0	0	1.1	8.7
(b) Gasoline Handling Vapor Recovery	0	0	5.0	39.4
(c) Other Stationary Source Rule Strengthening	0	0	0	
Stationary Source Emissions Remaining	78		8.2	
Mobile Emissions from Highway Light and Heavy Duty Vehicles without Control Strategy	498		19.3	
Expected Reductions From:				
(a) Inspection and Maintenance	26	34.6	1.5	11.8
(b) VSAD Retrofit, pre-'68 cars	3	4.0	0.4	3.2
(c) Catalytic Retrofit of Fleet LDV's	5	6.7	0.2	1.6
(d) Mass Transit Improvements	21	28	2.7	21.2
(e) HDV Peak Hour Delivery Ban	27	36	1.0	7.9
(f) Aircraft Ground Operations		12	0.8	6.4
Mobile Emissions Remaining	416		12.7	
Total Emissions without Strategy (FMVCP Included	576		33.6	
Total Reductions	82	109.3	12.7	100.2
Total Emissions Remaining	494		20.9	

Proposed Controls on Stationary Sources

The major stationary sources of hydrocarbon emissions which have been identified in the District of Columbia's plan, are the gas handling losses which occur in the distribution system for gasoline fuel, and the emission losses from dry cleaning establishments. Since present regulations are inadequate to effect any substantial control on the resultant emissions, the District of Columbia has proposed regulations and compliance schedules which would reduce gasoline handling losses by 90 percent and dry cleaning losses by 85 percent.

The regulation proposed by the District of Columbia for control of hydrocarbon emissions through vapor recovery during service station and automobile tank refueling operations requires the installation by May 31, 1975 of a vapor collection and disposal system which is 90 percent effective, on all loading facilities for tank trucks or trailers, railroad tank cars, locomotives, aircraft, or stationary storage tanks with a capacity of more than 250 gallons; and for boat or motor vehicle fuel tank filling equipment applied to facilities with a capacity greater than five gallons. The proposed regulation further requires provision for a means to prevent liquid organic compound drainage from the loading device when it is removed from the hatch. It is estimated that installation of 90 percent effective vapor recovery devices on all installations throughout the Region will result in a total reduction of hydrocarbon emissions of 5.0 tons/peak period by 1977.

The regulation proposed by the District of Columbia for elimination of dry cleaning losses require that all dry cleaning operations emitting more than three pounds per hour or 15 pounds per day of photochemically reactive hydrocarbons shall install, prior to January 1, 1975, control devices to reduce such emissions by at least 85 percent of the uncontrolled emissions. It is estimated that the effect of the proposed 85 percent control of dry cleaning losses throughout the National Capital Interstate Region will result in a total reduction in hydrocarbon emissions of 1.1 tons per peak period.

The foregoing regulations as proposed by the District of Columbia appear to be adequate to achieve the anticipated reduction in hydrocarbon emissions. However, the Administrator cannot approve these proposed regulations at this time, since 40 CFR Part 51 requires that all regulations dealing with the control of emissions from stationary sources be adopted at the time of submittal of the plan. EPA is therefore proposing to promulgate similar regulations which will be rescinded upon submission of equivalent regulations as adopted by the District of Columbia.

The Environmental Protection Agency has also examined the District of Columbia's regulations governing emissions of organic solvents resulting from degreasing operations and from evaporation from surface and architectural coatings. For degreasing operations, there are no specific requirements that non-reactive material be used such as perchlorethylene or saturated hologenated hydrocarbons. Comments are solicited on whether degreasing operations in the National

Capital Interstate Region are a significant source of reactive hydrocarbon emissions for which a specific regulation should be promulgated.

Emissions of other solvents in the National Capital Interstate Region were also investigated. It has been determined that technology does exist to control more efficiently the emissions of a number of the smaller heating (15 to 200 lb. per day category) involving organic solvents.

Comments are solicited as to whether it is feasible or practicable to require additional controls on these sources, many of which are presumably located on premises of small sized firms. If these comments indicate that further controls are needed, then the Administrator proposes to promulgate regulations equivalent to those currently adopted by the County of Los Angeles Air Pollution Control District as Rule 66. L.A. Rule 66 contains minor exceptions involving evaporative emissions from gallon (or smaller) sized containers of architectural coating compounds, and from the allowable disposal limits of waste solvent materials. There are no data presently available to the Administrator on the atmospheric burden that may be created by such evaporative emissions though they are presently believed to be very small.

Proposed Controls on Mobile Sources (Non-Aircraft)

The District of Columbia, in its submissions proposes a loaded emissions inspection program in conjunction with its existing annual safety inspection program. The July 9, 1973 submission proposes a 13% reduction in hydrocarbon emissions from private and commercial vehicles. Therefore, this part of the District of Columbia plan appears to be approvable. Anticipated emissions reductions from the inspection/maintenance program as proposed throughout the National Capital Interstate Region, are 1.5 tons per peak period for hydrocarbons and 26 tons per peak period for carbon monoxide.

In order to comply with the requirements of the Clean Air Act that primary standards be achieved as expeditiously as practicable, the Administrator proposes to promulgate a regulations requiring that on or before January 1, 1975, all pre-1968 light duty vehicles be retrofitted with a vacuum spark advance disconnect device which will reduce hydrocarbon emissions from such vehicles by 25 percent and carbon monoxide emissions by 9 percent. If implemented throughout the National Capital Interstate region, installation of these devices will result in a total reduction of hydrocarbon emissions of 0.4 tons per peak period and a reduction of 3.0 tons per peak period of carbon monoxide emissions.

In order to attain the primary air quality standard by May 31, 1977 additional measures are required beyond those proposed by the District of Columbia. Since catalytic retrofit devices for light duty vehicles are expected to be readily available by 1977, it is proposed to require installation of these devices on selected segments of the light duty vehicle population. These segments include all 1971–1975 LDV fleet vehicles (e.g., taxis, GSA vehicles, rental cars, fleet delivery vehicles), capable of operating on 91 RON gasoline. The regulation proposed by the Administrator will require that the above motor vehicles be equipped with catalytic retrofit devices by May 31, 1977, effecting a 50% hydrocarbon emission reduction for each vehicle. Exemptions will be allowed for all 1975 vehicles originally equipped with the oxidizing catalytic converter or those vehicles which are certified to meet the original statutory federal emission standards for 1975. Based on information currently available to him, the Administrator estimates that:

Fleet vehicles account for 6 percent of total mobile source emissions. Under the assumptions that one-third of the fleet vehicles will be older than two years (pre-1976), and catalytic retrofits can reduce automotive emission by 50 percent, it is apparent that this measure, when applied on a Region-wide basis, will result in a hydrocarbon emission reduction of 0.2 tons/peak period.

In the event that the measures proposed herein prove to be inadequate, the Administrator is required by law to apply additional reasonably available alternatives, such as catalytic retrofit of other segments of 1968–1975 light duty vehicle population. Candidate segments include all light duty trucks, or passenger vehicles of specified model years. The public is urged to comment on these or any other type of control measure that may help to achieve the National Ambient Air Quality Standards.

Proposed Reduction in VMT

According to computer printouts provided by the Metropolitan Washington Council of Governments, the District of Columbia's transportation package (including participation in the area wide expansion of transit by 750 buses, exclusive bus/carpool lanes, a carpool locator service, and extensive parking restrictions) will result in a 12 percent reduction in 6–9 a.m. VMT and a corresponding reduction in total trips during those hours.

The total commitment of the District of Columbia to the transportation package is demonstrated by submission of proposed regulations for the following supportive measures:

1) Participation in the area wide improved transit system, including the addition of 750 buses to the current area fleet and the establishment of exclusive bus lanes, bus shelters, and fringe parking facilities.

2) Increased terminal cost, including the elimination of free parking and the establishment of a $2.00 parking surcharge for long-term commuter parking in all areas served adequately by mass transit, and strict enforcement of reciprocal parking agreements.

3) Establishment of a computerized carpool locator service.

This portion of the plan is central to the District of Columbia's plan for reduction of HC and CO emissions. Therefore, to avoid confusion and expedite comments, a discussion of the elements that make up this portion of the plan shall be included.

a. *Elimination of Free Parking*—The District of Columbia proposes to eliminate free parking for the District of Columbia government employees, and for employees of private businesses located in the District of Columbia. A portion of this shall be achieved by the elimination of street commuter parking (in major arterials) and by requiring all District of Columbia government employees and all privately operated lots which are providing free employee parking to establish charges for this parking.

These measures will be imposed in high density employment areas which are adequately served by mass transit. These areas will be more specifically described by the District within the next 10 months, upon completion of studies of the matter.

Additionally, the District proposes to enter into a reciprocal enforcement program for parking violations. Thus, enforcement of the existing parking regulations will be facilitated.

On the basis of the information submitted by the District of Columbia in its plan, the Administrator feels that this portion of the District of Columbia's plan is approvable.

As pointed out in the District of Columbia's plan, (reduction) of emissions due to work trips into, out of and within the District by Federal Government employees is integral to achieving air quality goals. Therefore, EPA feels it has the responsibility to aid the District in the control of these emissions. As a result, EPA will follow the District's suggestion and propose a federal regulation which would effectively reduce emissions as a result of commuter trips by federal employees. This will be done by requiring Federal Facilities in high density areas served by mass transit either to eliminate free parking by establishing commercial type rates or to reduce the available parking spaces in these facilities by 12 percent. The Administrator feels that the result of this proposal will be to induce Federal employees to utilize alternate modes of transportation, such as buses and carpools and thereby reduce the VMT in the area. It should be noted that this proposal should result in a reduction of the VMT for employees from all three jurisdictions in the National Capital area.

It is the Administrator's opinion that, at a minimum the central business district (Massachusetts Avenue, 1st Street, NW.; Constitution Avenue and 23rd Street, NW.) as well as the Southwest Mall-Waterside Mall area in Southwest, the Capitol Hill area, along with other areas would, in all likelihood, need to be included in any definition of high density employment area which is serviced by mass transit for this strategy to be effective.

b. *$2.00 Surcharge.* The District of Columbia plan proposes the imposition of a $2.00 per day surcharge (or an equivalent measure) on all long-term

commercial parking facilities in employment areas which are adequately served by mass transit. Identification of the areas where the surcharge is to be imposed should be made by the District of Columbia within the next 10 months, upon completion of studies of the matter.

This proposal is to be implemented and enforced by the parking agency to be established by the District. The Administrator feels that if implemented according to the schedule provided in the plan, this proposal is approvable.

The effectiveness of mass transit systems can be greatly enhanced by imposing disincentives to the use of the private automobile. It is felt the District's proposals for the surcharge is integral to the success of the plan.

The Administrator wants to make it clear that if for any reason this strategy is not implemented according to schedule, he will institute equivalent measures. In order to avoid any delay in implementation of such equivalent measures and to invite timely public comment, the Administrator is proposing contingency measures in the plan which will become effective if it becomes apparent that the surcharge will not be implemented. Specifically, a phased 15 percent reduction in existing off-street parking spaces would be imposed, as well as ban on the construction, modification or enlargement of any parking facility without first obtaining a permit from the Administrator. Public comments are solicited on these contingency proposals.

c. *Mass Transit Improvements.* The development of an effective mass transit system is essential to the development of an effective transportation control strategy. If the strategy is to be successful, a sufficient number of buses with convenient service and adequate schedules must be provided.

The District of Columbia plan proposes that the District shall take all possible measures to assure that the area wide transmit system's current fleet be increased by 750 buses and that its service and convenience for commuters be improved. Included in this proposal are provisions for installing bus shelters, providing additional public information and improved scheduling. In addition, the District plans to institute a number of exclusive bus lanes, and contra-flow lanes on major highway corridors into the downtown area. All of these measures are meant to provide the increased mass transit service which will be necessary if air quality standards are to be achieved.

Based on the information contained in the three documents submitted by the District, the Administrator feels that the proposals for increased mass transit are approvable, on the condition that certain administrative details are provided to him by the District. Specifically, the arrangements or agreements which will trigger the expansion of the fleet should be clarified, since it is necessary for EPA to determine what actions are necessary to bring about any additional purchases of buses. Also a clarification on the schedule showing the projected incremental increases in fleet size should be provided.

d. *Bus/Car Pool Locator System.* The District of Columbia plan recognizes the need for more efficient automobile usage. Thus, the plan proposes a voluntary bus/car pool locator matching service. This system will attempt to assemble lists of commuters with similar work schedules and home, work locations, and will be phased in starting with pilot projects during 1973. Full operation of the system is scheduled for April 1974. The Administrator feels that this measure is approvable and encourages residents of the National Capital area to take advantage of this service.

Along with the benefits accruing to this system in terms of a potential decrease of vehicle miles traveled, this system also will mitigate the impact of disincentives to private auto use (i.e., the surcharge and elimination of free employee parking).

e. *Heavy Duty Vehicle Restraints.* In addition to the transportation measures described above, the District of Columbia plan proposes to reduce emissions from heavy duty gasoline powered vehicles. Since a substantial portion of the peak hour emissions of both hydrocarbons 6 percent and carbon monoxide 10 percent are produced by heavy duty trucks, the District of Columbia proposes a regulation which would ban peak hour (6–9:30 a.m., 4–6:30 p.m.) deliveries by gasoline-powered heavy duty trucks. Proposed compliance dates are January 1974 for the morning hours and January 1975 for the two peak periods. Assuming that the ban will result in a 50 percent reduction in heavy duty truck emissions (due to the exception of essential services and through traffic), calculations indicate a peak-hour reduction in total hydrocarbon emissions by 1.0 ton/ peak period. The Administrator commends the District of Columbia for proposing this effective measure and feels that this measure is approvable.

Aircraft Emission Reduction

Aircraft emissions, as they affect ambient air quality, occur during approach, landing, taxi, idle, takeoff, and climbout. Heaviest emissions occur during taxi and idle when aircraft engines are operated at greatly reduced power.

The District of Columbia Transportation Control Plan asserts that control of these emissions through modified ground operations at Dulles and Washington National Airports can result in a significant hydrocarbon, and carbon monoxide emission reduction in the National Capital Region. The District of Columbia contends that a 50 percent reduction in hydrocarbon and carbon monoxide emissions can be achieved though the implementation of such ground controls at the two northern Virginia airports. Such a reduction would represent a 1.7 ton reduction in the area's hydrocarbon emissions and 28 ton reduction in the area's carbon monoxide emissions. The District of Columbia assumes the required measures will be fully implemented by EPA and FAA during the next four years and takes full credit for the potential emissions reductions which they believe could result from these measures.

The assumed reduction in hydrocarbon emissions is necessary for the plan to demonstrate achievement of the oxidant standards; the claimed carbon monoxide reductions are not needed for attainment of the standard.

EPA has published an Advance Notice of Proposed Rulemaking for aircraft ground controls but has not yet proposed regulations for such controls. The Agency, however, is currently funding a demonstration project with FAA to determine if safety hazards would accompany modified ground operations. If the demonstration is successful, EPA will propose and promulgate regulations for the implementation of ground operations deemed free of safety hazards.

The Agency currently believes that certain ground and taxi operations included in the demonstration can be conservatively assumed to be safe and acceptable. EPA calculations indicate that the application of these measures could result in a 24 percent reduction in hydrocarbons at National Airport and a 30 percent reduction in hydrocarbons at Dulles Airport versus 50 percent reduction proposed by the District of Columbia. No reductions are assumed for Andrews Air Force Base, which is responsible for 15 percent of the emissions inventory. In light of EPA's intention to work jointly with FAA to promulgate and implement ground operations deemed safe and acceptable prior to 1977, the Agency believes it is reasonable to allow the District of Columbia to accept credit for emission reductions which will result from controlling the ground operations conservatively felt at this time to be safe and acceptable. The percent emissions reductions indicated above which would result from these measures would provide approximately a 0.8 tons reduction in hydrocarbons for the National Capital Region. Accordingly, the Agency will accept 0.8 tons of the claimed 1.7 tons hydrocarbon reduction as being an approvable portion of the plan based on the expected implementation of ground operation regulations.

Economic and Social Impact

The social and economic consequences of the measures included in the District of Columbia plan or proposed herein are considered reasonable. For example, the inspection and maintenance procedures will require expenses of approximately $10 annually for the average vehicle inspected. The implementation of the VSAD retrofit program of pre-1968 vehicles will require that individual motorists pay approximately $20 installation costs. Though the price to the fleet vehicle owner for the catalytic retrofit is $135 per vehicle, this cost could gradually be reclaimed through slightly higher service or use fees for the fleet vehicles controlled. In addition, such expenditure can be deducted from income tax as a business expense, and therefore part of the cost will be absorbed by the govern-

ment. Compensation for the expenditures associated with the modifications required by the gasoline handling regulations could similarly be gained through slight increase in the fees for station services or fuel prices. This also could be deducted as a business expense from the income tax. Distributed costs of the various mass transportation improvement measures, as well as the incentives for the use of express buses and carpools and disincentives on the use of automobiles by individual motorist-commuters, are also considered reasonable.

The measures providing transportation improvements are expected to benefit the public fom the standpoint of improved traffic flow for commuters, general urban mobility, and energy consumption. The resulting VMT reductions may also have some impact on the sprawling development patterns fostered by widespread automobile use which are unduly wasteful of energy, land and other resources and have contributed to the decay of urban centers.

PUBLIC COMMENTS SOLICITED

Although the Administrator has concluded that the proposed plan is the best approach available to him at the present time for achieving compliance with the requirements of the Act, further analysis may demonstrate that more appropriate options are available. He therefore desires to obtain the comments and suggestions of the public on the problems of achieving the ambient air quality standards in the District of Columbia portion of the National Capital Interstate Air Quality Control Region. Comments are particularly invited pertaining to measures that may be taken by Federal, State, or local authorities to support or supplement the proposed air pollution control strategy, to implement these measures, and to compare social and economic effects of alternative pollution control measures.

Public hearing will be held in the Department of Commerce Interior departmental Auditorium, 14th Street between E and Constitution Avenues, N.W., Washington, D.C. on September 5, 1973, beginning at 9:00 a.m. Notice of the hearing on these regulations (including designation of locations for inspection and distribution of EPA proposals) is being published in the District of Columbia.

The Administrator's final promulgation of transportation controls for the District of Columbia will be significantly influenced by the comments and testimony he receives, as well as any additional approvable strategies submitted by the District of Columbia as part of the District of Columbia plan before or at the hearing. These influences, and the additional analysis of alternative strategies that can be made in the time between this proposal and final promulgation, may lead the Administrator to adopt final regulations that differ in important ways from this proposal.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rule making by submitting written comments, preferably in triplicate, to EPA, Attention: Mobile Source Enforcement Division, 401 M Street SW., Washington, D.C. 20460. All relevant comments received on or before September 4, 1973 will be considered. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at EPA, Office of Public Affairs, 401 M Street SW., Washington, D.C. 20460. This notice of proposed rule making is issued under the authority of section 110(c) and 301(a) of the Clean Air Act (42 U.S.C. 1857 et seq.).

EPA STUDIES AND GUIDELINES

Further information on transportation control, land use, and motor vehicle emissions may be obtained from one or more of the following documents which the Environmental Protection Agency has published:

a. "Prediction of the Effects of Transportation Controls on Air Quality in Major Metropolitan Areas" and "Evaluating Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas," November 1972. Both of these documents are generally known as the "Six Cities Study".

b. "Transportation Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas", December 1972. This document is a summary of a study of 14 cities conducted with the view of recommending specific transportation control strategies. (Separate reports for each of the 14 cities are also available.)

NOTE: The documents listed in a and b above are available from the Air Pollution Technical Information Center, EPA, Research Triangle Park, North Carolina 27711.

c. "Control Strategies for In-Use Vehicles", November 1972. This report is available from EPA, Mobile Source Pollution Control Programs, 401 M Street, SW., Washington, D.C. 20460.

d. "Transportation Control Measures", FEDERAL REGISTER (38 FR 15194) June 8, 1973.

e. "Aircraft and Aircraft Engines", FEDERAL REGISTER (37 FR 26488) December 12, 1972.

f. "Aircraft Emissions: Impact on Air Quality and Feasibility of Control". This report presents the available information on the present and predicted nature and extent of air pollution related to aircraft operations in the United States. In addition, it presents an investigation of the present and future technological feasibility of controlling such emissions.

g. "An Air Pollution Impact Methodology for Airports—Phase I", APTD-1470, January, 1973.

(42 U.S.C. 1857 et seq.)

Dated: July 24, 1973.

ROBERT W. FRI,
Acting Administrator.

It is proposed to amend Part 52 of Chapter I of Title 40 of the Code of Federal Regulations by adding the following:

§ 52.486 Reduction of Employee Parking.

(a) Definitions:

(1) Government Entity—means a federal, department, agency, bureau, board, office, commission, district, or unit of any other type (excluding foreign embassies) which employs personnel paid wholly with public funds.

(2) Commercial Parking Rate—means the average rate charged by commercial parking facilities (excluding on-street parking meters) on a monthly basis within a 1 mile radius of a facility or installation covered by this section.

(3) Served by Public Transit—means that such transit is available during working hours within a reasonable walking distance of the employee's place of employment, even though such transit may not serve the area of the employee's residence.

(b) This section shall be applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c)(1) All facilities or installations owned, operated or leased by federal government which control, operate or lease a parking facility containing 25 or more spaces, shall by January 1, 1974, report to the Administrator the number of parking spaces in each such facility as of October 15, 1973. This number shall not include residential (including barracks) parking spaces contained in or on the facility or installation.

(2) The chief administrative officer of all facilities or installations subject to paragraph (c)(1) of this section, shall by April 1, 1974, submit to the Administrator a detailed report specifying the level of public transit service to the facility, and also the parking space utilization at the facilities or installations under his or her control at that time. This report shall include but is not limited to:

(i) All public transit lines which have stops within one-half mile of any such installation or facility.

(ii) The practicality of the operation of shuttle service from presently well serviced location such as (Federal Triangle, Southwest Mall, Georgetown, Capitol Hill, etc.) to the facility or installation during morning and afternoon peak hours.

(iii) A summary of the existing parking situation at the facility including:

(a) average vehicle occupancy calculated from a visual survey of vehicles entering and leaving the facility over a full week's time.

(b) the percentage of vehicles with one, two, three and four occupants.

(c) the total number of vehicles using the facility daily.

Should the report state that the facility or installation is not presently served by public transit, this report shall be reexamined, updated, and submitted annually not later than April 1 of each successive year.

(d) Each governmental entity subject to paragraph (c)(1) of this section which in the opinion of the Administrator is served by public transit shall comply with either paragraph (d)(1) or (2) of this section. The governmental entity shall either:

(1) Adopt a plan whereby a charge equivalent to commercial parking rates will be imposed for parking at any such parking facility owned, operated or leased by the governmental entity. In

no case shall the charge be less than $20.00 per space per month. Any funds collected by any governmental entity under this subparagraph may be used for any legitimate governmental purpose, *Provided, however,* That no such funds shall be used to subsidize directly or indirectly employee parking; or

(2) Adopt a plan to reduce the number of parking spaces in each facility from the number in existence on October 15, 1973, according to the following schedule:

(i) by November 30, 1974, a reduction of 4 percent

(ii) by February 28, 1975, a reduction of 8 percent

(iii) by May 31, 1975, a reduction of 12 percent

(e)(1) Each entity of the Federal government subject to paragraph (c) of this section shall submit to the Administrator no later than June 30, 1974, a detailed compliance schedule showing steps it will take to achieve either the require reduction of spaces, or the initiation of commercial parking rates. In the case of a reduction of spaces, the schedule shall include provisions for marking those spaces to be eliminated in a manner obvious to members of the public (painting over, roping off, etc.). In the case of the initiation of commercial parking rates, the schedule shall include:

(i) A date for the initial imposition of the charge. Such date shall be no later than January 31, 1975,

(ii) The amount to be charged per space per month,

(iii) Any exceptions to the charge (e.g., handicapped personnel, certain high level officials of the governmental entity), including documentation of the need and rationale for such exceptions,

(iv) Provisions for annual reevaluation of the amount charged per space per month based upon any changes in commercial parking rates.

(f) Failure to submit any report or compliance schedule as required by this section shall render the person so failing to comply in violation of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any governmental entity which either allows vehicles to be parked in excess of the number allowable, or which fails to collect commercial parking charges, shall likewise be in violation and subject to enforcement.

§ 52.487 Limitation of Off-Street Parking.

(a) This section shall apply only in the event that the Administrator finds that the District of Columbia fails to take one or more of the following steps to implement the $2.00 surcharge (or an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Administrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the District of Columbia or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measure in those areas identified in the study by April 1, 1975.

(b) In the event the District of Columbia chooses to adopt any "equivalent measure" to this surcharge, the District of Columbia must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the District of Columbia is failing to implement the surcharge.

(c) In the event that the Administrator determines that the District of Columbia is failing to implement the $2.00 surcharge (or an equivalent measure) he shall make this determination public in the FEDERAL REGISTER, and this section shall then be immediately effective.

(d) Definition:

(1) The term "off-street parking facility" means any land or building or portion of a building set aside for the purpose of storing a maximum capacity of 10 or more vehicles on a temporary basis.

(e) Each governmental entity, public agency, private corporation, partnership or sole proprietor owning or operating an off-street parking facility located within the District of Columbia portion of the National Capital Interstate Air Quality Control Region shall, within 30 days of the effective date of this regulation, report to the Administrator the number of parking spaces in each such facility under its ownership or control of the effective date of this regulation. The number used solely for the storage of vehicles of persons who reside within ¼ mile of the facility shall not be counted.

(f) Each such owner or operator of any off-street parking facility located within the area specified in paragraph (c) of this section shall reduce the number of affected parking spaces in each such facility from the number in existence as of the date this regultaion becomes effective according to the following schedule:

(i) Within 90 days of the effective date—a 5 percent reduction;

(ii) Within 120 days of the effective date—a 10 percent reduction;

(iii) Within 180 days of the effective date—a 15 percent reduction.

(g) Each such owner or operator of an off-street parking facility subject to the requirements of this section shall submit to the Administrator, no later than 60 days after the effective date of this section, a detailed compliance schedule showing the steps it will take to achieve the required reduction in parking spaces. Such schedule shall provide for the marking in some manner obvious to the public (such as painting over, roping off, or the like) of the eliminated spaces on which parking is not permitted pursuant to this section.

(h) Failure to submit a compliance schedule as required by this section shall render the person or governmental entity so failing in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any owner or operator of an off-street parking facility who allows any vehicle to be parked on any parking space which has been eliminated pursuant to this section, or who fails to mark clearly those spaces which have been eliminated, shall likewise be in violation and subject to enforcement.

§ 52.488 Vacuum Spark Advance Disconnect.

(a) For purposes of this section, "vacuum spark advance disconnect" means a device or system installed on the vehicle which prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears or when the vehicle is traveling below a predetermined speed.

(b) This section is applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c) On or before January 1, 1975, all gasoline-powered light duty vehicles of model year prior to 1968 and subject under presently existing legal requirements to registration in the area described in paragraph (b) of this section shall be equipped with an appropriate vacuum spark advance disconnect device.

(d) The District of Columbia shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps it will take to implement and enforce this requirement. Such schedule shall included, as a minimum, the following:

(1) A date by which the District of Columbia will evaluate and approve devices for use in this program. Such date shall be no later than March 1, 1974.

(2) A date by which installation of this equipment shall commence. Such date shall be no later than June 1, 1974.

(3) A date by which all vehicles subject to this section will be equipped with such devices. Such date shall be no later than January 1, 1975.

