federal register

MONDAY, DECEMBER 3, 1973

WASHINGTON, D.C.

Volume 38 ■ Number 231

Pages 33267–33383

PART I

HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

(Continued inside)

December 3, 1973—Pages 33267–33383

REMINDERS

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items published after October 1, 1972, that are eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

ACE—Standardization of design icenses to manufacture nuclear power reactors..... 30251; 11–2–73

CONSUMER PRODUCT SAFETY COMMISSION—Lead-containing artists' paints and related material; exemption from banning.. 31519; 11–15–73

FAA—Designation of Federal airways, area low points, controlled airspace and reporting points; designation of control zone and alteration of transition area..... 27820; 10–9–73

INTERIOR/BLM—Appointment of Mineral Surveyors; delegations of authority and procedures..... 30001; 10–31–73

federal register

Area Code 202 Phone 523–5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by the Executive Branch of the Federal Government. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $2.50 per month or $25 per year, payable in advance. The charge for individual copies is 20 cents for each issue, or 20 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Contents

(Continued on next page)

List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears following the Notices section of each issue beginning with the second issue of the month. In the last issue of the month the cumulative list will appear at the end of the issue.

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.

1 CFR

Ch. I 33273

5 CFR

PROPOSED RULES:

731 33315

7 CFR

871 33273

1464 33276

9 CFR

PROPOSED RULES:

317 33308

381 33308

14 CFR

71 33277

16 CFR

13 (5 documents) 33277, 33279

1700 33280

17 CFR

210 33282

19 CFR

1 33284

21 CFR

1 33284

PROPOSED RULES:

1000 33313

26 CFR

1 33290

601 33300

38 CFR

21 33303

40 CFR

52 33368

166 33303

45 CFR

206 33380

248 33380

249 33383

47 CFR

1 33302

95 33302

49 CFR

1033 (2 documents) 33302

Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 1—General Provisions

CHAPTER I—ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

CFR CHECKLIST

1973 Issuances

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the issuance date and price of revised volumes of the Code of Federal Regulations issued to date during 1973. New units issued during the month are announced on the back cover of the daily FEDERAL REGISTER as they become available.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1973):

Title	Price
1	$0.55
2 [Reserved]	
3	2.60
3A 1972 Compilation	2.50
4	1.75
5	3.75
6 (Rev. Feb. 1, 1973)	4.25
7 Parts:	
0–45	6.50
46–51	2.60
52	4.20
53–209	7.00
210–699	5.25
700–749	3.75
750–899	2.10
900–944	4.00
945–980	2.25
981–999	2.25
1000–1059	4.00
1060–1119	4.00
1120–1199	3.00
1200–1499	4.25
1500–end	6.50
8	1.85
9	5.00
10	4.00
11	.75
12 Parts:	
1–299	5.50
300–end	6.25
13	3.00
14 Parts:	
1–59	6.50
60–199	6.75
200–end	7.75
15	4.00
16 Parts:	
0–149	7.00
150–end	4.25
Finding Aids	3.10
General Index	3.75

Title	Price
CFR Unit (Rev. as of April 1, 1973):	
17	$5.50
18 Parts:	
1–149	4.00
150–end	4.00
19	5.00
20 Parts:	
01–399	2.25
400–end	7.00
21 Parts:	
1–9	2.25
10–129	5.50
130–140	3.00
141–169	5.50
170–299	2.25
300–end	1.50
22	4.25
23 (Rev. June 20, 1973)	1.50
24	6.50
25	3.75
26 Parts:	
1 (§§ 1.0–1–1.300)	9.75
1 (§§ 1.301–1.400)	2.50
1 (§§ 1.401–1.500)	3.00
1 (§§ 1.501–1.640)	3.75
1 (§§ 1.641–1.850)	4.00
1 (§§ 1.851–1.1200)	4.50
1 (§ 1.1201–end)	6.50
2–29	2.75
30–39	3.00
40–169	4.75
170–299	6.75
300–499	3.00
500–599	3.50
600–end	1.50
27	1.25
28 (Rev. July 10, 1973)	$1.70
29 Parts:	
0–499	4.00
500–1899	4.95
1900–end	6.05
30	4.15
31	4.75
32 Parts:	
1–8	5.45
9–39	3.70
40–399	4.35
400–589	4.50
590–699	2.05
700–799	5.90
800–999	4.05
1000–1399	1.60
1400–1599	3.25
1600–end	1.65
32A	2.80
33 Parts:	
1–199	4.35
200–end	3.05
34 [Reserved]	
35	3.40
36	2.50
37	1.75
38	5.25
39 (Rev. Aug. 1, 1973)	3.40

CFR Unit (Rev. as of July 1, 1973):

Title	Price
41 Chapters:	
1–2	4.50
3–5D	3.90
6–9	4.10
10–17	2.55
18	5.70
19–100	2.30
101–end	4.55
General Index Supplement	1.35

Title 7—Agriculture

CHAPTER VIII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (SUGAR), DEPARTMENT OF AGRICULTURE

SUBCHAPTER I—DETERMINATION OF PRICES

[Docket No. SH–312]

PART 871—SUGARBEETS

Fair and Reasonable Prices for 1973 Crop

The Sugar Act requires producers who also process sugarbeets grown by other producers to pay prices determined by the Secretary of Agriculture to be fair and reasonable as one of the conditions for receiving Sugar Act payments on their own production.

Such determination may not be made until after investigation and opportunity for interested persons to testify on the fair and reasonable prices to be paid under either purchase or toll agreements. A series of public hearings was held during December 1972 in several cities within the major producing regions of the sugarbeet area.

The determination, which is applicable to the 1973 crop of sugarbeets, requires processors to pay for all beets at a price not less than that provided in the purchase contract which they have entered into with producers. Sugarbeet purchase contracts for the 1973 crop were negotiated by producers and processors and submitted to the Department subsequent to the public hearings. Examination of the contracts indicates that most of the major provisions relating to the payment for sugarbeets conform to those of the 1972 crop purchase contracts.

Pursuant to the provisions of section 301(c)(2) of the Sugar Act of 1948 (7 U.S.C. 1131(c)(2)), as amended (herein referred to as "act"), after investigation and due consideration of the evidence presented at public hearings held during December 1972, the following determination is hereby issued.

The regulations previously appearing in these sections under "Determination of Prices; Sugarbeets" remain in full

force and effect as to the crops to which they were applicable.

Sec.
871.24 General requirements.
871.25 Purchase agreements.
871.26 Reporting requirements.
871.27 Applicability.
871.28 Subterfuge.

AUTHORITY: Secs. 301, 403, 61 Stat. 929, as amended, 932; 7 U.S.C. 1131, 1153.

§ 871.24 General requirements.

A producer of sugarbeets who is also a processor of sugarbeets (herein referred to as "processor") shall have paid, or contracted to pay for all sugarbeets of the 1973 crop grown by other producers and processed by him, in accordance with the following requirements:

§ 871.25 Purchase agreements.

(a) The price for all 1973-crop sugarbeets delivered by a producer and processed by a processor, shall be not less than that required to be paid pursuant to the 1973-crop sugarbeet purchase contract between the processor and the producer, subject to the provisions of paragraphs (b), (c), and (d) of this section.

(b) If the processor, in determining the net proceeds pursuant to the contract, makes a deduction from the gross sales price of sugar for factory-site bulk sugar storage facilities owned by the processor, or for factory-site bulk pulp storage facilities owned by the processor in those districts where producers share directly in the total net returns from the sales of sugar, pulp, and molasses, such deduction shall be limited to amortization of such facilities, including improvements over a reasonable period, interest at prevailing rates on the unrecovered cost, taxes, insurance, maintenance, and operating costs properly applicable thereto. After the costs of the facilities, including improvements, have been fully recovered such deductions shall be limited to taxes, insurance, maintenance, and operating costs properly applicable thereto: *Provided*, That if there is an agreement between the processor and producers such deductions for factory-site storage facilities owned by the processor shall be as agreed upon if less than that provided above.

(c)(1) In factory districts using a scale-type sugarbeet purchase contract where the processor has constructed tanks for the storage of concentrated juice, has stored such juice for a period of not less than 30 days after the end of the slicing campaign and has processed such juice into granulated sugar, and there is agreement between the processor and producers for the processor to make a charge for the storage of concentrated juice, a storage charge measured by the additional costs incurred as a result of factory clean-up and start-up in connection with the juice processing campaign may be deducted from the gross sales price of sugar: *Provided*, That such charge shall not exceed two cents per month (based on the length of time such juice is stored between the end of the slicing campaign and the start-up of the juice processing campaign, such period not to exceed six months) per 100 pounds granulated sugar equivalent of the juice so stored.

(2) In those factory districts in Michigan and Ohio using a percentage-type sugarbeet purchase contract, wherein growers share with the processor in factory extraction efficiency, and where the processor has constructed and is operating tanks for the storage of concentrated juice, a deduction from the gross sales price of sugar and by-products may be made for the amortization of such tanks as provided in the processor's 1973-crop sugarbeet purchase contract.

(d) In determining the net proceeds pursuant to the contract, the gross sales price per 100 pounds to be applicable to sugar sold to an affiliate company or other affiliate business entity, or to sugar used by the processor during the settlement period, shall be not less than the weighted average quoted basis price, less customary allowance, and plus appropriate prepays and package differentials which would have been applicable to such sugar had it been marketed to non-affiliated purchasers.

§ 871.26 Reporting requirements.

The processor shall submit to the Director, Sugar Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, within 60 days after the close of the sales period specified in the sugarbeet purchase contract, an itemized statement for each settlement district, certified by an independent accountant, showing the computation of "net proceeds" or "net returns" as provided in such contract, such statement to be in substantially the form as that contained in Schedule A attached hereto and made a part hereof: *Provided*, That, if the processor markets sugar to an affiliate company or other affiliate business entity or if the processor uses any beet sugar, the weighted average gross sales price for each category, the marketing expenses applicable to each, and the net proceeds derived therefrom shall be reported in substantially the form shown on Schedule A–1 attached hereto and made a part hereof, to supplement the information submitted in accordance with Schedule A: *Provided further*, That if the processor in determining net proceeds makes a deduction for factory-site bulk sugar, bulk pulp or concentrated juice storage facilities owned by the processor, the total cost of such facilities, including improvements, the amount of the deduction and the expenses used in determining such deduction shall be reported in substantially the form shown on Schedule A–2 attached hereto and made a part hereof to supplement the information submitted in accordance with Schedule A.

§ 871.27 Applicability.

The requirements of this part are applicable to all sugarbeets purchased from other producers and processed by a processor who produces sugarbeets (a processor-producer is defined in § 821.1 of this chapter); and to sugarbeets purchased by a cooperative processor from nonmembers. The requirements are not applicable to sugarbeets processed by a cooperative processor for its members.

§ 871.28 Subterfuge.

The processor shall not reduce returns to producers below those determined in accordance with the requirements of this part through any subterfuge or device whatsoever.

STATEMENT OF BASES AND CONSIDERATIONS

General. The foregoing determination establishes the fair and reasonable price requirements which must be met, as one of the conditions for payment under the act, by a producer who processes sugarbeets of the 1973 crop grown by other producers.

Requirements of the act. Section 301 (c)(2) of the act provides as a condition for payment, that the producer on the farm who is also, directly or indirectly a processor of sugarbeets, as may be determined by the Secretary, shall have paid, or contracted to pay under either purchase or toll agreements, for any sugarbeets grown by other producers and processed by him at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing.

1973-crop fair price determination. This determination provides that a processor shall be deemed to have complied with the fair price provisions of the act if he has paid, or contracted to pay, prices for all sugarbeets processed that are not less than those determined pursuant to the applicable 1973-crop purchase contract with producers. Other provisions of the 1972-crop determination are continued essentially unchanged. No testimony concerning the 1973 price determination was presented at the sugarbeet price hearings held in December 1972. However, a supplemental brief was submitted subsequent to the hearings by the California Beet Growers Association, Ltd., advising the Department as to the status of contract negotiations at that time.

Examination of the 1973-crop purchase contracts, which have been negotiated by producers and processors and submitted to the Department subsequent to the hearings, indicates that with few exceptions the major provisions relating to payments for sugarbeets conform to those of the 1972-crop contracts. All beet sugar companies operating in California will make the initial payment for beets based on a higher net selling price for sugar. A supplemental contract between one company and the growers in one of its California districts provides for the payment by growers of all transportation costs above a certain amount for beets shipped to another district for processing. Another company increased the charge to growers in one of its California districts for bulk storage to provide for grower participation in the cost of new bulk sugar storage facilities. That same

processor increased the freight charge to growers in one of its factory districts outside of California for beets shipped to another factory for processing. One company has divided one of its districts into four settlement districts, with payment for beets delivered to a district other than the one in which the beets were contracted being based on the average sugar content for the district in which the beets were contracted. However, the average sugar content of beets for a district will include the sugar content of beets delivered to that district but contracted in another district. Two companies increased by 50 percent the premium for early delivery of sugarbeets. One company added a supplement to the contracts in two of its districts which contains provisions concerning payments to be made subsequent to the initial payment, hauling allowances, and other matters.

One beet sugar company, which has been purchased by a growers cooperative, has instituted five-year agreements containing basic provisions and annual agreements covering such items as the price of beet seed, recruitment of workers, and payment for early harvested beets. For the first time these growers will be paid on the basis of an individual sugar test rather than on factory average sugar content. Another new growers cooperative has leased one of this company's factories and has also offered five-year and annual contracts. The five-year agreement establishes a retainer fee of $1.00 per ton of beets to apply toward rental of the factory. Both co-ops have included requirements in their contracts that growers abide by the by-laws and policies of the organizations and the terms of the contracts or be subject to rejection of their beets. These co-ops have also eliminated from their contracts the New York raw sugar price as a basis for determining the total price for sugarbeets.

Other changes in the 1973 purchase contracts include increases in the price of sugarbeet seed at several companies, changes in the deduction for association dues at two companies, and an increase in the deduction for experimental work at another company.

Consideration has been given to the provisions of the purchase contracts, to the comparative average costs of producers and processors obtained by field survey for a prior crop and recast in terms of prospective price and production conditions for the 1973 crop, and to other pertinent factors. Analysis of the comparative average operating results of producers and processors indicates that the producers' share of returns, on average, continues to be favorable as compared to their share of total production and processing costs, and that the provisions for payment in the 1973-crop purchase contracts are fair and reasonable at the levels of sugar prices and net returns which may be expected during the marketing season.

On the basis of an examination of all relevant factors, the provisions of this determination are deemed to be fair and reasonable. Accordingly, I hereby find and conclude that the foregoing price determination will effectuate the price provisions of the Sugar Act of 1948, as amended.

NOTE.—The recordkeeping and reporting requirements of these regulations have been approved by, and subsequent recordkeeping and reporting requirements will be subject to the approval of the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Effective date. This determination shall become effective on December 3, 1973 and is applicable to 1973-crop sugarbeets.