(4) Designation of any agency or agencies responsible for evaluating and approving such devices for use on vehicles subject to this section.

(5) Designation of an agency or agencies responsible for ensuring that the prohibitions of paragraph (e)(2) of this section shall be enforced.

(6) Method and proposed procedures for ensuring that those persons installing the devices have the training and ability to perform the needed tasks satisfactorily and that an adequate supply of devices will be available.

(7) Provision (apart from the requirements of any program for periodic inspection and maintenance of vehicles generally) for emission testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1975, the following shall apply within the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(1) The District of Columbia shall not register a vehicle subject to this paragraph which is not equipped in accordance with paragraph (c) of this section.

(2) No owner of a light duty vehicle subject to this paragraph shall operate or allow the operation of any such vehicle that is not equipped in accordance with paragraph (c) of this section.

(f) The failure of any person to comply with any provision of this section shall render such person in violation of a requirement of an applicable implementation plan, and subject to enforcement action under section 113 of the Clean Air Act. As to compliance schedules, the District of Columbia will be considered to have failed to comply with the requirements of this regulation if it fails to submit on a timely basis the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.489 Gasoline transfer vapor control.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of four (4) pounds or greater.

(b) This section is applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight vapor return line from the storage container to the delivery vessel and a device that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapor displaced from the delivery vessel during refilling.

(d) The provisions of this paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry; provided, however, said containers are equipped with submerged fill pipes.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this paragraph.

(3) Transfer made to storage tanks equipped with floating roofs or their equivalent.

(e) *Compliance schedule.* Except as provided in paragraph (f) of this section, the owner or operator of any source subject to this section shall comply with this section on or before January 31, 1974.

(1) Any owner or operator in compliance with this section on the effective date of this regulation shall certify such compliance to the Administrator no later than 120 days following the effective date of this section.

(2) Any owner or operator who achieves compliance with this section after the effective date of this section shall certify such compliance to the Administrator within 5 days of the date compliance is achieved.

(f) Any owner or operator of a source subject to paragraph (e) of this section may, not later than 120 days following the effective date of this section, submit to the Administrator for approval a proposed compliance schedule that demonstrates compliance with the provisions specified in paragraph (e) of this section as expeditiously as practicable but no later than June 30, 1975. The compliance schedule shall provide for increments of progress toward compliance. The dates for achievment of such increments of progress shall be specified. Increments of progress shall include, but not be limited to: submittal of final control plan to the Administrator; letting of necessary contracts for construction or process changes or issuance of orders for the purchase of component parts to accomplish emission control or process modification; initiation of on-site construction or installation of emission control equipment or process modification; completion of on-site construction or installation of emission control equipment or process modification; and final compliance.

(g) Any owner or operator who submits a compliance schedule pursuant to this paragraph shall, within 5 days after the deadline for each increment of progress, certify to the Administrator whether or not the required increment of the approved compliance schedule has been met.

§ 52.491 Elimination of drycleaning losses.

(a) Definition:

(1) Drycleaning Operation means that process by which an organic solvent is used in the commercial cleaning of garments and other fabric material.

(b) This section is applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c) After May 31, 1974, no person shall operate a drycleaning operation unless the uncontrolled organic emissions from such operation have been reduced at least 85 percent, except that drycleaning operation emitting less than three (3) pounds per hour and less than fifteen (15) pounds per day are exempt from this regulation.

(d) If incineration is used as a control technique, 90 percent or more of the carbon in the organic compounds being incinerated must be oxidized to carbon dioxide.

(f) Any person who fails to fulfill any requirement of this section shall be in violation of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act.

§ 52.493 Management of parking supply.

(a) This section shall apply only in the event that the Administrator finds that the District of Columbia fails to take one or more of the following steps to implement the $2.00 surcharge (or an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Administrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the District of Columbia or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measures in those areas identified in the study by April 1, 1975.

(b) In the event the District of Columbia chooses to adopt any "equivalent measure" to this surcharge, the District of Columbia must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the District of Columbia is failing to implement the surcharge.

(c) In the event that the Administrator determines that the District of Columbia is failing to implement the $2.00 surcharge (or an equivalent measure) he shall make this determination public in the FEDERAL REGISTER, and this section shall then be immediately effective.

(b) Definitions:

(1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land to use as a parking facility.

(2) "Modification" means any change to a parking facility which increases the vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the vehicle capacity of such facility.

(4) "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or enlargement.

(5) "Parking facility" (also called "facility") means any facility, building, structure, or lot or portion thereof used primarily for temporary storage of motor vehicles.

(c) No person, after the effective date of this section, shall commence construction of any new parking facility or modification or enlargement of any existing parking facility until he has first received from the Administrator or from an

agency approved by the Administrator a permit stating the construction, modification or enlargement of such facility will not interfere with the attainment or maintenance of applicable Federal air quality standards.

(d) In order for any agency to be approved by the Administrator for purposes of issuing permits for construction of any new parking facility or any modification or enlargement of any existing parking facility, such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include, but not be limited to, a requirement that before a permit may be issued, the following findings of fact or factually supported projections must be made:

(i) The location of the facility.

(ii) The total motor vehicle capacity before and after the construction, modification, or enlargement of the facility.

(iii) The normal hours of operation of the facility and the enterprises and activities which it serves.

(iv) The number of people using or engaging in any enterprises or activities which the facility will serve.

(v) The number of motor vehicles using the facility on an average hourly basis and a peak hour basis.

(vi) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projections shall include data concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include, but shall not be limited to:

(i) Full consideration of all facts contained in the application.

(ii) Provisions that no permit shall be issued if such permit will result in the increase of VMT within any area, the air quality of which fails to meet applicable Federal air quality standards.

(3) Agency procedures provide that no permit for the construction, enlargement or modification of a parking facility covered by this section shall be issued without notice and opportunity for public hearing. The public hearing may be of the legislative type the notice shall conform to the requirements of 40 CFR 51.4(b); and the agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to 7 days before the scheduled hearing date, no hearing need be held. Such a requirement, if imposed, shall be noted prominently in the required notice of hearing.

§ 52.490 Control of evaporative losses from the filling of vehicular tanks.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c) A person shall not transfer gasoline to an automotive fuel tank from gasoline dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Effect a vapor-tight fit between the fill nozzle and filler neck of the automotive fuel tank so as to prevent discharge of hydrocarbon vapors to the atmosphere.

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered.

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, or refrigeration-condensation system or equivalent.

(e) Components of the systems required by § 52.489(c) can be used for compliance with paragraph (c) of this section.

(f) If demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of fill neck configuration, location, or other design features, the provisions of this paragraph shall not apply to tanks or vehicles existing at the time of promulgation of this regulation.

(g) The District of Columbia shall divide all facilities subject to this section into three classes, the first of which shall equal approximately 70 percent of hydrocarbon emissions from all gasoline stations, the second and third classes shall each equal approximately 15 percent of total hydrocarbon emissions from these sources. The classes shall be known as Class I, Class II, and Class III.

(h) Except as provided in paragraph (k) of this section, the owner or operator of a source included in Class I shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 31, 1974.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources, subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(i) The owner or operator of a source included in the Class II shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1975.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1976.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(j) The owner or operator of a source included in Class III shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1976.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1977.

(4) Final compliance is to be achieved not later than May 31, 1977.

(5) Any owner or operator of stationary sources, subject to compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(k) Paragraphs (h) and (i) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by December 31, 1973. The Administrator may request whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the District and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by December 31, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975, in the case of Class I sources, and May 31, 1976, in the case of Class II sources. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(l) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compli-

ance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15 (b) and (c) of this chapter.

§ 52.492 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizies a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbon and carbon monoxide from that vehicle.

(2) Fleet vehicle means any of 5 or more light duty vehicles operated by the same person(s), business, or governmental entity and used principally in connection with the same or related occupations or uses. This definition shall also include any taxicab (or other light duty gasoline-powered vehicle-for-hire) owned by any individual or business.

(3) Governmental entity means any agency of the executive branch of the Federal government, or a state or local department, agency, bureau, board, office, commission, district, or unit of any other type (excluding foreign embassies) which employs personnel paid wholly with public funds.

(4) All other items used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b)(1) This section is applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(2) Classes of Vehicles Covered: (i) Light duty fleet vehicles of model year 1971 through 1975, not already equipped with catalyst, or certified to meet original 1975 statutory light duty vehicle emission standards.

(c) The District of Columbia shall establish a retrofit program to insure that on or before May 31, 1977, classes of gasoline-powered light duty vehicles as specified in paragraph (b)(2) of this section, which are subject under presently existing legal requirements to registration in the area defined in paragraph (b) of this section and are used on the streets and highways, of the District, are equipped with an appropriate oxidizing catalyst retrofit device. No later than March 1, 1974, the District of Columbia shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on motor vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (c)(3) of this section are enforced.

(3) A provision that starting no later than May 31, 1976, the District of Columbia shall commence retrofitting oxidizing catalysts to those light duty motor vehicles able to operate properly on unleaded 91 RON gasoline. The installation shall be completed by May 31, 1977.

(4) A method and proposed procedure for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and that they will have an adequate supply of retrofit components.

(d) After May 31, 1977, the District shall not register or allow to operate on public streets or highways any light duty gasoline-powered vehicles specified in paragraph (b)(2) of this section which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicles which does not comply with the applicable standards and procedures implementing this section.

(f) The District of Columbia shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, and the text of needed statutory proposals and needed regulations which it will proposed for adoption. The compliance schedule shall include a date by which the District shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of applicable implementation plan and subject to enforcement under § 113 of the Clean Air Act. The District will be considered to have failed to comply with the requirements of this regulation if it fails to submit on time the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

[FR Doc.73-15626 Filed 8-1-73;8:45 am]

[40 CFR Part 52]

OREGON; APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Notice of Proposed Rule Making

The transportation control plan submitted to EPA on April 13, 1973, by the State of Oregon for attainment of the primary national ambient air quality standards for carbon monoxide and photochemical oxidants (hydrocarbons) in the Portland Interstate Region was approved with certain exceptions on June 15, 1973 (38 FR 16561). This Notice of Proposed Rulemaking sets forth regulations that in the Administrator's judgment can be implemented in addition to the approved portions of the Oregon transportation control plan to attain national standards in the Region by May 31, 1975.

If, prior to Federal promulgation the State of Oregon submits transportation control plan revisions which will assure attainment of national standards by May 31, 1975, and which the Administrator determines are acceptable, these proposed Federal regulations will not be promulgated. If revisions to the State plan are submitted and determined to be approvable after promulgation of Federal regulations, then those regulations will be rescinded. It is the desire of EPA that the plan to attain and maintain national standards in the Region be a State plan carried out by the State or by authorized local governments. To the greatest extent feasible, the Federal regulations proposed are designed to implement transportation control measures that are acceptable to the State and/or that received public support at the State hearings held on October 25, 1972, and on May 29, 1973, or that were contained in the comments submitted to EPA following EPA receipt of the State transportation control plan.

Pollution in the Oregon Portion of the Portland Interstate Region

The Oregon portion of the Portland Interstate Region encompasses the counties of Columbia, Washington, Multnomah, Yamhill, Polk, Marion, Benton, Linn, and Lane. The Region lies between the low Coast Mountain Range to the west and the Cascade Mountain Range to the east and contains three major urban areas. Portland, the largest city in the Region, is situated in a bowl at the confluence of the Willamette and Columbia Rivers. The topographical and climatological features of the Portland area contribute to the accumulation of air pollution.

Portland is the only area in the Region experiencing levels of carbon monoxide and photochemical oxidants exceeding national ambient air quality standards. The highest 8-hour carbon monoxide concentration recorded in Portland in 1971 was 23 parts per million, compared to an 8-hour national ambient air quality standard of 9 parts per million (10 milligrams per cubic meter), not to be exceeded more than once per year. The highest 1-hour concentration recorded in Portland was 32 parts per million compared with a national standard of 35 parts per million (40 milligrams per cubic meter), not to be exceeded more than once per year. An estimated 43 percent reduction in addition to the reductions resulting from implementation of Federal emission standards for new cars, is required to attain the 8-hour national ambient air quality standard. Attainment of the 8-hour standard will ensure attainment of the 1-hour standard.

The maximum 1-hour photochemical oxidant concentration recorded in Portland in 1971 was 0.14 part per million, compared to a 1-hour national ambient air quality standard of 0.08 part per million (160 micrograms per cubic meter), not to be exceeded more than once per year. An estimated 17 percent reduction in motor vehicle hydrocarbon emissions, in addition to the reductions resulting from implementation of Federal emission standards for new cars, is required to attain the 1-hour national ambient air quality standard for photochemical oxidants. The strategies proposed to achieve attainment of the 8-hour carbon monoxide standard will ensure attainment of the 1-hour standard for photochemical oxidants.

Summary of State Plan

The measures adopted by the State for implementation in the Oregon portion of the Portland Interstate Region and submitted to EPA on April 13 include: (1) Annual inspection to determine emissions from and maintenance required for gasoline-powered light-duty vehicles with a contingency retrofit provision; (2) traffic flow improvements with contingency provisions including alteration of the hours for loading and servicing to off-peak times; (3) public transportation improvements; and (4) reorganization and management of parking.

The State intends to limit the requirement for light-duty motor vehicle inspection to vehicles registered in four of the Oregon counties in the Portland metropolitan area (Clackamas, Columbia, Multnomah, and Washington). The emission inspection will be performed using loaded (dynamometer) emissions tests at inspection stations that are either State owned or privately operated under State supervision. If the emission reductions forecast by the State to result from the inspection and maintenance program are not achieved, the State indicates retrofitting of pre-1968 vehicles will then be required.

The State proposes to implement traffic flow improvements in the Portland central business district through a computerized traffic signalization system and through removal of on-street parking on selected streets. If further steps are needed to improve traffic flow or to maintain the flow improvements achieved through the computerized traffic signalization system and removal of on-street parking, the State will implement other measures including prohibiting turns into pedestrian crosswalks and altering servicing and loading hours.

The transit improvement plan developed includes elements such as acquisition of new buses, construction and operation of suburban park-and-ride stations with exclusive bus lanes and/or express buses, development of supplemental park-and-ride stations using existing parking lots, and creation of a transit mall in the Portland central business district. Service improvements and an aggressive marketing program will be used to attempt to induce new ridership.

To implement the reorganization and management of parking, the State has determined the maximum allowable parking spaces by land use and planning zone for new developments in downtown Portland. The Portland City Council, by ordinance, removed the minimum off-street parking requirements for new development in the downtown area.

State Emissions Density Calculations

In developing the transportation control strategies it submitted, the State used a proportional mathematical model to establish the maximum emission densities allowable if the 8-hour national ambient air quality standard for carbon monoxide is to be attained and maintained in the Oregon portion of the Portland Intrastate Region. The reductions in motor vehicle carbon monoxide emissions necessary to attain the ambient carbon monoxide standard by 1975 were determined by forecasting the emission densities for that year and subtracting the allowable emission densities established by means of the proportional model. For the purposes of the analysis, traffic speeds and volumes were determined for the metropolitan Portland area. Estimates of 1975 emissions were calculated for selected grid cells having high traffic densities and congested traffic flow. Based on these calculations the State determined that the only grid cell where the 8-hour ambient carbon monoxide standard will be exceeded in 1975 is in the central business district of Portland.

Tabular Summary—Control Strategy Effects

The following table summarizes, for one of the critical grid cells, within the Portland central business district, the effect of each of the control measures included in the strategy adopted by the State of Oregon on the overall emission reductions necessary in the Oregon portion of the Portland Interstate Region. The State estimates that the 8-hour standard for carbon monoxide can be met in the Portland central business district by reducing the emission density per week day to 79,000 grams per grid cell. The emission density forecast for 1975 is 133,950 grams per day for the selected grid cell. The 1975 estimate takes growth into account and the reduction in emissions from implementation of the Federal standards for new motor vehicles, but not the interim 1975 standards published April 26, 1973 (38 FR 10317). Consequently, an appropriate revision to the forecasted motor vehicle emissions inventory and adjustment of strategies may be required.

The State calculations indicate the emission reductions needed in the Portland central business district can be achieved by combining increased transit patronage, traffic signal optimization, removal of selected on-street parking, and vehicle inspection to determine emissions from and maintenance required for light-duty vehicles.

Compilation of Control Strategy Effects of State Plan for the Sample Analysis Grid Cell[1] on May 31, 1975

Portland central business district

Transportation Control Measure	Carbon Monoxide Reductions Based on Motor Vehicle Emissions forecast for 1975	
	gm/grid—24 hr.	%
Increased transit patronage	−7,500	6
Traffic signal optimization	−7,700	6
Removal of selected on-street parking	−24,300	18
Inspection and maintenance of light duty vehicles	−18,900	14
Total	−58,400	44
Motor vehicle emission, 1975 forecast	133,950	----
Motor vehicle emissions remaining	75,550	----
Maximum emissions allowable to attain standard	79,000	----

[1] Fourth, Washington, and Alder grid cell.

Deficiencies in the State Plan

Although the types of transportation control measures contained in the plan submitted to EPA by the State of Oregon are acceptable, there are deficiencies in the plan which prevent its complete approval by the Administrator. The plan does not contain for the inspection/maintenance program an adequate description of proposed surveillance and enforcement methods, proposed rules and regulations, proposed administrative procedures to be used, a description of the resources available, and a schedule of dates by which significant steps will be achieved. A sufficient description of the resources available to the State and to local agencies for carrying out other meaures in the plan is also not included.

In addition, the emission reductions claimed by the State to result from some of the transportation control measures are considered by the Administrator to be somewhat high. In the Administrator's judgment, a motor vehicle inspection/maintenance program of the type proposed by the State will result in an annual average reduction in carbon monoxide emissions of only 12 percent (See Appendix N, 38 FR 15197). The contingency retrofit program is not specified in sufficient detail to assure implementation.

The State has supplied some evidence that the traffic flow improvements resulting from traffic signal optimization and removal of on-street parking may not ultimately result in increased traffic on the affected streets and has indicated that other measures such as turn prohibitions and alteration of hours for loading and servicing will be implemented if the forecasted traffic flow improvements do not occur. Based on experience in other areas, improvements in traffic flow are generally short-lived; streets with improved traffic flow attract additional traffic and are again soon congested. The contingency measures to be instituted if the expected traffic flow improvements are not achieved and maintained are not discussed in sufficient detail to assure implementation.

Proposed Federal Regulations

Because of the deficiencies in the State transportation control plan for the Portland Interstate Region, Federal regulations are proposed to implement the following transportation control measures:

1. Establishment of a system of traffic lanes for the exclusive use of buses and car pools. The proposed regulation will require that a bus or bus and car pool lane be established between the downtown and Park-and-Ride lot. It will also require that for streets having four or more traffic lanes in one direction, at least one lane must be designated for use only by buses or by buses and car pools with an additional lane during rush hours. In the case of a street or highway with only three lanes in one direction, at least one of the lanes must be open to buses or buses and car pools from 6:30 to 9:30 a.m. and from 3:30 to 6:30 p.m. This regulation will apply to the Oregon

Counties of Clackamas, Columbia, Multnomah and Washington.

2. Institution of a daylight delivery ban that will alter the hours heavy-duty gasoline powered motor vehicles are allowed to make deliveries in the Portland central business district. The proposed regulation will prohibit these vehicles from making deliveries in the central business district between 7 a.m. and 6 p.m. The purpose of this regulation is to reduce the number and thus the air pollutant emissions from heavy-duty vehicles operating in downtown Portland during the hours when the 8-hour carbon monoxide standard is most likely to be exceeded. Reducing the number of heavy-duty vehicles will have the additional benefit of helping to improve traffic flow.

These Federally proposed measures are intended to strengthen and supplement, not wholly replace, State-adopted transportation control measures. Other measures are available to EPA and to the State that will, if implemented, assist in achieving a reduction in motor vehicles emissions equivalent to that resulting from the two proposed measures. In the State of Washington, for example, EPA is proposing regulations requiring the implementation of a selective vehicle-use exclusion program that will provide for metering the amounts of traffic entering those areas of Seattle and Spokane where air quality standards are presently not being met. To meter the traffic entering the affected areas, the State of Washington will be required to issue an "access certificate" to each vehicle requested within specified counties in the two metropolitan areas. The certificate will be affixed in a prominent place on the vehicle. On specified days of the week, vehicles displaying designated certificates will be prohibited from operating or parking in the affected areas between 7:00 a.m. and 5:00 p.m.

The estimated effect of the two proposed regulations, implemented together with three State-adopted transportation control measures is presented in the following table. Because the State-adopted measures to improve traffic flow will not, in the opinion of the Administrator, result in the increases in average vehicle speed forecasted, the reduction in carbon monoxide emissions from traffic flow improvements was reduced from the amount estimated by the State. Attainment of national standards by 1975 through implementation of only the State and Federal measures listed in the table will require that the State not permit in the Portland central business district the construction of any new parking facilities or the enlargement of any existing facilities. A regulation containing this authority, Oregon Administrative Rule, Chapter 340, section 20-050 through 20-070, "Parking Facilities and Highways in Urban Areas," was adopted January 24, 1972. This rule was incorporated in Section 5 of the State's Implementation Plan submitted January 30, 1972 and approved on May 31, 1972 (37 FR 10888). Stabilization of the parking supply in the Portland central business district will reduce the annual increase in light-duty vehicle travel, will help assure the success of State-adopted programs for traffic flow improvement and increased transit patronage, and will also encourage car pooling.

COMPILATION OF STATE/FEDERAL TRANSPORTATION CONTROL STRATEGY EFFECTS FOR THE SAMPLE ANALYSIS

GRID CELL* ON MAY 31, 1975

PORTLAND CENTRAL BUSINESS DISTRICT

Transportation Control Measure	Carbon Monoxide Reductions	
	gm/grid—8 hr.	Percent
Increased transit patronage 1	−3,900	6
Traffic flow improvement 1, 3	−9,200	14
Parking management 1	−2,600	4
Bus/carpool lanes 2	−3,900	6
Daylight delivery ban 2	−9,200	14
Total	−28,800	44
Motor vehicle emissions 1975 forecast	65,600	
Motor vehicle emissions remaining	36,800	
Maximum emissions allowable to attain standard	38,800	

*Fourth, Washington, and Alder grid.
1 State-adopted transportation control measure.
2 EPA-proposed transportation control measure.
3 Traffic flow improvement measures include traffic signal optimization and removal of on-street parking.

SOCIAL AND ECONOMIC IMPACTS OF PROPOSED FEDERAL TRANSPORTATION CONTROL MEASURES

A quantitative assessment of the economic and social impacts of the proposed Federal transportation control measures on the Portland Interstate Region has not been possible due to the short time available for development of the measures and the innate complexities of the issues involved. However, an attempt has been made to identify some of the more important impacts that will result if the proposed Federal measures are promulgated and implemented.

Reductions in the accessibility of the Portland central business district could result if vehicle use is restricted through the daylight delivery ban. If deliveries at alternative times of the day or using alternative modes of transportation are not provided and the central business district becomes less convenient, the economy of the district may be adversely affected. Property values could fall and private profits and government revenues could decline. The extent of adverse economic effects and the degree to which these effects can be ameliorated through providing alternatives to day time deliveries are difficult to estimate. However, economic losses in the central business district may be offset by gains elsewhere within the Region.

EPA EFFORTS TO MITIGATE THE EFFECTS OF PROPOSED REGULATIONS

The proposed Federal regulations, together with the State-adopted measures, will eliminate the danger to human health and welfare that exists in the Oregon portion of the Portland Interstate Region as a result of air pollution from motor vehicles. The regulations may, however, have adverse economic and social impacts. The Administrator will make every effort to mitigate the adverse effects of his final promulgation. He will be in contact with the Department of Transportation and other departments as necessary. The Administrator will request that these departments give special attention to the need for funding of programs necessary to offset any adverse effects resulting from the implementation of transportation control measures.

PUBLIC COMMENTS SOLICITED

The Administrator intends that any Federal regulations which must be promulgated be as responsive as possible to the needs of the Portland Interstate Regions; he therefore desires to obtain the comments and suggestions of the public on the proposed regulations and on any other measures that may be taken by Federal, State, or local governments to strengthen, supplement, or replace the proposed measures.

A public hearing will be held on this and any alternative proposals in Portland at the Portland Hilton Hotel, Parlor D, 921 Sixth Avenue at 7:30 p.m. on September 5, 1973.

In any promulgation of regulations necessary the Administrator will consider all comments and testimony he receives, as well as any additional strategies submitted by the State.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rule making by submitting written comments, preferably in triplicate, to the Administrator, EPA, Region X, 1200 Sixth Avenue, Seattle, Washington 98101, Attention: Ms. Betty Simon. All relevant comments received on or before September 4, 1973 will be considered. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at the EPA Region X library. The changes proposed by this notice, with appropriate modifications, will be effective as noted. This notice of proposed rule making is issued under the authority of section 110(c) and 301(a) of the Clean Air Act.

(42 U.S.E. 1857c et seq.)

Dated: July 24, 1973.

ROBERT W. FRI,
Acting Administrator.

It is proposed to amend Part 52 of Chapter I, Title 40, of the Code of Regulations as follows:

Subpart MM—Oregon

1. Subpart MM is amended by adding § 52.1979 and § 52.1980 as follows:

§ 52.1979 Bus/carpool lanes.

(a) Definitions:

(1) "Carpool"—a vehicle containing three or more persons.

(2) "Bus/carpool lane"—a lane on a street or highway open only to buses (or buses and carpools), whether constructed specially for that purpose or converted from existing lanes.

(3) "Major street or highway"—any street or highway which meets the criteria given in paragraph (b)(4) (ii), (iii) and (iv) of this section.

(b) The following constitutes the bus/carpool control strategy for the Portland Interstate Air Quality Control Region.

(1) Each incorporated city within the counties of Clackamas, Columbia, Multnomah and Washington shall establish bus/carpool lanes on the major streets and highways (as defined herein) over which it has ownership or control, according to the schedule in paragraph (b)(4)(vi) of this section.

(2) The Oregon counties of Clackamas, Columbia, Multnomah and Washington shall establish bus/carpool lanes on the major streets and highways (as defined herein) within the Region over which they have ownership or control, according to the schedule in paragraph (b)(4)(vi) of this section.

(3) The State of Oregon shall establish bus/carpool lanes on the major streets and highways (as defined herein) within the Region over which it has ownership or control, according to the schedule in paragraph (b)(4)(vi) of this section.

(4) Each of the governmental entities named in the previous three subparagraphs shall submit no later than December 1, 1973, a detailed compliance schedule showing the steps which it will take to establish these bus/carpool lanes and to enforce the limitations on their use, with each schedule to include the following:

(i) Each street and highway which will have bus/carpool lanes must be identified with a schedule for the establishment of the lanes.

(ii) A bus/carpool lane must be established between the Portland central business district and each Park-and-Ride lot identified in section (iv), "Public Transportation Improvements of the Portland Transportation Strategy," April 15, 1973.

(iii) If a street or highway has four or more traffic lanes in one direction, at least one of these lanes must be open only to buses (or buses and carpools) at all times. If only one lane is open to buses (or buses and carpools) at all times, a second lane must be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iv) If a street or highway has three traffic lanes in one direction, at least one of these lanes must be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(v) In unusual situations, a street or highway, or lane or segment thereof, may be exempt from these requirements if an approval of the exemption is obtained from the Administrator. The application for exemption shall not be submitted and will not be accepted after November 1, 1973. Special circumstances justifying the need for an exemption or modification (such as inappropriateness of use by buses, designation of bicycle lanes, or desire to allow bus/carpool lanes to be entered briefly by other vehicles for the purpose of crossing a lane or making a right turn) must be given in detail with its application.

(iv) Bus/carpool lanes must be prominently indicated by overhead signs at least once every mile, and at each intersection or entry ramp. Twenty-five percent of the lane mileage for each of the governmental entities must be established and needed signs must be installed by March 1, 1974; fifty percent by June 1, 1974; seventy-five percent by September 1, 1974; one hundred percent by December 1, 1974.

(vii) Bus/carpool lanes must be prominently indicated by distinctive painted lines, pylons, or physical barrier.

(viii) A signed statement by the chief executive officer of each governmental entity or his designee will identify the sources and amounts of funds for all projects.

(5) Buses shall have the right of way whenever changing lanes on streets and highways with bus lanes. This shall take effect as each lane is established and identified.

(6) Buses shall be permitted to make left turns whether or not the intersection is posted for "No Left Turn" (except when a one-way street would be entered from the wrong direction). This shall take effect January 1, 1974.

(7) None of the governmental entities named in paragraph (b) of this section shall convert existing on-street parking spaces to use as motor vehicle traffic lanes unless the effect will be to increase the number of bus/carpool lanes on the affected street beyond the number otherwise required by paragraph (b) of this section or unless the effect will be to create a bicycle lane in place of parking spaces.

(c) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, a governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1980 Daylight delivery ban regulation.

(a) Definitions:

(1) "Daylight hours" means the hours between 7 a.m. and 6 p.m. Monday through Friday.

(2) "Delivery ban" means a program to reduce emissions from in-use heavy-duty gasoline-powered vehicles employed to deliver goods during daylight hours.

(3) "Heavy-duty gasoline-powered vehicle" means any motor vehicle designated primarily for transportation of property and rated at more than 6,000 pounds GVW which is powered by a gasoline-burning engine.

(4) All other terms used in this section which are defined in Part 51 of this subchapter are used herein with the meaning so defined.

(5) "Portland central business district" means an area enclosed by the freeway loop formed by the Marquam Bridge-Eastbank Freeway (I-5) and the Fremont Bridge-Stadium Freeway (I-405) and by West Burnside Street.

(b) This section is applicable in the Portland central business district.

(c) Beginning January 1, 1975, the State of Oregon, Multnomah County, and the City of Portland shall prohibit during daylight hours deliveries of goods to commercial establishments employing 10 or more persons on the streets or highways over which it has ownership or control. The prohibition shall state that heavy-duty gasoline-powered vehicles making deliveries in violation of the prohibition shall either be towed away, or the owner and/or operator subject to a fine of up to $100 or both. No later than March 1, 1974 each of the governmental entities shall submit legally adopted regulations to EPA establishing such a prohibition.

(d) The State of Oregon, Multnomah County, and the City of Portland shall submit, no later than December 1, 1973, detailed compliance schedules showing the steps they will take to establish and enforce a daylight hours delivery ban program including the statutory proposals and needed regulations which they will propose for adoption. The compliance schedule shall include the date by which the governmental entities will recommend needed legislation to the appropriate body and will identify the State, county or city officer responsible for enforcement.

(e) Failure to comply with any provision of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. A state or other governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

[FR Doc.72-15629 Filed 8-1-73;8:45 am]

[40 CFR Part 52]

MARYLAND; APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Notice of Proposed Rule Making

The transportation control plan submitted by the State of Maryland for attainment of the primary national ambient air quality standards for carbon monoxide and photochemical oxidants (hydrocarbons) in the Metropolitan Baltimore Intrastate Air Quality Region, hereafter called the Metropolitan Baltimore Intrastate Region, was disapproved in part on June 15, 1973. This notice of proposed rule making sets forth regulations which in the Administrator's judgment could be implemented in addition to

the approved portions of the Maryland plan to attain and maintain the national standards for carbon monoxide and for photochemical oxidants in the Metropolitan Baltimore Intrastate Region.

If revisions to the State plan are submitted and determined to be approvable prior to Federal promulgation, these proposed regulations will be withdrawn. If revisions to the State plan are submitted and determined to be approvable after Federal promulgation, then those Federal regulations will be rescinded. It is the desire of the Environmental Protection Agency that the plan to attain and maintain the carbon monoxide standard and the photochemical oxidant standard in the Metropolitan Baltimore Intrastate Region be a State plan carried out by the State or its designated representatives.

SUMMARY

Portions of the Maryland plan were not approved on June 15, 1973, because the justification for claimed reductions and the procedures for administration, enforcement, and monitoring of the strategies were not adequate. Although some of the general strategies proposed in the plan were approved, the specific control strategy package was not approved. The specific control strategies in the State plan did not guarantee a sufficient degree of carbon monoxide and hydrocarbon emission reductions to justify a finding that carbon monoxide and photochemical oxidant air quality standards would be attained.

Maryland, by letter from Governor Marvin Mandel, has made a request for a 2-year extension until May 31, 1977, to meet the carbon monoxide and photochemical oxidant air quality primary standards. This would be the maximum extension permitted under section 110(e) of the Clean Air Act. On January 31, 1973, the opinion of the U. S. Court of Appeals for the District of Columbia in the case of Natural Resources Defense Council Inc., et al. v. Environmental Protection Agency (Civil Action No. 72-1522) and seven related cases required EPA to apply a very stringent standard of review to State extension requests. Maryland's submittal does not itself contain sufficient supporting data on the technical infeasibility of the available control strategies nor does it show adequate consideration of available alternative strategies.

However, based on EPA's own evaluation and analysis we have determined that the hardware necessary for retrofitting substantial numbers of light-duty vehicles with catalytic converters will not be available to meet standards until May 31, 1977. If evidence presented at the public hearings or submitted to the Agency during the comment period indicates that this 2-year extension is not justified, appropriate revisions will be made in our final promulgation.

The EPA-proposed regulations are designed to correct specific deficiencies in the State plan. A regulation is proposed to accelerate the implementation of the Maryland-proposed program which would prohibit the State of Maryland from registering or allowing the operation of vehicles which cannot show proof of satisfactorily passing a loaded emission test. Because the State plan lacks specific assurances of emission reductions from improvements to public transportation, regulations are proposed to establish exclusive bus/carpool lanes, restrict on-street parking, restrict the establishment of additional parking facilities, and require the establishment of a bus/carpool computer matching system.

A regulation also is proposed to require a Vacuum Spark Advance Disconnect (VSAD) retrofit by 1975 of all pre-1968 light-duty vehicles and an oxidizing catalyst retrofitting by 1977 of certain light-duty vehicles of model years 1968–1975 inclusive. Also proposed are regulations requiring gasoline marketing vapor controls to reduce hydrocarbon loss during transfer of gasoline. As a final assurance of adequate emission reductions, a regulation is proposed to limit gasoline sales in the Region to their base year levels beginning July 1, 1974, and to limit them to 40.5 percent of their base year levels beginning May 31, 1977.

The strategies proposed herein, when taken together with the effects of the Federal Motor Vehicle Control Program, are projected to achieve more than the 57 percent reduction in carbon monoxide base year (1972) emissions required to meet the national ambient air quality standard for carbon monoxide by May 31, 1977, and will achieve the 70 percent reduction in hydrocarbon base year (1972) emissions required to meet the national ambient air quality standards for photochemical oxidants by May 31, 1977 in the Metropolitan Baltimore Intrastate Region.

EPA is also considering the promulgation of additional control measures and requests public comment on the applicability of these measures to the Metropolitan Baltimore Intrastate Region. Candidate measures include phased reductions of public parking facilities, motorcycle limitation programs, the expanded use of any existing rail right-of-way, and establishment of bikeways.

In addition, EPA is evaluating the potential of increasing the stringency of certain proposed regulatory measures. The proposed inspection and maintenance regulations incorporate a 30 percent failure rate which could be expanded to 50 percent and gain additional emission reductions. Furthermore, Maryland has in effect regulations for organic solvent use and control of degreasing operations. Though these regulations are believed to be reasonable, further examination may indicate that additionally stringent measures are necessary. Pending review of public comments and additional EPA evaluation of these control measures and/or modifications, EPA may include some, if not all, of these potential strategies in the final promulgation.

TRANSPORTATION CONTROL ALTERNATIVES

Analysis of the air quality problems in the State of Maryland reveals a photochemical oxidant problem and a carbon monoxide problem within the Metropolitan Baltimore Intrastate Region.

Since a substantial proportion of the photochemical oxidant problem and virtually all of the carbon monoxide problem stems from emissions from individual motor vehicles, measures to reduce emissions and measures to reduce vehicular travel can be effective in improving air quality. Reductions in emissions from vehicles can be obtained through inspection and maintenance programs and from incorporation of various retrofit devices. Reductions in Vehicle Miles Traveled (VMT) can be achieved through various pricing and taxing schemes for road use, adoption of parking restrictions and/or limitations of available number of parking spaces, and programs promoting the use of bus/carpools.

Direct vehicle restraints may also be necessary. These can take the form of limitations on gasoline distribution or of restricting access of vehicles to areas of high pollutant concentrations. In the Metropolitan Baltimore Intrastate Region, where the greatest threat to air quality is an area-wide photochemical oxidant pollution generated by hydrocarbon emissions, an area-wide limitation on gasoline distribution would be an effective approach.

In solving the pollution problem, improvements to public transportation are a desirable and effective complement to restraints on automobile use. Such improvements as greater coverage, increased frequency of service, improved reliability, improved comfort, and adequate personal security would further encourage the use of public transit alternatives.

PROPOSED ADDITIONAL CONTROL STRATEGIES

The Maryland plan as amended by the June 15, 1973 submission, attempts to demonstrate attainment of the photochemical oxidant and carbon monoxide air quality standards through utilization of five general measures: the Federal Motor Vehicle Emissions Control Program; a State-wide, State-run Motor Vehicle Inspection Program for all gasoline-powered vehicles; improvements to public transportation; retrofit of heavy-duty gasoline-powered vehicles; and major stationary source restrictions.

The Maryland plan, which utilizes data gathered in the physical area defined by the Baltimore Metropolitan Area Transportation Study (BMATS), reports peak-period hydrocarbon emissions were 57.7 tons and carbon monoxide emissions were 507,800 tons per year in 1972. In order to demonstrate attainment of the standards, the State of Maryland calculations indicate that hydrocarbon emissions must be reduced by 70 percent of the 1972 emissions in the BMATS area to a level of 17.3 tons/peak period and that carbon monoxide emissions must be reduced by 57 percent of the 1972 emissions in the BMATS area to a level of 217,800 tons/year.

Including projected increases in vehicle miles of travel, the Federal Motor Vehicle Emissions Control Program will reduce hydrocarbon peak-period emissions by 31 percent to 39.7 tons and will reduce carbon monoxide emissions by 32 percent to 345,100 tons/year by 1977.

These estimates are adjusted to include the 1975 interim motor vehicle emission standards as announced on April 11, 1973.

To provide the required additional reductions to attain the national ambient air quality standards as expeditiously as practicable, several measures for controlling mobile sources and reducing VMT are proposed. Mobile source controls include the early initiation of a State vehicle inspection program and the retrofitting of certain light-duty gasoline-powered vehicles. VMT reductions to be realized through improvements to public transportation are augmented and supported by proposed measures providing for encouragement of bus/carpools, parking restrictions and limitations, and a gasoline distribution limitation.

In order to ensure that national ambient air quality standards will be achieved as expeditiously as practicable, the following VMT reduction measures will be implemented by May 31, 1975:

1. Gasoline distribution limitations to their base year (July 1, 1972–June 30, 1973) levels.

2. Public transportation improvements including exclusive bus lanes and parking restrictions.

Moreover, the Administrator is considering the promulgation of additional control strategies which he believes can possibly provide further support to assure attainment of the needed reduction in VMT. The Administrator encourages testimony on a program calling for the phased reduction of public parking spaces in the CBD and other trip attraction centers by as much as 20 percent by mid-1975. Also solicited is testimony on the possibility and advisability of the expanded use of existing rail right-of-way and motorcycle limitation programs.

The final promulgation may include measures not explicitly proposed herein if, on the basis of information provided to the Administrator, they appear at the time of the final promulgation to be the most effective and reasonable means of attaining standards.

Proposed Reductions in VMT

According to the Maryland plan, improvements to public transportation are credited with reducing vehicle miles of travel by 13 percent in the BMATS area. This VMT reduction is expected to reduce by 13 percent light-duty mobile emissions of both hydrocarbons and carbon monoxide in that area. Improvements proposed include establishing exclusive bus lanes, purchase of new buses, and promotion of carpools; however, implementation schedules are not firm and hence provide no assurance for claimed reductions. To help ensure that the State's reductions claimed for mass transportation improvements will be achieved, the Environmental Protection Agency is proposing four additional regulations: provision of exclusive bus/carpool lanes, limitation of on-street parking on those streets with exclusive bus lanes, limitations on the construction of additional parking facilities, and the establishment of a computerized bus/carpool service.

Although the implementation of stationary source controls, inspection/maintenance of light-duty gasoline-powered vehicles, improvements to public transportation, retrofit of certain light-duty gasoline vehicles, and the above four additional regulations will enable the carbon monoxide standard to be achieved in 1977, these measures alone will not be sufficient to meet the standard for photochemical oxidants by 1977.

An additional reduction of 11.5 tons/peak period of hydrocarbon emissions is required. To attain this reduction, EPA proposes a phased gasoline distribution limitation, by limiting gasoline distribution by mid-1975 to the base year level and by reducing the distribution by mid-1977 to 40.5 percent of the base year level.

The Clean Air Act of 1970 requires attainment of the national ambient air quality standard as expeditiously as practicable but in no case later than May 31, 1975, unless the necessary technology or other control methods are not reasonably available by that date. In the latter event, an extension of time for achieving the standards until no later than May 31, 1977, may be granted, but all reasonably available alternatives must be implemented by May 31, 1975, along with such measures during the pre-1977 interim period as are deemed to be reasonably available. In the Metropolitan Baltimore Intrastate Region, a number of reasonable strategies (inspection/maintenance, gasoline distribution limitation, vacuum spark advance disconnect for light-duty vehicles, volatile organic loading facilities, preferential bus treatment, on-street parking and new parking facility limitations, and a computerized bus/carpool service) will be operative in 1975. However, because of hardware unavailability and long lead times involved in the acquisition of mass transportation equipment and in the installation of advance retrofit devices, the total strategy cannot be completed until May 31, 1977. The gasoline distribution limitation strategy must, by its very nature, rely heavily on the other proposed strategies. The percentage reduction in 1977 from the gasoline limitation program is projected to be 59.5 percent of the base year levels of gasoline consumption.

The proposals described above are the only ones for which regulatory language has been included in this proposal. However, EPA will also consider other VMT reduction measures as part of this rulemaking proceeding, and they may be included in the final promulgation if they are found to be the most feasible methods for achieving the standards. In particular, EPA will explore the possibility of reducing VMT by the phased reduction of the number of public parking spaces in CBD's and other trip attraction centers by as much as 20 percent by mid-1975, establishment of a more sophisticated mass transit system, selective conversion of traffic lanes on roads to the exclusive use of buses and carpools, adoption of more restrictive on-street parking regulations, increased parking charges, and adoption of more stringent enforcement methods. Measures to promote the use of bicycles and to limit the use of motorcycles will also be considered. Comments on these and other VMT reduction measures are particularly solicited.

Proposed Controls on Stationary Sources

Although Maryland has either existing or proposed regulations to control stationary sources, its proposal to reduce hydrocarbon emissions through vapor recovery during service station and automobile tank refueling operations was not supported by proposed regulations which the State committed itself to adopt as required by 40 CFR 51.14(a)(ii). In the plan addendum of June 28, 1973, Maryland's intent to adopt such regulations was indicated. This submission is now being evaluated. To ensure the reduction of 1.8 tons/peak period claimed for this measure, EPA is proposing a regulation to require 90 percent recovery of hydrocarbon vapors during loading of service station storage tanks and during transfer of gasoline to automobiles. If the Maryland proposal of June 28, 1973, is satisfactory, the regulation proposed by EPA herein will be withdrawn.

Existing organic solvent regulations require that all present drycleaning installations emitting more than 200 pounds per day of photochemically reactive hydrocarbons shall reduce present emissions by at least 85 percent, and that the limit for new installations shall be 40 pounds per day. Although the full effect of the existing regulations through natural attrition would not be felt until 1987, the additional requirement that all solvent users must be fully controlled by 85 percent of uncontrolled emissions would result in a negligible reduction of 0.03 tons per peak period, or 0.14 percent of the reduction required to meet the primary ambient air quality standards by May 31, 1977. The administrator is aware of Maryland's ongoing program for the control of hydrocarbon emissions from dry-cleaning installations and is presently evaluating the proposed regulation which would accelerate the program by attaining full compliance by the proposed May 31, 1974 date. Consequently, no regulation is being proposed by EPA at this time on the assumption that Maryland is proceeding expeditiously to control this relatively small source category of hydrocarbon emissions.

The Environmental Protection Agency has also examined Maryland's regulations governing emissions of organic solvents resulting from degreasing operations and from evaporation from surface and architectural coatings. For decreasing operations, there are no specific constraints on nonreactive material that may be used, such as perchlorethylene or saturated hologenated hydrocarbons that are in use elsewhere. Comments are solicited on whether degreasing operations in the Metropolitan Baltimore Intrastate Region are a significant source of reactive hydrocarbon emissions for

which a specific regulation should be promulgated.

Emissions of other solvents in the Metropolitan Baltimore Intrastate Region were also investigated. It has been determined that technology does exist to control more efficiently the emissions of a number of the smaller heating (15 to 200 lb/day category) and spraying operations (40 to 200 lb/day category) involving organic solvents. Their estimated total peak-period emission is 0.10 ton or 0.47 percent of the reduction required to meet the primary ambient air quality standards by May 31, 1977. Comments are solicited as to whether it is feasible or practicable to require additional controls on these sources, many of which are presumably located on premises of small firms. If these comments indicate that further controls are needed, then the Administrator proposes to promulgate regulations equivalent to those currently adopted by the County of Los Angeles Air Pollution Control District as Rule 66. Other minor relaxations from L.A. Rule 66 involve evaporative emissions from gallon (or smaller) containers of architectural coating compounds and from the allowable disposal limits of waste solvent materials. No data are presently available to the Administrator on the atmospheric burden that may be created by such evaporative emissions, which are presently believed to be very small.

Even if the Administrator should determine that Maryland's existing regulations for control of solvent emissions as discussed above need not be augmented at this time, they will be the subject of continuing examination and their rigorous enforcement will be monitored.

Proposed Controls on Mobile Sources

In the plan addendum of June 28, 1973, it is stated that legislative authorization funding measures, etc., are needed to implement Maryland's proposed inspection and maintenance program. The tentative implementation timetable proposed by Maryland shows the commencing of the 20-month program on January 1, 1975, following an assumed passage of legislation, and completion by September 1, 1976. Under the requirements of the Clean Air Act, the States must proceed as expeditiously as practicable to attain primary air quality standards. In an effort to ensure the earliest possible initiation of Maryland's inspection and maintenance program, the Administrator is proposing a regulation to require implementation of the system to begin by March 1, 1974, and actual commencement of the inspection program by August 1, 1975. The duration of this timetable is very close to that proposed by Maryland. The Maryland plan proposes an emission inspection program for all light- and heavy-duty gasoline-powered vehicles; a 12 percent hydrocarbon emission reduction and a 10 percent carbon monoxide emission reduction for all such vehicles is claimed through the use of a loaded-test inspection/maintenance program. These values are consistent with those presented in CFR Part 51, Appendix N. Both the Maryland and EPA proposals assume an initial 30 percent failure rate criterion. Comments are solicited on the desirability of establishing an initial 50 percent failure rate criterion, which calculations indicate would give an additional reduction of 0.1 ton of hydrocarbons per peak-period emission.

A full EPA review of the June 28, 1973, addendum is now in progress. This review will determine the degree of acceptability for both the establishment of the inspection and maintenance system itself and the subsequent inspection program. Comments are also solicited from the public and other interested parties on all aspects of the program. It is the Administrator's wish that the final promulgation incorporate as much of the Maryland-proposed program as can be found acceptable.

On June 15, 1973, and as subsequently amended on June 28, 1973, and on July 9, 1973, Maryland proposed retrofit of heavy-duty gasoline-powered vehicles with devices capable of reducing hydrocarbon and carbon monoxide emissions by 50 percent. EPA is unable to accept this proposal at this time because there has not been sufficient time for an adequate review of this proposal. Although a proposed implementation timetable has been included in Maryland's latest proposal, cooperative arrangements with jurisdictions proposing a heavy-duty retrofit program have not been indicated. EPA, however, encourages Maryland's intended efforts in this direction.

EPA proposes retrofit of pre-1968 light-duty vehicles with approved Vacuum Spark Advance Disconnect (VSAD) devices and of certain 1968–1975 light-duty vehicles with oxidizing catalyst devices. The VSAD device is expected to reduce hydrocarbon emissions by 20 percent per vehicle and carbon monoxide emissions by 9 percent per vehicle. The oxidizing catalyst device is expected to reduce both hydrocarbon and carbon monoxide emissions by 50 percent per vehicle. Only those cars of 1968–1975 model years which run on gasoline with a research octane number (RON) of 91 can be fitted with this device because of technical constraints. In addition, this gasoline must be unleaded. Exemptions will be allowed for all 1975 model year vehicles originally equipped with the oxidizing catalytic converter, or those vehicles which are certified to meet the original statutory Federal emission standards for 1975. National estimates indicate that approximately 20 percent of the 1968–1970 model year vehicles and 75 percent of the 1971–1975 model year vehicles would be retrofitted under this proposal.

Summary of Effects

The estimated combined effect of the State transportation control measures approved by EPA and Federally proposed regulation are presented in the following table.

Federally proposed regulations are intended to strengthen, supplement, and expand, not wholly replace, State transportation control measures approved by EPA.

Compilation of Control Strategy Effects for the Metropolitan Baltimore Intrastate Air Quality Control Region on May 31, 1977

	Carbon Monoxide		Hydrocarbons	
	Tons per Year	Percent of Total Reduction Required	Tons per Peak Period (6-9 am)	Percent of Total Reduction Required
Stationary Source Emissions Without Control Strategy	103,000		13.4	
Expected Reduction:				
a) Current Regulations (1)	−5,575	−4.4%	1.5	6.9%
b) Gasoline Handling Vapor Recovery (2)	0	0	1.8	8.1%
c) Other Stationary Source (1)	500	0.4%	0.5	2.4%
Rule Strengthening				
Stationary Source Emissions Remaining	108,075		9.6	
Mobile Emissions from Highway Light- and Heavy-Duty Vehicles without Control Strategy (Credit taken for FMVCP)	242,100		26.3	
Expected Reduction:				
a) Inspection and Maintenance (2)	15,500	12.2%	2.1	9.4%
b) Mass Transit Improvements (2)	20,400	16.0%	1.8	8.1%
c) VSAD Retrofit pre-1968 LDV (3)	1,460	1.1%	0.3	1.3%
d) LDV Catalytic Retrofit 1968-1975 (3)	33,000	25.9%	2.9	12.9%
e) Gasoline Distribution Limitation (3)	103,200	81.1%	11.5	51.3%
Mobile Emissions Remaining	68,600		7.7	
Total Emissions without Strategy	345,100		39.7	
Total Reduction	168,425	132%	22.4	100%
Total Emissions Remaining	176,675		17.3	
Total Reduction Required	127,300		22.4	

(1) Approved State strategy.
(2) State strategies modified by EPA.
(3) EPA proposed strategy.

Implementation Procedures

Implementation of the strategies provided for by the regulations proposed herein is the key to the success of the air quality improvement program for the Metropolitan Baltimore Intrastate Region. Therefore, the proposed regulations also provide for the development of any necessary administrative procedures; schedules of compliance by sources; and surveillance, monitoring, and enforcement activities.

In all cases where VMT reduction measures are being proposed by regulations, the State or city will be required to take steps to accomplish the intended result. If this is not done, penalties for violation of the Clean Air Act may be assessed. It is EPA's position that it may require States or cities to enforce regu-

lations that are related to their position as owners of roads. As owners of roads, States and cities may be held directly responsible for the pollution caused by those roads and by the traffic which the roads make possible, and they may be required to take such steps as are necessary to ensure that the roads and the activities carried out on them cease to cause violations of air quality standards. Regulations have accordingly been drafted to impose enforcement responsibility on the States or cities only where the activity being regulated was, in the judgment of EPA, closely enough related to the government's position as owner of the roads to justify the imposition of responsibility under this theory.

ECONOMIC AND SOCIAL IMPACT

The social and economic consequences of the majority of the measures included in the Maryland plan or proposed herein are considered reasonable. For example, the inspection and maintenance procedures will require expenses of approximately $10 annually for the average vehicle inspected. The implementation of the VSAD retrofit program of pre-1968 vehicles will require that individual motorists pay approximately $20 installation costs. Distributed costs of the various Maryland proposed mass transportation and fuel-handling improvement measures, as well as those supplemental strategies proposed by EPA providing incentives for the use of express buses and carpools and disincentives on the use of automobiles by individual motorist-commuters, are also considered reasonable. In addition, these measures are expected to benefit the public from the standpoint of improved traffic flow for commuters, general urban mobility, and a decrease in energy consumption.

On the other hand, while the collective benefits to be derived from the catalytic converter retrofit program are significant, the average price to the individual motorist is $135 per vehicle. However, the cost of this proposal could be ameliorated by the imposition of a state financed retrofit program which would spread the cost over the entire vehicle population. Such a program might be financed through a gasoline tax or vehicle registration fee.

The most stringent proposal would require in 1977 a gasoline sales reduction of 59.5 percent from base year levels. This would affect nearly every economic and social activity in the Metropolitan Baltimore Intrastate Region. It is not possible at this time to calculate the economic and social cost to the community of this proposal. However, it must be recognized that under the requirements of the Clean Air Act, the Administrator must help provide for attainment of air quality standards as expeditiously as practicable. It is for this reason that the Administrator solicits suggestions on all possible measures which will ease the burden of the more severe strategies considered. The Administrator recognizes that there are significant positive aspects to VMT reductions. These VMT reductions may well lessen the need for currently envisioned urban interstate highways. Many experts believe that the sprawling development patterns fostered by widespread automobile use are unduly wasteful of energy, land, and other resources, and have contributed to the decay of urban centers. Widespread use of other modes of transportation will be necessary if these adverse tendencies are to be corrected.

Greater use of mass transit and car pooling may well stimulate the switch to a 4-day week by major industries. This, in turn, may result in further reductions in VMT and/or total emissions, at least in the CBD. Gasoline limitation measures would stimulate the need for additional mass transit and/or car pooling, thus resulting in further reductions of the total emissions.

In summary, the Agency has responded to the order of the United States Court of Appeals for the District of Columbia Circuit and proposes a plan to attain and maintain air quality standards in the Metropolitan Baltimore Intrastate Region by May 31, 1977. In this proposed plan for attainment of standards by May 31, 1977, the Agency proposes to grant the maximum extension allowed by law. Even with this extension, the plan would result in social and economic consequences which must be considered severe. The public hearing scheduled on these proposals should focus not only on the reasonableness or unreasonableness of the proposed plan, but also on what steps can be taken to clean up the air and maintain air quality standards beyond 1977.