Signed at Washington, D.C., on November 26, 1973.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

SCHEDULE A—STATEMENT OF AVERAGE NET RETURN OR NET PROCEEDS FROM SALES OF SUGAR[1]

Company _____
Settlement Area _____
Settlement Period _____

	Per Hundredweight Sugar (dollars)
Gross Sales Price	
Less Sales and Marketing Expenses (Applicable to Sugar only):	
Federal excise tax	
Freight on sugar to destination	
Cash discount	
Allowances	
Public storage (actually paid)	
Off-site storage owned by the processor (amount charged)	
On-site storage (computed charge)[2]	
Loading and handling	
Cost of packing in excess of basis pack	
Taxes	
Insurance	
Brokerage and Commissions	
Advertising	
Sales department expenses:	
Salaries	
Travel	
Miscellaneous	
Other (specify)	
Total expense	
Net Return on Net Proceeds	

[1] Where the purchase contract provides that the proceeds from the sales of molasses and beet pulp are to be included in calculating the net return or net proceeds, show separately the gross price and the marketing expenses applicable to each.

[2] Obtain from Schedule A-2.

(Data will be held confidential and will not be published in any manner as would disclose the operations of any company).

SCHEDULE A-1—STATEMENT OF GROSS SALES PRICES APPLICABLE TO SUGAR SOLD TO AFFILIATED COMPANIES OR ENTITIES AND USED BY THE PROCESSOR, AS COMPARED TO SALES TO NONAFFILIATED PURCHASERS

Item	Affiliated purchasers	Used by processor	Nonaffiliated purchasers
Sugar sold or used (Cwt.)			
	Dollars per hundredweight		
Quoted basis price			
Customary allowances (itemize):			
Open competitive			
Other:		XXXXX	
		XXXXX	
		XXXXX	
Basis price—less allowances			
Prepay		XXXXX	
Package differential		XXXXX	
Gross sales price	$	$	$
Marketing expenses[1]			
Net proceeds			

[1] If any marketing expenses are deducted from the gross sales price by the processor in computing net return for this particular sugar, such expenses shall be itemized separately.

(Data will be held confidential and will not be published in any manner as would disclose the operations of any company.)

SCHEDULE A-2—STATEMENT RELATING TO CHARGES FOR COMPANY-OWNED FACTORY-SITE BULK SUGAR, BULK PULP, AND CONCENTRATED JUICE STORAGE IN COMPUTING NET PROCEEDS, 1973-CROP (SUBMIT SEPARATE SCHEDULE FOR EACH FACILITY)

Company _____
Location of Bulk Sugar, Pulp, or Juice Storage Facility _____
Settlement Areas Included _____
Settlement Period _____
Sugar Sold During Settlement Period—Cwt. _____

	Total Dollars
Original Cost of Facility (Year first used ____)	
Improvements (Item & Date):	
_____	
_____	
_____	
_____	
Total Cost of Facility Including Improvements	
Total Amount Recovered Prior to 1973-Crop	
Total Unrecovered Cost of Facility	
Operating Costs or Charges for 1973-Crop:	
Interest on unrecovered cost	
Taxes	
Insurance	
Maintenance and Operating (Itemize):	
_____	
_____	
_____	
_____	
Total Operating Costs for 1973-Crop	
Amount applied against 1973-Crop to amortize cost of facility	
Total amount charged for facility in computing net proceeds—1973-crop—(to be carried to Schedule A as amount of deduction)	
Unamortized cost of facility at end of 1973-crop	

(Data will be held confidential and will not be published in any manner as would disclose the operations of any company.)

[FR Doc.73-25434 Filed 11-30-73;8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1464—TOBACCO

1973 Crop—Cigar Tobacco, Advance Schedule

On October 26, 1973, there was published in the FEDERAL REGISTER (38 FR 29603) a notice of proposed rulemaking setting forth the proposed price support advance rates for 1973-crop cigar tobacco. Interested parties were given the opportunity to submit, not later than November 26, 1973, data, views, and recommendations regarding the advance rates.

No unfavorable comments have been received, and the proposed advance rates are hereby adopted without change and are set forth below. The material previously appearing under the section numbers shown below remains applicable to the crop to which each refers.

Effective date.—November 27, 1973.

Signed at Washington, D.C., on November 27, 1973.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

§ 1464.22 1973 Crop—Ohio Filler Tobacco, Types 42–44, advance schedule.[1]

(Dollars per hundred pounds, farm sales weight)

Grade:	Advance rate
Crop run (stripped together):	
X1	40.50
X2	37.50
X3	34.50
X4	30.50
Nondescript:	
N	22.50

§ 1464.23 1973 Crop—Connecticut Valley Broadleaf Tobacco, Type 51, advance schedule.[2]

(Dollars per hundred pounds, farm sales weight)

Grade:	Advance rate
Binders:	
B1	75.00
B2	67.00
B3	58.00
B4	47.00
B5	42.00
Non-Binders:	
X1	36.00

[1] The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower 50 cents per hundred pounds to apply against receiving and overhead costs. Only the original producer is eligible to receive advances. No advance is authorized for tobacco designated "No-G" (no grade).

§ 1464.24 1973 Crop—Connecticut Valley Havana Seed Tobacco, Type 52, Advance Schedule.[1]

(Dollars per hundred pounds, farm sales weight)

Grade:	Advance rate
Binders:	
B1	70.00
B2	62.00
B3	55.00
B4	46.00
B5	42.00
Non-Binders:	
X1	36.00

§ 1464.25 1973 Crop—New York and Pennsylvania Havana Seed Tobacco, Type 53, and Southern Wisconsin Tobacco, Type 54, Advance Schedule.[2]

(Dollars per hundred pounds, farm sales weight)

Grade:	Advance rate
Crop-Run:	
X1	44.50
X2	40.00
X3	33.00
Farm Fillers:	
Y1	30.50
Y2	28.50
Y3	26.50
Nondescript:	
N1	27.00
N2	21.00

§ 1464.26 1973 Crop—Northern Wisconsin Tobacco, Type 55, Advance Schedule.[2]

(Dollars per hundred pounds, farm sales weight)

Grade:	Advance rate
Binders:	
B1	62.00
B2	57.00
B3	51.00
Strippers:	
C1	45.50
C2	40.50
C3	33.50
Crop-run:	
X1	45.00
X2	39.00
X3	31.00
Farm Fillers:	
Y1	34.50
Y2	31.00
Y3	29.00
Nondescript:	
N1	24.00
N2	18.00

[2] The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower $1 per hundred pounds to apply against receiving and overhead costs. Only the original producer is eligible to receive advances. No advance is authorized for tobacco graded "N1" (first quality nondescript), "N2" (second quality nondescript) or "S" (scrap), or designated "No-G" (no grade).

§ 1464.27 1973 Crop—Puerto Rican Tobacco, Type 46, Advance Schedule.[1]

(Dollars per hundred pounds, farm sales weight)

Grade:

	Advance rate
Price Block I (C1F and C1P)	46.50
Price Block II (X1F, X1P and X1S)	40.00
Price Block III (X2T, X2F, X2P and X2S)	31.00
Price Block IV (N)	16.00

[FR Doc.73-25532 Filed 11-30-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 73-EA-84]

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

Alteration of Control Zone

Correction

In FR Doc. 73-24355 appearing on page 31519 in the issue for Thursday, November 15, 1973, in the final paragraph following the signature line 4, preceding the word "sunset" the reference to "ot" should read "to".

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

[Docket No. 8884-0]

PART 13—PROHIBITED TRADE PRACTICES

Chock Full O'Nuts Corp. Inc.

Correction

In the correction to FR Doc. 73-22547, (38 FR 29317) appearing at page 32438 in the issue of Monday, November 26, 1973, in paragraph 3, following the colon, add "* *New".

[1] The cooperative association through which price support is made available is authorized to deduct from the amount paid the growers $1 per hundred pounds to apply against receiving and overhead costs. Only the original producer is eligible to receive advances. No advance is authorized for tobacco graded "N1" (first quality nondescript), "N2" (second quality nondescript) or "S" (scrap), or designated "No-G" (no grade).

[2] The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower 50 cents per hundred pounds to apply against receiving and overhead costs. Only the original producer is eligible to receive advances. No advance is authorized for tobacco designated "No-G" (no grade).

[3] The cooperative association through which price support is made available is authorized to deduct from the amount paid the grower 50 cents per hundred pounds to apply against receiving and overhead costs. Only the original producer is eligible to receive advances. No advance is authorized for tobacco designated "No-G" (no grade).

[Docket No. C-2472]

PART 13—PROHIBITED TRADE PRACTICES

Bermuda Pool Co., Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages or connections;* 13.15-60 Exclusive distributor or producer; § 13.155 *Prices;* 13.155-5 Additional charges unmentioned; 13.155-100 Usual as reduced, special, etc.; § 13.170 *Qualities or properties of product or service;* 13.170-30 Durability or permanence. Subpart—Failing to maintain records: § 13.1051 *Failing to maintain records;* 13.1051-20 Adequate. Subpart—Misrepresenting oneself and goods—Business status, advantages and connections: § 13.1490 *Nature;* — Goods: § 13.1710 *Qualities or properties;*—Prices: § 13.1778 *Additional costs unmentioned;* § 13.1825 *Usual as reduced or to be increased.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.) [Cease and desist order, Bermuda Pool Co., Inc., et al., Fairfield, N.J., Docket C-2472, Oct. 30, 1973.]

In the Matter of Bermuda Pool Co., Inc., a Corporation, and Malcolm A. White and Herbert Smith, Individually and as Officers of said Corporation.

Consent order requiring a Fairfield, N.J., seller and distributor of swimming pools and other merchandise, among other things to cease representing its filter furnished with their pools, as being "Lifetime" filters; representing themselves as the exclusive source for "Lifetime" filters; misrepresenting the price of their pools as complete; representing prices as special or reduced; failing to maintain adequate records.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Bermuda Pool Co., Inc., a corporation, its successors and assigns, and Malcolm White and Herbert Smith, individually and as officers of said corporation, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of swimming pools or other products or merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the filter furnished with respondents' swimming pools is a "Lifetime" filter.

2. Representing, directly or by implication, that the respondents are the exclusive source for filters manufactured by the Lifetime Filter Equipment Corp.

3. Representing, directly or by implication, that any price for respondents' products is a complete price for all items usually purchased for use with a swimming pool without clearly and conspicuously listing those items not included in said price which are usually purchased by respondents' customers.

4. Representing, directly or by implication, that any price for respondents' products is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent, regular course of their business; or misrepresenting in any manner, their prices or the savings available to their purchasers.

5. Failing to maintain adequate records, (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims of the type discussed in Paragraph 1 of this Order are based; and (b) from which the validity of any savings claim, including former pricing claims and similar representations of the type described in Paragraph 1 of this Order can be determined.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the advertising, offering for sale or sale of respondents' products and that respondents secure and retain a signed statement acknowledging the receipt of said order from each such person.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That the individual respondents named herein shall promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

By the Commission.

Issued: October 30, 1973.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.73-25477 Filed 11-30-73;8:45 am]

[Docket No. C-2474]

PART 13—PROHIBITED TRADE PRACTICES

Fashion Two Twenty, Inc., et al.

Subpart—Coercing and intimidating: § 13.358 *Distributors;* § 13.370 *Suppliers*

and sellers. Subpart—Controlling, unfairly, seller suppliers: § 13.530 *Controlling, unfairly, seller-suppliers.* Subpart—Cutting off access to customers or market: § 13.535 *Contracts restricting customers handling of competitive products;* § 13.580 *Interfering with distributive outlets.* Subpart—Cutting off supplies or service: § 13.625 *Organizing and controlling supply sources;* § 13.660 *Threatening withdrawal of patronage.* Subpart—Dealing on exclusive and tying basis; § 13.670 *Dealing on exclusive and tying basis;* 13.670–20 Federal Trade Commission Act. Subpart—Enforcing dealings or payments wrongfully: § 13.-1045 *Enforcing dealings or payments wrongfully.* Subpart—Maintaining resale prices: § 13.1130 *Contracts and agreements;* § 13.1155 Price schedules and announcements.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719; as amended; 15 U.S.C. 45) [Cease and desist order, Fashion Two Twenty, Inc., et al., Aurora, Ohio, Docket C–2474, Nov. 5, 1973.]

In the matter of Fashion Two Twenty, Inc., a corporation, and Vernon G. Gochneaur and Roger V. Gochneaur as officers and directors of Fashion Two Twenty, Inc.

Consent order requiring an Aurora, Ohio, manufacturer, purchaser, distributor, and seller of cosmetics, toiletries, skin care and associated items commonly sold through a party-plan merchandising program, among other things to cease certain anticompetitive selling practices and agreements.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

I. *It is ordered,* That respondent Fashion Two Twenty, Inc., a corporation, its officers, agents, representatives, employees, successors and assigns, and respondents Vernon G. Gochneaur and Roger V. Gochneaur, as officers and directors of Fashion Two Twenty, Inc., their agents, representatives or employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale, or distribution of goods or commodities in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Requiring, coercing, contracting or entering into an agreement with any distributor or dealer to refrain from selling or sales activities in any geographic area of his choosing: *Provided, however,* That the definition of sales activities shall not include the establishment of a place of business as a physical entity.

2. Requiring or coercing any distributor or dealer into obtaining the approval of any other distributor or dealer as a prerequisite for engaging in any business activities.

3. Requiring, agreeing with or coercing any distributor or dealer to refrain from selling any merchandise in any quantity to or through any specified person, class of persons, business, or class of business.

4. Requiring, agreeing with or coercing any distributor or dealer into purchasing product needs only from those persons who sponsored or recruited him into respondents' program, or into whose organizations they have been assigned.

5. Requiring, agreeing with or coercing any distributor or dealer into obtaining the approval or permission of any other distributor or dealer prior to sponsoring another person into the sales organization of the recruiting distributor.

6. Requiring, agreeing with or coercing any distributor or dealer to refrain from sponsoring or recruiting persons who are customers of other distributors or dealers.

7. Fixing, establishing, maintaining or otherwise controlling the prices, discounts, rebates, overrides, or terms or conditions of sale upon which goods or commodities may be resold.

8. Requiring, agreeing with or coercing any distributor or dealer to pay a refund, bonus, or other consideration or thing of value to any other distributor or dealer, or require any such payment by a specified date or time period.

9. Requiring, agreeing with or coercing any distributor or dealer into making pricing information available either to respondents or to any other distributor or dealer.

10. Requiring, agreeing with or coercing any distributor or dealer into forwarding retail orders or copies thereof to respondents.

11. Requiring, agreeing with or coercing any distributor or dealer to refrain from advancing monies to other distributors or dealers.

12. Requiring, agreeing with or coercing any distributor or dealer to buy from or sell to any other distributor or dealer on a cash basis only.

13. Requiring, agreeing with or coercing any distributor or dealer to refrain from purchasing merchandise or equipment or contracting for services with persons of his own choosing.

14. Requiring, agreeing with or coercing any ditributor or dealer to refrain from distributing or dealing in the products of a competitor of respondents, or of another cosmetic company, so long as such competitor or other cosmetic company does not falsely represent respondents as the source of its products.

15. Requiring, agreeing with or coercing any distributor or dealer to refrain from recruiting distributors or dealers of other cosmetic companies.