MASS TRANSPORTATION

Improvements and expansion of the existing mass transportation facilties in the Baltimore Metropolitan area (the so-called Baltimore Metropolitan Area Transportation Study Area—BMATS) are integral to the proposed reduction in VMT obtained as a result of disincentives and restraints on the personal use of automobiles primarily within the BMATS area.

Since mid-1971, all transit functions in Baltimore City have been the responsibilty of the Mass Transit Administration (MTA) of the Maryland Department of Transportation. The Baltimore Transit Company had been purchased in 1970 by the predecessor agency, the Metropolitan Transit Authority. MTA is responsible for planning, programming and implementing mass transit services in the Metropolitan Transit District, which is comprised of Baltimore City, Baltimore County, and Anne Arundel County. MTA has taken over four suburban transit companies. Thus, the entire metropolitan transit system is State owned and operated.

In addition to bus transit, MTA is planning and developing a regional rail rapid transit system in coordination with the Regional Planning Council. The Urban Mass Transportation Administration (UMTA) has recently granted $22.5 million to help finance construction of the first phase of the system. The local one-third of funds will come from the Maryland Department of Transportation.

There are few apparent legal or institutional obstacles to improved transit services, or even reduced transit fares at the State level. Local policy is one of support for public transit. There is a question of economic policy, however, related to the mandate of MTA to support all costs incurred for construction, acquisition, operation, and maintenance of transit facilities "as far as practicable" from the fare box and Federal funding grants. Presently no funds are available from Federal sources to subsidize operating losses; therefore, it would be necessary for the State to review policy related to operating losses caused by new services or reduced fares.

Present planning calls for many transit service improvements, including acquisition of at least 100 new buses in 1973. An application to UMTA to support this plan was submitted in January. The transit technical study (T9-5) is in the review stages, but it may be expected to recommend further service improvements.

Expanded mass transit facilities are essential to the success of any air pollution control strategy for the Metropolitan Baltimore area. The Administrator, therefore, encourages transit expansion in this area, and he will provide all possible support to efforts by Federal, State, local governmental, and private groups to expand the mass transit facilities.

PUBLIC COMMENTS SOLICITED

Although the Administrator has concluded that the proposed plan is the best approach available to him at the present time for achieving compliance with the requirements of the Act, further analysis may demonstrate that more appropriate options are available. He therefore desires to obtain the comments and suggestions of the public on the problems of achieving the ambient air quality standards in the Metropolitan Baltimore Intrastate Region. Comments are particularly invited pertaining to measures that may be taken by Federal, State, or local authorities to support or supplement the proposed air pollution control measures to implement these measures, and to compare social and economic effects of alternative pollution control measures.

Public hearings will be held in Baltimore on September 5, 1973, at 10:00 a.m. in the Carroll Room, Baltimore Hilton Hotel, 101 West Fayette Street. Further notice of these hearings, including locations where EPA proposals can be inspected, will be published in the Baltimore area.

The Administrator's final promulgation of transportation controls for the Metropolitan Baltimore area will consider the comments and testimony he receives, as well as any additional approvable strategies submitted by the State before or at the hearing as part of the State plan. These influences, and the additional analysis of alternative strategies that can be made in the time between this proposal and final promulga-

tion, may lead the Administrator to adopt final regulations that differ in significant ways from this proposal.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rule making by submitting written comments, preferably in triplicate, to the Regional Administrator, EPA Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106. All relevant comments received not later than September 4, 1973 will be considered. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at the EPA Region III Office, and at locations to be announced in the Baltimore area. This notice of proposed rule making is issued under the authority of section 110(c) and 301(a) of the Clean Air Act (42 U.S.C. 1857 et seq.).

EPA STUDIES AND GUIDELINES

Further information on transportation control, land use, and motor vehicle emissions may be obtained from one or more of the following documents which the Environmental Protection Agency has published:

1. "Prediction of the Effects of Transportation Controls on Air Quality in Major Metropolitan Areas" and "Evaluating Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas," November 1972. Both of these documents are generally known as the "Six Cities Study."
2. "Transportation Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas," December 1972. This document is a summary of a study of 14 cities conducted with the view of recommending specific transportation control strategies. (Separate reports for each of the 14 cities are also available.) The documents listed in 1 and 2 above are available from the Air Pollution Technical Information Center, EPA, Research Triangle Park, North Carolina 27711.
3. "Control Strategies for In-Use Vehicles," November 1972. This report is available from EPA, Mobile Source Pollution Control Programs, 401 M Street, SW., Washington, D.C. 20460.
4. "Transportation Control Measures," *Federal Register* (38 FR 15194), June 8, 1973.
5. "Transportation Controls to Reduce Motor Vehicle Emissions in Baltimore, Maryland," APTD-1443 (December 1972), available from EPA, Office of Air and Water Programs, Research Triangle Park, North Carolina 27711.

(42 U.S.C. 1857 et seq.)

Dated: July 24, 1973.

ROBERT W. FRI,
Acting Administrator.

It is proposed to amend Part 52 of Chapter 1 of Title 40 of the Code of Federal Regulations by adding the following:

Subpart V—Maryland

§ 52.1085 Inspection and maintenance.

(a) Definitions:

(1) "Inspection and maintenance program" means a program to reduce emissions from in-use vehicle by identifying vehicles which need emission-control-related maintenance and requiring that maintenance be performed.

(2) "Precontrolled vehicles" means light-duty vehicles sold nationally (except California) prior to the 1968 model year and light-duty vehicles sold in California prior to the 1966 model year.

(3) "Controlled vehicles" means light-duty vehicles sold nationally (except California) in the 1968 model year and later and light-duty vehicles sold in California in the 1966 model year and later.

(4) "Loaded emissions test" means a sampling procedure for exhaust emissions which requires testing the engine under stress (i.e., loading) by use of a chassis dynamometer to simulate actual driving conditions. As a minimum requirement, the loaded emission test must include running the vehicle and measuring exhaust emissions at two speeds and loads other than idle.

(5) "Idle emission test" means a sampling procedure for exhaust emissions which requires operation of the engine in the idle mode only. At a minimum, the idle test must consist of the following procedures carried out on a fully warmed-up engine: a verification that the idle RPM is within manufacturer's specified limits and a measurement of the exhaust carbon monoxide and/or hydrocarbon concentrations during the period of time from 15 to 25 seconds after the engine was used to move the car or was run at 2000 to 2500 RPM with no load for 2 to 3 seconds.

(6) "Retrofit" means the addition or removal of an item of equipment, or a required adjustment, connection, or disconnection of an existing item of equipment, for the purpose of reducing emissions.

(7) "Idle adjustment" means a series of adjustments which include RPM, idle air/fuel ratio and basic timing.

(8) "Initial failure rate" means the percentage of vehicles rejected because of excessive emissions of a single pollutant during the first inspection cycle of an inspection/maintenance program. (If inspection is conducted for more than one pollutant, the total failure rate may be higher than the failure rates for each single pollutant.)

(b) This regulation is applicable within the geographical confines of the State of Maryland.

(c) The State of Maryland shall submit to the Administrator of EPA or his designee, no later than January 1, 1974, a detailed compliance schedule showing the steps that will be taken to establish and enforce an inspection and maintenance program pursuant to paragraph (d) of this section.

The compliance schedule shall include:

(1) The text of any necessary statutory proposals and regulations that are needed to carry out the inspection/maintenance system.

(2) A detailed timetable describing the steps that must be taken and when these steps will be taken to ensure the timely submittal of the needed legislation to the legislature and to ensure timely adoption of the regulations needed for paragraph (d) of this section.

(3) A detailed timetable describing the dates of ordering and of acquisition of necessary equipment.

(4) A signed statement by the chief executive or his designee identifying the sources and amounts of funding for the inspection/maintenance program and a timetable to ensure that proper funding levels are available. If funds cannot legally be obligated under existing statutory authority, the text of the needed legislation shall be submitted to the Administrator of the Environmental Protection Agency or his designee pursuant to paragraph (c)(1) of this section.

(d) The State of Maryland shall establish an inspection and maintenance program applicable to all light-duty gasoline-powered vehicles registered within its confines. No later than March 1, 1974, the State of Maryland shall submit to the Environmental Protection Agency legally adopted regulations establishing such a program. The regulations shall include:

(1) Provisions for the inspection of all gasoline-powered light-duty vehicles at periodic intervals of no more than one year by means of a loaded (dynamometer) test.

(2) Provisions for inspection failure criteria consistent with the emission reduction claimed in the plan for the strategy. These criteria shall include an initial failure rate of 30 percent (see definitions).

(3) Provisions to ensure that failed vehicles receive the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts and knowledge to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This might include spot checks of idle adjustments and/or a suitable type of physical tagging.

(5) Delineation of the agency or agencies responsible for conducting, overseeing and enforcing the inspection and maintenance program.

(6) Provisions for beginning the first inspection cycle by August 1, 1975, and completing it by July 31, 1976.

(e) After July 31, 1976, the State of Maryland shall not register nor allow to operate on its streets or highways vehicles which fall within this regulation and have not complied with the applicable standards and procedures of paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

(f) After July 31, 1976, no owner of a vehicle which is affected by this regulation shall operate or allow to be operated

a vehicle which does not comply with the applicable standards and procedures of paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

§ 52.1086 Bus/carpool computer matching system.

(a) Definitions:

(1) "Bus/carpool matching" means assembling lists of commuters sharing similar travel needs. The number of commuters on each list identifies potential bus/carpools.

(2) "Time-origin-destination (TOD) information" means information that identifies a commuter's work schedule, home and work location.

(3) All other terms used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region (hereafter referred to as the Region).

(c) Beginning March 1, 1974, the State of Maryland shall establish a computer-aided bus/carpool matching system which is conveniently available to all employees in businesses having more than 10 employees within the Region who operate light-duty vehicles on streets or highways over which it has ownership or control. No later than December 1, 1973, the State shall submit legally adopted regulations to the EPA establishing such a system. The regulations shall include:

(1) A method of collecting information which will include the following as a minimum:

(i) Provisions for each affected employee to receive an application form with a cover letter describing the matching program.

(ii) Provisions on each application for applicant identification of time, origin, and destination, and the applicant's desire to drive only, ride only, or share driving.

(2) A computer method of matching information that will have provisions for locating each applicant's origin and destination within a grid system in the urban area and suburban region surrounding it and matching applicants with identical origin and destination grids and compatible work schedules.

(3) A method for providing continuing service such that the master list of all applicants is retained and available for use by new applicants; applications are currently available; and the master list is periodically updated to remove applicants who have moved from the area served.

(4) An agency or agencies responsible for operating, overseeing and maintaining the bus/carpool computer matching system.

(d) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act.

§ 52.1087 Management of parking supply.

(a) Definitions:

(1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land for use as a facility.

(2) "Modification" means any change to a parking facility which increases the vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the vehicle capacity of such facility.

(4) "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or enlargement.

(5) "Parking facility" (also called "facility") means any facility, building, structure, or lot, or portion thereof used primarily for temporary storage of motor vehicles.

(b) This regulation is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) No person, after August 15, 1973, shall commence construction of any new parking facility or modification or enlargement of any existing parking facility until he has first received from the Administrator or from an agency approved by the Administrator a permit stating that construction, modification, or enlargement of such facility will not interfere with the attainment or maintenance of applicable Federal air quality standards.

(d) In order for any agency to be approved by the Administrator for purposes of issuing permits for construction of any new parking facility or any modification or enlargement of any existing parking facility, such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include, but not be limited to, a condition that before a permit may be issued the following findings of fact or factually supported projections must be made:

(i) The location of the facility.

(ii) The total motor vehicle capacity before and after the construction, modification, or enlargement of the facility.

(iii) The normal hours of operation of the facility and the enterprises and activities which it serves.

(iv) The number of people using or engaging in any enterprises or activities which the proposed facility will serve.

(v) The number of motor vehicles using the proposed facility on an average hourly basis and a peak hour basis.

(vi) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projections shall include data concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include but not be limited to:

(i) Full consideration of all facts contained in the application.

(ii) Provisions that no permit shall be issued if such permit will result in the increase of vehicle miles of travel within any area the air quality of which fails to meet applicable Federal air quality standards.

(3) Agency procedures provide that no permit for the construction, enlargement, or modification of a facility covered by this section shall be issued without notice and opportunity for public hearing. The public hearing may be of the legislative type; the notice shall conform to the requirements of 40 CFR 51.4(b); and the agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to 7 days before the scheduled hearing date, no hearing need be held. If notice of intent to participate is required, that fact shall be noted prominently in the required notice of hearing.

§ 52.1088 Limitation of public parking.

(a) The term "on-street parking" means leaving a vehicle on a street or sidewalk and also includes stopping for any purpose other than the momentary and immediate pickup or discharge of passengers. A prohibition of "on-street parking" under this section includes a prohibition against stopping for the purpose of effecting any delivery of goods.

(b) The following provisions apply to all areas within the City of Baltimore and the counties of Baltimore, Howard, and Anne Arundel, which are in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) On-street parking limitations:

(1) Beginning January 1, 1974, the City of Baltimore and all municipalities in the counties described above shall prohibit on-street parking, Monday through Saturday, on all streets and highways over which they have ownership or control and which contain express bus/carpool lanes. The prohibition against "on-street parking" on any particular street or highway shall be only for the period during which the particular street or highway has a lane or lanes reserved for buses, carpools, or buses and carpools. The prohibition shall state that vehicles parked in violation of the prohibition shall be towed away, or the owner shall be subject to a fine of up to $100 per violation, or both, depending on the circumstances of the violation.

(2) Beginning January 1, 1974, the counties of Baltimore, Howard, and Anne Arundel shall prohibit on-street parking, Monday through Saturday, on all streets and highways over which they have ownership or control and which contain bus/carpool lanes. The prohibition against "on-street parking" on any particular street or highway shall be only for the period during which the particular street or highway has a lane or lanes reserved for buses, carpools, or buses and carpools. The prohibition shall state that vehicles parked in violation shall be towed away, or the owner shall be subject to a fine of up to $100 per violation, or both, depending on the circumstances of the violation.

(3) Beginning on January 1, 1974, the State of Maryland shall prohibit on-street parking, Monday through Saturday, on streets and highways over which it has ownership or control and which contain express bus/carpool lanes. The prohibition against "on-street parking" on any particular street or highway shall be only for the period during which the particular street or highway has a lane or lanes reserved for buses, carpools, or buses and carpools. The prohibition shall state that vehicles parked in violation of the prohibition shall be towed away, or the owner shall be subject to a fine of up to $100 for violation, or both, depending on the circumstances of the violation.

(d) Failure to comply with any provision of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan, and subject to enforcement under section 113 of the Clean Air Act.

§ 52.1089 Preferential bus/carpool treatment.

(a) Definitions:

(1) "Carpool" means a vehicle containing three or more persons.

(2) "Bus/carpool lane" means a lane or a street or highway open only to buses (or buses and carpools), whether constructed specially for that purpose or converted from existing lanes.

(3) "CBD" is defined as the area bounded by Centre Street, Fallsway, Falls Avenue, Pratt Street, Greene Street, Franklin Street and Eutaw Street in Baltimore City.

(4) "Major street or highway" means any street or highway which meets the criteria given in paragraphs (b)(4)(ii) and (iii) of this section.

(b) The following provisions apply to all areas within the City of Baltimore and the counties of Baltimore, Howard, and Anne Arundel.

(1) The City of Baltimore and all municipalities in counties described above shall establish bus/carpool lanes on the major streets and highways over which they have ownership or control according to the schedule in paragraph (b)(4)(v) of this section.

(2) Baltimore, Howard, and Anne Arundel counties shall establish bus/carpool lanes on the major streets and highways over which they have ownership or control, according to the schedule in paragraph (b)(4)(v) of this section.

(3) The State of Maryland shall establish bus/carpool lanes on the major streets and highways over which it has ownership or control, according to the schedule in paragraph (b)(4)(v) of this section.

(4) Each of the governmental entities named in the previous three subparagraphs of this paragraph shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps which it will take to establish these bus/carpool lanes and to enforce the limitations on their use, with each schedule to include the following:

(i) Each street and highway which will have bus/carpool lanes must be identified with a schedule for the establishment of the lanes.

(ii) If a street or highway has four or more traffic lanes in one direction, at least one of these lanes must be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iii) If a street or highway has three lanes in one direction, at least one of these lanes must be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iv) In unusual situations, a street or highway, or segment thereof, may be exempt from these requirements if an approval of the exemption is obtained from the Administrator. The application for exemption shall not be submitted and will not accepted after November 15, 1973. Special circumstances justifying the need for an exemption (such as inappropriateness of use by buses, designation of bicycle lanes instead, or desire to allow bus/carpool lanes to be entered briefly by other vehicles for the purpose of crossing a lane or making a right turn) must be given in detail with the application.

(v) Bus/carpool lanes must be prominently indicated by overhead signs at least once every mile, and at each intersection or entry ramp. Of the lane mileage for each of the governmental entities, 25 percent must be established and needed signs must be installed by March 1, 1974; 50 percent by June 1, 1974; and 75 percent by September 1, 1974; and 100 percent by December 1, 1974.

(vi) Bus/carpool lanes must be prominently indicated by distinctive painted lines pylons, or physical barriers.

(vii) Between 7:00 a.m. and 6:30 p.m., the right two lanes of each one-way street in the CBD having four or more lanes shall be bus/carpool lanes.

(viii) Between 7:00 a.m. and 6:30 p.m., the right lanes of each one-way street in the CBD having three lanes shall be a bus/carpool lane.

(ix) In unusual situations, the requirements of paragraph (b)(4)(iv) of this section shall apply.

(5) Buses shall have the right-of-way whenever changing lanes on streets and highways with bus lanes. This shall take effect as each lane is established and identified.

(6) Buses shall be permitted to make left turns whether or not the intersection is posted for "No Left Turn" (except when a one-way street would be entered from the wrong direction). This shall take effect January 1, 1974.

(7) None of the governmental entities named in paragraphs (b)(1), (b)(2) and (b)(3) of this section shall convert existing on-street parking spaces to traffic lanes unless the effect will be to increase the number of bus/carpool lanes on the affected street beyond the number otherwise required by paragraph (b) of this section or unless the effect will be to create a bicycle lane in place of the parking spaces. Exemptions from the requirements of this paragraph (b)(7) of this section may be sought by application in the manner and subject to the requirements provided for by paragraph (b)(4)(iv) of this section. Requests for exceptions pursuant to this subparagraph along streets or highways on which existing parking lanes will be automatically eliminated by the institution of parking limitations pursuant to § 52.1088 of this Chapter shall be submitted to the EPA no later than November 15, 1973. In all other cases, requests for exceptions must be made and approved before a parking lane can be converted to a traffic lane other than bicycle or bus/carpool lanes.

(8) A signed statement by the chief executive of each governmental entity or his designee shall be submitted to the EPA on January 1, 1974, to identify the sources and amount of funds for all projects.

(c) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. A State of other governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1090 Control of evaporative losses from the filling of vehicular tanks.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) A person shall not transfer gasoline to an automotive fuel tank from gasoline-dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Effect a vapor-tight fit between the fill nozzle and filler neck of the automotive fuel tank so as to prevent discharge of hydrocarbon vapors to the atmosphere.

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered.

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, or refrigeration-condensation system or equivalent.

(e) Components of the systems required by § 52.1091(c) can be used for compliance with paragraph (c) of this section.

(f) If demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions

of paragraph (c) of this section as a result of fill neck configuration, location, or other design features, the provisions of this paragraph shall not apply to tanks on vehicles existing at the time of promulgation of this regulation.

(g) The State of Maryland shall divide all facilities subject to this section into two classes, each of which taken as a whole emit approximately equal amounts of hydrocarbon materials. The classes shall be known as Class I and Class II.

(h) Except as provided in paragraph (j) of this section, the owner or operator of a source included in Class I shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of onsite construction or installation of emission control equipment or process change must begin not later than July 31, 1974.

(3) Onsite construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1975.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(i) The owner or operator of a source included in Class II shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of onsite construction or installation of emission control equipment or process change must begin not later than July 31, 1975.

(3) Onsite construction or installation of emission control equipment or process modification must be completed not later than March 31, 1976.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(j) Paragraphs (h) and (i) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by November 15, 1973. The Administrator may request whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by November 15, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975, in the case of Class I sources, and May 31, 1976, in the case of Class II sources. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(k) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this Chapter.

§ 52.1091 Gasoline transfer vapor control.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight vapor return line from the storage container to the delivery vessel and a device that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling.

(d) The provisions of paragraph (c) of this section shall not apply to the transfer made to storage tanks equipped with floating roofs or their equivalent.

(e) *Compliance schedule.* Except as provided in paragraph (f) of this section, the owner or operator of any source subject to this section shall comply with this section on or before January 31, 1974.

(1) Any owner or operator in compliance with this section on the effective date of this regulation shall certify such compliance to the Administrator no later than 120 days following the effective date of this section.

(2) Any owner or operator who achieves compliance with this section after the effective date of this section shall certify such compliance to the Administrator within 5 days of the date compliance is achieved.

(f) Any owner or operator of a source subject to paragraph (e) of this section may, not later than 120 days following the effective date of this section, submit to the Administrator for approval a proposed compliance schedule that demonstrates compliance with the provisions specified in paragraph (e) of this section as expeditiously as practicable but no later than June 30, 1975. The compliance schedule shall provide for increments of progress toward compliance. The dates for achievement of such increments of progress shall be specified. Increments of progress shall include, but not be limited to: submittal of final control plan to the Administrator; letting of necessary contracts for construction or process changes or issuance of orders for the purchase of component parts to accomplish emission control or process modification; initiation of onsite construction or installation of emission control equipment or process modification; completion of onsite construction or installation of emission control equipment or process modification; and final compliance.

(g) Any owner or operator who submits a compliance schedule pursuant to this paragraph shall, within 5 days after the deadline for each increment of progress, certify to the Administrator whether or not the required increment of the approved compliance schedule has been met.

§ 52.1092 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbons and carbon monoxide from that vehicle.

(2) All other terms used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before May 31, 1977, certain gasoline-powered light-duty motor vehicles of model years 1968 through 1975, which are or would be subject under presently existing legal requirements to registration in the area defined in paragraph (b) of this section, are equipped with an appropriate oxidizing catalyst retrofit device. No later than March 1, 1974, the

State shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on motor vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (c)(3) of this section are enforced.

(3) A provision that starting no later than May 31, 1976, the State of Maryland shall commence retrofitting oxidizing catalysts to those light-duty motor vehicles able to operate properly on unleaded 91 RON gasoline. The installation shall be completed by May 31, 1977.

(4) A method and proposed procedures for ensuring that those installing the retrofits have the training and ability to perform the known needed tasks satisfactorily and that they will have an adequate supply of retrofit components.

(d) After May 31, 1977, the State shall not register or allow to operate on public streets or highways any light-duty gasoline-powered vehicle which does not comply with the applicable standards, procedures, and regulations adopted pursuant to paragraph (c) of this section.

(e) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle which does not comply with the applicable standards, procedures and regulations implementing this section.

(f) The State of Maryland shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section and the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. A State will be considered to have failed to comply with the requirements of this regulation if it fails to submit on time the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1093 Vacuum spark advance disconnect.

(a) For purposes of this section, "vacuum spark advance disconnect" means a device or system installed on the vehicle which prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears or when the vehicle is traveling below a predetermined speed.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) On or before January 1, 1975, all gasoline-powered light-duty vehicles of model year prior to 1968 and subject under presently existing legal requirements to registration in the area described in paragraph (b) of this section shall be equipped with an appropriate vacuum spark advance disconnect device.

(d) The State of Maryland shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps it will take to implement and enforce this requirement. Such schedule shall include, as a minimum, the following:

(1) A date by which the State will evaluate and approve devices for use in this program. Such date shall be not later than March 1, 1974.

(2) A date by which installation of this equipment shall commence. Such date shall be no later than June 1, 1974.

(3) A date by which all vehicles subject to this section will be equipped with such devices. Such date shall be no later than January 1, 1975.

(4) Designation of any agency or agencies responsible for evaluating and approving such devices for use on vehicles subject to this section.

(5) Designation of an agency or agencies responsible for ensuring that the prohibitions of paragraph (e)(2) of this section enforced.

(6) Method and proposed procedures for ensuring that those persons installing the devices have the training and ability to perform the needed tasks satisfactorily and that an adequate supply of devices will be available.

(7) Provision (apart from the requirements of any program for periodic inspection and maintenance of vehicles generally) for emission testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1975, the following shall apply within the Metropolitan Baltimore Intrastate Air Quality Control Region:

(1) The State shall not register a vehicle subject to this paragraph which is not equipped in accordance with paragraph (c) of this section.

(2) No owner of a light-duty vehicle subject to this paragraph shall operate or allow the operation of any such vehicle that is not equipped in accordance with paragraph (c) of this section.

(f) The failure of any person to comply with any provision of this section shall render such person in violation of a requirement of an applicable implementation plan, and subject to enforcement action under section 113 of the Clean Air Act. As to compliance schedules, a State will be considered to have failed to comply with the requirements of this regulation if it fails to submit on a timely basis the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1094 Gasoline limitation.

(a) Definitions:

(1) "Base year" means the consecutive twelve month period commencing on July 1, 1972, and ending June 30, 1973.

(2) "Distributor" means any corporation, partnership, or sole proprietorship which transports or stores or causes the transportation or storage of gasoline between any refinery and any retail outlet.

(3) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the public or introduced into any vehicle.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region to all distributors who transport gasoline to any retail outlet in this area, and to the owners of retail outlets in this area.

(c) Beginning July 1, 1974, the State of Maryland shall implement regulations limiting the total gallonage of gasoline delivered to retail outlets in the area described in paragraph (b) of this section to the amount delivered to such outlets during the base year. Beginning May 31, 1977, the State of Maryland shall implement regulations limiting the total gallonage delivered to retail outlets to that amount which, when combusted, will not result in the ambient air quality standard being exceeded. The State shall by January 1, 1977, submit to the Administrator regulations to accomplish this limitation and specifying the amount of limitation necessary.

(d) In order for the State to determine the amount of gasoline delivered during the base year and each year in which control is in effect, all distributors to which this section applies shall provide the State with a detailed accounting of the amount of gasoline delivered to each retail outlet in the areas described in paragraph (b) of this section during the base year, and the years during which control is in effect. For the year during which control is in effect, the owner of each retail outlet to which this paragraph applies shall provide the State with a detailed accounting of gasoline received from each distributor, the total amount of gasoline sold during the year, and the amount of gasoline on hand at the beginning and end of the year. The State may require any other reports it may deem necessary for the implementation of this section.

(e) The State of Maryland shall submit no later than January 1, 1974, a detailed compliance schedule showing steps it will take to establish and enforce the limitation program specified in paragraph (c) and (d) of this section including the text of needed statutory proposals and needed regulations which it will propose for adoption. Each schedule shall also include the following:

(1) A date by which the State shall adopt procedures to ensure that no more than the amount of gasoline specified in paragraph (c) of this section is delivered to retail outlets in the areas affected. Such date shall be no later than March 30, 1974.

(2) A date by which any report necessary for establishing such procedures

shall be furnished to the State by the distributors. Such a date shall be no later than January 1, 1974.

(3) An agency responsible for implementation and monitoring of this program.

(f) Failure to comply with any provision of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under Section 113 of the Clean Air Act. A state will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

[FR Doc.73-15627 Filed 8-1-73;8:45 am]

[40 CFR Part 52]

MARYLAND; (PRINCE GEORGES AND MONTGOMERY COUNTIES) APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Notice of Proposed Rule Making

The transportation control plan submitted by the State of Maryland for attainment of the primary National Ambient Air Quality Standards for carbon monoxide (CO) and photochemical oxidants for the Maryland portion of the National Capital Interstate Region was disapproved in part on June 15, 1973, (38 FR 16558). This notice of proposed rulemaking sets forth regulations which in the Administrator's judgment could be implemented in addition to the approvable portions of the Maryland plan to attain and maintain the National standards for carbon monoxide and photochemical oxidants in the Maryland portion of the National Capital Interstate Region.

If revisions to the Maryland plan are submitted and determined to be approvable prior to Federal promulgation, these proposed regulations will be withdrawn. If revisions to the Maryland plan are submitted and determined to be approvable after Federal promulgation, then those Federal regulations will be rescinded. It is the desire of the Environmental Protection Agency that the plan to attain and maintain the carbon monoxide and photochemical oxidant standards in the Maryland portion of the National Capital Interstate Region by a Regional plan carried out by the State or its designated representative.

Transportation Control Alteratives

Analysis of the air quality problems in the National Capital Interstate Region, which contains Prince George's and Montgomery Counties in Maryland, reveals that both photochemical oxidants and carbon monoxide exhibit unacceptably high levels in the region, with the former being the pacing pollutant.

Since a substantial proportion of the photochemical oxidant problem and almost all of the carbon monoxide problem are the result of automotive vehicle emissions, measures to reduce emissions from individual vehicles and measures to reduce vehicular travel can be effective in improving air quality. Since a significant percentage of the oxidant-producting hydrocarbon emissions stem from the vehicle-related sources associated with gasoline handling operations, measures to reduce these operational losses can also provide a measurable improvement in the regional air quality.

Reductions in emissions from vehicles can be obtained through inspection and maintenance programs, and from incorporation of various retrofit devices. Reductions in Vehicle Miles Traveled (VMT) can be achieved through various pricing and taxing schemes for road use, adoption of parking restrictions, and/or limitations of available number of parking spaces, restrictions on idling or cruising of fleet vehicle, selective control of goods movement, the establishment of vehicle-free zones, establishment of a four-day week, programs promoting the use of carpools or alternative modes of transportation and limitations on gasoline usage. It must be emphasized that, in order to be effective, each VMT control measure proposed or adopted for the Region by the State of Maryland must be reflected by identical or equivalent measures in each of the neighboring jurisdictions of Virginia, and the District of Columbia.

In effecting substantial improvements in air quality, improvements in and expansion of public transportation facilities are a necessary and effective complement facilitating use of this alternative to the private automobile. Clearly public transit improvements must be implemented in concert with the appropriate level of vehicle restraints, as determined by the regional characteristics of the private automobile use demand elasticity. Such improvements as greater coverage, increased frequency of service, improved reliability, increased comfort and convenience, a reasonable cost, and adequate personal security will further encourage the use of public transit alternatives to the private automobile.

Summary

The Maryland plan, as amended by the June 15, 1973, June 22, 1973, and June 28, 1973, submissions in its demonstration of attainment of the photochemical oxidant and carbon monoxide air quality standards utilizes the following general measures. These are: the Federal Motor Vehicle Emission Control Program, a state-wide, state-run Motor Vehicle Inspection Program for all gasoline powered vehicles, improvements to public transportation, increased parking charges, bus/carpool locator, retrofit of heavy duty gasoline powered vehicles, restrictions on aircraft ground operations, and major stationary source restrictions. As aforementioned, it is EPA's intent to use the state submitted strategy to the greatest extent possible.

The Maryland plan reports that, in 1972, peak period hydrocarbon emissions were 30.1 tons (47.6 percent of the total Regional Peak emissions) and carbon monoxide emissions were 286,725 tons per year. Although these figures are only for Prince George's and Montgomery counties (i.e., the Maryland portion of the National Capital AQCR), they are reflected in the overall strategy developed by the Metropolitan Washington Council of Government (COG). The state of Maryland's corrected calculations indicate that hydrocarbon emissions in Maryland in the peak period must be reduced by 65 percent of the 1972 emissions to a level of 10.5 tons. Similarly, carbon monoxide emissions must be reduced by 55 percent of the 1972 levels to an annual level of 129,026 tons.

After including projected increases in vehicle miles of travel, the Federal Motor Vehicle Control Program will reduce hydrocabron peak period emissions by 15.1 tons or by approximately 50 percent relative to the 1972 base period. Similarly, the impact on carbon monoxide levels will be to reduce emissions in Maryland by 145,000 tons yearly or by 51 percent relative to the 1972 base period. These estimates are adjusted to reflect the effect of the 1975 interim motor vehicle emission standards announced on April 11, 1973.

Since the 21-day period for public comment on the additional submissions has not been completed, it is impossible for the Administrator to make a final decision on approval or disapproval of the strategies included in the Maryland plan at this time. This decision must take into consideration all comments received during this time. However, preliminary review by EPA indicates that certain strategies are likely to be approvable. Accordingly, the Agency is proposing only those items which, when added to the approvable measures, are necessary to attain the National Ambient Air Quality Standards.

If an apparently approvable strategy is determined not to be approvable, additional measures will be proposed.

The information contained in the additional submissions by the State appears to remedy many of the deficiencies on which the Administrator's June 15 decision was based.

The following is a summary of the actions EPA is proposing to take with respect to the Maryland Plan.

Federal Motor Vehicle Control Program—Reductions appear to be approvable based on projected vehicle populations and emission factors.

Motor Vehicle Inspection Program—The basic program appears to be approvable in concept but lack of legal authority delays timely implementation of the plan. Therefore, it does not appear to be approvable. The Administrator will propose the same program, but with an acceptable implementation schedule.

Improvements in Public Transit

(a) Maryland participation in the area wide addition of 750 buses to current fleet—appears to be approvable, contingent upon clarification of certain administrative details.

(b) Exclusive Bus Lanes—appears to be approvable.

(c) System Improvements (i.e., shelters, fringe parking, improved scheduling) appears to be approvable.

Increased Terminal Charges

(a) Elimination of free off-street, employee parking in certain areas—does not appear to be approvable.

(b) Street enforcement of current on-street parking restrictions—appears to be approvable.

(c) $2.00 parking surcharge (or an equivalent measure)—appears to be approvable.

Bus/Carpool Locator Program—appears to be approvable.

Restrictions on aircraft ground operations—partial reductions are allowable; appears to be partially approvable.

Increased Control of Stationary Source Emissions—not approvable at this time due to lack of adopted regulations.

Heavy Duty Restraints—does not appear to be approvable because of lack of documented technical feasibility.

Due to the fact that:

Full reductions claimed for aircraft emissions do not appear to be allowable;

The plan did not include adequate controls for heavy duty gasoline powered vehicles.

The portion of the plan dealing with elimination of free off-street employee parking does not appear to be approvable.

The controls over stationary sources cannot be approved at this time.

EPA is proposing the following measures:

Initiation of commercial-type parking rates or reduction of 12% the available spaces at any federal, state, or local facility which has 25 or more parking spaces and which is located in a high density employment area which is well serviced by public transit.

Retrofit by 1975 of all pre-1968 vehicles with a vacuum spark advance disconnect kit.

Retrofit of light duty 1971–1975 fleet vehicles (including federal government vehicles) and taxicabs with an oxidizing catalyst retrofit—beginning in mid-1976, to be completed by mid-1977.

Controls of emissions of hydrocarbons due to gasoline handling; both from the delivery truck to underground tank and from the pump to the vehicle. Implementation begins in 1974 and is fully completed by 1977.

Ban of heavy-duty-gasoline-powered vehicles (except emergency vehicles, mail trucks, etc.) from 6:00 a.m. to 9:30 a.m. beginning July 1, 1974.

Finally, since the $2.00 surcharge proposed by Maryland is integral to the success of this plan, EPA is proposing contingency strategies to be implemented if appropriate steps are not taken to implement the surcharge. These contingency measures are:

A ban on the construction, modification or enlargement of any parking facility without having first obtained a permit from the Administrator.

A phased 15 percent reduction in the number of off-street parking spaces.

The Administrator invites comments on these and any other measures which may be used to achieve the national ambient air quality standards for photochemical oxidants and carbon monoxide.

Two-Year Extensions to Achieve Standards

The Administrator proposes to give a two-year extension for the attainment of the standard in the State of Maryland. To attain the standards in 1975 would require stringent restraints on vehicle miles traveled which could not be considered to be "reasonably available" within the meaning of section 110(e) of the Clean Air Act, or the implementation of a widespread catalytic retrofit program which could not be implemented due to technological problems before 1977. Although some measures have not been proposed here which have appeared in some other proposals (such as gasoline limitations and a selective vehicle exclusion program involving colored tags) the reduction in vehicle miles traveled expected from measures contained herein appears to be substantial and adequate to fulfill the requirement that reasonably available alternative measures be employed before an extension is given for any strategy. The plan proposed herein, along with the apparently approvable measures submitted by the State of Maryland, apply the reasonably available alternative means of control at the earliest possible dates. Comment is invited on any measures which have not been considered and applied and which can be considered to be reasonably available.

Summary of Effects

The following table is a summary of the effect of the proposed strategies on the total reductions required.

COMPILATION OF CONTROL STRATEGY EFFECTS FOR THE NATIONAL CAPITAL INTERSTATE REGION ON MAY 31, 1977

	Carbon Monoxide		Hydrocarbons	
	Tons per peak period	Percent of total Reduction Required	Tons per peak period	Percent of total Reduction Required
Stationary Source Emissions Without Control Strategy	78		14.3	
Expect Reduction From:				
(a) Dry Cleaning Vapor Recovery	0	0	1.1	8.7
(b) Gasoline Handling Vapor Recovery	0	0	5.0	39.4
(c) Other Stationary Source Rule Strengthening	0	0	0	
Stationary Emissions Remaining	78		8.2	
Mobile Emissions from Highway Light and Heavy Duty Vehicles without Control Strategy	498		19.3	
Expected Reductions From:				
(a) Inspection and Maintenance	26	34.6	1.5	11.8
(b) VSAD Retrofit, pre-'68 cars	3	4.0	0.4	3.2
(c) Catalytic Retrofit of Fleet LDV's	5	6.7	0.2	1.6
(d) Mass Transit Improvements	21	28	2.7	21.2
(e) HDV Peak Hour Delivery Ban	27	36	1.0	7.6
(f) Aircraft Model Program	11.0	14.6	0.8	6.4
Mobile Emissions Remaining	495		12.7	
Total Emissions without Strategy	576		33.6	
Total Reductions	93	123.9	12.7	100.2
Total Emissions Remaining	483		20.9	

Proposed Controls on Stationary Sources

One of the major sources of hydrocarbon emissions, which have been identified in the Maryland plan for the Maryland portion of the National Capital Interstate Region, is the gas handling losses which occur in the distribution system for gasoline fuel. The Maryland plan proposes control of these emissions.

The regulations proposed by the State of Maryland for control of hydrocarbon emissions at retail service stations or fleet-owned service stations requires installation of a vapor balance line or equally effective vapor discharge control system. This regulation requires controls to be installed on all stations with a monthly average throughput exceeding 35,000 gallons by May 31, 1975, and at all other stations by May 31, 1977. Vapor collecting systems which must be installed on vehicle fuel tank filling systems are to be installed concurrent with the vapor balance line connections specified above.

The regulations as proposed by the State of Maryland appear to be adequate to achieve the anticipated reduction in hydrocarbon emissions. However, the Administrator cannot approve these proposed regulations at this time, since 40 CFR part 51 requires that all regulations dealing with the control of stationary sources be adopted at the time of submittal of the plan. EPA is therefore proposing to promulgate similar regulations which will be rescinded upon submission of equivalent acceptable regulations as adopted by the State of Maryland.

Existing organic solvent regulations require that all present dry cleaning installations emitting more than 200 pounds per day of photochemically reactive hydrocarbons shall reduce present emissions by at least 85 percent, and that the limit for new installations shall be 40 pounds per day. In its plan the state has proposed a requirement that all dry cleaning establishments refrain from using any photochemically reactive organic solvents after May 31, 1974. This would result in a reduction of 0.03 tons per peak period, or 0.14 percent of the reduction required to meet the primary ambient air quality standards by May 31, 1977. The Administrator is aware of Maryland's on-going program for the control of hydrocarbon emissions from

dry cleaning installations and is presently evaluating the proposed regulation which would accelerate the program by attaining full compliance by the proposed May 31, 1974 date.

The regulations as proposed by the State of Maryland appear to be adequate to achieve the anticipated reduction in hydrocarbon emissions. However, the Administrator cannot approve these proposed regulations at this time, since 40 CFR part 51 requires that all regulations dealing with the control of Stationary Sources be adopted at the time of submittal of the plan. EPA is therefore proposing to promulgate similar regulations which will be rescinded upon submission of equivalent acceptable regulations as adopted by the State of Maryland.

The Environmental Protection Agency has also examined Maryland's regulations governing emissions of organic solvents resulting from degreasing operations and from evaporation from surface and architectural coatings. For degreasing operations, there are no specific constraints on non-reactive material that may be used such as perchlorethylene or saturated halogenated hydrocarbons that are in use elsewhere. Comments are solicited on whether degreasing operations in the Maryland portion of the National Capital Interstate Region are a significant source of reactive hydrocarbon emissions for which a specific regulation should be promulgated.

Emissions of other solvents in the Maryland portion of the National Capital Interstate Region were also investigated. It has been determined that technology does exist to control more efficiently the emissions of a number of the smaller heating (15 to 200 lb per day category) and spraying operations (in the 40 to 200 lb per day category) involving organic solvents. Their estimated total peak period emissions is 0.10 tons or 0.47 percent of the reduction required to meet the primary ambient air quality standards by May 31, 1977. Comments are solicited as to whether it is feasible or practicable to require additional controls on these sources, many of which are presumably located on the premises of small sized firms. If these comments indicate that further controls are needed, then the Administrator proposes to promulgate regulations equivalent to those currently adopted by the County of Los Angeles Air Pollution Control District as Rule 66. L.A. Rule 66 contains minor exemptions involving evaporative emissions from gallon (or smaller) sized containers of architectural coating compounds, and from the allowable disposal limits of waste solvent materials. There are no data presently available to the Administrator on the atmospheric burden that may be created by such evaporative emissions though they are presently believed to be very small.

Proposed Controls on Mobile Sources (non-aircraft)

In the plan addendum of June 28, 1973, it is stated that legislative authorization funding measures, etc., are needed to implement Maryland's proposed inspection and maintenance program. The tentative implementation timetable proposed by Maryland shows the commencing of the 20-month program on January 1, 1975, following an assumed passage of legislation, and completion by September 1, 1976. Under the requirement of the Clean Air Act, the States must proceed as expeditiously as practicable to attain primary air quality standards. Because of the delay in getting legal authority, Maryland's program would not be implemented as expeditiously as possible. In an effort to ensure the earliest possible initiation of Maryland's program, the Administrator is proposing a regulation which will permit implementation of the system to begin on March 1, 1974, and permit actual commencement of the inspection program by August 1, 1975.

The Maryland plan proposes an emissions inspection program for all light and heavy duty gasoline powered vehicles with an initial failure rate of 30 percent. As recommended in Appendum N of 40 CFR, Part 51, a 12 percent hydrocarbon emission reduction and a 10 percent carbon monoxide emission reduction for all such vehicles is claimed through the use of a loaded test inspection/maintenance program. Comments are solicited on the desirability to establish an initial 50 percent failure rate criterion which calculations indicate would result in an additional reduction of 0.1 tons hydrocarbon peak period emission.

A full EPA review of the June 28, 1973, addendum is now in progress. This review will determine the degree of acceptability for both the establishment of the inspection and maintenance system itself and the subsequent inspection program. Comments are also solicited from the public and other interested parties on all aspects of the program. It is the Administrator's intent that the final promulgation incorporate as much of the Maryland proposed program as can be found acceptable.

Since the Clean Air Act requires consideration of all reasonably available alternatives, in order to attain the primary standard as expeditiously as practicable, EPA proposes retrofit of pre-1968 light duty vehicles with approved Vacuum Spark Advance Disconnect (VSAD) devices and 1971–1975 light duty fleet vehicles with oxidizing catalyst devices. The VSAD device is expected to reduce hydrocarbon emissions by 25 percent per vehicle and carbon monoxide emissions by 9 percent per vehicle. The oxidizing catalyst device is expected to reduce both hydrocarbon and carbon monoxide emissions by 50 percent per vehicle. Only those cars of 1971–1975 model years which run on gasoline with a R.O.N. of 91 can be fitted with this device because of technical constraints. In addition this gasoline must be unleaded. National estimates indicate that approximately 75 percent of the 1971–1975 model year vehicles would be retrofitted under this proposal. Since catalytic retrofit devices for light-duty vehicles are expected to be available by 1977, it is proposed to require installation of these devices on all 1971–1975 LDV fleet vehicles (e.g., taxis, GSA vehicles, rental cars, fleet delivery vehicles), capable of operating on 91 RON gasoline.

The regulation proposed by the Administrator will require that the above motor vehicles be equipped with catalytic retrofit devices by May 31, 1977, effecting a 50 percent hydrocarbon emission reduction for each vehicle. Exemptions will be allowed for all 1975 vehicles originally equipped with the oxidation catalytic converter or those vehicles which are certified to meet the original statutory emission standards in 1975. Based on inspection currently available to him, the Administrator estimates that fleet vehicles account for 6 percent of total mobile source emissions. On the basis that one-third of the fleet vehicles will be older than two years (pre 1976), and catalytic retrofits can reduce automotive emissions from each vehicle by 50 percent, it is apparent that this measure, when applied on a Region-wide basis, will result in a hydrocarbon emission reduction of 0.2 tons/peak period.

In the event that the measures proposed herein prove to be inadequate, the Administrator is required by law to apply additional reasonably available alternatives, including catalytic retrofit of other segments of 1968–1975 light duty vehicle population. Candidate segments include all light duty trucks, all GSA cars, or passenger vehicles of specified model years. The public is urged to present their comments on these or any other type of control measure that may help to achieve the National Ambient Air Quality Standards.

Proposed Reductions in VMT

According to data provided by the Metropolitan Washington Council of Governments, the proposed transportation package (including 750 additional buses, exclusive bus/carpool lanes, a carpool locater service, and parking restrictions) will result in a 12 percent reduction in 6–9 am VMT and a corresponding reduction in total trips.

The Maryland plan includes the following strategies under its transportation measures:

1. Participation with District of Columbia and Commonwealth of Virginia in an area wide improved transit system, including the addition of 750 buses to the current area fleet, the establishment of exclusive bus lanes, bus shelters, and fringe parking facilities.

2. Increased terminal costs including the elimination of free parking and the establishment of a $2.00 parking surcharge for long term commuter parking in all areas adequately served by mass transit.

3. Establishment of a computerized carpool locater service.

This portion of the plan is central to the Maryland plan for reduction of HC and CO emissions. Therefore, to avoid confusion and expedite comments, a discussion of the elements that make up this portion of the plan shall be included.

a. *Elimination of Free Parking*—The State of Maryland proposes to have EPA

eliminate free parking for the federal government employees, and to study the feasibility for similar action by the state for employees of state and local government and private businesses. The plan also includes a program of strict enforcement of existing parking regulations.

These measures will be imposed in high density employment areas which are adequately served by mass transit. These areas will be more specifically described by the state within the next 10 months, upon completion of studies of the matter.

Additionally, Maryland proposes to enter into a reciprocal enforcement program for parking violations. Thus, enforcement of the existing parking regulations will be facilitated.

On the basis of the information submitted by Maryland in its plan, the Administrator feels that the portions of the Maryland plan dealing with enforcement of existing parking restrictions and the reciprocal enforcement of parking violations is approvable.

As pointed out in Maryland's plan, reduction of emissions due to work trips within the Maryland portion of the AQCR by Federal Government employees is integral to achieving air quality goals. Therefore, EPA feels it has the responsibility to aid Maryland in the control of these emissions. As a result, EPA will follow the suggestion made in the Maryland plan and propose a federal regulation which would effectively reduce emissions as a result of commuter trips by federal employees. This will be done by requiring federal facilities in high density areas served by mass transit to either eliminate free parking (by establishing commercial type rates) or to reduce the available parking spaces in these facilities by 12 percent.

Since the other jurisdictions in the AQCR has also proposed to eliminate free parking for employees of their government and the Maryland plan is unclear on this point, EPA is also proposing that the specific state and local governmental parking facilities eliminate free parking (or adopt an equivalent measure). Specifically the proposal calls for the elimination of free parking or the reduction of available space by 12 percent for all state and local government parking facilities which have 25 or more spaces and which are located in high density employment areas which are served by public transportation. Since the plan is regional in nature, this action is necessary to insure that the reductions achievable by this measure throughout the AQCR do in fact occur. The Administrator feels that the result of this proposal will be to induce employees to utilize alternate modes of transportation, such as buses and carpools and thereby reduce the VMT in the area. In should be noted that this proposal should result in a reduction of VMT over the entire area because it will reduce VMT of employees from all three jurisdictions in the National Capital Area.

The Friendship Heights Area, the Silver Spring Area, and the Rockville Area, along with other areas, in all likelihood would need to be included in any definition of "high density employment area which is served by mass transit" for this strategy to be effective.

b. *$2.00 Surcharge (or its equivalent)* The Maryland plan proposes to seek the imposition of a $2.00 per day surcharge (or an equivalent measure) on all long term parking facilities in employment areas which are served by mass transit. Identification of the areas where the surcharge is to be imposed should be made within the next 10 months, upon completion of studies of matter.

This proposal calls for the charge to be implemented and enforced by the local jurisdictions within the Maryland portion of the AQCR. The Administrator feels that, if implemented according to the schedule provided in the plan, this proposal is approvable.

It is well documented that no matter how well designed and operated a mass transit system is, unless there are disincentives to the use of the private automobile, mass transit will be ineffective. Therefore, Maryland's proposals for the surcharge is integral to the success of the plan.

The Administrator wants to make it clear that if for any reason this strategy is not emplemented according to schedule, he will institute equivalent measures. In order to avoid any delay in the implementation of such equivalent measures and to invite timely public comment, the Administrator is proposing contingency measures in the plan. These contingency measures will become effective if it becomes apparent that the surcharge will not be implemented. Specifically, a phased 15 percent reduction in existing off-street parking spaces would be imposed, as well as a ban on the construction, modification or enlargement of any parking facility without first obtaining a permit from the Administrator. Public comments are solicited on these contingency proposals.

c. *Mass Transit Improvements.* The development of an effective mass transit system is essential to the development of an effective tranportation control strategy. If this control plan is to be successful, a sufficient number of buses with convenient service and adequate schedules must be provided.

The Maryland plan proposes to participate in the area wide transit system increase of current fleet size by 750 buses and to improve service and convenience for commuters. Included in this proposal are provisions for installing bus shelters, providing additional public information and improved scheduling. In addition, Maryland plans to institute a number of exclusive bus lanes on major highway corridors. All of these measures are meant to provide the increased mass transit service which will be necessary if air quality standards are to be achieved.

Based on the information contained in the documents submitted by Maryland, the Administrator feels that the proposals for increased mass transit are approvable, on the condition that certain administrative details will be provided to him by the State. Specifically, the arrangements or agreements which will trigger the expansion of the fleet should be clarified, since it is necessary for EPA to determine what actions are necessary to bring about any additional purchases of buses. Also a clarification on the schedule showing the projected incremental increases in fleet size should be provided. In addition, the Maryland plan does not specifically indicate that Maryland will expend funds for the necessary purchase of new buses. Since Maryland is a signator of the WMATA compact, this commitment can be assumed. A direct declaration by Maryland should be made, though.

d. *Bus/Car Pool Locator System.* The Maryland plan recognizes the need for more efficient utilization of current automobile usage. Thus, the plan proposes a voluntary bus/car pool locator matching service. This system will attempt to assemble lists of commuters with similar work schedules and home, work locations, and will be phased in starting with pilot projects during 1973. Full operation of the system is scheduled for April 1974. The Administrator feels that this measure is approvable, and encourages residents of the National Capital area to take advantage of this service.

Along with the benefits accruing to this system in terms of a potential decrease of vehicle miles traveled, this system also has the advantages of fuel conservation and it will mitigate the impact of disincentives to private auto use (i.e., the surcharge and elimination of free employee parking).

e. *Heavy duty vehicle restraints.* In addition to the transportation measures described above, the Maryland plan addresses the problem of heavy duty gasoline powered vehicle emissions. The plan discusses emission control retrofit program for heavy duty gasoline powered vehicles. The discussion provided indicates the need to achieve a 50 percent reduction in emissions from such vehicles to meet the standards by 1977. Such reduction would be complimentary to the approvable heavy duty emission controls measures included in the District of Columbia plan and the concepts discussed in the Virginia plan.

The Maryland plan specifically proposes a heavy duty retrofit strategy to be implemented by 1977. Currently, EPA feels there are many uncertainties concerning the feasibility of implementing such a strategy by 1977. The only significant development and testing program currently on-going is being conducted by the state of New York. EPA feels this program has the potential to develop and provide information for the implementation of a heavy duty retrofit program by 1977. Accordingly, the Agency has approved this strategy for the New York plan.

While Maryland's heavy duty retrofit proposal appears to be basically approvable, EPA does not feel the plan provides adequate assurance that Maryland will develop a program of their own for the development and testing of such devices or indicate a commitment to establish an understanding to use information developed through New York's program.

Without this information, EPA does not feel this strategy is approvable at this time. Furthermore, even if this program was approvable, the Administrator believes emission reductions from heavy duty vehicles can be reduced at an earlier date through heavy duty vehicle delivery bans.

In light of this determination and in order to compliment similar measures in the District of Columbia and Virginia plans, the Administrator is proposing a delivery ban on heavy duty gasoline powered vehicles which will be effective during the peak traffic period (6:00 am–9:30 am). The ban will take effect July 1, 1974. The Administrator recognizes that the District of Columbia will impose this ban on January 1, 1974; however, in order to allow Maryland adequate time to adopt regulations and plans for implementation of this ban, the additional implementation time is warranted.

EPA encourages the State of Maryland to submit the required additional information on the heavy duty retrofit program. Such a program could eventually replace the proposed interim delivery ban.

Aircraft Emission Reduction

Aircraft emissions, as they affect ambient air quality, occur during approach, landing, taxi, idle, takeoff, and climb-out. Heaviest emissions occur during taxi and idle when aircraft engines are operated at greatly reduced power.

The Maryland Transportation Control Plan asserts that control of these emissions through modified ground operations at Dulles and Washington National Airports can result in a significant hydrocarbon, and carbon monoxide emission reduction in the National Capital Region. Maryland contends that a 50% reduction in hydrocarbon and carbon monoxide emissions can be achieved through the implementation of such ground controls at the two northern Virginia airports. Such a reduction would represent a 1.7 ton reduction in the area's hydrocarbon emissions and a 28 ton reduction in the area's carbon monoxide emission. Maryland assumes the required measures will be fully implemented by EPA and FAA during the next four years and takes full credit for the potential emissions reductions which they believe could result from these measures.

The assumed reduction in hydrocarbon emissions is necessary for the plan to demonstrate achievement of the oxidant standards; the claimed carbon monoxide reductions are not needed for attainment of the standard.

EPA has published an Advance Notice of Proposed Rulemaking for aircraft ground controls but has not yet proposed regulations for such controls. The Agency, however, is currently funding a demonstration project with FAA to determine if safety hazards would accompany modified ground operations. If the demonstration is successful, EPA will propose and promulgate regulations for the implementation of ground operations deemed free of safety hazards.