16. Requiring, agreeing with or coercing any distributor or dealer to refrain from developing or creating any advertising literature or sales aids which he may choose to: *Provided, however,* That respondents may require submission thereof and approval by respondents prior to their use; and provided further that respondents may not require that the material submitted include territorial references and price quotations, and respondents may not withhold approval of such material because such information is lacking.

17. Requiring, agreeing with or coercing any terminated, former or separated distributor or dealer to refrain from selling, distributing or dealing in any product of a competitor, like, similar, or related to respondents' products.

II. 1. Nothing contained herein shall prevent respondents from availing themselves of the benefits, if any, accruing to them by virtue of the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act.

2. Nothing contained herein shall prevent respondents from complying with the provisions of paragraphs 7 and 14 of the court order duly entered in United States District Court, Eastern District of New York, entitled Fashion Two Twenty, Inc. v. Rudolph Steinber, et al., civil action No. 71 Civ. 665, and paragraphs 7 and 16 of the court order duly entered in United States District Court, Northern District of Indiana, entitled Fashion Two Twenty, Inc. v. Marjo, Inc. et al., civil action No. 72 F. 71; said paragraphs to expire June 13, 1974 and September 13, 1973, respectively.

III. *It is further ordered,* That respondent Fashion Two Twenty, Inc., within sixty (60) days from the effective date of this order, shall:

1. Mail or deliver a conformed copy of this order to cease and desist to all directors, associate directors, persons performing the functions of directors and associate directors, and other persons known by it to have received copies of the prior "How Manual," and who are known to it to be engaged in the sale or distribution of respondent's products or services.

2. Offer distributorships or dealerships to any former distributor or dealer who was terminated or suspended by respondent solely for the violation of any rule, regulation, or policy which contravenes any of the provisions of this order.

It is further ordered, That respondent shall furnish a conformed copy of this order to all future directors, associate directors, and persons performing the functions of directors and associate directors.

IV. *It is further ordered,* That the respondents herein shall within sixty (60) days from the effective date of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

By the Commission.

Issued: November 5, 1973.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.73–25474 Filed 11–30–73;8:45 am]

[Docket No. C-2120]

PART 13—PROHIBITED TRADE PRACTICES

Longines-Wittnauer, Inc. and Credit Services Inc.

Subpart—Advertising falsely or misleadingly: § 13.150 *Premiums and prizes;* § 13.157 *Prize contests.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1870 *Nature;* § 13.1883 *Prize Contests;* § 13.1895 *Scientific or other relevant facts.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat 719, as amended; 15 U.S.C. 45) [Modified order, Longines-Wittnauer, Inc., et al., New York, N.Y., Docket C-2120, Oct. 30, 1973.]

In the matter of Longines-Wittnauer, Inc., and Credit Services, Inc., corporations.

Order modifying Paragraph IA(1) of cease and desist order issued December 21, 1973, by deleting the requirement to disclose the odds of winning each prize in a promotional sweepstakes or game of chance, or the number of individuals to whom the promotional device is being disseminated where odds cannot be accurately determined.

The modified order of compliance is as follows:

It is ordered, That the proceedings in this matter be reopened and that paragraph I A(1) of the order to cease and desist issued against respondents on September 30, 1971, be modified to read as follows:

A.(1) Failing to disclose clearly and conspicuously to participants and prospective participants the exact number of prizes which will be awarded, the exact nature of the prizes, and the approximate retail value of each.

By the Commission.[1]

Issued: October 30, 1973.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.73-25475 Filed 11-30-73;8:45 am]

[Docket No. C-2473]

PART 13—PROHIBITED TRADE PRACTICES

Watchung Pool Supplies, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.75 *Free goods or services;* § 13.155 *Prices;* 13.155-39 Discount savings; 13.155-40 Exaggerated as regular and customary; 13.155-93 Special or test offers; 13.155-100 Usual as reduced or special, etc. Subpart—Misrepresenting oneself and goods—Goods: § 13.1625 *Free goods or services;*—Prices: § 13.1805 *Exaggerated as regular and customary;* § 13.1820 *Retail as cost, etc., or discounted;* § 13.1825 *Usual as reduced or to be increased.* Subpart—Offering unfair, improper and deceptive inducements to purchase or deal: § 13.1955 Free *goods;* § 13.1960 *Free service.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Watchung Pool Supplies, Inc., et al., North Plainfield, N.J., Docket C-2473, October 30, 1973.]

In the Matter of Watchung Pool Supplies, Inc., a Corporation, and Frank Jannuzzi, and Frank C. Jannuzzi, Individually and as Officers of Said Corporation.

Consent order requiring a North Plainfield, N.J., retailer and distributor of swimming pools, related accessories, and other products and merchandise, among other things to cease misrepresenting products or services as free or at a discount; misrepresenting prices as reduced or usual and customary; misrepresenting savings that purchasers may realize.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Watchung Pool Supplies, Inc., a corporation, its successors and assigns, and its officers and Frank Jannuzzi and Frank C. Jannuzzi, individually and as officers of said corporation and respondents' agents, representatives and employees directly or indirectly, in connection with advertising, offering for sale, sale or distribution of swimming pools, swimming pool accessories or any other products or merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a customer is to receive merchandise or services for "free" or at a discount upon the purchase of other advertised products where the respondents, in making such an offer, increase the regular price of the product required to be bought, or decrease the quantity or quality of that product, or otherwise attach strings to the offer.

2. Representing, directly or by implication, through the use of terms such as "Our lowest price ever", "4 days only", "special sale price", "savings" or in any other manner, that any price is reduced from respondents' former price if respondents' business records fail to establish and show that such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

3. Using the words "value" or "made to sell for" or any other words or terms of similar import in connection with prices of merchandise unless such prices are those at which the merchandise has been sold by respondents in the recent regular course of business, or unless such prices are those at which the merchandise has usually and customarily been sold at retail in the trade area where the representations are made.

4. Representing directly or by implication that any amount is respondents' usual and customary retail price for merchandise unless such amount is the price at which the merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

5. Representing directly or by implication that any saving is afforded in the purchase of merchandise from the respondents' retail price unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by the respondents in the recent regular course of business.

6. Misrepresenting in any manner, the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of merchandise has been reduced either from the price at which it has been usually and customarily sold by respondents in the recent regular course of business, or from the price at which it has been usually and customarily sold at retail in the trade area where the representation is made.

It is further ordered, That respondent corporation shall forthwith deliver a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That respondents shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

Issued: October 30, 1973.

[FR Doc.73-25476 Filed 11-30-73;8:45 am]

[1] Chairman Engman concurring in the result, and commissioners Jones and Dennison dissenting in part. Dissenting statement filed as part of the original.

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER E—POISON PREVENTION PACKAGING ACT OF 1970 REGULATIONS

PART 1700—POISON PREVENTION PACKAGING

Ethylene Glycol; Establishment of Child Protection Packaging Standards

The purpose of this promulgation under the Poison Prevention Packaging Act of 1970 (Pub. Law 91–601) is to require household substances in liquid form containing 10 percent or more by weight of ethylene glycol packaged on or after June 1, 1974, to be packaged in child protection packaging meeting certain poison prevention packaging standards.

In the FEDERAL REGISTER of December 28, 1972 (37 FR 28636), the Commissioner of Food and Drugs proposed child protection packaging standards for household substances in liquid form containing 10 percent or more by weight of ethylene glycol (21 CFR 295.2(a)(14)). The proposal invited interested persons to submit comments on or before February 26, 1973.

Effective May 14, 1973, functions under the Poison Prevention Packaging Act were transferred to the Consumer Product Safety Commission by section 30(a) of the Consumer Product Safety Act (Pub. Law 92–573, 86 Stat. 1231; 15 U.S.C. 2079(a)).

Subsequently, on August 7, 1973 (38 FR 21247), the Consumer Product Safety Commission revised and transferred the regulations under the Poison Prevention Packaging Act of 1970 (21 CFR Part 295 became 16 CFR Part 1700). Accordingly, in this promulgation, proposed 21 CFR 295.2(a)(14) is adopted as 16 CFR 1700.14(a)(11).

In response to the proposal of December 28, 1972, comments were received from one retailer, one packager of ethylene glycol, eight manufacturers of household substances containing ethylene glycol, one association of manufacturers of such products, and one manufacturer of packaging materials. The principal issues raised in the comments and the Commission's conclusions thereon are as follows:

A. *Need for special packaging.* 1. One manufacturer and the packager state that special packaging is not necessary for household substances containing ethylene glycol. One manufacturer questions whether some or all of the ingestions of products containing ethylene glycol by children younger than 5 years of age, cited in the proposal, were from sources other than the original containers, in which case special packaging would have given no additional protection to the children involved.

Examination of reports from the National Clearinghouse for Poison Control Centers pertaining to the 208 ingestions noted in the proposal reveals that in 60 of the nonhospitalized cases and in 4 of the hospitalized cases, the substances involved were ingested from original containers; in 8 of the nonhospitalized cases and one of the hospitalized cases, the substances involved were ingested from other than original containers; and in 128 of the nonhospitalized cases and 7 of the hospitalized cases, the reports do not indicate the type of container from which the substances were obtained. The type of container is not identified in the three deaths which were cited in the proposal. Thus, of the 73 ingestions where the container is identified, a large majority were from original containers.

The Commission concludes that these data demonstrate that special packaging is needed to reduce the number of accidental ingestions by young children of household substances containing ethylene glycol.

2. A retailer states that because one-gallon containers of antifreeze containing ethylene gylcol weigh approximately 10 pounds, it would be difficult for young children to maneuver the containers. The retailer therefore suggests that the special packaging requirements be limited to single-use containers of ethylene glycol-containing substances in packages of less than one gallon.

Since one-gallon containers may frequently be used and stored in and around households after part of the contents have been used and, when partially emptied, are reduced in weight, the Commission concludes that the special packaging requirements for ethylene glycol-containing substances should not be limited to containers of less than one-gallon capacity.

B. *Concentration of ethylene glycol.* As proposed, the special packaging standards for household substances in liquid form containing ethylene glycol was applicable to substances containing 10 percent or more by weight of ethylene glycol. A comment from one manufacturer states that a lethal dose of ethylene glycol for a 22-pound child is approximatley 14 milliliters and suggests that special packaging requirements should be imposed on all packages of household substances containing 14 milliliters or more of ethylene glycol, rather than "10 percent or more by weight." This comment urges consideration of the possibility that packages of some household substances consisting of less than 10 percent by weight of ethylene glycol might be sufficiently large to contain 14 milliliters or more of ethylene glycol. Thus, a child might be able to ingest a lethal dose from a container not subject to special packaging requirements. Injury data do not indicate a need for special packaging for products containing less than 10 percent by weight of ethylene glycol. Further, mixtures containing 10 percent or more by weight of ethylene glycol are required to bear special labeling under regulations (16 CFR 1500.14) issued pursuant to section 3(b) of the Federal Hazardous Substances Act (74 Stat. 374–75, as amended by 80 Stat. 1304; 15 U.S.C. 1262(b)) because of the hazardous nature of such mixtures. Section 3(a)(1) of the Poison Prevention Packaging Act of 1970 authorizes the Commission to establish packaging standards for household substances if special packaging is required to protect children from "serious personal injury or serious illness." Thus, special packaging standards may be imposed to reduce the risk of nonfatal accidents caused by ingestion or handling of household substances by young children if serious injury or illness is likely to occur.

The suggestion that special packaging requirements be limited to packages containing 14 milliliters or more of ethylene glycol overlooks the possibility that a one-ounce package of a substance containing a 35-percent concentration of ethylene glycol would not be subject to special packaging requirements because it would contain only about 11 milliliters of ethylene glycol, an amount which would nevertheless be capable of producing serious illness or injury if ingested by a young child. The possibility of serious illness or injury resulting from accidental ingestion under such circumstances appears to be far more likely than the hypothetical situation proposed in the comment under consideration.

Accordingly, the provision of the proposed regulation which requires special packaging for household substances in liquid form having a concentration of 10 percent or more by weight or ethylene glycol is retained.

C. *Technically feasible, practicable, and appropriate.* Comments from three manufacturers and one association of manufacturers of substances containing ethylene glycol question the findings published in the proposal of December 28, 1972, that special packaging for household substances containing ethylene glycol is technically feasible, practicable, and appropriate. The comments state that special closures are not yet available which have been tested on containers filled with ethylene glycol-containing substances to determine that this packaging will withstand conditions of shipment, storage, and handling the substances are subject to and retain the ability to meet the child protection packaging testing procedure set forth in 16 CFR 1700.20. In addition, the comments state that a number of relatively small firms which manufacture ethylene glycol-based antifreeze cannot convert their packaging machinery to accommodate special packaging until the final designs for such packaging have been tested and approved by antifreeze manufacturers.

The Commission concludes that the finding required under section 3(a)(2) of the act (that the required special packaging be technically feasible, practicable, and appropriate for such substance) does not imply a delay in the effective date of child protection packaging standards until special packaging is available conforming exactly with existing packages and packaging equipment of all manufacturers or packers of such substances. On the basis of reports and data from industry and other relevant information, the Commission finds that the special packaging required herein is:

1. Technically feasible because technology exists to produce special packages conforming to the subject standards. On

December 28, 1972, when special packaging was proposed for substances containing ethylene glycol, at least 27 manufacturers of special packaging had submitted data indicating that one or more of their packages tested in accordance with the testing procedure for special packaging prescribed by 21 CFR 295.10 (now 16 CFR 1700.20) met or exceeded the effectiveness specifications in 21 CFR 295.3(b) (now 16 CFR 1700.15(b)). Some of those special packaging manufacturers are now producing child-resistant closures suitable for packaging liquid substances containing ethylene glycol. Several other manufacturers either have or could develop the capacity to produce special packaging for liquid substances containing ethylene glycol. These packaging designs include special packaging for glass, plastic, or metal containers.

2. Practicable in that it is susceptible to modern mass production and assembly line techniques. Manufacturers of packaging materials estimate the total packaging requirements for ethylene glycol-containing substances to be approximately 150 million units per year, and state that they believe they could retool to meet special packaging requirements for all products subject to the proposed standards for substances containing ethylene glycol.

3. Appropriate since special packaging is not detrimental to the integrity of the substance and will not interfere with its storage and use.

D. *Single-use containers.* The proposal of December 28, 1972, contained a statement to the effect that a single-use container requiring a tool for entry will be considered special packaging if it meets the specifications of the standards when tested by the procedure now prescribed by 16 CFR 1700.20 (formerly 21 CFR 295.10); that in the testing of such a container, it is not necessary to provide the children with the tool needed to open the container unless such a tool accompanies the container when offered for sale to consumers; and that if the entire contents of the package are intended for use in a single application and the package is so labeled, it shall not be subject to the resecuring provisions of the adult portion of the testing procedure now specified in 16 CFR 1700.20.

Although no comments were received about this statement, the Commission affirms the determinations cited above, with the further provision that in the adult phase of the testing of single-use containers opened with a tool which does not accompany the container, the adult test subjects may be provided with the tool required to open the package, in addition to the instructions concerning the proper method of opening which are printed on the packaging.

E. *Exclusion.* A manufacturer of porous point pens (commonly called "felt tip" or "soft tip" pens) containing ink with a concentration of approximately 20 percent of ethylene glycol by weight requests that those porous point pens which are exempted by 16 CFR 1500.83(a)(9) from the requirement of a warning label imposed by the Federal Hazardous Substances Act be excluded from the coverage of the proposed packaging standards for household products containing ethylene glycol.

These pens are exempted from the requirement of a warning statement if they are constructed in such a manner that the ink is held within the barrel of the pen by absorbent materials; no free liquid is contained within the device; and the only orifice through which the ink can be released under any reasonably foreseeable use, including reasonably foreseeable abuse by children, is through the porous writing nib of the pen. In addition to porous point pens, other articles, including certain containers of dry ink and certain packages of felt pads impregnated with ethylene glycol, have been exempted from the requirements for a warning label imposed by the Federal Hazardous Substances Act (16 CFR 1500.83).

The Commission concludes that those articles containing ethylene glycol which have been exempted from labeling requirements of the Federal Hazardous Substances Act present a sufficiently minimal risk of injury to children through handling, use, or ingestion to justify exclusion from the special packaging standards for household substances containing ethylene glycol. The regulation has been changed accordingly.

F. *Effective date.* Comments from six manufacturers and one association of manufacturers of ethylene glycol-containing products recommend that the subject special packaging standards be made effective from 10 to 24 months after the date of promulgation in the FEDERAL REGISTER to allow adequate time for the testing, selection, and production of special packaging and the conversion of packaging machinery to accommodate such special packaging.

On October 16, 1973, the Commission surveyed manufacturers of safety closures in an effort to determine the availability of such closures to packagers of products containing ethylene glycol. From its survey, the Commission has concluded that an adequate supply of such closures can be made available by June 1, 1974, to meet the needs of packagers of products containing ethylene glycol.

On November 5, 1973, letters were sent to known trade associations with members that package or market products that may be subject to the proposed regulation and to known individual packagers, distributors, or retailers whose products may be subject to it informing them that the Commission could provide the names of suppliers of special packaging if there was a problem meeting the June 1, 1974, effective date. Because of the relatively limited number of manufacturers of special packaging and manufacturers of products containing ethylene glycol, the Commission is able to provide names of possible suppliers of special packaging. No inference should be drawn from this action that the Commission necessarily intends to offer similar notification or assistance in any future proceeding under the Poison Prevention Packaging Act of 1970 or other statutes administered by the Commission.

The Commission is also aware that some firms have made timely attempts to plan and to initiate special packaging of household products containing ethylene glycol since December 28, 1972, and concludes that these firms should not be at a commercial disadvantage for their good faith effort to prepare for compliance at the earliest possible date with the terms of the regulation promulgated below. After consideration of those comments concerning the various steps involved in the conversion to special packaging for products containing ethylene glycol, the availability of special child protection packaging, the good faith effort of some manufacturers to prepare for compliance with the subject special packaging standards, and other information, the Commission concludes that the special packaging standards promulgated below shall be applicable to those household substances in liquid forms containing 10 percent or more by weight of ethylene glycol which are packaged after June 1, 1974.

In consideration of the above, the Commission finds in accordance with section 3(a) (1) and (2) of the Poison Prevention Packaging Act of 1970 (1) that the degree or nature of the hazard to children in the availability of household substances in liquid form containing 10 percent or more by weight of ethylene glycol, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or illness resulting from handling, using, or ingesting such substance and (2) that the special packaging to be required by the subject regulation is technically feasible, practicable, and appropriate for such substance.

Therefore, having evaluated the comments received and other relevant material, the Commission concludes that the proposal should be adopted as set forth below.

Accordingly, pursuant to provisions of the Poison Prevention Packaging Act of 1970 (secs. 2(4), 3, 5, 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), a new paragraph (a)(11) is added to 16 CFR 1700.14 as follows (although unchanged, the introductory text of paragraph (a) is included below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and that the

special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(11) *Ethylene glycol.* Household substances in liquid form containing 10 percent or more by weight of ethylene glycol packaged on or after June 1, 1974, except those articles exempted by 16 CFR 1500.83, shall be packaged in accordance with the provisions of § 1700.15 (a) and (b).

* * * * *

Effective date. This regulation shall become effective June 1, 1974.

(Secs. 2(4), 3, 5, 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472, 1474.)

Dated: November 29, 1973.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.73-25602 Filed 12-30-73;8:45 am]

Title 17—Commodity and Securities Exchanges

[Release Nos. 33-5441, 34-10523, 35-18190, IC-8104, AS-149]

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

Amendment Providing for Improved Disclosure of Income Tax Expense

The Securities and Exchange Commission today adopted amendments to Rule 3-16(o) of Regulation S-X [17 CFR 210.3-16(o)] calling for improved disclosure of income tax expense in financial statements filed with the Commission. These amendments were originally proposed on December 18, 1972 (Securities Act Release No. 5344 [38 FR 1748]), and then were reissued in revised form for additional comment on September 12, 1973 (Securities Act Release No. No. 5421 [38 FR 27088]).

The final rule includes a number of changes made in response to comments received although the basic requirements of the original proposal which called for disclosure of the components of tax expense, the reasons for timing differences between book and tax reporting resulting in deferred income taxes, and a reconciliation between the effective income tax rate indicated by the income statement and the statutory Federal income tax rate have been retained and are adopted hereby. The proposal that the amount of deferred taxes shown on the most recent balance sheet which will be reflected in tax expense reported in income statements for each of the next five years be disclosed has been revised. The revision requires disclosure of deferred tax reversals only in cases where the registrant expects that the cash outlay for income taxes with respect to any of the succeeding three years will substantially exceed income tax expense for such year.

The objectives of these disclosure requirements are to enable users of financial statements to understand better the basis for the registrant's tax accounting and the degree to which and the reasons why it is able to operate at a different level of tax expense than that which would be incurred at the statutory tax rate. By developing such an understanding, users will be able to distinguish more easily between one time and continuing tax advantages enjoyed by a company and to appraise the significance of changing effective tax rates. In addition, users will be able to gain additional insights into the current and prospective cash drain associated with payment of income taxes.

Discussion of Comments Received. Numerous comments were received in response to the exposure of this rule. In general, analysts and other users indicated that the required disclosure would be very helpful to them in the process of analyzing results and determining the earning power of a corporation. Financial executives generally opposed the disclosure on the grounds that it would be costly to produce and would provide details which would be of little value to the average investor. The Commission has concluded that the benefits of the disclosure are sufficient to require its presentation in financial statements filed with the Commission but it recognizes that the detailed disclosure provided herein will be primarily of interest to professional analysts who have the obligation to develop an understanding in depth of corporate results and may not be required in financial disclosure designed for the average investor. The Commission notes, however, that financial statements prepared in conformity with generally accepted accounting principles as set forth in Accounting Principles Board Opinion No. 11 require disclosure of the "reasons for significant variations in the customary relationships between income tax expense and pretax accounting income if they are not otherwise apparent from the financial statements or from the nature of the entity's business" and it believes that many of the disclosures required by Rule 3-16(o) may be necessary in order to reflect the spirit of Opinion No. 11.

A number of commentators suggested that the Commission does not have the authority to require disclosure of the information relating to income taxes because such information appears on the income tax returns of the corporations and is therefore confidential. The Commission finds no merit in this position. The requirements for full and fair disclosure of material information to investors are a basic part of the Securities Act of 1933 and the Securities Exchange Act of 1934. Each Act provides that registration statements filed under the Act must contain, in addition to other information specified, such information "as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors."[1] Both Acts also grant to the Commission the power to prescribe, with regard to documents required to be filed, "the form or forms in which required information shall be set forth, and the items or details to be shown in the balance sheet and earnings statement * * *."[2] The Commission believes that the amendments to Regulation S-X adopted today are entirely consistent with its express authority under the Acts. The type of information required to be disclosed by these amendments is, in the opinion of the Commission, material to investors as noted above.

Other comments indicated that the rule would require disclosure of information which would be valuable to competitors since it would reveal tax strategy or which would lead taxing authorities to question tax deductions or assess claims based on amounts provided in computing tax expense where items subject to varying tax interpretations were treated in a manner favorable to the taxpayer. Those who made such comments did not provide specific examples of items and amounts involved, but the Commission believes that most items of this sort would be of a size such that disclosure would not be required under the significance criteria set forth in the rule. In those cases, if any, where the amounts involved are sufficiently large to require disclosure the needs of present and potential investors in public corporations are best served by providing such significant information even though there may be an increased risk of adverse consequences at the hands of competitors.

Numerous commentators raised questions about the proposed requirement that disclosure be made of the amounts of deferred income taxes shown on the year-end balance sheet which are expected to be reflected as components of tax expense in each of the next five years. It was pointed out that this disclosure would not achieve the stated objective of providing insights into potential future cash outlays for taxes since in the normal case one tax deferral is expected to be replaced by another. Hence the data proposed to be required might lead to the misleading inference that a substantial cash outlay for taxes would be likely in the five-year period covered when such was not the case. The Commission recognizes the validity of these comments and has revised this particular proposal. The revised requirement calls for disclosure only in those cases when it

[1] Section 7 of the Securities Act of 1933 (Act) and Section 12 (g) and (b) of the Securities Exchange Act of 1934 (Exchange Act). In addition, Section 13(a) of the Exchange Act requires issuers of securities registered under that Act to file reports and information "in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security."

[2] Section 19(a) of the Act and Section 13 (b) of the Exchange Act.

is expected that the cash outlay for income taxes with respect to any of the succeeding three years will substantially exceed income tax expense for such year.

The Amended Rules. Inasmuch as certain of the requirements under Rule 3-16 (o) (§ 210.3-16(o)) relate also to Rule 5-02-19 (§ 210.5-02-19), prepaid expenses and deferred charges, and to Rule 5-02-35 (§ 210.5-02-35), deferred credits, these rules have been amended to include a cross-reference to Rule 3-16(o).

Commission action. The Commission hereby amends the following sections of 17 CFR Part 210, Chapter II, and as so amended they read as follows:

§ 210.316 General Notes to Financial Statements. (See Release No. AS-4.)

* * * * *

(o) *Income tax expense.* (1) Disclosure shall be made, in the income statement or a note thereto, of the components of income tax expense, including: (i) taxes currently payable; (ii) the net tax effects, as applicable, of (a) timing differences (Indicate separately the amount of the estimated tax effect of each of the various types of timing differences, such as depreciation, research and development expense, warranty costs, etc. Types of timing differences that are individually less than 15 percent of the deferred tax amount in the income statement may be combined. If no individual type of difference is more than five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate and the aggregate amount of timing differences is less than five percent of such computed amount, disclosure of each of the separate types of timing differences may be omitted.) and (b) operating losses; and (iii) the net deferred investment tax credits. Amounts applicable to United States Federal income taxes, to foreign income taxes and to other income taxes shall be stated separately for each major component, unless the amounts applicable to foreign and other income taxes do not exceed five percent of the total for the component.

(2) If it is expected that the cash outlay for income taxes with respect to any of the succeeding three years will substantially exceed income tax expense for such year, that fact should be disclosed together with the approximate amount of the excess, the year (or years) of occurrence and the reasons therefor.

(3) Provide a reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, showing the estimated dollar amount of each of the underlying causes for the difference. If no individual reconciling item amounts to more than five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than five percent of such computed amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than five percent of the computed amount may be aggregated in the reconciliation. The reconciliation may be presented in percentages rather than in dollar amounts. Where the reporting person is a foreign entity, the income tax rate in that person's country of domicile should normally be used in making the above computation, but different rates should not be used for subsidiaries or other segments of a reporting entity. If the rate used by a reporting person is other than the United States Federal corporate income tax rate, the rate used and the basis for using such rate shall be disclosed.

* * * * *

Section 210.5-02 is amended by revising the following entries:

§ 210.5-02 Balance sheets.

* * * * *

19. *Prepaid expenses and deferred charges.* State separately any material items. Items properly classed as current may, however, be included under § 210.5-02-8. (See also § 210.3-16(o).)

* * * * *

35. *Deferred credits.* State separately amounts for (a) deferred income taxes, (b) deferred tax credits, and (c) material items of deferred income. The current portion of deferred income taxes shall be included under § 210.5-02-26. (See Accounting Series Release No. 102 [30 F.R. 15240].) (See also § 210.3-16(o).)

* * * * *

In order to clarify the rules as adopted, an example of disclosure and associated assumptions and computations has been attached as an exhibit to this release.

The amendments to Regulation S-X have been adopted pursuant to authority conferred on the Commission by the Securities Act of 1933, particularly sections 6, 7, 8, 10 and 19(a) thereof; the Securities Exchange Act of 1934, particularly sections 12, 13, 15(d) and 23(a) thereof; the Public Utility Holding Company Act of 1935, particularly sections 5(b), 14 and 20(a) thereof; and the Investment Company Act of 1940, particularly sections 8, 30, 31(c) and 38(a) thereof.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85, secs. 205, 209, 48 Stat. 906, 908, sec. 8, 68 Stat. 685 (15 U.S.C. 77f, 77g, 77h, 77j, 77s); secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901, secs. 3, 8, 49 Stat. 1377, 1379, secs. 3, 4, 6, 10, 78 Stat. 565, 569, 570, 580, secs. 1, 2, 84 Stat. 1497 (15 U.S.C. 78l, 78m, 78o(d), 78w); secs. 5(b), 14, 20(a), 49 Stat. 812, 827, 833 (15 U.S.C. 79e, 79n, 79t); secs. 8, 30, 31(c), 38(a), 54 Stat. 803, 836, 838, 841, sec. 3(c), 84 Stat. 1415 (15 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)).)

The above amendments to Regulation S-X shall be applicable to financial statements for periods ending on or after December 28, 1973. Such disclosure is recommended but not required for financial statements of prior periods included in filings with the Commission subsequent to December 31, 1973. The foregoing shall be effective 30 days from the filing date.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

NOVEMBER 28, 1973.

EXHIBIT

The following example of the disclosure required under Rule 3-16(o) [§ 210.3-16(o)] provided to assist registrants in appraising the proposal and in complying with it.

I. *Assumptions.* The following facts apply to a hypothetical business corporation for the calendar year 1973 (all figures in thousands):

Book income before tax, $15,000.

(1) Assets purchased at the beginning of 1973 at a cost of $10,000, eight year life, double declining balance depreciation for tax purposes, straight line on books, eligible for 7% investment credit.

(2) Research costs of $3,000 deducted on tax return but amortized over following years for book purposes.

(3) Warranty reserve of $1,400 provided for book purposes is not deductible for tax purposes until warranty costs are incurred.

(4) Income before taxes includes $2,000 related to construction-type contracts still in process which are accounted for on the percentage of completion method for book purposes and on the completed contract method for tax purposes.

(5) Amortization of goodwill of $800 is not deductible for tax purposes.