The Agency currently believes that certain ground and taxi operations included in the demonstration can be conservatively assumed to be safe and acceptable. EPA calculations indicate that the application of these measures could result in a 24 percent reduction in hydrocarbons at National Airport and a 30 percent reduction in hydrocarbons at Dulles Airport vice (50 percent reduction proposed by Virginia). In light of EPA's intention to work jointly with FAA to promulgate and implement ground operations deemed safe and acceptable prior to 1977, the Agency believes it is reasonable to allow Maryland to accept credit for emission reductions which will result from controlling the ground operations conservatively felt at this time to be safe and acceptable. The percent emissions reductions indicated above which would result from these measures would provide approximately a 0.8 tons reduction in hydrocarbons for the National Capital Region. Accordingly, the Agency will accept 0.8 tons of the claimed 1.7 tons reduction as being an approvable portion of the plan based on the expected implementation of ground operation regulations.

Economic and Social Impact

The social and economic consequences of the measures included in the Maryland plan or proposed herein are considered reasonable. For example, the inspection and maintenance procedures will require expenses of approximately $10 annually for the average vehicle inspected. The implementation of the VSAD retrofit program of pre-1968 vehicles will require that individual motorists pay approximately $20 installation costs. Though the price to the fleet vehicle owner for the catalytic retrofit is $135 per vehicle, this cost could gradually be reclaimed through slightly higher service or use fees for the fleet vehicles controlled. In addition, such expenditure can be deducted from income tax as a business expense, and therefore part of the cost will be absorbed by the government. Compensation for the expenditures associated with the modifications required by the gasoline handling regulations could similarly be gained through slight increase in the fees for station services or fuel prices. This also could be deducted as a business expense from the income tax. Distributed costs of the various mass transportation improvement measures, as well as the incentives for the use of express buses and carpools and disincentives on the use of automobiles by individual motorist-commuters, are also considered reasonable.

The measures providing transportation improvements are expected to benefit the public from the standpoint of improved traffic flow for commuters, general urban mobility, and energy consumption. The resulting VMT reductions may also have some impact on the sprawling development patterns fostered by widespread automobile use which are unduly wasteful of energy, land and other resources and have contributed to the decay of urban centers.

Public Comments Solicited

Although the Administrator has concluded that the proposed plan is the best approach available to him at the present time for achieving compliance with the requirements of the Act, further analysis may demonstrate that more appropriate options are available. He therefore desires to obtain the comments and suggestions of the public on the problems of achieving the ambient air quality standards in the Maryland portion of the National Capital Interstate Air Quality Control Region. Comments are particularly invited pertaining to measures that may be taken by Federal, State, or local authorities to support or supplement the proposed air pollution control strategy, to implement these measures, and to compare social and economic effects of alternative pollution control measures.

Public hearings will be held at the Holiday Inn, 8777 Georgia Ave., Silver Spring, Maryland on September 6, 1973, beginning at 9:00 a.m. Notice of the hearings on these regulations (including designation of locations for inspection and distribution of EPA proposals) is being published in the Maryland portion of the National Capital Interstate Air Quality Control Region.

The Administrator's final promulgation of transportation controls for the Maryland portion of the Natonal Capital Interstate Region will consider the comments and testimony he receives, as well as any additional approvable strategies submitted by the State as part of the State plan before or at the hearings. These influences, and the additional analysis of alternative strategies that can be made in the time between this proposal and final promulgation, may lead the Administrator to adopt final regulations that differ in important ways from this proposal.

Submittal of Written Comments

Interested persons may participate in this rule making by submitting written comments, preferably in triplicate, to the Mobile Source Enforcement Division, EPA, 401 M Street, SW., Washington, D.C. 20460. All relevant comments received on or before September 4, 1973 will be considered. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at the office of Public Affairs, EPA, 401 M Street, SW., Washington, D.C. 20460. This notice of proposed rule making is issued under the authority of Section 110(c) and 301(a) of the Clean Air Act. (42 U.S.C. 1857 et seq.)

EPA Studies and Guidelines

Further information on transportation control, land use, and motor vehicle emissions may be obtained from one or more of the following documents which the Environmental Protection Agency has published:

a. "Prediction of the Effects of Transportation Controls on Air Quality in Ma-

jor Metropolitan Areas" and "Evaluating Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas," November 1972. Both of these documents are generally known as the "Six Cities Study".

b. "Transportation Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas", December 1972. This document is a summary of a study of 14 cities conducted with the view of recommending specific transportation control strategies. (Separate reports for each of the 14 cities are also available.)

NOTE: The documents listed in a and b above are available from the Air Pollution Technical Information Center, EPA, Research Triangle Park, North Carolina 27711.

c. "Control Strategies for In-Use Vehicles", November 1972. This report is available from EPA, Mobile Source Pollution Control Programs, 401 M Street, SW., Washington, D.C. 20460.

d. "Transportation Control Measures", FEDERAL REGISTER (38 FR 15194) June 8, 1973.

e. "Aircraft and Aircraft Engines", FEDERAL REGISTER (37 FR 26488) December 12, 1972.

f. "Aircraft Emissions: Impact on Air Quality and Feasibility of Control." This report presents the available information on the present and predicted nature and extent of air pollution related to aircraft operations in the United States. In addition, it presents an investigation of the present and future technological feasibility of controlling such emissions. (42 U.S.C. 1857 et seq.)

Dated: July 24, 1973.

ROBERT W. FRI,
Acting Administrator.

It is proposed to amend Part 52 of Chapter I of Title 40 of the Code of Federal Regulations by adding the following:

Subpart V—Maryland

§ 52.1095 Inspection and maintenance.

(a) Definitions:

(1) "Inspections and maintenance program" means a program to reduce emissions from in-use vehicles by identifying vehicles which need emission-control-related maintenance and requiring that maintenance be performed.

(2) "Precontrolled vehicles" means light duty vehicles sold nationally (except California) prior to the 1968 model year and light duty vehicles sold in California prior to the 1966 model year.

(3) "Controlled vehicles" means light duty vehicles sold nationally (except California) in the 1968 model year and later light duty vehicles sold in California in the 1966 model year and later.

(4) "Loaded emissions test" means a sampling procedure for exhaust emissions which requires testing the engine under stress (i.e., loading) by use of a chassis dynamometer to simulate actual driving conditions. As a minimum requirement, the loaded emission test must include running the vehicle and measuring exhaust emissions at two speeds and loads other than idle.

(5) "Idle emission test" means a sampling procedure for exhaust emission which requires operation of the engine in the idle mode only. At a minimum, the idle test must consist of the following procedures carried out on a fully warmed-up engine: A vertification that the idle RPM is within manufacturer's specified limits and a measurement of the exhaust carbon monoxide and/or hydrocarbon concentrations during the period of time from 15 to 25 seconds after the engine was used to move the car or was run at 2000 to 2500 RPM with no lead for 2 to 3 seconds.

(6) "Retrofit" means the addition or removal of an item of equipment, or a required adjustment, connection, or disconnection of an existing item of equipment, for the purpose of reducing emissions.

(7) "Idle adjustment" means a series of adjustments which include RPM, idle air/fuel ratio and basic timing.

(8) "Initial failure rate" means the percentage of vehicles rejected because of excessive emissions of a single pollutant during the first inspection cycle of an inspection/maintenance program. (If inspection is conducted for more than one pollutant, the total failure rate may be higher than the failure rates for each single pollutant.)

(b) This regulation is applicable within the Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) The State of Maryland shall submit to the Administrator of EPA or his designee, no later than January 1, 1974, a detailed compliance schedule showing the steps that will be taken to establish and enforce an inspection and maintenance program pursuant to paragraph (d) of this section. The compliance schedule shall include:

(1) The text of any necessary statutory proposal and regulations that are needed to carry out the inspection/maintenance system.

(2) A detailed timetable describing the steps that must be taken and when these steps will be taken to ensure the timely submittal of the needed legislation to the legislature and to ensure timely adoption of the regulations needed for paragraph (d) of this section.

(3) A detailed timetable describing the dates of ordering and of acquisiton of necessary equipment.

(4) A signed statement by the chief executive or his designee identifying the sources and amounts of funding for the inspection/maintenance program and a timetable to ensure that proper funding levels are available. If funds cannot legally be obligated under existing statutory authority, the text of the needed legislation shall be submitted to the Administrator of the Environmental Protection Agency or his designee pursuant to paragraph (c)(1) of this section.

(d) The State of Maryland shall establish an inspection and maintenance program applicable to all light duty gasoline-powered vehicles registered within its confines. No later than March 1, 1974, the State of Maryland shall submit to the Environmental Protection Agency legally adopted regulations reestablishing such a program. The regulations shall include:

(1) Provisions for the inspection of all gasoline-powered light duty vehicles at periodic intervals of no more than one year by means of a loaded (dynamometer) test.

(2) Provisions for inspection failure criteria consistent with the emission reduction claimed in the plan for the strategy. These criteria shall include an initial failure rate of 30 percent (see definitions).

(3) Provisions to ensure that failed vehicles receive the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts and knowledge to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This might include spot checks of idle adjustments and/or a suitable type of physical tagging.

(5) Delineation of the agency or agencies responsible for conducting, overseeing and enforcing the inspection and maintenance program.

(6) Provisions for beginning the first inspection cycle by August 1, 1975, and completing it by July 31, 1976.

(e) After July 31, 1976, the State of Maryland shall not register nor allow to operate on its streets or highways vehicles which fall within this regulation and have not complied with the applicable standards and procedures of paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

(f) After July 31, 1976, no owner of a vehicle which is affected by this regulation shall operate or allow to be operated a vehicle which does not comply with the applicable standards and procedures of paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

§ 52.1097 Vacuum Spark Advance Disconnect.

(a) For purposes of this section, "vacuum spark advance disconnect" means a device or system installed on the vehicle which prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears or when the vehicle is traveling below a predetermined speed.

(b) This section is applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) On or before January 1, 1975, all gasoline-powered light duty vehicles of model year prior to 1968 and subject

under presently existing legal requirements to registration in the area described in paragraph (b) of this section shall be equipped with an appropriate vacuum spark advance disconnect device.

(d) The State of Maryland shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps it will take to implement and enforce this requirement. Such schedule shall include, as a minimum, the following:

(1) A date by which the State of Maryland will evaluate and approve devices for use in this program. Such date shall be no later than March 1, 1974.

(2) A date by which installation of this equipment shall commence. Such date shall be no later than June 1, 1974.

(3) A date by which all vehicles subject to this section will be equipped with such devices. Such date shall be no later than January 1, 1975.

(4) Designation of any agency or agencies responsible for evaluating and approving such devices for use on vehicles subject to this section.

(5) Designation of an agency or agencies responsible for ensuring that the prohibitions of paragraph (c)(2) of this section shall be enforced.

(6) Method and proposed procedures for ensuring that those persons installing the devices have the training and ability to perform the needed tasks satisfactorily and that an adequate supply of devices will be available.

(7) Provision (apart from the requirements of any program for periodic inspection and maintenance of vehicles generally) for emission testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1975, the following shall apply within the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(1) The State of Maryland shall not register a vehicle subject to this paragraph which is not equipped in accordance with paragraph (c) of this section.

(2) No owner of a light duty vehicle subject to this paragraph shall operate or allow the operation of any such vehicle that is not equipped in accordance with paragraph (c) of this section.

(f) The failure of any person to comply with any provision of this section shall render such person in violation of a requirement of an applicable implementation plan, and subject to enforcement action under section 113 of the Clean Air Act. As to compliance schedules, the State of Maryland will be considered to have failed to comply with the requirements of this regulation if it fails to submit on a timely basis the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1098 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbon and carbon monoxide from that vehicle.

(2) Fleet vehicle means any of 5 or more light duty vehicles operated by the same person(s), business, or governmental entity and used principally in connection with the same or related occupations or uses. This definition shall also include any taxicab (or other light duty gasoline-powered vehicle-for-hire) owned by any individual or business.

(3) Governmental entity means any agency of the executive branch of the Federal government, or a state or local department, agency, bureau, board, office, commission, district, or unit of any other type (excluding foreign embassies) which employs personnel paid wholly with public funds.

(4) All other items used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b)(1) This Section is applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(2) Classes of Vehicles Covered:

(i) Light duty fleet vehicles of model year 1971 through 1975, not already equipped with catalyst, or certified to meet original 1975 statutory light duty vehicle emission standards.

(c) The State of Maryland shall establish a retrofit program to insure that on or before May 31, 1977, classes of gasoline-powered light duty vehicles as specified in (b)(2) of this section which are subject under presently existing legal requirements to registration in the area defined in paragraph (b) of this section and are used on the streets and highways of the State, are equipped with an appropriate oxidizing catalyst retrofit device. No later than March 1, 1974, the State of Maryland shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on motor vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (c)(3) of this section are enforced.

(3) A provision that starting no later than May 31, 1976, the State of Maryland shall commence retrofitting oxidizing catalysts to those light duty motor vehicles able to operate properly on unleaded 91 RON gasoline. The installation shall be completed by May 31, 1977.

(4) A method and proposed procedure for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and that they will have an adequate supply of retrofit components.

(d) After May 31, 1977, the State shall not register or allow to operate on public streets or highways and light duty gasoline-powered vehicles specified in paragraph (b)(2) of this section which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicles which does not comply with the applicable standards and procedures implementing this section.

(f) The State of Maryland shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, and the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. The State will be considered to have failed to comply with the requirements of this regulation if it fails to submit on time the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1101 Control of evaporative losses from the filling of vehicular tanks.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) A person shall not transfer gasoline to an automotive fuel tank from gasoline dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Effect a vapor-tight fit between the fill nozzle and filler neck of the automotive fuel tank so as to prevent discharge of hydrocarbon vapors to the atmosphere.

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered.

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, or refrigeration-condensation system or equivalent.

(e) Components of the systems required by § 52.1100(c) can be used for compliance with paragraph (c) of this section.

(f) If demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of fill neck configuration, location, or other design features, the provisions of this paragraph shall not apply to

tanks or vehicles existing at the time of promulgation of this regulation.

(g) The State of Maryland shall divide all facilities subject to this section into three classes, the first of which shall equal approximately 70 percent of hydrocarbon emissions from all gasoline stations, the second and third classes shall each equal approximately 15 percent of total hydrocarbon emissions from these sources. The classes shall be known as Class I, Class II, and Class III.

(h) Except as provided in paragraph (k) of this section, the owner or operator of a source included in Class I shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 31, 1947.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources, subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(i) The owner or operator of a source included in the Class II shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of components parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1975.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1976.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(j) The owner or operator of a source included in Class III shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1976.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1977.

(4) Final compliance is to be achieved not later than May 31, 1977.

(5) Any owner or operator of stationary sources, subject to compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(k) Paragraph (h) and (i) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by December 31, 1973. The Administrator may request whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by December 31, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975, in the case of Class I sources, and May 31, 1976, in the case of Class II sources. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(l) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

§ 52.1100 Gasoline transfer vapor control.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of four (4) pounds or greater.

(b) This section is applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight vapor return line from the storage container to the delivery vessel and a device that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapor displaced from the delivery vessel during refilling.

(d) The provisions of this paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry; provided, however, said containers are equipped with submerged fill pipes.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this paragraph.

(3) Transfer made to storage tanks equipped with floating roofs or their equivalent.

(e) Compliance schedule: Except as provided in paragraph (f) of this section, the owner or operator of any source subject to this section shall comply with this section on or before January 31, 1974.

(1) Any owner or operator in compliance with this section on the effective date of this regulation shall certify such compliance to the Administrator no later than 120 days following the effective date of this section.

(2) Any owner or operator who achieves compliance with this section after the effective date of this section shall certify such compliance to the Administrator within 5 days of the date compliance is achieved.

(f) Any owner or operator of a source subject to paragraph (e) of this section may, not later than 120 days following the effective date of this section, submit to the Administrator for approval a proposed compliance schedule that demonstrates compliance with the provisions specified in paragraph (e) of this section as expeditiously as practicable but no later than June 30, 1975. The compliance schedule shall provide for increments of progress toward compliance. The dates for achievement of such increments of progress shall be specified. Increments of progress shall include, but not be limited to: submittal of final control plan to the Administrator; letting of necessary contracts for construction or process changes or issuance of orders for the purchase of component parts to accomplish emission control or process modification; initiation of on-site construction or installation of emission control equipment or process modification; completion of on-

site construction or installation of emission control equipment or process modification; and final compliance.

(g) Any owner or operator who submits a compliance schedule pursuant to this paragraph shall, within 5 days after the deadline for each increment of progress, certify to the Administrator whether or not the required increment of the approved compliance schedule has been met.

§ 52.1103 Management of Parking Supply.

(a) This section shall apply only in the event that the Administrator finds that the State of Maryland fails to take one or more of the following steps to implement the $2.00 surcharge (or an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Admininistrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the State of Maryland or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measures in those areas identified in the study by April 1, 1975.

(b) In the event the State of Maryland chooses to adopt any "equivalent measure" to this surcharge, the State of Maryland must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the State of Maryland is failing to implement the surcharge.

(c) In the event that the Administrator determines that the State of Maryland is failing to implement the $2.00 surcharge (or an equivalent measure) he shall make this determination public in the FEDERAL REGISTER, and this section shall then be immediately effective.

(b) Definitions:

(1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land to use as a parking facility.

(2) "Modification" means any change to a parking facility which increases the vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the vehicle capacity of such facility.

(4) "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or enlargement.

(5) "Parking facility" (also called "facility") means any facility, building, structure, or lot or portion thereof used primarily for temporary storage of motor vehicles.

(c) No person, after the effective date of this section, shall commence construction of any new parking facility or modification or enlargement of any existing parking facility until he has first received from the Administrator or from an agency approved by the Administrator a permit stating the construction, modification or enlargement of such facility will not interfere with the attainment or maintenance of applicable Federal air quality standards.

(d) In order for any agency to be approved by the Administrator for purposes of issuing permits for construction of any new parking facility or any modification or enlargement of any existing parking facility, such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include, but not be limited to, a requirement that before a permit may be issued, the following findings of fact or factually supported projections must be made:

(i) The location of the facility.

(ii) The total motor vehicle capacity before and after the construction, modification, or enlargement of the facility.

(iii) The normal hours of operation of the facility and the enterprises and activities which it serves.

(iv) The number of people using or engaging in any enterprises or activities which the facility will serve.

(v) The number of motor vehicles using the facility on an average hourly basis and a peak hour basis.

(vi) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projections shall include data concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include, but shall not be limited to:

(i) Full consideration of all facts contained in the application.

(ii) Provisions that no permit shall be issued if such permit will result in the increase of VMT within any area, the air quality of which fails to meet applicable Federal air quality standards.

(3) Agency procedures provide that no permit for the construction, enlargement or modification of a parking facility covered by this section shall be issued without notice and opportunity for public hearing. The public hearing may be of the legislative type; the notice shall conform to the requirements of 40 CFR Part 51.4(b); and the agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to 7 days before the scheduled hearing date, no hearing need be held. Such a requirement, if imposed, shall be noted prominently in the required notice of hearing.

§ 52.1096 Reduction of employee parking.

(a) Definitions

(1) Governmental Entity—means a federal, state or local department, agency bureau, board, office, commission, district, or unit or any other type (excluding foreign embassies) which employs personnel paid wholly with public funds.

(2) Commercial Parking Rate—means the average rate charged by commercial parking facilities (excluding on-street parking meters) on a monthly basis within a 1 mile radius of a facility or installation covered by this section.

(3) Served by Public Transit—means that such transit is available during working hours within a reasonable walking distance of the employee's place of employment, even though such transit may not serve the area of the employee's residence.

(4) State Agency means State of Maryland, Bureau of Air Quality Control.

(b) This section shall be applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c)(1) All facilities or installations owned, operated or leased by the federal government which control, operate or lease a parking facility containing 25 or more spaces, shall by January 1, 1974, report to the Administrator the number of parking spaces in each such facility as of October 15, 1973. This number shall not include residential (including barracks) parking spaces contained in or on the facility or installation.

(2) The chief administrative officer of all facilities or installations subject to paragraph (c)(1) of this section, shall by April 1, 1974, submit to the Administrator a detailed report specifying the level of public transit service to the facility and also the parking space utilization at the facilities or installations under his or her control at that time. This report shall include but is not limited to:

(i) All public transit lines which have stops within one-half mile of any such installation or facility.

(ii) The practicality of the operation of shuttle service from presently well serviced locations such as Friendship Heights, Silver Spring to the facility or installation during morning and afternoon peak hours.

(iii) A summary of the existing parking situation at the facility including:

(*a*) Average vehicle occupancy calculated from a visual survey of vehicles entering and leaving the facility over a full week's time.

(*b*) The percentage of vehicles with one, two, three and four occupants.

(*c*) The total number of vehicles using the facility daily.

Should the report state that the facility or installation is not presently served by public transit, this report shall be reexamined, updated, and submitted annually not later than April 1 of each successive year.

(d)(1) All facilities or installations owned, operated, or leased by state and local governments which control, operate or lease a parking facility containing 25 or more spaces, shall by January 1, 1974 report to the State Agency the number of parking spaces in each such facility as of October 15, 1973. This number shall not include residential parking spaces contained in or on the facility or installation or publicly owned commercial type parking facilities.

(2) The chief administrative officer of all facilities or installations, subject to paragraph (d)(1) of this section, shall be April 1, 1974 submit to the State of Maryland, Bureau of Air Quality Control, a detailed report specifying whether the facilities or installations under his or her control are served by public transit at that time. This report shall include, but is not limited to:

(i) All public transit lines which have stops within one-half mile of any such installation or facility.

(ii) The practicality of the operation of shuttle service from presently well serviced location such as Friendship Heights, Silver Spring to the facility or installation during morning and afternoon peak hours.

(iii) A summary of the existing parking situation at the facility including:

(a) Average vehicle occupancy calculated from a visual survey of vehicles entering and leaving the facility over a full week's time.

(b) The percentage of vehicles with one, two, three and four occupants.

(c) The total number of vehicles using the facility daily. Should the report state that the facility or installation is not presently served by public transit, this report shall be reexamined, updated and submitted annually, not later than April 1 of each successive year.

(e) Each governmental entity subject to paragraphs (c)(1) and (d)(1) of this section, and which in the opinion of the Administrator of State Agency is served by public transit shall comply with either paragraphs (e)(1) or (2) of this section. This governmental entity shall either:

(1) Adopt a plan whereby a charge equivalent to commercial parking rates will be imposed for parking at any such parking facility owned, operated or leased by the governmental entity. In no case shall the charge be less than $20.00 per space per month. Any funds collected by any governmental entity under this subparagraph may be used for any legitimate governmental purpose, *Provided, however*, That no such funds shall be used to subsidize directly or indirectly employee parking; or

(2) Adopt a plan to reduce the number of parking spaces in each such facility from the number in existence on October 15, 1973, according to the following:

(i) By November 30, 1974, a reduction of 4 percent

(ii) By February 28, 1975, a reduction of 8 percent

(iii) by May 31, 1975, a reduction of 12 percent

(f)(1) Each entity of the Federal government subject to paragraph (e) of this section shall submit to the Administrator no later than June 30, 1974, a detailed compliance schedule showing steps it will take to achieve either the required reduction of spaces, or the initiation of commercial parking rates. In the case of a reduction of spaces, the schedule shall include provisions for marking those spaces to be eliminated in a manner obvious to members of the public (painting over, roping off, etc.). In the case of the initiation of commercial parking rates the schedule shall include:

(i) A date for the initial imposition of the charge. Such date shall be no later than January 1, 1975.

(ii) The amount to be charged per space per month.

(iii) Any exceptions to the charge (e.g., handicapped personnel, certain high level officials of the governmental entity), including documentation of the need and rationale for such exceptions.

(iv) Provisions for annual reevaluation of the amount charged per space per month based upon any changes in commercial parking rates.

(2) Each entity of a State or local government subject to paragraph (e) of this section shall submit to the State Agency no later than June 30, 1974, a detailed compliance schedule showing steps it will take to achieve either the required reduction of spaces or the initiation of commercial parking rates. In the case of a reduction of spaces, the schedule shall include provisions for marking those spaces to be eliminated in a manner obvious to members of the public (painting over, roping off, etc.). In the case of the initiation of commercial parking rates, the schedule shall include:

(i) A date for the initial imposition of the charge. Such date shall be no later than January 1, 1975.

(ii) The amount to be charged per space per month.

(iii) Any exceptions to the charge (e.g., handicapped personnel, certain high level officials of the governmental entity), including documentation of the need and rationale for such exceptions.

(iv) Provisions for annual reevaluation of the amount charged per space per month based upon any changes in commercial parking rates.

(g) Failure to submit any report or compliance schedule as required by this section shall render the person so failing to comply in violation of an applicable implementation plan and subject to enforcement action under § 113 of the Clean Air Act. Any governmental entity which either allows vehicles to be parked in excess of the number allowable, or which fails to collect commercial parking charges, shall likewise be in violation and subject to enforcement.

§ 52.1102 Elimination of drycleaning losses.

(a) Definition:

(1) A photochemically reactive solvent is any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, referred to the total volume of solvent:

(i) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers or ketones having an olefinic or cyclo-olefinic type of unsaturation: 5 percent;

(ii) A combination of aromatic compounds with eight or more carbon atoms to the molecule except ethylbenzene: 8 percent;

(iii) A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichloroethylene or toluene: 20 percent;

Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the above groups of organic compounds, it shall be considered as a member of the most reactive chemical group, that is, that group having the least allowable percent of the total volume of solvents.

(b) This section is applicable in the Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) After May 31, 1974, no person shall cause, suffer, allow, or permit the use of any photochemically reactive organic solvent for the purpose of drycleaning of clothing and household items.

(d) The owner or operator of any premise subject to the requirements of this section shall within 30 days of the effective date of this regulation submit to the Administrator the following information:

(1) Location of premise.

(2) Source of supply and identifying name, number or purchase specification for all drycleaning solvents used.

(e) Any owner or operator who fails to fulfill any requirement of this section shall be in violation of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act.

§ 52.1099 Peak hour delivery ban regulation.

(a) Definitions:

(1) *Peak Hours*—The hours 6:00 AM to 9:30 AM Monday through Saturday.

(2) *Delivery Ban*—A program to reduce emissions from in-use heavy duty gasoline powered vehicles employed to deliver goods within the specified peak hours.

(3) *Heavy Duty Gasoline Powered Vehicle*—Any motor vehicle either designated primarily for transportation of property and rated more than 6,000 pounds GVW and which is powered by a gasoline burning engine. This shall not include mail trucks, and emergency type vehicles such as fire trucks and police wagons.

(4) All other terms used in this section which are defined in 40 CFR Part 51, Appendix N are used therein with the meaning so defined.

(b) This regulation is applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) The State of Maryland counties of Prince Georges, Montgomery and all incorporated cities located within such county shall establish a peak hour, heavy duty gasoline powered vehicle use prohibition on streets and highways over which each entity has ownership and control. No later than February 1, 1974, each governmental entity shall submit to the Administrator a legally enforceable program which shall include:

(1) Provisions for initiation of the ban no later than June 30, 1974.

(2) The prohibition shall state that heavy duty gasoline powered vehicles making deliveries in violation of the prohibition shall either be towed away, or the owner and/or operator subject to a fine of up to $100, or both.