(6) Book income before taxes includes $2,400 which represents the net income of wholly-owned foreign subsidiaries that are expected to indefinitely invest their undistributed earnings. Foreign Subsidiary A is permitted under its local tax laws to deduct a provision for an inventory reserve related to increased inventory levels. The reserve would be reduced in periods of inventory decline. For consolidated financial statement purposes, no such accrual is made and the associated deferred tax expense is $420. The subsidiaries have reportable taxes in their respective foreign jurisdictions as follows:

	Foreign subsidiary A	Foreign subsidiary B	Total
Foreign book income before taxes	$2,100	$300	$2,400
Foreign jurisdiction tax rate percentage	30	50	----
Currently taxable income	$700	$300	$1,000
Current tax expense	210	150	360
Deferred tax expense	420	----	420
Total foreign income tax expense	630	150	780

(7) Investments sold during the year resulted in a gain of $1,000, which is taxed at capital gain rates of 30%.

(8) Included in income is $1,500 of interest on tax exempt municipal bonds.

(9) State and local income taxes amounted to $400.

II. *Illustrative Note.* Note—Income tax expense (all data in thousands).

Income tax expense is made up of the following components:

	U.S. Federal	Foreign	State and local	Total
Current tax expense	$2,312	$360	$400	$3,072
Deferred tax expense	2,328	420	.....	2,748
	4,640	780	400	5,820

Deferred tax expense results from timing differences in the recognition of revenue and expense for tax and financial statement purposes. The sources of these differences in 1973 and the tax effect of each were as follows:

Excess of tax over book depreciation	$600
Research and development costs expensed on tax return and deferred on books	1,440
Revenue recognized on completed contract basis on tax return and on percentage of completion basis on books	960
Tax deductible inventory reserve provided in foreign tax jurisdiction	420
Warranty cost charged to expense on books but not deductible until paid	(672)
	$2,748

Total tax expense amounted to $5,820 (an effective rate of 38.8%), a total less than the amount of $7,200 computed by applying the U.S. Federal income tax rate of 48% to income before tax. The reasons for this difference are as follows:

	Dollar amount	Percent of pretax income
Computed "expected" tax expense	$7,200	48.0
Increases (reductions) in taxes resulting from:		
Foreign income subject to foreign income tax but not expected to be subject to U.S. tax in foreseeable future ($2,400×48%)−$780=$372	(372)	(2.5)
Tax exempt municipal bond income	(720)	(4.8)
Investment tax credit on assets purchased in 1973	(700)	(4.7)
Goodwill amortization not deductible for tax purposes	384	2.6
State and local income taxes, net of Federal income tax benefit [1]	208	1.4
Benefit from income taxed at capital gains rate (1,000×48%)−(1,000×30%)=$180 [1]	(180)	(1.2)
Actual tax expense	$5,820	38.8

[1] Since these amounts are less than 5 percent of the computed "expected" tax expense, they could be combined with any other items less than $360 into an aggregate total. For example, these items could be disclosed as follows: "Miscellaneous items * * * $28 * * * 0.2 percent." If no single item had exceeded $360 in this case and the total net difference of all items was also less than $360, this reconciliation would not have been required.

Based upon currently anticipated expenditures and operations, it is expected that the deferred income tax balance will be substantially reduced in 1976 and the cash outlay for taxes associated with that year will exceed tax expense by approximately $4,000, primarily due to the book amortization in that year of research and development expense previously deducted for tax purposes.

III. *Computational Guide.* (Furnished only to enable interested parties to determine source of numbers shown in above illustrative note; not to be required of registrants in filings.)

A. Tax computations

Book income before tax	$15,000
State income tax	(400)
Permanent differences:	
Goodwill amortization	800
Municipal bond income	(1,500)
Foreign income, no domestic income tax	(2,400)
Capital gain	(1,000) (4,100)
	$10,500
Timing differences:	
Excess depreciation	(1,250)
R & D deducted on tax return	(3,000)
Warranty cost not deductible until paid	1,400
Percentage of completion income	(2,000)
Taxable income (excluding capital gain)	5,650
Tax to be paid:	
Tax on ordinary income .48 x 5,650	2,712
Plus capital gain tax .30 x 1,000	300
Less investment credit	(700)
Actual tax paid	2,312
Tax expense per books:	
Tax expense on ordinary income .48 x 10,500	5,040
Plus capital gain tax	300
Less investment credit	(700)
Tax expense—Federal	4,640
Foreign tax	780
State and local income tax	400

B. Facts affecting disclosure of net deferred income taxes.

Estimated Changes in Deferred Income Tax Accounts on Balance Sheets:

	1974	1975	1976
Balance—beginning of year	$10,000	$11,000	$10,500
Additions for timing differences in each year [1]	3,000	1,500	500
Reversals of balances at beginning of each year	(2,000)	(2,000)	(4,500)
Balance—end of year	11,000	10,500	6,500

[1] NOTE: Includes effect of expected expenditures in each subsequent period which give rise to additional tax deferrals.

C. Computations of disclosure limits per Rule 3-16(o)

Computed amount, 15,000×.48=7,200.

5% of computed amount, 0.05×7,200=360.

15% of deferred tax, 0.15×2,728=409.

[FR Doc.73-25608 Filed 11-29-73;12:27 pm]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 73-325]

PART 1—GENERAL PROVISIONS

Ports of Entry; Greenville, Mississippi

NOVEMBER 21, 1973.

On September 7, 1973, notice of a proposal to extend the port limits of Greenville, Mississippi, in the New Orleans, Louisiana, Customs district (Region V), was published in the FEDERAL REGISTER (38 FR 24374). No comments were received regarding this proposed extension.

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to the authorization provided by Treasury Department Order No. 190, Rev. 9 (38 FR 17517), the port limits of Greenville, Mississippi, in the New Orleans, Louisiana, Customs district (Region V), are hereby extended to include all of the Washington County, Mississippi.

To reflect this change, the table in section 1.2(c) of the Customs Regulations is amended by substituting "Greenville, Mississippi (including the territory described in T.D. 73-325)" for "Greenville, Miss. (T.D. 55697 including the territory described in T.D. 55829)." in the column headed "Ports of entry" in the New Orleans, Louisiana, district (Region V).

(Sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended; 19 U.S.C. 1, 2.)

It is desirable to make this extension of the port limits of Greenville, Mississippi, available to the public as soon as possible. Therefore, good cause is found for dispensing with the delayed effective date provision of 19 U.S.C. 553(d).

Effective date. This amendment shall be effective December 3, 1973.

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

[FR Doc.73-25550 Filed 11-30-73;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

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 revise the requirements contained in § 1.12 (21 CFR 1.12) with respect to the labeling of flavor when sold in bulk and when contained in food. A final order on this matter was published in the FEDERAL REGISTER of August 2, 1973 (38 FR 20718).

A number of requests were received for reconsideration or modification of the August 2 order. The Commissioner proposed further modification of that order in the FEDERAL REGISTER of October 5, 1973 (38 FR 27622), and permitted four weeks for comment. Comments were received from a number of organizations, companies, and individuals.

The Commissioner has reviewed all of the comments and petitions submitted with respect to the January 19 and October 5 proposals and the August 2 order, in promulgating the final regulation set out below. The major points that have been made with respect to the August 2 order and the October 5 proposal, and the Commissioner's conclusions, are as follows:

1. Several comments, concurring with the proposal to delete the broad category of "reaction products" from the definition of natural flavor in § 1.12(a)(3), stated that the definition should further be revised to permit products obtained by roasting, heating, or enzymolysis. It was pointed out that such products have traditionally been regarded as natural flavors.

The Commissioner concurs in this comment and the definition has been so revised.

2. Several comments suggested that "other reaction products" should be retained but modified in a way that would not permit the broad construction which led the Commissioner to propose its deletion in the October 5 notice. One comment suggested that "cooking" would be an adequate substitute.

The Commissioner concludes that the addition of "roasting, heating, or enzymolysis" is sufficient to cover flavoring constituents long regarded as natural in origin, and to exclude those, such as vanillin, which are essentially synthetic and result from chemical reactions.

3. One comment requested that the word "fish" be replaced with the broader term "seafood" in the definition of a natural flavor.

This was the intent of the earlier definition, and thus the Commissioner concurs with this comment and has changed the definition accordingly.

4. Comments requested that the term "protein" be added to the term "hydrolysate" in the definition of a natural flavor in order to clarify the intent.

The Commissioner concurs with this comment and has so revised the definition.

5. One comment argued that the definition of artificial color in § 1.12(a)(4) should not include natural substances such as beet juice.

The Commissioner points out that, where beet juice is used to color food in which it is not naturally found, it is being used as an artificial color for those products. Nothing in § 1.12 would prohibit the food manufacturer in those circumstances from declaring the presence of natural beet juice, either on the principal display panel or in the statement of ingredients. Thus, any manufacturer who wishes to use fully informative labeling of this type will be permitted to do so, and no change in the regulation is needed.

6. One comment states that the term "artificial color" in section 403(k) of the Federal Food, Drug, and Cosmetic Act was intended by Congress to apply solely to coal tar colors. The comment admits that there is little legislative history on this point.

The Commissioner concludes that coloring derived other than from the same type of food to which the color is being added is properly characterized as artificial. As already noted, any consumer confusion can readily be avoided by a statement that the product contains the specific natural ingredient involved.

7. Numerous comments indicated widespread failure to understand the relatively limited circumstances under which § 1.12(i) will apply. Several comments reflected the erroneous interpretation that all food must be so labeled with respect to its flavor content.

The Commissioner advises that, if a food makes no direct or indirect representations with respect to flavor, the provisions of § 1.12(i) are inapplicable. In such circumstances, the presence of artificial or natural flavor, or both, may be declared simply in the statement of ingredients, as permitted by sections 403(i) and (k) of the act.

8. One comment requested clarification of the circumstances under which a food name would make representations with respect to flavor.

The Commissioner concludes that it is not possible to set out all circumstances under which a flavor representation is or is not implied. Any use of a vignette showing a fruit or vegetable clearly constitutes such a representation. Designation of a soft drink as a "cola" beverage or ginger ale or root beer, or with well-recognized proprietary brand names, does not constitute a flavor representation. On the other hand, use of a specific fruit flavor in the food name, such as "orange soda," does constitute such a representation and requires compliance with § 1.12(i). The Commissioner will provide advisory opinions with respect to specific terminology upon request.

9. One comment suggested that the term "characterizing flavor" referred to in § 1.12(i) should be replaced with the phrase "primary recognizable flavor." This would permit additional use of minor spices without their being declared on the principal display panel.

The Commissioner concurs in this suggestion and the provision has been so revised. It is not intended that individual spices added, for example, to canned foods be required to be separately declared on the principal display panel as part of the name of the food where they are not the primary flavor and are added for garnishment purposes.

10. Comments were submitted that use of the term "artificial" misleads the public into believing that an artificial flavor is in some way inferior to a natural flavor. Comments pointed out that there is no available evidence to indicate any difference in safety or nutritional value between a naturally occurring flavor and its synthetic counterpart.

The Commissioner concurs with the comment that an artificial flavor is no less safe, no less nutritious, and not inherently less desirable, than a natural flavor. The sole purpose for distinguishing between natural and artificial flavors is for economic reasons. In most instances, natural flavor is more expensive than artificial flavor. Where a label creates an impression that a natural flavor is present, the consumer has the right to rely upon that implication or representation.

11. It was suggested that § 1.12(i)(1)(i) should be deleted, on the ground that there is no need to declare the flavor in the name if enough characterizing ingredient is present and natural characterizing flavor is added to enhance or stabilize the flavor of the food.

The Commissioner agrees with this comment and this provision has been deleted. It is unlikely that a food with a characterizing ingredient would also contain added natural characterizing flavor, and in those few instances where this occurs the consumer will be fully protected since all the characterizing flavor in the product will still be from natural sources.

12. There was comment that a determination whether there is a "sufficient" quantity of a characterizing food ingredient to characterize the food independent of any added natural characterizing flavor involves subjective judgment, and that the distinction between the two situations is so subtle as to have little meaning to the consumer.

The Commissioner recognizes that this determination will in some instances be difficult to make. The difference between a product that contains a characterizing food ingredient and a product that contains no such ingredient, however, is not at all subtle, and is very important to the value of the product and thus to the consuming public.

13. A comment suggested that the term "ingredient" should be substituted for "component" in proposed § 1.12(i)(1)(i) and (ii).

The Commissioner concurs with this comment and final § 1.12(i)(1)(i) has been so revised.

14. Comments pointed out that use of the non-specific term "flavor added" or "flavored" in the proposal is inconsistent with the statement made by the Commissioner in the preamble to his August 2 order that this designation is not meaningful to consumers.

The Commissioner does not agree with this comment. The concern expressed in the preamble to the August 2 order related to the use of the non-specific term "flavored" where part of the characterizing flavor is artificial. The Commissioner has no objection to use of the term "flavored" where all the characterizing flavor is natural in origin.

15. Comments suggested that, in § 1.12(i)(1) and (2), the only important issue is the nature of the characterizing flavor.

The Commissioner concurs with this comment, and has revised these provisions to refer to flavor which "simulates, resembles or reinforces the characterizing flavor." The addition of natural or artificial non-characterizing flavor may properly be designated in the statement of ingredients as such and may include the name of the ingredient(s). For example, in a "chocolate pudding" which contains cocoa and vanillin, it will be unnecessary to state on the principal display panel as the October 5 notice had proposed, that the product contains artificial vanilla flavor. Under the final regulation, this may be stated in the statement of ingredients. Thus, the "except" clause is also deleted from § 1.12(i)(2).

16. Similarly, there was comment that, in proposed § 1.12(i)(1)(iii), there is no need to state on the principal display panel the presence of natural flavor that is not derived from the product whose flavor is simulated.

The Commissioner does not concur in this comment. If there is no flavor whatever from the product whose flavor is simulated, the product is properly labeled

as artificially flavored. If the product contains both flavor from the product whose flavor is simulated and other natural flavor which simulates that flavor, it may be labeled "with other natural flavor." If the product contains both flavor from the product whose flavor is simulated and other natural flavor which does not simulate that flavor, it will be labeled simply as containing the flavor involved, pursuant to § 1.12(i)(1). Accordingly, the "except" clause is retained in § 1.12(i)(1), and clarified in new § 1.12(i)(1)(ii) and (iii).

17. Questions have arisen as to how the "characterizing flavor" is to be determined, and as to how it will be determined whether added flavor "simulates" a characterizing natural flavor or otherwise characterizes the product.

The Commissioner advises that the characterizing flavor is that which is represented in labeling or advertising as the product flavor, or that which is in any event the primary recognizable flavor of the finished food. In determining whether added flavor does or does not simulate, resemble, or reinforce the characterizing flavor, the principal test will be to separate such added flavor from the product to determine whether it tastes like the characterizing natural flavor or approximates the flavor characteristics of any principal or key flavor note. Thus, the vanillin added to a chocolate pudding would clearly not be a characterizing flavor because it does not taste like chocolate, whereas the benzaldehyde added to a cherry juice would be an artificial flavor because it does reinforce and extend the cherry taste. It must be emphasized that the test is not solely whether an artificial flavor simulates or is chemically identical to the characterizing natural flavor, but also more broadly whether it resembles, reinforces, or extends it. At the same time, this test does not include all artificial flavor, such as artificial flavor that merely modifies, rounds out, or gives a particular cast to an existing flavor without reinforcing or increasing it or otherwise making it appear that more is present than is actually in the product. Thus, benzaldehyde is a characterizing flavor in cherry but not in cinnamon; allyl hexanoate is a characterizing flavor in pineapple but not in orange; and ethyl valerate is characterizing in apple but not in raspberry. In the vast majority of instances, the conclusion will be clear-cut and readily accepted by flavor technologists. The Commissioner believes that it would be feasible and appropriate to prepare a list of individual flavors or combinations showing the circumstances under which they are characterizing for particular flavor uses. The Commissioner recognizes that this will in some instances involve judgmental factors, but believes that this requirement is as enforceable as any that could be adopted.

18. A large number of comments stated that all of § 1.12(i) as proposed in the October 5 notice is confusing both to industry and to consumers, in that there are too many categories of flavor labeling.

The Commissioner concurs with this comment. For that primary reason, the number of total categories of flavor labeling in the final regulations has been reduced to five. For the vast majority of foods, which contain added flavor but no characterizing food ingredient, there will be only the following three labeling categories:

1. Where the characterizing flavor is solely natural and is derived from the product whose flavor is simulated, the food will be labeled only with the name of the flavor (e.g., "lemon pudding").

2. Where the characterizing flavor is solely natural and is derived partly from the product whose flavor is simulated and partly from other natural sources, the food will be so labeled (e.g., "lemon pudding, with other natural flavor").

3. Where (a) the characterizing flavor is solely natural and is derived solely from sources other than the product whose flavor is simulated, or (b) any part of the characterizing flavor is artificial, the food will be labeled "artificially flavored" (e.g., "lemon pudding, artificially flavored").

For those foods which the consumer expects to contain characterizing food ingredient (e.g., strawberries in strawberry shortcake or peaches in peach pie), two additional labeling categories will exist:

Where the food does not contain a sufficient amount of that food ingredient independently to characterize the food and it contains added natural characterizing flavor, it shall be labeled as a naturally flavored food (e.g., either "natural peach flavored pie" or as "natural peach flavored pie, with other natural flavors," depending upon whether all or only part of the characterizing flavor is derived from the product whose flavor is simulated. The initial use of the word "natural" is optional.)

These are the only five labeling patterns that will be required to be used on the principal display panel under the final regulation. All other designations of flavors contained in the October 5 proposal will appear in the statement of ingredients. Thus, the final regulation vastly simplifies labeling while at the same time informing consumers of the essential nature of the characterizing flavoring used.

19. A comment contended that the October 5 proposal would require unnecessarily long names for products relating solely to the source of the flavor. The comment stated that, while it may be important that the name inform the consumer whether the characterizing flavor is natural or artificial, there is little or no need to point out in the name that other natural or artificial non-characterizing flavors are also used. It was suggested that it is sufficient if these non-characterizing flavors are shown in the ingredient statement.

The Commissioner concurs with this comment and the regulation has been so revised.

20. Some comments argued that section 403(k) of the act requires the label declaration of artificial flavor only in the statement of ingredients, and does not require such declaration on the principal display panel.

The Commissioner concurs with this comment. Section 1.12(i) is required by sections 201(n), 402(b), and 403(a) of the act. These provisions state that a food is adulterated if a less expensive ingredient is substituted for a more expensive ingredient so as to make the food appear to be of greater value than it is, or if the labeling is false or misleading as a result of any statement or failure to reveal a fact that is material in the light of other representations. In the opinion of the Commissioner, the substitution of a characterizing artificial flavor for a natural flavor, and the failure prominently to reveal the presence of a characterizing artificial flavor, is in violation of these provisions when the labeling for a food otherwise represents or implies the presence of a characterizing natural flavor.

21. Some comments argued that flavor designation should be limited to the statement of ingredients.

The Commissioner agrees that this is sufficient where the manufacturer makes no direct or indirect representation with respect to the flavor of the product other than in the ingredients statement. Where such representations are made on the principal display panel or in other promotional material, however, it is necessary to establish a uniform system of flavor designation to dispel any confusion or misrepresentation.

22. One comment objected to proposed § 1.12(i)(1)(iii) on the ground that citrus oils have been used to make "orange" beverages for over 50 years and should be allowed to continue.

The Commissioner has no objection to this use of citrus oils, but believes that, if they simulate, resemble, or reinforce a characterizing flavor, and the food contains no natural orange flavor, the consumer is entitled to understand that the product is made solely with flavor other than that from oranges. If natural orange flavor is used in conjunction with other natural citrus oils that simulate, resemble, or reinforce it, the product is properly labeled "with other natural flavor." Under these circumstances, auxiliary statements explaining that the flavor is derived from natural citrus oils are permissible and sufficient fully to inform the consumer.

23. A comment objected to proposed § 1.12(i)(1)(iii) on the ground that it is misleading to label a natural flavor as "artificial" when it is used to simulate another natural flavor. It was suggested that a phrase such as "beef-like flavor" be permitted.

As already noted, the consumer is entitled to terminology which clearly distinguishes between the use of a natural flavor derived from the type of product involved, and natural flavor derived from

other sources. As has already been pointed out, truthful auxiliary statements may be utilized by the manufacturer to explain such other natural flavors.

24. Several comments suggested that, while the intended application of the August 2 order was clear, the modification proposed in the October 5 notice was so complex as to be confusing. Two comments submitted recommended new language designed to change the format as well as to change the substance.

The Commissioner concurs that the language in the October 5 proposal was complex. This complexity was the result of attempting to recognize the numerous flavoring combinations used, and to provide labeling that would accurately convey those combinations to the consumer. Those various combinations have to a significant extent been reduced for labeling purposes in this order. As revised, the final regulation is internally consistent and symmetrical. If all the characterizing flavor is natural and derived from the product whose flavor is simulated, the principal display panel of the food is labeled solely with the name of that food and any other non-characterizing natural or artificial flavor need be declared only in the statement of ingredients. If any part of the characterizing flavor is not derived from the product whose flavor is simulated, the principal display panel of the food is labeled with its source, either "with other natural flavor" or "artificially flavored." The Commissioner concludes that the revised language is sufficiently straightforward to make any substantial change in format unnecessary.

25. Comments suggested a return to the "predominance" test contained in the January 19 proposal, and suggested an arbitrary standard of 50 percent by weight as a test of predominance.

On the basis of all the comments submitted on the two proposals and prior order, the Commissioner concludes that such a standard is too susceptible of ambiguity and uncertainty to be enforceable. Organoleptic tests have variable results. The arbitrary 50 percent standard suggested, or any other arbitrary standard, would be inaccurate more often than it is accurate. Even with full records inspection, therefore, the predominance test is too uncertain to serve as a regulatory standard for most foods.

26. It was suggested that, if both natural and artificial characterizing flavor is used, the label should be permitted to state "natural and artificial flavor."

The Commissioner does not concur with this suggestion. In order to determine whether the term "natural" or the term "artificial" should come first, it would again be necessary to determine which predominates in flavor strength. As already noted, the Commissioner concludes that this would not be enforceable. The Commissioner also advises that where a food is required to be labeled as "artificially flavored" and it also contains some natural flavor, nothing in § 1.12 or other regulations prohibits the manufacturer from a label statement about the presence of such natural flavor, as long as such statement is truthful and not misleading. The presence of natural flavor is also required to be declared in the statement of ingredients. Since the manufacturer may properly designate the presence of natural flavor under these circumstances both with such auxiliary explanations and in the statement of ingredients, there is no validity to the contention that the regulation requires misleading labeling.

27. One comment argued that, since the regulation requires a product containing 99 percent natural flavor and 1 percent characterizing artificial flavor to be labeled "artificially flavored," it is unreasonable and results in misleading labeling.

The Commissioner does not agree with this contention. First, it is well within the power of the food manufacturer to replace the 1 percent artificial flavor with natural flavor. If he does not do so, it is obvious that the characterizing artificial flavor is indeed important to the product, and thus that its presence should forthrightly be made known to consumers. Second, it is well known that artificial flavor is often concentrated, and thus has several times the strength of an equivalent quantity of natural flavor. Some artificial flavors, for example, are 20 to 50 times as strong as the same amount of natural flavor. Thus, the level of use of the ingredient is not indicative of its importance to the product or its impact on the product's flavor. Third, use of the term "artificially flavored" is literally true, and in no sense misleading, whenever any amount of a characterizing artificial flavor is used. It must be remembered that there is no requirement that a food manufacturer make any flavor representation with respect to his food, and thus the invocation of § 1.12(i) is entirely at the option of the manufacturer. A manufacturer cannot exercise his discretion to make a flavor representation about his product, and then complain that he is required to qualify that representation in a way that will be accurate and truthful. As already noted, any situation in which the natural flavor is an important element can easily be the subject of auxiliary explanatory statements that will be fully informative to the consumer.

28. Representatives of the dairy industry urged that the Commissioner not revise the present provisions of the ice cream standard and of the pasteurized milk ordinance to substitute the new labeling requirements contained in § 1.12 (i) for the former three-category labeling now applicable to those products.

The Commissioner has not yet concluded whether the ice cream standard should be revised in this respect. Any such revision would be proposed by FEDERAL REGISTER publication and with full opportunity for consumers, State officials, and the affected industry to participate in the decision through conferences and the submission of comments.

29. A number of comments suggested specific alternatives to the flavor designations proposed in the October 5 notice.

The Commissioner has considered all of the specific suggestions made and believes that the purpose of simplification of terminology that these comments convey is satisfied by the final regulation being promulgated.

30. A question was raised about the proper labeling of products containing cocoa, which have in the past been labeled as "chocolate."

The Commissioner advises that such products as chocolate pudding, made from cocoa rather than chocolate, may continue to be labeled as "chocolate pudding" because the consumer has long recognized that this product may be made from cocoa and does not expect it to contain chocolate. A chocolate bar, on the other hand, is expected to contain chocolate and may not be made from cocoa without being labeled as a "natural chocolate flavored" or "chocolate flavored" candy.

31. A comment recommended deleting the requirement that the characterizing flavor be half the size of the name of the food. It was suggested that this requirement might result in the name of the food appearing in a relatively smaller type size.

The Commissioner does not concur with this suggestion. The law and regulations require that the name of the food appear prominently and conspicuously, and that the label be designed to meet this requirement. It is important that the characterizing flavor also be sufficiently prominent.

32. A comment stated that there is no reason to require that the information pertaining to flavor accompany the name of the food everywhere it appears on the label.

The Commissioner advises that, pursuant to § 1.12(i)(3), it is sufficient that this information appear only where the name of the characterizing flavor appears.

33. A comment suggested that the required type size for the word "artificial" be half the size of the name of the product rather than half the size of the name of the flavor.

The Commissioner concludes that the type size for the term "artificial" (or "natural") is logically related to the flavor designation, not the product name. It is the flavor, and not necessarily the product, which is artificial.

34. One comment suggested that the regulation should permit the use of such a generic term as "fruit _____" where three or more characterizing flavors are used, so that it is unnecessary to spell out each separate flavor.

The Commissioner concurs with this comment, and the regulation has been revised accordingly. In situations where such a collective term is used, the same rules will apply with respect to declaration of natural and artificial flavor as where the common or usual name of each flavor is used.

35. One comment requested that a vignette be permitted in lieu of such collective terms as "fruit" or "vegetable" where three or more characterizing flavors are involved.

The Commissioner concludes that this could be confusing and misleading as the consumer would not be able to tell from a vignette alone whether the characterizing flavor was natural or artificial.

36. A large number of comments argued that the enforcement provisions in § 1.12(i)(4) are unlawful and unreasonable. It was contended that there is no authority for this provision in section 701(a) or section 704(a) of the act, and that it violates the Fourth Amendment to the United States Constitution.

The Commissioner concludes that the statute authorizes an enforcement provision of this type where, as the comments on the January 2 proposal and general chemical knowledge readily demonstrate, the requirements of the law and the regulations cannot otherwise be enforced. It is well known that chemical analysis is incapable of distinguishing between a natural flavor and its synthetic counterpart. Economic adulteration and misbranding of flavors has been a major problem in the food industry. Without some form of certification and records inspection, there is no way whatever to enforce the requirements of the law and regulations. The Fourth Amendment permits reasonable inspection of records. Section 701(a) of the act permits the Commissioner to promulgate regulations for the efficient enforcement of the act, and the Supreme Court has stated that "where the empowering provision of a statute states simply that the agency may 'make * * * such rules and regulations as may be necessary to carry out the provisions of this Act,' we have held that the validity of a regulation promulgated thereunder will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation.'" Mourning v. Family Publications Service, Inc. (decided April 24, 1973). Section 409 allows limitations on use of food additives, section 702 allows the Commissioner to conduct examinations and investigations for the purposes of the act, section 703 allows inspection of the records of interstate shipments, and section 704 allows factory inspection of materials and labeling. In view of the fact that the act would otherwise be unenforceable, the Commissioner concludes that reasonable certification and records inspection provisions are fully warranted and authorized.

37. It was contended that the provisions of § 1.12(i)(4) are unnecessary because the criminal provisions of the law provide ample protection against cheating.

The Commissioner notes that the criminal provisions of the law provide no protection whatever unless cheating can be detected. The sole purpose of § 1.12(i)(4) is to detect such cheating, which would otherwise go wholly undetected and unpunished.

38. Several comments viewed § 1.12(i)(4) as an affront and an insult to honest businessmen.

The Commissioner believes that these enforcement provisions are a protection for the honest businessman against unscrupulous competition. The existence of reasonable enforcement provisions in no way suggests that businessmen are untrustworthy.

39. It was pointed out that flavor formulas are extremely valuable trade secrets which deserve special protection.

The Commissioner agrees fully with this comment. Because of this consideration, § 1.12(i)(4) has been revised extensively to incorporate a number of specific protective provisions to minimize any possibility that the confidentiality of such trade secrets will be lost or that the enforcement provisions may be abused. The Commissioner believes that, as revised, § 1.12(i)(4) contains very reasonable enforcement provisions designed to protect both the industry from unfair competition and the consumer from adulterated and misbranded food.

40. It was suggested that the certification requirement not be applied to a user unless the user himself adds another flavor to a flavor which he has purchased.

The Commissioner agrees that this is reasonable and the regulation has been so revised.

41. A comment suggested that the certification requirement could be satisfied by a guarantee under section 303(c)(2) of the act, such as the guarantees set out in § 1.5 of the regulations.

The Commissioner agrees that the certification required by § 1.12(i)(4) may be included in a guarantee, but the general wording of the guarantee forms set out in § 1.5 is insufficient for compliance with this provision. The purpose of a certification is to require the flavor supplier explicitly to state that the product contains no artificial flavor and that he has not added any artificial flavor to it.

42. Comments suggested that reference to 18 U.S.C. 1001 was unlawful and unnecessary.

The Commissioner concludes that, under the applicable law, the certification and guarantee is a report to the government and is subject to both 18 U.S.C. 1001 and sections 301(g) and 303(a) of the act. The Commissioner believes it appropriate that the regulations explicitly state this fact, as ample warning to any person who makes a false certification and guarantee. Those who make only honest certifications and guarantees will, of course, have nothing to fear from this provision.

43. It was requested that advance notification of inspections regarding verification of certifications be given, to permit the company to have the authorized personnel available and to obtain the appropriate records.