(d) The State of Maryland, counties and all incorporated cities within such counties subject to this section shall submit, no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce a peak hour delivery ban. The compliance schedule shall include the date by which the jurisdictions will recommend needed regulations to the appropriate body, and will identify the state, county, or city official responsible for enforcement.

(e) Failure to comply with any provisions of this regulation shall render such person in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. A state or other governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule.

§ 52.1104 Limitation of off-street parking.

(a) This section shall apply only in the event that the Administrator finds that the State of Maryland fails to take one or more of the following steps to implement the $2.00 surcharge (or an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Administrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the State of Maryland or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measure in those areas identified in the study by April 1, 1975.

(b) In the event the State of Maryland chooses to adopt any "equivalent measure" to this surcharge, the State of Maryland must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the State of Maryland is failing to implement the surcharge.

(c) In the event that the Administrator determines that the State of Maryland is failing to implement the $2.00 surcharge (or an equivalent measure) he shall make this determination public in the Federal Register, and this section shall then be immediately effective.

(d) Definition:

(1) The term "off-street parking facility" means any land or building or portion of a building set aside for the purpose of storing a maximum capacity of 10 or more vehicles on a temporary basis.

(e) Each governmental entity, public agency, private corporation, partnership or sole proprietor owning or operating an off-street parking facility located within the State of Maryland portion of the National Capital Interstate Air Quality Control Region shall, within 30 days of the effective date of this regulation, report to the Administrator the number of parking spaces in each such facility under its ownership or control of the effective date of this regulation. The number used solely for the storage of vehicles of persons who reside within ¼ mile of the facility shall not be counted.

(f) Each such owner or operator of any off-street parking facility located within the area specified in paragraph (c) of this section shall reduce the number of affected parking spaces in each such facility from the number in existence as of the date this regulation becomes effective according to the following schedule:

(1) Within 90 days of the effective date—a 5 percent reduction;

(2) Within 120 days of the effective date—a 10 percent reduction;

(3) Within 180 days of the effective date—a 15 percent reduction.

(g) Each such owner or operator of an off-street parking facility subject to the requirements of this section shall submit to the Administrator, no later than 60 days after the effective date of this section, a detailed compliance schedule showing the steps it will take to achieve the required reduction in parking spaces. Such schedule shall provide for the marking in some manner obvious to the public (such as painting over, roping off, or the like) of the eliminated spaces on which parking is not permitted pursuant to this section.

(h) Failure to submit a compliance schedule as required by this section shall render the person or governmental entity so failing in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any owner or operator of an off-street parking facility who allows any vehicle to be parked on any parking space which has been eliminated pursuant to this section, or who fails to mark clearly those spaces which have been eliminated, shall likewise be in violation and subject to enforcement.

[FR Doc.73-15628 Filed 8-1-73;8:45 am]

[40 CFR Part 52]

VIRGINIA; APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Notice of Proposed Rule Making

The transportation control plan submitted by the Commonwealth of Virginia for attainment of the primary national ambient air quality standards for carbon monoxide (CO) and photochemical oxidants (Ox) for the Virginia portion of the National Capital Interstate Region was disapproved in part on June 15, 1973 (38 FR 16563). This notice of proposed rulemaking sets forth regulations which in the Administrator's judgment could be implemented in addition to the approvable portions of the Virginia plan to attain and maintain the national standards for carbon monoxide and photochemical oxidants in the Virginia portion of the National Capital Interstate Region.

If revisions to the Virginia plan are submitted and determined to be approvable prior to Federal promulgation, these proposed regulations will be withdrawn. If revisions to the Virginia plan are submitted and determined to be approvable after Federal promulgation, then those Federal regulations will be rescinded. It is the desire of the Environmental Protection Agency that the plan to attain and maintain the carbon monoxide and photochemical oxidant standards in the Virginia portion of the National Capital Interstate Region be a State plan carried out by the Commonwealth of Virginia or its designated representative.

Transportation Control Alternatives

Analysis of the air quality problems in the National Capital Interstate Region, which is partly located in the Commonwealth of Virginia, reveals that both photochemical oxidants and carbon monoxide exhibit unacceptably high levels in the region, with the former being the pacing pollutant.

Since a substantial proportion of the photochemical oxidant problem and almost all of the carbon monoxide problem are the result of automotive vehicle emissions, measures to reduce emissions from individual vehicles and measures to reduce vehicular travel can be effective in improving air quality. Since a significant percentage of the oxidant-producing hydrocarbon emissions stem from vehicle-related sources associated with gasoline handling operations, measures to reduce these operational losses can also provide a measurable improvement in the regional air quality.

Reductions in emissions from vehicles can be obtained through inspection and maintenance programs and from incorporation of various retrofit devices. Reductions in Vehicle Miles Traveled (VMT) can be achieved through various pricing and taxing schemes for road use, adoption of parking restrictions, including limitations of available number of parking spaces, restrictions on idling or cruising of fleet vehicles, selective control of goods movement, the establishment of vehicle-free zones, establishment of a four-day work week, programs promoting the use of carpools or alternative modes of transportation, and limitations on gasoline usage. It must be emphasized that, in order to be effective, each VMT control measure proposed or adopted by the Commonwealth of Virginia must be reflected by identical or equivalent measures in the neighboring jurisdictions of Maryland and the District of Columbia for their portions of the National Capital Interstate Region.

In effecting substantial improvements in air quality, improvements in and expansion of public transportation facilities are a necessary and effective com-

plement facilitating use of this alternative to the private automobile. Clearly, public transit improvements must be implemented in concert with the appropriate level of vehicle restraints, as determined by the regional characteristics of the private automobile use demand elasticity. Such improvements as greater coverage, increased frequency of service, improved reliability, increased comfort and convenience, a reasonable cost, and adequate personal security will further encourage the use of public transit alternatives to the private automobile.

SUMMARY

The Virginia plan, as amended by the July 9, 1973, submission, in its demonstration of the attainment of the photochemical oxidant and carbon monoxide air quality standards, utilizes seven general measures. These are: the Federal Motor Vehicle Control Program, the Virginia Motor Vehicle Inspection and Maintenance Program for light duty vehicles, improvement in public transportation, increased terminal (or parking) costs, car pool locator service, restrictions on aircraft ground operations, and control of stationary source emissions. According to the Virginia plan, which utilizes data by the Metropolitan Washington Council of Governments for the entire National Capital Interstate Region, peak period hydrocarbon emissions were 63.3 tons for the region as a whole and peak period carbon monoxide emissions were 1133.5 tons in 1972. In order to demonstrate attainment of standards, the Council of Governments' calculations indicate that hydrocarbon emissions must be reduced by 67 percent of the 1972 emissions in the National Capital Interstate Region to a level of 20.9 tons/peak period, and that carbon monoxide emissions must be reduced by 55.6 percent of the 1972 emissions in the Region to a level of 501 tons/peak period.

Including projected increase in vehicle miles of travel, the Federal Motor Vehicle Control Program will reduce hydrocarbon peak period emissions by 47 percent to 33.6 tons and will reduce carbon monoxide peak period emissions by 49.0 percent to 576 tons/peak period by 1977. These estimates are adjusted to reflect the 1975 interim motor vehicle emission standards as announced on April 11, 1973.

Since the 21-day period for public comment on the additional submission has not been completed, it is impossible for the Administrator to make a final decision on approval or disapproval of the strategies included in the Virginia plan at this time. This decision must take into consideration all comments received during this time. However, preliminary review by EPA indicates that certain strategies are likely to be approvable. Accordingly, the Agency is proposing only those items which, when added to the approvable measures, are necessary to attain the National Ambient Air Quality Standards.

If an apparently approvable strategy is determined not to be approvable, additional measures will be proposed.

The information contained in the additional submissions by Virginia appears to remedy many of the deficiencies on which the Administrator's June 15 decision was based.

The following is a summary of the actions EPA is proposing to take with respect to the Virginia Plan:

Federal Motor Vehicle Control Program—Reductions appear to be approvable based on projected vehicle populations and emission factors.

Motor Vehicle Inspection Program—Appears to be approvable, based upon proposed regulation and supporting data.

Improvements in Public Transit—

(a) Virginia participation in the area wide addition of 750 buses to current fleet—appears to be approvable, contingent upon clarification of certain administrative details.

(b) Exclusive Bus Lanes—appears to be approvable.

(c) System Improvements (i.e., shelters, fringe parking, improved scheduling)—Appears to be approvable.

Increased Terminal Charges—

(a) Elimination of free off-street, employee parking in certain areas—does not appear to be approvable.

(b) Elimination of on-street long-term parking in certain areas—appears to be approvable.

(c) $2.00 parking surcharge (or an equivalent measure)—appears to be approvable.

Bus/Carpool Locator Program—Appears to be approvable.

Restrictions on Aircraft Ground Operations—Partial reductions are allowable; appears to be partially approvable.

Increased Control of Stationary Source Emissions—Not approvable at this time due to lack of adopted regulations.

Due to the fact that:

a. Full reductions claimed for aircraft emissions do not appear to be allowable,

b. The plan did not include controls over heavy duty gasoline powered vehicles,

c. The portion of the plan dealing with elimination of free off-street employee parking does not appear to be approvable, and

d. The controls over stationary sources cannot be approved at this time.

EPA is proposing the following measures:

a. Initiation of commercial-type parking rates or reduction by 12 percent the available spaces at any federal, state, or local government facility which has 25 or more parking spaces and which is located in a high density employment area which is well serviced by public transit.

b. Retrofit by 1975 of all pre-1968 vehicles with a vacuum spark advance disconnect kit.

c. Retrofit of light duty 1971–1975 fleet vehicles (including federal government vehicles) and taxicabs with an oxidizing catalyst retrofit—beginning in mid-1976, to be completed by mid-1977.

d. Controls of emissions of hydrocarbons due to gasoline handling; both from the delivery truck to underground tank and from the pump to the vehicle. Implementation begins in 1974 and is fully completed by 1977.

e. Ban of heavy-duty-gasoline-powered vehicles (except emergency vehicles, mail trucks, etc.) from 6:00 a.m. to 9:30 a.m. beginning July 1, 1974.

Finally, since the $2.00 surcharge proposed by Virginia is integral to the success of this plan, EPA is proposing contingency strategies to be implemented if appropriate steps are not taken to implement the surcharge. These contingency measures are:

a. A ban on the construction, modification or enlargement of any parking facility without having first obtained a permit from the Administrator.

b. A phased 15 percent reduction in the number of off-street parking spaces.

The Administrator invites comments on these and any other measures which may be used to achieve the national ambient air quality standards for photochemical oxidants and carbon monoxide.

TWO-YEAR EXTENSION TO ACHIEVE STANDARDS

The Administrator proposes to give a two-year extension for the attainment of the standard in the Commonwealth of Virginia. To attain the standards in 1975 would require stringent restraints on vehicle miles traveled which could not be considered to be "reasonably available," within the meaning of section 110 (c) of the Clean Air Act, or the implementation of a widespread catalytic retrofit program which could not be implemented due to technological problems before 1977. Although some measures have not been proposed here which have appeared in some other proposals, such as gasoline limitations and a selective vehicle exclusion program involving colored tags, the reduction in vehicle miles traveled expected from measures contained herein appears to be substantial and adequate to fulfill the requirement that reasonably available alternative measures be employed before an extension is given for any strategy. The plan proposed herein, along with the apparently approvable measures submitted by the Commonwealth of Virginia applies the reasonably available alternative means of control at the earliest possible dates. Comment is invited on any measures which have not been considered and applied and which can be considered to be reasonably available.

COMPILATION OF CONTROL STRATEGY EFFECTS FOR THE NATIONAL CAPITAL INTERSTATE REGION ON MAY 31, 1977

	Carbon Monoxide		Hydrocarbons	
	Tons per Peak Period	Percent of Total Reduction Required	Tons per Peak Period	Percent of Total Reduction Required
Stationary Source Emissions Without Control Strategy	78		14.3	
Expected Reductions From:				
(a) Dry Cleaning Vapor Recovery	0	0	1.1	8.7
(b) Gasoline Handling Vapor Recovery	0	0	5.0	39.4
(c) Other Statutory Source Rule Strengthening	0	0	0	
Stationary Source Emissions Remaining	78		8.2	
Mobile Emissions from Highway Light and Heavy Duty Vehicles without Control Strategy	498		19.3	
Expected Reductions From:				
(a) Inspection and Maintenance	26	34.6	1.5	11.8
(b) VSAD Retrofit, pre-'68 cars	3	4.0	0.4	3.2
(c) Catalytic Retrofit of Fleet LDV's	5	6.7	0.2	1.6
(d) Mass Transit Improvements	21	28	2.7	21.2
(e) HDV Peak Hour Delivery Ban	27	36	1.0	7.9
(f) Aircraft Model Program	9	12	0.8	6.4
Mobile Emissions Remaining	416		12.7	
Total Emissions without Strategy (FMVCP Included)	576		33.6	
Total Reductions	82	109.3	12.7	100.2
Total Emissions Remaining	494		20.9	

PROPOSED CONTROLS ON STATIONARY SOURCES

The major stationary sources of hydrocarbon emissions, which have been identified in the Virginia plan, are the gas handling losses which occur in the distribution system for gasoline fuel, and the emissions losses from dry cleaning establishments. Since present regulations are inadequate to effect any substantial control of the resultant emissions, from gasoline distribution, the Commonwealth of Virginia has proposed regulations and compliance schedules which would reduce gasoline handling losses by 90 percent.

The regulation proposed by the Commonwealth of Virginia for control of hydrocarbon evaporative emissions at retail service stations and fleet owned stations requires the installation of 90 percent effective vapor recovery devices at stations handling over 50,000 gallons per month by May 31, 1975, and at stations handling over 25,000 gallons per month by May 31, 1977.

It is estimated that installations of 90 percent effective vapor recovery devices on all these service stations throughout the region will result in a total reduction of hydrocarbon emissions of 5.0 tons/peak period (6–9 a.m.) by May 31, 1977.

The Commonwealth of Virginia proposed the following additional regulations for the control of hydrocarbon emissions from stationary sources in the Northern Virginia portion of the National Capital Interstate Region:

(a) *Effluent Oil Water Separators*, which recover more than 200 gallons per day of any petroleum product, are required to be equipped with vapor recovery devices which reduce the emissions of all hydrocarbon vapors and gasses into the atmosphere by at least 90 percent by weight.

(b) *Storage of Petroleum Products*, in any container of more than 40,000 gallons capacity is forbidden unless the container is a pressure tank maintaining working pressures sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or is equipped with a floating roof or a vapor recovery system.

(c) *Organic Liquid Loading (Bulk Terminals)*, shall be accomplished in such a manner that all displaced vapor and air will be vented out to a vapor collection system.

(d) *Gasoline Loading (Submerged Fill)*, into any stationary tank with a capacity of 250 gallons or more is forbidden unless such tank is equipped with a vapor loss control device, or is a pressure tank as described in section (b).

Since photochemical reactive solvents are not used by any dry cleaning establishment in the Virginia portion of the National Capital Interstate Region, the hydrocarbon emission reduction by 1.1 tons per peak period is achievable without further specific action by Virginia.

The foregoing regulations as proposed by the Commonwealth of Virginia appear to be adequate to achieve the anticipated reduction in hydrocarbon emissions. However, the Administrator cannot approve these proposed regulations at this time, since 40 CFR Part 51 requires that all regulations dealing with the control of emissions from stationary sources be adopted at the time of submittal of the plan. EPA is therefore proposing to promulgate similar regulations which will be rescinded upon submission of equivalent regulations as adopted by the Commonwealth of Virginia.

PROPOSED CONTROLS ON MOBILE SOURCES (NON-AIRCRAFT)

The Commonwealth of Virginia, in its July 9, 1973 submission of additions and revisions to the implementation plan, proposes an idle mode emission inspection program with an initial failure rate of 30 percent in conjunction with its eixsting annual safety inspection program. The proposed timetable for legal authority (by July 1974), initiation of the inspection program (by January 1975) and completion of the first cycle (by June 1975) provides an enforceable measure for improving air quality by means of a 10 percent reduction in hydrocarbon emissions from light duty vehicles by mid-1975. Therefore, the Administrator feels that this portion of the Commonwealth of Virginia plan is approvable. Anticipated emissions reductions from the inspection/maintenance programs as proposed throughout the National Capital Interstate Region, are 1.5 tons per peak period for hydrocarbon and 26 tons per peak period for carbon monoxide.

In order to comply with the requirements of the Clean Air Act that primary standards be achieved as expeditiously as practicable, the Administrator proposes to promulgate a regulation requiring that on or before January 1, 1975, all pre-1968 light duty vehicles be retrofitted with a vacuum spark advance disconnect device which will reduce hydrocarbon emissions from such vehicles by 25 percent. If implemented throughout the National Capital Interstate Region, installation of these devices will result in a total reduction of hydrocarbon emissions of 0.4 tons per peak period and a total reduction of carbon monoxide emissions of 3 tons per peak period.

In order to attain the primary air quality standard by May 31, 1977, additional measures are required beyond those proposed by the Commonwealth of Virginia. Since catalytic retrofit devices for light duty vehicles are expected to be readily available by 1977, it is proposed to require installation of these devices on selected segments of the light duty vehicle population. These segments include all 1971–1975 LDV fleet vehicles (e.g., taxis, GSA vehicles, rental cars, fleet delivery vehicles), capable of operating on 91 RON gasoline.

The regulation proposed by the Administrator will require that the vehicles designated be equipped with catalytic retrofit devices by May 31, 1977, effecting a 50 percent hydrocarbon emission reduction for each vehicle. Exemptions will be allowed for all 1975 vehicles originally equipped with the oxidizing catalytic converter on those vehicles which are certified to meet the original statutory federal emission standards for 1975. Based on information currently available to him, the Administrator estimates that:

Fleet vehicles account for 6 percent of total mobile source emissions. On the basis that one-third of the fleet vehicles will be older than two years (pre-1976), and catalytic retrofits can reduce automotive emission from each vehicle by 50 percent, it is apparent that this measure, when applied on a Region-wide basis, will result in a hydrocarbon emission reduction of 0.2 tons/peak period.

In the event that the measures proposed herein prove to be inadequate, the Administrator is required by law to apply additional reasonably available alternatives, including catalytic retrofit of other segments of 1968–1975 light duty vehicle population. Canidate segments include all light duty trucks, or passenger vehicles of specified model years. The public is urged to comment on these or any other type of control measure that may help to achieve the National Ambient Air Quality Standards.

PROPOSED REDUCTIONS IN VMT

According to computer printouts provided by the Metropolitan Washington Council of Governments, the Commonwealth of Virginia's transportation package (including participation in the area wide expansion of transit by 750 buses, exclusive bus/carpool lanes, a carpool locator service, and extensive parking restrictions) will result in a 12 percent reduction in 6–9 a.m. VMT and a corresponding reduction in total trips.

The Virginia plan includes the following strategies under its transportation measures:

(1) Participation with D.C. and Maryland in an area wide improved transit system, including the addition of 750 buses to the current area fleet, the establishment of exclusive bus lanes, bus shelters, and fringe parking facilities.

(2) Increased terminal cost, including the elimination of free parking and the establishment of a $2.00 parking surcharge for long term commuter parking in all areas adequately served by mass transit.

(3) Establishment of a computerized carpool locator service.

This portion of the plan is central to the Virginia plan for reduction of HC and CO emissions. Therefore, to avoid confusion and expedite comments, a discussion of the elements that make up this portion of the plan shall be included.

a. Elimination of Free Parking—The Commonwealth of Virginia proposes to have EPA eliminate off-street parking for federal employees; once this has occurred, the plan proposes that other employers (state, local government and private businesses) will then begin a program to eliminate free parking for their employees. The plan also calls for a reduction of available on-street spaces which will be achieved by the elimination of street parking for commuters.

The elimination of on-street spaces will initialy be imposed in the Rosslyn and Crystal City areas of Arlington County and downtown Alexandria. Other high density employment areas will be analyzed for future restrictions as bus service expands. This program is scheduled for implementation in early 1975.

On the basis of the information submitted by Virginia, it is the Administrator's opinion that the portion of the Virginia plan dealing with elimination of on-street parking is approvable.

The reduction in off-street parking proposed by the plan is conceptually acceptable; however, there is not enough of a firm commitment indicated in the plan to permit approval of this element of the plan at this time. Therefore, EPA intends to propose those same strategies which Virginia had suggested in its plan, and thereby provide the firm commitment to implement Virginia's strategy.

As pointed out in Virginia's plan, reduction of emission due to work trips by Federal Government employees into, out of, and within Virginia is integral to achieving air quality goals. Therefore, EPA feels it has the responsibility to aid Virginia in the control of these emissions. As a result, EPA will follow Virginia's suggestion and propose a federal regulation which would effectively reduce emisisons as a result of commuter trips by federal employees. This will be done by requiring Federal Facilities in high density areas served by mass transit to either eliminate free parking (by establishing commercial type rates) or to reduce the available parking spaces in these facilities by 12 percent.

Since the other jurisdictions in the AQCR have also proposed to eliminate free parking for employees of its government and Virginia's plan is unclear on this point, EPA is also proposing that State and local government parking facilities which have 25 or more spaces and which are located in high density employment areas which are served by public transit either eliminate free parking or reduce the available spaces by 12 percent. It is EPA's opinion that since this plan is regional in nature that this action is necessary to insure that the reductions achievable by this measure do, in fact, occur.

The Administrator feels that the result of this proposal will be to induce employees to utilize alternate modes of transportation, such as buses and carpools and thereby reduce the VMT in the area. It should be noted that this proposal should result in a reduction of VMT for the entire National Capital area because it will reduce VMT of employees from all three jurisdictions.

It is the Administrator's opinion that, at a minimum, the Rosslyn, Crystal City, Pentagon, and Downtown Alexandria areas, along with other areas would, in all likelihood, need to be included in any definition of "high density employment area which is serviced by mass transit," for this strategy to be effective.

b. $2.00 Surcharge (or its equivalent)

The Virginia plan proposes the imposition of a $2.00 per day surcharge (or an equivalent measure) on all long term parking facilities in employment areas which are adequately served by mass transit. Identification of the areas where the surcharge is to be imposed should be made by Virginia within the next 10 months upon completion of studies of the matter.

This proposal calls for the charge to be implemented and enforced by Arlington County or the Northern Virginia Transportation Commission (NVTC). The Administrator feels that if implemented, according to the schedule provided in the plan, this proposal is approvable.

It is well documented that no matter how well designed and operated a mass transit system is, unless there are disincentives to the use of the private automobile, mass transit shall be ineffective. Therefore, Virginia's proposals for the surcharge is integral to the success of the plan.

The Administrator wants to make it clear that if for any reason this strategy is not implemented according to schedule, he will institute equivalent measures. In order to avoid any delay in implementation of such equivalent measures and to invite timely public comment, the Administrator is proposing contingency measures in the plan which will become effective if it becomes apparent that the surcharge will not be implemented. Specifically, a phased 15% reduction in existing off-street parking spaces would be imposed, as well as ban on the construction, modification or enlargement of any parking facility without first obtaining a permit from the Administrator or a specified local Agency. Public comments are solicited on these contingency proposals.

c. Mass Transit Improvements

The development of an effective mass transit system is essential to the development of an effective transportation control strategy. If this control plan is to be successful, a sufficient number of buses with convenient service and adequate schedules must be provided. The improvement in the transit system is an area wide measure in which Virginia will participate with District of Columbia and State of Maryland.

The Virginia plan proposes that NVTC, which represents the local governments in Northern Virginia in public transportation matters, shall take all possible measures to assure that the area wide transit system's current fleet size is increased by 750 buses and that service and convenience for commuters is improved. Included in this proposal are provisions for installing bus shelters, providing expanded fringe parking, additional public information and improved scheduling. In addition, Virginia plans to institute a number of exclusive bus lanes on major highway corridors in the area. The local jurisdictions in conjunction with NVTC have allocated funds to provide subsidies to support a lowering and equalization of transit fares throughout Northern Virginia. All of these measures are meant to provide the increased mass transit service which will be necessary if air quality standards are to be achieved.

Based on the information contained in the documents submitted by Virginia, the Administrator believes that the proposals for increased mass transit are approvable, on the condition that certain administrative details are provided to him by the Commonwealth. Specifically, the arrangements or agreements which will trigger the expansion of the fleet should be clarified, since it is necessary for EPA to determine what actions are necessary to bring about any additional purchases of buses. Also a clarification on the schedule showing the projected incremental increases in fleet size should be provided.

d. Bus/Carpool Locator System

The Virginia plan recognizes the need for more efficient utilization of current automobile usage. Thus, the plan proposes a voluntary bus/carpool locator matching service. This system will attempt to assemble lists of commuters with similar work schedules and home, work locations, and will be phased in starting with a pilot project during 1973. Full operation of the system is scheduled for April 1974. The Administrator feels that this measure is approvable, and encourages residents of the National Capital area to take advantage of this service.

Along with the benefits accruing to this system in terms of a potential decrease of vehicle miles traveled, this

system also has the advantages of fuel conservation and it will mitigate the impact of disincentives to private auto use (i.e., the surcharge and elimination of free employee parking).

e. Heavy Duty Vehicle Restraints

In addition to the transportation measures described above, the Virginia plan discusses the problem of heavy-duty gasoline-powered vehicle emissions. The plan does not propose any measures to control these emissions; however, the plan discusses the possibility of either a heavy-duty vehicle ban between 6–9 a.m. or an emissions control retrofit program for Heavy Duty Trucks. The discussions indicate the need to achieve a 50 percent reduction in emissions from such vehicles to meet the standards by 1977. Such a strategy would be complementary to the approvable heavy duty emission control measures included in the District of Columbia plan and the concepts discussed in the Maryland plan.

Since the Virginia plan does not actually propose any heavy duty truck measures, the Administrator must propose a regulation which will achieve the required reductions. Therefore, EPA is proposing a delivery ban on heavy duty gasoline-powered vehicles which will be effective during the peak traffic period (6:00 a.m.–9:30 a.m.). The ban will take effect July 1, 1974. The Administrator recognizes that the District of Columbia will impose this ban on January 1, 1974; however, in order to allow Virginia adequate time to adopt regulations and plan for implementation of this ban, the additional implementation time is warranted.

EPA has not proposed the heavy duty vehicle retrofit strategy discussed by the state of Virginia. Though a heavy duty retrofit strategy was proposed by the State of New York and approved by EPA, the uncertainties in its implementation date are such that EPA does not feel justified in proposing its establishment as a Federal Program. If the Commonwealth of Virginia wishes to propose a heavy duty strategy as a state program in a manner similar to New York's, then it may well be approved provided it is consistent with the New York Program.

It is recommended that if the Virginia Air Resources Board is considering for its plan a measure that requires the retrofit of heavy duty vehicles, it should actively work with the New York City Bureau of Motor Vehicle Pollution Control which has already made much progress in this area. For the approach to be approvable, Virginia must provide written commitments that appropriate arrangements will be made with the state of New York. This will provide a greater assurance that an acceptable device will be available in the Virginia portion of the National Capital Interstate Air Quality Control Region. However, even if Virginia were to adopt this strategy in conjunction with New York, reductions could not be achieved until 1977.

The Clean Air Act dictates that the Administrator must apply reasonably available interim strategies. The Administrator feels that reductions in emissions from this type of vehicle are possible through imposition of restraints in use of this type of vehicle.

AIRCRAFT EMISSION REDUCTIONS

Aircraft emissions, as they affect ambient air quality, occur during approach, landing, taxi, idle, takeoff, and climbout. Heaviest emissions occur during taxi and idle when aircraft engines are operated at greatly reduced power.