The Commissioner concludes that it is essential that the Food and Drug Administration continue to make unannounced inspections. The Commissioner agrees that, because of the secret nature of flavor formulas, and the fact that only certain company personnel may be authorized to handle them, arrangements may be required for an inspector to return at a later date to receive specific requested information if the authorized personnel are, for example, out of town at the time of the inspection. If the authorized company personnel are available, however, there is no reason why an inspection cannot proceed immediately. The regulation has been revised to incorporate the substance of this comment.

44. It was suggested that it would be unreasonable to require verification of all flavor formulas, of which there may be thousands for any given company.

The Commissioner concurs with the intent of this comment. It is not always possible for an inspector to specify in the notice of inspection the exact formulas he wishes to verify, but it is unlikely that verification of all formulas would be undertaken. The regulation has been revised to state that, wherever possible, verification shall be undertaken on a reasonable number of certifications, constituting a representative sample of such certifications. The Food and Drug Administration also intends to solicit, and to investigate, specific industry complaints about competitive flavors which do not appear to be labeled in accordance with § 1.12, and under these circumstances verification may be requested for only a very few formulas. Where a compliance problem is found, of course, no restriction on the number of verification requests would apply.

45. A comment stated that an inspection should be limited to qualitative formulas and should not extend to quantitative formulas.

The Commissioner agrees, and the regulation has been so revised. The quantitative formula is not necessary to enforce compliance.

46. It was urged that neither the formula nor any notes on it should be taken from the premises of the manufacturer except if a compliance problem is found, and then that the information should be sealed and delivered to the General Counsel of the Food and Drug Administration.

Although the Commissioner concurs with the intent of protecting trade secrets, he concludes that the provisions suggested in this comment are unduly restrictive. Not all verification activity can be conducted on the premises. Where inspection of other sources is also necessary for this purpose, such notes and formulas must be retained. Similarly, notes must be available for the purpose of making inspectional reports. The regulation therefore provides reasonable restrictions on such notes and formulas without precluding their use for legitimate verification purposes.

47. A comment requested the addition of an exemption for food sold to institutional customers only, where all the

necessary flavor information is supplied directly to such customers.

The Commissioner concludes that such an exemption has not been justified and is unwarranted. The comment suggested no hardship with respect to applying § 1.12(i) to food sold to institutional customers. The labeling established by this regulation is reasonable, compact, and would appear to be even simpler to apply to the usual large packaging used for institutional purposes than to the smaller retail packaging. Without such labeling on institutional packaging, state and local enforcement officials would be unable to supervise application of their laws and regulations involving truthful representations about food sold in retail food service establishments. Accordingly, no such exemption has been included in the regulations.

48. There were objections to the short time available for public comment on the October 5 proposal, and to the statement that the Commissioner intends to issue a final regulation within a few days after the time for comment expires.

The four-week time for comment meets all the requirements of the Administrative Procedures Act. Until relatively recently, the standard time for comment on all Food and Drug Administration regulations was 30 days. The urgency of this particular matter was dictated by the desire of the Commissioner to promulgate a final regulation governing flavor designation as quickly as possible, to permit the maximum lead time feasible for food manufacturers to meet the uniform effective date requirements for the various food labeling regulations that have been promulgated. The Commissioner believes that the quality of the comments that have been submitted on this proposal demonstrate that the amount of time provided was sufficient.

49. Comments suggested that the March 15, 1974, deadline for ordering new labels and the December 31, 1974, deadline for using up old labels should be extended.

The Commissioner concludes that inadequate justification for any extension was provided. The need to revise labels has been known for almost a year. Exceptions to the deadlines will be granted only on the basis of extreme hardship, and will require a showing that due diligence has been observed in placing orders and that, without an extension, the food product will be removed from the market. Such extensions will be extremely rare.

50. A comment asked for permission to use left-over seasonal labels (e.g., Easter, Mother's Day, Christmas, etc.) for an additional year.

The Commissioner concludes that since such labels may be used in 1974, no extension will be granted except in extreme hardship cases. The industry is aware of the inadvisability of ordering extensive inventories of seasonal labeling, and the Commissioner is unable to grant permission to continue to use such non-complying labeling as a general exception.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 402, 403, 409, 701(a), 702, 703, 704, 52 Stat. 1046, 1047, 1048–1049 as amended, 1055, 1056–1057 as amended; 21 U.S.C 342, 343, 348, 371(a), 372, 373, 374) and under authority delegated to the Commissioner (21 CFR 2.120), Part 1 is amended by revising § 1.12 (a) (3) and (i) to read as follows:

§ 1.12 Food labeling; spices, flavorings, colorings and chemical preservatives.

(a) * * *

(3) The term "natural flavor" or "natural flavoring" means the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating or enzymolysis, 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, seafood, 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) of this chapter, and the substances listed in § 121.1163 of this chapter.

* * * * *

(i) If the label, labeling, or advertising of a food makes any direct or indirect representations with respect to the primary recognizable flavor(s), 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, such flavor shall be considered the characterizing flavor and shall be declared in the following way:

(1) If the food contains no artificial flavor which simulates, resembles or reinforces the characterizing 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 ingredient, 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 may be immediately preceded by the word "natural" and 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, e.g., "natural strawberry flavored shortcake," or "strawberry flavored shortcake".

(ii) If none of the natural flavor used in the food is derived from the product whose flavor is simulated, 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."

(iii) If the food contains both a characterizing flavor from the product whose flavor is simulated and other natural flavor which simulates, resembles or reinforces the characterizing flavor, the food shall be labeled in accordance with the introductory text and paragraph (i)(1)(i) of this section and the name of the food shall be immediately followed by the words "with other natural flavor" in letters not less than one-half the height of the letters used in the name of the characterizing flavor.

(2) If the food contains any artificial flavor which simulates, resembles or reinforces the characterizing 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(s) of the characterizing flavor, in letters not less than one-half the height of the letters used in the name of the food and the name of the characterizing flavor shall be accompanied 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," "artificially flavored strawberry", or "grape artificially flavored".

(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 purchase, the words prescribed by this paragraph shall immediately and conspicuously precede or follow such name, without any intervening written, printed, or graphic matter, 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."

(iii) If the finished product contains three or more distinguishable characterizing flavors, or a blend of flavors with no primary recognizable flavor, the flavor may be declared by an appropriately descriptive generic term in lieu of naming each flavor, e.g., "artificially flavored fruit punch".

(4) A flavor supplier shall certify, in writing, that any flavor he supplies which is designated as containing no artificial flavor does not, to the best of his knowledge and belief, contain any artificial flavor, and that he has added no artificial flavor to it. The requirement for such certification may be satisfied by a guarantee under section 303(c)(2) of the act which contains such a specific statement.

A flavor used shall be required to make such a written certification only where he adds to or combines another flavor with a flavor which has been certified by a flavor supplier as containing no artificial flavor, but otherwise such user may rely upon the supplier's certification and need make no separate certification. All such certifications shall be retained by the certifying party throughout the period in which the flavor is supplied and for a minimum of three years thereafter, and shall be subject to the following conditions:

(i) The certifying party shall make such certifications available upon request at all reasonable hours to any duly authorized office or employee of the Food and Drug Administration or any other employee acting on behalf of the Secretary of Health, Education, and Welfare. Such certifications are regarded by the Food and Drug Administration as reports to the government and as guarantees or other undertakings within the meaning of section 301(h) of the act and subject the certifying party to the penalties for making any false report to the government under 18 U.S.C. 1001 and any false guarantee or undertaking under section 303(a) of the act. The defenses provided under section 303(c)(2) of the act shall be applicable to the certifications provided for in this section.

(ii) Wherever possible, the Food and Drug Administration shall verify the accuracy of a reasonable number of certifications made pursuant to this section, constituting a representative sample of such certifications, and shall not request all such certifications.

(iii) Where no person authorized to provide such information is reasonably available at the time of inspection, the certifying party shall arrange to have such person and the relevant materials and records ready for verification as soon as practicable; provided that, whenever the Food and Drug Administration has reason to believe that the supplier or user may utilize this period to alter inventories or records, such additional time shall not be permitted. Where such additional time is provided, the Food and Drug Administration may require the certifying party to certify that relevant inventories have not been materially disturbed and relevant records have not been altered or concealed during such period.

(iv) The certifying party shall provide, to an officer or representative duly designated by the Secretary, such qualitative statement of the composition of the flavor or product covered by the certification as may be reasonably expected to enable the Secretary's representatives to determine which relevant raw and finished materials and flavor ingredient records are reasonably necessary to verify the certifications. The examination conducted by the Secretary's representative shall be limited to inspection and review of inventories and ingredient records for those certifications which are to be verified.

(v) Review of flavor ingredient records shall be limited to the qualitative formula and shall not include the quantitative formula. The person verifying the certifications may make only such notes as are necessary to enable him to verify such certification. Only such notes or such flavor ingredient records as are necessary to verify such certification or to show a potential or actual violation may be removed or transmitted from the certifying party's place of business: *Provided*, That, where such removal or transmittal is necessary for such purposes the relevant records and notes shall be retained as separate documents in Food and Drug Administration files, shall not be copied in other reports, and shall not be disclosed publicly other than in a judicial proceeding brought pursuant to the act or 18 U.S.C. 1001.

Effective date.—Labeling may be changed to comply with this regulation beginning December 3, 1973. All labeling ordered for food subject to § 1.12(i) ordered after March 15, 1974, and all labeling used for products shipped in interstate commerce after December 31, 1974, shall comply with this regulation.

(Secs. 402, 403, 409, 701(a), 702, 703, 704, 52 Stat. 1046, 1047, 1048–1049 as amended, 1055, 1056–1057 as amended; 21 U.S.C. 342, 343, 348, 371(a), 372, 373, 374.)

Dated: November 21, 1973.

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

[FR Doc.73-25529 Filed 11-30-73;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7292]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Special Rules for Determining Foreign Tax Credit

By a notice of proposed rulemaking appearing in the FEDERAL REGISTER for March 23, 1971 (36 FR 5423), amendments to the Income Tax Regulations (26 CFR Part 1) were proposed in order to conform such regulations to changes made by section 10 of the Revenue Act of 1962 (76 Stat. 1002) and section 106(c) of the Foreign Investors Tax Act of 1966 (80 Stat. 1570), relating to the separate limitation on the foreign tax credit in the case of section 904(f) interest income. A public hearing was not requested, and none was held. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made, and the proposed amendments of the regulations, subject to the changes indicated below, are adopted by this document.

In the regulations as proposed it was unclear whether, in determining under § 1.904–4(a)(2)(i) whether interest income is derived from a transaction directly related to the active conduct of a trade or business, a trade or business conducted by a corporation which is affiliated with the taxpayer within the meaning of section 1504 should be considered. The regulations as adopted make it clear that the exclusion provided by section 904(f)(2)(A) or 904(f)(2)(B) applies only to interest derived from a transaction which is directly related to the active conduct by the taxpayer of a trade or business or derived in the conduct by the taxpayer of a banking, financing or similar business.

The last clause of the last sentence of § 1.904–4(b)(1) in the regulations as proposed has been deleted. The sentence as proposed established the rule that the period of time during which the taxpayer has conducted a trade or business in a foreign country will be considered in determining whether the conduct of such trade or business is the active conduct of a trade or business, particularly if the acquisition of the business was for the purpose of avoiding income tax. The clause relating to the period of time during which the taxpayer has conducted the trade or business has been retained, while the clause relating to the tax-avoidance motive has been deleted. A new sentence has been added at the end of § 1.904(b)(1) to provide that the treatment of a foreign subsidiary as a domestic corporation pursuant to section 1504(d) does not affect the location of the subsidiary's trade or business for purposes of section 904(f).

The rules in § 1.904–4(b)(2)(i) of the proposed regulations relating to the types of transactions which will be considered as being directly related to the active conduct of a trade or business in a foreign country have been made less restrictive. The introductory language of § 1.904–4(b)(2)(i) has been changed to make clear that the list of transactions therein is not considered to be all inclusive. In the regulations as proposed, the language indicated that credit extended by the taxpayer to enable the taxpayer's debtor to purchase the goods or services furnished by the taxpayer would be considered as directly related to the active conduct of the trade or business. The wording has been changed in the final regulations to provide that credit extended to secure an outlet for such goods or services will be considered as directly related to the active conduct of the trade or business. This language covers the situation, for example, where a taxpayer extends credit on arm's length terms to meet the general credit needs of a customer so as to encourage such customer to purchase goods from the taxpayer. Section 1.904–4(b)(2)(i) has also been amended to provide that interest from the short-term investment of excess funds is business related and that interest from sources outside a foreign country may be related to business carried on in that country.

The last sentence of § 1.904–4(b)(2)(iii) has been revised to be more in conformity with § 1.864–4(c)(2)(iii)(*b*) of the Income Tax Regulations and to make clear that the personnel managing the investment of the asset are not required to be in the same foreign country in which the asset is located.

The list of types of operations contained in proposed § 1.904–4(c)(1) which will qualify a taxpayer as being engaged in a banking, financing, or similar business for purposes of section 904(f) has been amended in the adopted regulations to be brought more in conformity with the list contained in § 1.864–4(c)(5)(i) of the Income Tax Regulations.

The regulations as adopted have deleted an example in proposed § 1.904–4(c)(2) relating to the short-term investment of excess funds by a banking business and instead have added a similar rule to § 1.904–4(b)(2)(i) for determining interest derived from a transaction directly related to the active conduct of a trade or business in a foreign country.

Subdivision (ii) of § 1.904–4(d)(2) as proposed provided rules for the allocation in certain cases of the foreign income tax to the section 904(f) interest. These allocation rules have been revised to make it clear that the allocation is based upon the net income as determined under the applicable foreign law.

Adoption of amendments to the regulations. On March 23, 1971, there was published in the FEDERAL REGISTER (36 FR 5423) a notice of proposed rule making with respect to an amendment conforming the Income Tax Regulations (26 CFR Part 1) to section 904(f) of the Internal Revenue Code of 1954, as added by section 10 of the Revenue Act of 1962 (76 Stat. 1002) and amended by section 106(c) of the Foreign Investors Tax Act of 1966 (80 Stat. 1570). After consideration of all such relevant matter as was presented by interested persons regarding the proposed rules, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. The amendment of § 1.904, as set forth in paragraph 1 of the notice of proposed rule making, is changed by adding to section 904 a new subsection (g) in lieu of the asterisks after subsection (f), as set forth below.

PAR. 2. Section 1.904–4, as set forth in paragraph 5 of the notice of proposed rulemaking, is changed by revising paragraphs (a)(2)(i) and (ii), (b)(1), (b)(2)(i) and (iii), (c)(1) and (2), and (d)(2)(ii) to read as set forth below.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: November 21, 1973.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to section 904(f) of the Internal Revenue Code of 1954, as added by section 10 of the Revenue Act of 1962 (76 Stat. 1002) and such taxes shall, for purposes of applying amended by section 106(c) of the Foreign Investors Tax Act of 1966 (80 Stat. 1570), such regulations are amended as follows:

PARAGRAPH 1. Section 1.904 is amended by redesignating subsection (f) of section 904 as subsection (g) and revising such subsection, by adding a new subsection (f) to section 904 and revising such subsection, and by revising the historical note, as follows:

§ 1.904 Statutory provisions; limitation on credit.