The Virginia Transportation Control Plan asserts that control of these emissions through modified ground operations at Dulles and Washington National Airports can result in a significant hydrocarbon, and carbon monoxide emission reduction in the National Capital Region. Virginia contends that a 50 percent reduction in hydrocarbon and carbon monoxide emissions can be achieved though the implementation of such ground controls at the two northern Virginia airports. Such a reduction would represent a 1.7 ton reduction in the area's hydrocarbon emissions and 28 ton reduction in the area's carbon monoxide emissions. Virginia assumes the required measures will be fully implemented by EPA and FAA during the next four years and takes full credit for the potential emissions reductions which they believe could result from these measures.

The assumed reduction in hydrocarbon emissions is necessary for the plan to demonstrate achievement of the oxidant standards; the claimed carbon monoxide reductions are not needed for attainment of the standards.

EPA has published an Advance Notice of Proposed Rulemaking for aircraft ground controls but has not yet proposed regulations for such controls. The Agency, however, is currently funding a demonstration project with FAA to determine if safety hazards would accompany modified ground operations. If the demonstration is successful, EPA will propose and promulgate regulations for the implementation of ground operations deemed free of safety hazards.

The Agency currently believes that certain ground and taxi operations included in the demonstration can be conservatively assumed to be safe and acceptable. EPA calculations indicate that the application of these measures could result in a 24 percent reduction in hydrocarbons at National Airport and a 30 percent reduction in hydrocarbons at Dulles Airport (vice 50 percent reduction proposed by Virginia). In light of EPA's intention to work jointly with FAA to promulgate and implement ground operations deemed safe and acceptable prior to 1977, the Agency believes it is reasonable to allow Virginia to accept credit for emission reductions which will result from controlling the ground operations conservatively felt at this time to be safe and acceptable. The percent emissions reductions indicated above which would result from these measures would provide approximately a 0.8 tons reduction in hydrocarbons for the National Capital Region. Accordingly, the Agency will accept 0.8 tons of the claimed 1.7 tons reduction as being an approvable portion of the plan based on the expected implementation of ground operation regulations.

ECONOMIC AND SOCIAL IMPACT

The social and economic consequences of the measures included in the Virginia plan or proposed herein are considered reasonable. For example, the inspection and maintenance procedures will require expenses of approximately $10 annually for the average vehicle inspected. The implementation of the VSAD retrofit program of pre-1968 vehicles will require that individual motorists pay approximately $20 installation costs. Though the price to the fleet vehicle owner for the catalytic retrofit is $135 per vehicle, this cost could gradually be reclaimed through slightly higher service or use fees for the fleet vehicles controlled. In addition, such expenditure can be deducted from income tax as a business expense, and therefore part of the cost will be absorbed by the government. Compensation for the expenditures associated with the modifications required by the gasoline handling regulations could similarly be gained through slight increase in the fees for station services or fuel prices. This also could be deducted as a business expense from the income tax. Distributed costs of the various mass transportation improvement measures, as well as the incentives for the use of express buses and carpools and disincentives on the use of automobiles by individual motorist-commuters, are also considered reasonable.

The measures providing transportation improvements are expected to benefit the public from the standpoint of improved traffic flow for commuters, general urban mobility, and energy consumption. The resulting VMT reductions may also have some impact on the sprawling development patterns fostered by widespread automobile use which are unduly wasteful of energy, land and other resources and have contributed to the decay of urban centers.

PUBLIC COMMENTS SOLICITED

Although the Administrator has concluded that the proposed plan is the best approach available to him at the present time for achieving compliance with the requirements of the Act, further analysis may demonstrate that more appropriate options are available. He therefore desires to obtain the comments and suggestions of the public on the problems of achieving the ambient air quality standards in the Virginia portion of the National Capital Interstate Air Quality Control Region. Comments are particularly invited pertaining to measures that may be taken by Federal, State, or local authorities to support or supplement the proposed air pollution control strategy, to implement these measures, and to compare social and economic effects of alternative pollution control measures.

Public hearings will be held at the Holiday Inn, Jefferson Plaza, 1489 Jefferson Davis Highway, Arlington, Virginia, on September 4, 1973, beginning at 9:00 a.m. Notice of the hearing on these regulations (including designation of locations for inspection and distribution of EPA proposals) is being published in the Virginia portion of the National Capital Interstate Air Quality Control Region.

The Administrator's final promulgation of transportation controls for the Virginia portion of the National Capital Interstate Region will consider the comments and testimony he receives, as well as any additional approvable strategies submitted by the Commonwealth as part of the Commonwealth plan before or at the hearing. These influences, and the additional analysis of alternative strategies that can be made in the time between this proposal and final promulgation, may lead the Administrator to adopt final regulations that differ in important ways from this proposal.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate, to EPA ATTN: Mobile Source Enforcement Division, 401 M Street, SW., Washington, D.C. 20460. All relevant comments received no later than September 4, 1973 will be considered. Receipt of comments will be acknowledged but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at the Office of Public Affairs, EPA, 401 M Street, SW., Washington, D.C. 20460. This notice of proposed rulemaking is issued under the authority of section 110(c) and 301(a) of the Clean Air Act (42 U.S.C. 1857 et seq).

EPA STUDIES AND GUIDELINES

Further information on transportation control, land use, and motor vehicle emissions may be obtained from one or more of the following documents which the Environmental Protection Agency has published:

a. "Prediction of the Effects of Transportation Controls on Air Quality in Major Metropolitan Areas" and "Evaluating Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas." November 1972. Both of these documents are generally known as the "Six Cities Study."

b. "Transportation Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas," December 1972. This document is a summary of a study of 14 cities conducted with the view of recommending specific transportation control strategies. (Separate reports for each of the 14 cities are also available.)

NOTE: The documents listed in a and b above are available from the Air Pollution Technical Information Center, EPA, Research Triangle Park, North Carolina 27711.

c. "Control Strategies for In-Use Vehicles." November 1972. This report is available from EPA, Mobile Source Pollution Control Programs, 401 M Street, SW., Washington, D.C. 20460.

d. "Transportation Control Measures." FEDERAL REGISTER (38 FR 15194) June 8, 1973.

e. "Aircraft and Aircraft Engines." FEDERAL REGISTER (37 FR 26488) December 12, 1972.

f. "Aircraft Emissions: Impact on Air Quality and Feasibility of Control." This report presents the available information on the present and predicted nature and extent of air pollution related to aircraft operations in the United States. In addition, it presents an investigation of the present and future technological feasibility of controlling such emissions.

(42 U.S.C. 1857 et seq.)

Dated: July 24, 1973.

ROBERT W. FRI,
Acting Administrator.

It is proposed to amend Part 52 of Chapter I of Title 40 of the Code of Federal Regulations by adding the following:

§ 52.2435 Reduction of employee parking.

(a) Definitions:

(1) Governmental Entity—means a federal, state or local department, agency bureau, board, office, commission, district, or unit or any other type (excluding foreign embassies) which employs personnel paid wholly with public funds.

(2) Commercial Parking Rate—means the average rate charged by commercial parking facilities (excluding on-street parking meters) on a monthly basis within a 1 mile radius of a facility or installation covered by this section.

(3) Served by Public Transit—means that such transit is available during working hours within a reasonable walking distance of the employee's place of employment, even though such transit may not serve the area of the employee's residence.

(4) State Agency means Commonwealth of Virginia, State Air Pollution Control Board.

(b) This section shall be applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c)(1) All facilities or installations owned, operated or leased by the federal government which control, operate or lease a parking facility containing 25 or more spaces, shall by January 1, 1974, report to the Administrator the number of parking spaces in each such facility as of October 15, 1973. This number shall not include residential (including barracks) parking spaces contained in or on the facility or installation.

(2) The chief administrative officer of all facilities or installations subject to paragraph (c)(1) of this section, shall by April 1, 1974, submit to the Administrator a detailed report specifying the level of public transit service to the facility and also the parking space utilization at the facilities or installations under his or her control at that time. This report shall include but is not limited to:

(i) All public transit lines which have stops within one-half mile of any such installation or facility.

(ii) The practicality of the operation of shuttle service from presently well serviced locations such as (Rosslyn, Crystal City) to the facility or installation during morning and afternoon peak hours.

(iii) A summary of the existing parking situation at the facility including:

(*a*) Average vehicle occupancy calculated from a visual survey of vehicles entering and leaving the facility over a full week's time.

(*b*) The percentage of vehicles with one, two, three and four occupants.

(*c*) The total number of vehicles using the facility daily. Should the report state that the facility or installation is not presently served by public transit, this report shall be reexamined, updated, and submitted annually not later than April 1 of each successive year.

(d)(1) All facilities or installations owned, operated, or leased by state and local governments which control, operate or lease a parking facility containing 25 or more spaces, shall by January 1, 1974, report to the State Agency the number of parking spaces in each such facility as of October 15, 1973. This number shall not include residential parking spaces contained in or on the facility or installation or publicly owned commercial type parking facilities.

(2) The chief administrative officer of all facilities or installations, subject to paragraph (d)(1) of this section, shall by April 1, 1974, submit to the Commonwealth of Virginia, State Air Pollution Control Board, a detailed report specifying whether the facilities or installations under his or her control are served by public transit at that time. This report shall include, but is not limited to:

(i) All public transit lines which have stops within one-half mile of any such installation or facility.

(ii) The practicality of the operation of shuttle service from presently well serviced locations such as Rosslyn, Crystal City to the facility or installation during morning and afternoon peak hours.

(iii) A summary of the existing parking situation at the facility including:

(*a*) average vehicle occupancy calculated from a visual survey of vehicles entering and leaving the facility over a full week's time.

(*b*) The percentage of vehicles with one, two, three and four occupants.

(*c*) The total number of vehicles using the facility daily.

Should the report state that the facility or installation is not presently served by public transit, this report shall be reexamined, updated and submitted annually, not later than April 1 of each successive year.

(e) Each governmental entity subject to paragraphs (c)(1) and (d)(1) of this section and which in the opinion of the Administrator or State Agency is served by public transit shall comply with either subparagraphs (1) or (2) of this paragraph. This governmental entity shall either:

(1) Adopt a plan whereby a charge equivalent to commercial parking rates will be imposed for parking at any such parking facility owned, operated or leased by the governmental entity. In no case shall the charge be less than $20.00 per space month. Any funds collected by any governmental entity under this subparagraph may be used for any legitimate governmental purpose, *provided, however*, That no such funds shall be used to subsidize directly or indirectly employee parkng; or

(2) Adopt a plan to reduce the number of parking spaces in each such facility from the number in existence on October 15, 1973, according to the following:

(i) By November 30, 1974, a reduction of 4 percent;

(ii) By February 28, 1975, a reduction of 8 percent;

(iii) By May 31, 1975, a reduction of 12 percent.

(f)(1) Each entity of the Federal government subject to paragraph (e) of this section shall submit to the Administrator no later than June 30, 1974, a detailed compliance schedule showing steps it will take to achieve either the required reduction of spaces, or the initiation of commercial parking rates. In the case of a reduction of spaces, the schedule shall include provisions for marking those spaces to be eliminated in a manner obvious to members of the public (painting over, roping off, etc.). In the case of the initiation of commercial parking rates the schedule shall include:

(i) A date for the initial imposition of the charge. Such date shall be no later than January 1, 1975.

(ii) The amount to be charged per space per month.

(ii) Any exceptions to the charge (e.g., handicapped personnel, certain high level officials of the governmental entity), including documentation of the need and rationale for such exceptions.

(iv) Provisions for annual reevaluation of the amount charged per space per month based upon any changes in commercial parking rates.

(2) Each entity of a State or local government subject to paragraph (e) of this section shall submit to the State Agency no later than June 30, 1974, a detailed compliance schedule showing steps it will take to achieve either the required reduction of spaces or the initiation of commercial parking rates.

In the case of a reduction of spaces, the schedule shall include provisions for marking those spaces to be eliminated in a manner obvious to members of the public (painting over, roping off, etc.). In the case of the initiation of commercial parking rates, the schedule shall include:

(i) A date for the initial imposition of the charge. Such date shall be no later than January 1, 1975.

(ii) The amount to be charged per space per month.

(iii) Any exceptions to the charge (e.g., handicapped personnel, certain high level officials of the governmental entity), including documentation of the need and rationale for such exceptions.

(iv) Provisions for annual reevaluation of the amount charged per space per month based upon any changes in commercial parking rates.

(g) Failure to submit any report or compliance schedule as required by this section shall render the person so failing to comply in violation of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any governmental entity which either allows vehicles to be parked in excess of the number allowable, or which fails to collect commercial parking charges shall likewise be in violation and subject to enforcement.

§ 52.2436 Vacuum spark advance disconnect.

(a) For purposes of this section, "vacuum spark advance disconnect" means a device or system installed on the vehicle which prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears or when the vehicle is traveling below a predetermined speed.

(b) This section is applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c) On or before January 1, 1975, all gasoline-powered light duty vehicles of model year prior to 1968 and subject under presently existing legal requirements to registration in the area described in paragraph (b) of this section shall be equipped with an appropriate vacuum spark advance disconnect device.

(d) The Commonwealth of Virginia shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps it will take to implement and enforce this requirement. Such schedule shall include, as a minimum, the following:

(1) A date by which the Commonwealth of Virginia will evaluate and approve devices for use in this program. Such date shall be no later than March 1, 1974.

(2) A date by which installation of this equipment shall commence. Such date shall be no later than June 1, 1974.

(3) A date by which all vehicles subject to this section will be equipped with such devices. Such date shall be no later than January 1, 1975.

(4) Designation of any agency or agencies responsible for evaluating and approving such devices for use on vehicles subject to this section.

(5) Designation of an agency or agencies responsible for ensuring that the prohibitions of paragraph (e)(2) of this section shall be enforced.

(6) Method and proposed procedures for ensuring that those persons installing the devices have the training and ability to perform the needed tasks satisfactorily and that an adequate supply of devices will be available.

(7) Provision (apart from the requirements of any program for periodic inspection and maintenance of vehicles generally) for emission testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1975, the following shall apply within the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(1) The Commonwealth of Virginia shall not register a vehicle subject to this paragraph which is not equipped in accordance with paragraph (c) of this section.

(2) No owner of a light duty vehicle subject to this paragraph shall operate or allow the operation of any such vehicle that is not equipped in accordance with paragraph (c) of this section.

(f) The failure of any person to comply with any provision of this section shall render such person in violation of a requirement of an applicable implementation plan, and subject to enforcement action under section 113 of the Clean Air Act. As to compliance schedules, the Commonwealth of Virginia will be considered to have failed to comply with the requirements of this regulation if it fails to submit on a timely basis the required compliance schedule, and or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.2437 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbon and carbon monoxide from that vehicle.

(2) Fleet vehicle means any of 5 or more light duty vehicles operated by the same person(s), business, or governmental entity and used principally in connection with the same or related occupations or uses. This definition shall also include any taxicab (or other light duty gasoline-powered vehicle-for-hire) owned by any individual or business.

(3) Governmental entity means any agency of the executive branch of the Federal government, or a state or local department, agency, bureau, board, office, commission, district, or unit of any other type (excluding foreign embassies) which employs personnel paid wholly with public funds.

(4) All other items used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b)(1) This section is applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(2) Classes of Vehicles Covered.

(i) Light duty fleet vehicles of model year 1971 through 1975, not already equipped with catalysts, or certified to meet original 1975 statutory light duty vehicle emission standards.

(c) The Commonwealth of Virginia shall establish a retrofit program to insure that or before May 31, 1977, classes of gasoline-powered light duty vehicles as specified in paragraph (b)(2) of this section, which are subject under presently existing legal requirements to registration in the area defined in paragraph (b) of this section above and are used on the streets and highways, of the Commonwealth, are equipped with an appropriate oxidizing catalyst retrofit device. No later than March 1, 1974, the Commonwealth of Virginia shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on motor vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (c)(3) of this section are enforced.

(3) A provision that starting no later than May 31, 1976, the Commonwealth of Virginia shall commence retrofitting oxidizing catalysts to those light duty motor vehicles able to operate properly on unleaded 91 RON gasoline. The installation shall be completed by May 31, 1977.

(4) A method and proposed procedure for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and that they will have an adequate supply of retrofit components.

(d) After May 31, 1977, the Commonwealth shall not register or allow to operate on public streets or highways any light duty gasoline-powered vehicle specified in paragraph (b)(2) of this section which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicles which does not comply with the applicable standards and procedures implementing this section.

(f) The Commonwealth of Virginia shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, and the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall include a date by which the Commonwealth shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. The Commonwealth will be considered to have failed to comply with the requirements of this regulation if it fails to submit on time the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.2438 Control of evaporative losses from the filling of vehicular tanks.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c) A person shall not transfer gasoline to an automotive fuel tank from gasoline dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Effect a vapor-tight fit between the fill nozzle and filler neck of the automotive fuel tank so as to prevent discharge of hydrocarbon vapors to the atmosphere.

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered.

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, or refrigeration-condensation system or equivalent.

(e) Components of the systems required by § 52.2439 paragraph (c) can be used for compliance with paragraph (c) of this section.

(f) If demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of fill neck configuration, location, or other design features, the provisions of this paragraph shall not apply to tanks or vehicles existing at the time of promulgation of this regulation.

(g) The Commonwealth of Virginia shall divide all facilities subject to this section into three classes, the first of which shall equal approximately 70 percent of hydrocarbon emissions from all gasoline stations, the second and third classes shall each equal approximately 15 percent of total hydrocarbon emissions from these sources. The classes shall be known as Class I, Class II, and Class III.

(h) Except as provided in paragraph (k) of this section, the owner or operator of a source included in Class I shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 31, 1974.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources, subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(i) The owner or operator of a source included in the Class II shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of components parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1975.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1976.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(j) The owner or operator of a source included in Class III shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1976.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1977.

(4) Final compliance is to be achieved not later than May 31, 1977.

(5) Any owner or operator of stationary sources, subject to compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(k) Paragraph (h) and (i) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by December 31, 1973. The Administrator may request whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the Commonwealth and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by December 31, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975, in the case of Class I sources, and May 31, 1976, in the case of Class II sources. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(l) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

§ 52.2439 Gasoline transfer vapor control.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of four (4) pounds or greater.

(b) This section is applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight vapor return line from the storage container to the delivery vessel and a device that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapor displaced from the delivery vessel during refilling.

(d) The provisions of paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry; provided, however, said containers are equipped with submerged fill pipes.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this paragraph.

(3) Transfer made to storage tanks equipped with floating roofs or their equivalent.

(e) Compliance schedule: Except as provided in paragraph (f) of this section, the owner or operator of any source subject to this section shall comply with this section on or before January 31, 1974.

(1) Any owner or operator in compliance with this section on the effective date of this regulation shall certify such compliance to the Administrator no later than 120 days following the effective date of this section.

(2) Any owner or operator who achieves compliance with this section after the effective date of this section shall certify such compliance to the Administrator within 5 days of the date compliance is achieved.

(f) Any owner or operator of a source subject to paragraph (e) of this section may, not later than 120 days following the effective date of this section, submit to the Administrator for approval a proposed compliance schedule that demonstrates compliance with the provisions specified in paragraph (e) of this section as expeditiously as practicable but no later than June 30, 1975. The compliance schedule shall provide for increments of progress toward compliance. The dates for achievement of such increments of progress shall be specified. Increments of progress shall include, but not be limited to: Submittal of final control plan to the Administrator; letting of necessary contracts for construction or process changes or issuance of orders for the purchase of component parts to accomplish emission control or process modification; initiation of on-site construction or installation of emission control equipment or process modification; completion of on-site construction or installation of emission control equipment or process modification; and final compliance.

(g) Any owner or operator who submits a compliance schedule pursuant to this paragraph shall, within 5 days after the deadline for each increment of progress, certify to the Administrator whether or not the required increment of the approved compliance schedule has been met.

§ 52.2440 Control of hydrocarbon emissions from effluent oil-water separators.

(a) This section is applicable in the Virginia Portion of the National Capital Interstate Air Quality Control Region.

(b) After December 30, 1973, a person shall not use any compartment of any vessel or device operated for the recovery of oil from effluent water which recovers 200 gallons a day or more of any petroleum products from any equipment which processes, refines, stores or handles hydrocarbons with a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions unless such compartment is equipped with one of the following vapor loss control devices, except when gauging or sampling is taking place:

(1) A solid cover with all openings sealed and totally enclosing the liquid contents of that compartment.

(2) A floating pontoon or double-deck type cover, equipped with closure seals to enclose any space between the cover's edge and compartment wall.

(3) A vapor recovery system, which reduces the emission of all hydrocarbon vapors and gases into the atmosphere by at least 90 percent by weight.

(4) Other equipment of an efficiency equal to or greater than 1, 2, or 3 if approved by the Administrator.

This section shall not apply to any oil-effluent water separator used exclusively in conjunction with the production of crude oil if the water fraction of the oil-water effluent entering the separator contains less than 5 parts per million hydrogen sulfide, organic sulfides, or a combination thereof.

§ 52.2441 Peak hour delivery ban regulation.

(a) Definitions:

(1) *Peak Hours.* The hours 6:00 a.m. to 9:30 a.m. Monday through Saturday.

(2) *Delivery Ban.* A program to reduce emissions from in-use heavy duty gasoline powered vehicles employed to deliver goods within the specified peak hours.

(3) *Heavy Duty Gasoline Powered Vehicle.* Any motor vehicle either designated primarily for transportation of property and rated more than 6,000 pounds GVW and which is powered by a gasoline burning engine. This shall not include mail trucks, and emergency type vehicles such as fire trucks and police wagons.

(4) All other terms used in this section which are defined in 40 CFR Part 51, Appendix N are used herein with the meaning so defined.

(b) This regulation is applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c) The Commonwealth of Virginia counties of Arlington, Fairfax, and Loudoun and all incorporated cities located within such county shall establish a peak hour, heavy duty gasoline powered vehicle use prohibition on streets and highways over which each entity has ownership and control. No later than February 1, 1974, each governmental entity shall submit to the Administrator a legally enforceable program which shall include:

(1) provisions for initiation of the ban no later than June 30, 1974.

(2) the prohibition shall state that heavy duty gasoline powered vehicles making deliveries in violation of the prohibition shall either be towed away, or the owner and/or operator subject to a fine of up to $100, or both.

(d) The Commonwealth of Virginia, counties and all incorporated cities within such counties subject to this section shall submit, no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce a peak hour delivery ban. The compliance schedule shall include the date by which the jurisdictions will recommend needed regulations to the appropriate body, and will identify the state, county, or city official responsible for enforcement.

(e) Failure to comply with any provisions of this regulation shall render such person in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. A state or other governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule.

§ 52.2442 Limitation of off-street parking.

(a) This section shall apply only in the event that the Administrator finds that the Commonwealth of Virginia fails to take one or more of the following steps to implement the $2.00 surcharge (or an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Administrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the Commonwealth of Virginia or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measure in those areas identified in the study by April 1, 1975.

(b) In the event the Commonwealth of Virginia chooses to adopt any "equivalent measure" to this surcharge, the Commonwealth of Virginia must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the Commonwealth of Virginia is failing to implement the surcharge.

(c) In the event that the Administrator determines that the Commonwealth of Virginia is failing to implement the $2.00 surcharge (or an equivalent measure) he shall make this determination public in the FEDERAL REGISTER, and this section shall then be immediately effective.

(d) Definition:

(1) The term "off-street parking facility" means any land or building or portion of a building set aside for the purpose of storing a maximum capacity of 10 or more vehicles on a temporary basis.

(e) Each governmental entity, public agency, private corporation, partnership or sole proprietor owning or operating an off-street parking facility located within the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region shall, within 30 days of the effective date of this regulation, report to the Administrator the number of parking spaces in each such facility under its ownership or control of the effective date of this regulation. The number used solely for the storage of vehicles of persons who reside within ¼ mile of the facility shall not be counted.

(f) Each such owner or operator of any off-street parking facility located within the area specified in paragraph (c) of this section shall reduce the number of affected parking spaces in each such facility from the number in existence as of the date this regulation becomes effective according to the following schedule:

(1) Within 90 days of the effective date—a 5 percent reduction;

(2) Within 120 days of the effective date—a 10 percent reduction;

(3) Within 180 days of the effective date—a 15 percent reduction;

(g) Each such owner or operator of an off-street parking facility subject to the requirements of this section shall submit to the Administrator, no later than 60 days after the effective date of this section, a detailed compliance schedule showing the steps it will take to achieve the required reduction in parking spaces. Such schedule shall provide for the marking in some manner obvious to the public (such as painting over, roping off, or the like) of the eliminated spaces on which parking is not permitted pursuant to this section.

(h) Failure to submit a compliance schedule as required by this section shall render the person or governmental entity so failing in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any owner or operator of an off-street parking facility who allows any vehicle to be parked on any parking space which has been eliminated pursuant to this section, or who fails to mark clearly those spaces which have been eliminated, shall likewise be in violation and subject to enforcement.

§ 52.2443 Management of parking supply.

(a) This section shall apply only in the event that the Administrator finds that the Commonwealth of Virginia fails to take one or more of the following steps to implement the $2.00 surcharge (or an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Administrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the Commonwealth of Virginia or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measures in those areas identified in the study by April 1, 1975.

(b) In the event the Commonwealth of Virginia chooses to adopt any "equivalent measure" to this surcharge, the Commonwealth of Virginia must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the Commonwealth of Virginia is failing to implement the surcharge.

(c) In the event that the Administrator determines that the Commonwealth of Virginia is failing to implement the $2.00 surcharge (or an equivalent measure) he shall make this determination public in the FEDERAL REGISTER, and this section shall then be immediately effective.

(d) Definitions:

(1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land to use as a parking facility.

(2) "Modification" means any change to a parking facility which increases the vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the vehicle capacity of such facility.

(4) "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or enlargement.

(5) "Parking facility" (also called "facility") means any facility, building, structure, or lot or portion thereof used primarily for temporary storage of motor vehicles.

(e) No person, after the effective date of this section, shall commence construction of any new parking facility or modification or enlargement of any existing parking facility until he has first received from the Administrator or from an agency approved by the Administrator a permit stating the construction, modification or enlargement of such facility will not interfere with the attainment or maintenance of applicable Federal air quality standards.

(f) In order for any agency to be approved by the Administrator for purposes of issuing permits for construction of any new parking facility or any modification or enlargement of any existing parking facility, such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include, but not be limited to, a requirement that before a permit may be issued, the following findings of fact or factually supported projections must be made:

(i) The location of the facility.

(ii) The total motor vehicle capacity before and after the construction, modification, or enlargement of the facility.

(iii) The normal hours of operation of the facility and the enterprises and activities which it serves.

(iv) The number of people using or engaging in any enterprises or activities which the facility will serve.

(v) The number of motor vehicles using the facility on an average hourly basis and a peak hour basis.

(vi) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projections shall include data concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include, but shall not be limited to:

(i) Full consideration of all facts contained in the application.

(ii) Provisions that no permit shall be issued if such permit will result in the increase of VMT within any area, the air quality of which fails to meet applicable Federal air quality standards.

(3) Agency procedures provide that no permit for the construction, enlargement or modification of a parking facility covered by this section shall be issued without notice and opportunity for public hearing. The public hearing may be of the legislative type the notice shall conform to the requirements of 40 CFR Part 51.4(b); and the Agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to 7 days before the scheduled hearing date, no hearing need be held. Such a requirement, if imposed, shall be noted prominently in the required notice of hearing.

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