SEC. 904. *Limitation on credit.* * * *

(f) *Application of section in case of certain interest income*—(1) *In general.* The provisions of subsections (a), (c), (d), and (e) of this section shall be applied separately with respect to—

(A) The interest income described in paragraph (2), and

(B) Income other than the interest income described in paragraph (2).

(2) *Interest income to which applicable.* For purposes of this subsection, the interest income described in this paragraph is interest other than interest—

(A) Derived from any transaction which is directly related to the active conduct of a trade or business in a foreign country or a possession of the United States,

(B) Derived in the conduct of a banking, financing, or similar business.

(C) Received from a corporation in which the taxpayer (or one or more includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member) owns, directly or indirectly, at least 10 percent of the voting stock,

(D) Received on obligations acquired as a result of the disposition of a trade or business actively conducted by the taxpayer in a foreign country or possession of the United States or as a result of the disposition of stock or obligations of a corporation in which the taxpayer owned at least 10 percent of the voting stock.

For purposes of subparagraph (C), stock owned directly or indirectly, by or for a foreign corporation shall be considered as being proportionately owned by its shareholders.

(3) *Overall limitation not to apply.* The limitation provided by subsection (a)(2) shall not apply with respect to the interest income described in paragraph (2). The Secretary or his delegate shall by regulations prescribe the manner of application of subsection (e) with respect to cases in which the limitation provided by subsection (a)(2) applies with respect to income other than the interest income described in paragraph (2).

(4) *Transitional rules for carrybacks and carryovers*—(A) *Carrybacks to years prior to Revenue Act of 1962.* Where, under the provisions of subsection (d), taxes (i) paid or accrued to any foreign country or possession of the United States in any taxable year beginning after the date of the enactment of the Revenue Act of 1962 [October 16, 1962] are deemed (ii) paid or accrued in one or more taxable years beginning on or before the date of enactment of the Revenue Act of 1962, the amount of such taxes deemed paid or accrued shall be determined without regard to the provisions of this subsection. To the extent the taxes paid or accrued to a foreign country or possession of the United States in any taxable year described in clause (i) are not, with the application of the preceding sentence, deemed paid or accrued in any taxable year described in clause (ii), subsection (d), be deemed paid or accrued in a taxable year beginning after the date of the enactment of the Revenue Act of 1962, with respect to interest income described in paragraph (2), and with respect to income other than interest income described in paragraph (2), in the same ratios as the amount of such taxes paid or accrued with respect to interest income described in paragraph (2), and the amount of such taxes paid or accrued with respect to income other than interest income described in paragraph (2), respectively, bear to the total amount of such taxes paid or accrued to such foreign country or possession of the United States.

(B) *Carryovers to years after Revenue Act of 1962.* Where under the provisions of subsection (d), taxes (i) paid or accrued to any foreign country or possession of the United States in any taxable year beginning on or before the date of the enactment of the Revenue Act of 1962 [October 16, 1962] are deemed (ii) paid or accrued in one or more taxable years beginning after the date of the enactment of the Revenue Act of 1962, the amount of such taxes deemed paid or accrued in any year described in clause (ii) shall, with respect to interest income described in paragraph (2), be an amount which bears the same ratio to the amount of such taxes deemed paid or accrued as the amount of the taxes paid or accrued to such foreign country or possession for such year with respect to interest income described in paragraph (2) bears to the total amount of the taxes paid or accrued to such foreign country or possession for such year; and the amount of such taxes deemed paid or accrued in any year described in clause (ii) with respect to income other than interest income described in paragraph (2) shall be an amount which bears the same ratio to the amount of such taxes deemed paid or accrued for such year as the amount of taxes paid or accrued to such foreign country or possession for such year with respect to income other than interest income described in paragraph (2) bears to the total amount of the taxes paid or accrued to such foreign country or possession for such year.

SEC. 904. *Limitation on credit.* * * *

(g) *Cross references*—(1) For increase of applicable limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(b).

(2) For special rule relating to the application of the credit provided by section 901 in the case of affiliated groups which include Western Hemisphere trade corporations for years in which the limitation provided by subsection (a)(2) applies, see section 1503(b).

[Sec. 904 as amended by sec. 42(a), Technical Amendments Act 1958 (72 Stat. 1639); sec. 1, Act of Sept. 14, 1960 (Public Law 86–780, 74 Stat. 1010); secs. 10 and 12(b)(2), Rev. Act 1962 (76 Stat. 1002, 1031); sec. 234(b)(6), Rev. Act 1964 (78 Stat. 116); sec. 106(c), Foreign Investors Tax Act 1966 (80 Stat. 1570).]

PAR. 2. Section 1.904–1 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 1.904–1 Limitation on credit for foreign taxes.

(a) *Per-country limitation*—(1) *General.* In the case of any taxpayer who does not elect the overall limitation

under section 904(a)(2), the amount allowable as a credit for income or profits taxes paid or accrued to a foreign country or a possession of the United States is subject to the per-country limitation prescribed in section 904(a)(1). Such limitation provides that the credit for such taxes paid or accrued (including those deemed to have been paid or accrued other than by reason of section 904(d)) to each foreign country or possession of the United States shall not exceed that proportion of the tax against which credit is taken which the taxpayer's taxable income from sources within such country or possession (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year. For special rules regarding the application of the per-country limitation when the taxpayer has derived section 904(f) interest, see § 1.904–4.

* * * * *

(b) *Overall limitation*—(1) *General.* In the case of any taxpayer who elects the overall limitation provided by section 904(a)(2), the total credit for taxes paid or accrued (including those deemed to have been paid or accrued other than by reason of section 904(d)) shall not exceed that proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year. Special rules which prohibit the applicability of the overall limitation in the case of section 904(f) interest are provided in section 904(f) and § 1.904–4.

* * * * *

PAR. 3. Section 1.904–2 is amended by revising paragraph (a) to read as follows:

§ 1.904–2 Carryback and carryover of unused foreign tax.

(a) *Credit for foreign tax carryback or carryover.* A taxpayer who chooses to claim a credit under section 901 for a taxable year is allowed a credit under that section not only for taxes otherwise allowable as a credit but also for taxes deemed paid or accrued in that year as a result of a carryback or carryover of an unused foreign tax under section 904(d). However, the taxes so deemed paid or accrued shall not be allowed as a deduction under section 164(a). The following paragraphs of this section provide rules for the computation of carryovers and carrybacks under section 904(d). For special rules regarding the application of section 904(d) and this section in the case of taxes paid or accrued with respect to section 904(f) interest see section 904(f) and § 1.904–4.

* * * * *

PAR. 4. Section 1.904–3 is amended by revising paragraph (e) to read as follows:

§ 1.904–3 Carryback and carryover of unused foreign tax by husband and wife.

* * * * *

(e) *Amounts carried from or through a joint return year to or through a separate return year.* It is necessary to allocate to each spouse his share of an unused foreign tax or excess limitation for any taxable year for which the spouses filed a joint return if—

(1) The husband and wife file separate returns for the current taxable year and an unused foreign tax is carried thereto from a taxable year for which they filed a joint return;

(2) The husband and wife file separate returns for the current taxable year and an unused foreign tax is carried to such taxable year from a year for which they filed separate returns but is first carried through a year for which they filed a joint return; or

(3) The husband and wife file a joint return for the current taxable year and an unused foreign tax is carried from a taxable year for which they filed joint returns but is first carried through a year for which they filed separate returns.

In such cases, the separate carryback or carryover of each spouse to the current taxable year shall be computed in the manner described in § 1.904–2 but with the modifications set forth in paragraph (f) of this section. Where applicable, appropriate adjustments shall be made to take into account the fact that, for any taxable year involved in the computation of the carryback or the carryover, either spouse has interest income described in section 904(f)(2) with respect to which the provisions of section 904(f) and § 1.904–4 apply.

* * * * *

PAR. 5. The following new section is inserted immediately after § 1.904–3:

§ 1.904–4 Separate limitation for section 904 interest.

(a) *Separate limitation*—(1) *In general.* For taxable years beginning after October 16, 1962, but only with respect to interest resulting from transactions consummated after April 2, 1962, the provisions of subsections (a), (c), (d), and (e) of section 904 shall be applied separately with respect to the taxpayer's income consisting of—

(i) Section 904(f) interest (as defined in subparagraph (2) of this paragraph), and

(ii) Income other than section 904(f) interest.

The provisions of section 904(f) and this section do not alter the rules provided by section 904(b) and paragraph (d) of § 1.904–1 for the election of the overall limitation upon the amount of the foreign tax credit. If the taxpayer has not elected the overall limitation, the per-country limitation prescribed in section 904(a)(1) which is applicable to any foreign country or possession of the United States shall be applied separately with respect to the taxpayer's taxable income from sources within that country or possession which is attributable to the income other than the section 904(f) interest, and a separate limitation computed in the same manner shall be applied separately with respect to his taxable income from sources within that country or possession which is attributable to the section 904(f) interest. If the taxpayer has elected the overall limitation prescribed in section 904(a)(2), such limitation shall be applied with respect to all of the taxpayer's taxable income from sources without the United States other than his taxable income from such sources which is attributable to the section 904(f) interest, and, in addition, a separate limitation computed in the same manner as the per-country limitation prescribed in section 904(a)(1) shall be applied separately with respect to the taxpayer's taxable income from sources within each foreign country or possession of the United States which is attributable to the section 904(f) interest from sources within that country or possession. For such purposes, the separate limitation with respect to section 904(f) interest from sources within a foreign country or possession of the United States shall be applied only to the taxes paid or accrued to such country or possession with respect to such interest, and the separate limitation with respect to income other than section 904(f) interest, whether the per-country or overall limitation, shall be applied only with respect to the foreign income taxes paid or accrued (including those deemed to have been paid or accrued other than by reason of section 904(d) with respect to the income, other than the section 904(f) interest, which is taken into account for purposes of such separate limitation. In no case may the overall limitation prescribed in section 904(a)(2) be applied with respect to section 904(f) interest or with respect to foreign income taxes paid or accrued with respect to such interest.

(2) *Section 904(f) interest defined.* For purposes of this section, section 904(f) interest shall be all interest income of the taxpayer for the taxable year other than interest—

(i) Derived from any transaction which, in accordance with paragraph (b) of this section, is directly related to the active conduct by the taxpayer of a trade or business in a foreign country or a possession of the United States,

(ii) Derived in the conduct by the taxpayer of a banking, financing, or similar business within the meaning of paragraph (c) of this section,

(iii) Received, before January 1, 1966, from a corporation, domestic or foreign, in which the taxpayer owns at least 10 percent of the voting stock,

(iv) Received, after December 31, 1965, in taxable years ending after such date, from a corporation, domestic or foreign, in which the taxpayer (or one or more includible corporations in an affiliated group, as defined in section 1504

and the regulations thereunder, of which the taxpayer is a member) owns, directly or indirectly, at least 10 percent of the voting stock, or

(v) Received on obligations acquired as a result of the disposition of a trade or business actively conducted by the taxpayer in a foreign country or possession of the United States or as a result of the disposition of stock or obligations of a corporation, domestic or foreign, in which the taxpayer owned at least 10 percent of the voting stock.

For purposes of subdivisions (iii) and (iv) of this subparagraph, the 10-percent ownership requirement must be satisfied only at the time the interest is received. For purposes of subdivision (iv) of this subparagraph, stock owned, directly or indirectly, by or for a foreign corporation shall be considered as being proportionately owned by its shareholders. For purposes of subdivision (v) of this subparagraph, an obligation shall include any bond, note, debenture, certificate, or other evidence of indebtedness and the 10-percent ownership requirement must be satisfied only at the time of the disposition of the stock or obligations of the corporation.

(3) *Date transaction is consummated*—(i) *In general.* The determination for purposes of subparagraph (1) of this paragraph of whether a transaction has been consummated after April 2, 1962, shall be made based upon the facts and circumstances in a particular case. A transaction shall be considered consummated on or before April 2, 1962, if it is made pursuant to an agreement all the significant terms of which have been agreed upon on or before that date by all the parties to the agreement. The mere signature after April 2, 1962, by one or more parties to an agreement, all the significant terms of which have been agreed upon on or before that date by all the parties to the agreement, shall not in and of itself prevent such transaction from being considered consummated on or before April 2, 1962. Generally, a transaction which results from an agreement for which the negotiations commenced on or before April 2, 1962, but the significant terms of which were agreed upon after such date, shall be considered consummated after April 2, 1962.

(ii) *Performance under contract.* Where there is performance on or before April 2, 1962, under any contract, or after that date under a contract all the significant terms of which have been agreed upon on or before that date, the transaction shall be considered consummated on or before April 2, 1962. Thus, for example, domestic corporation M enters into a contract with B, a resident of foreign country Z, on March 1, 1962, to deliver in the United States certain merchandise to B. M is not engaged in trade or business in country Z but agrees to finance the purchase of the merchandise by B. Delivery is made on September 1, 1962, and the final payment is due 18 months after delivery. For purposes of this section, the transaction is consummated before April 2, 1962. In further illustration, if M were to make delivery on March 1, 1962, under terms which are not finally agreed upon until June 1, 1962, the transaction shall be considered consummated before April 2, 1962.

(iii) *Options.* An option shall, for purposes of this section, be considered consummated on the date the option is exercised. Thus, for example, if domestic corporation N purchases on March 21, 1962, a 30-day option to purchase certain securities issued by a resident of foreign country X and then purchases such securities on April 5, 1962, the transaction shall be considered consummated on April 5, 1962.

(4) *Characterization of income as interest*—(i) *In general.* For purposes of section 904(f) and this section, the determination as to whether an item of income is to be treated as an item of interest shall be made based upon the applicable provisions of U.S. law and any administrative or judicial interpretations made under such law. A provision of the laws of a foreign country or possession of the United States regarding the characterization of an item of income as interest and any judicial or administrative interpretations made under such laws shall not be controlling for purposes of this section.

(ii) *Unstated interest.* Any amount which is treated as interest under section 483 and the regulations thereunder shall be considered interest for purposes of this section.

(5) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). Domestic corporation M, a calendar year taxpayer to which the per-country limitation applies, has for 1969 $50,000 of taxable income consisting of section 904(f) interest from sources within foreign country X, $100,000 of other taxable income from sources within that country, and $150,000 of taxable income (none of which is interest income) from sources within foreign country Y. M has no other income (or losses) from sources without the United States in 1969 and has total taxable income from all sources (including countries X and Y) of $2 million. M pays income tax for 1969 to country X of $15,000 with respect to section 904(f) interest and $60,000 with respect to other income; and $75,000 income tax to country Y. M's U.S. tax (before credit) is assumed to be $1 million. M's foreign tax credit limitation under section 904(a)(1) is determined as follows:

Country X:	
Limitation with respect to section 904(f) interest from sources within country X	
$\{\$1,000,000 \times \frac{\$50,000}{\$2,000,000}\}$	$25,000
Limitation with respect to other income from sources within country X	
$\{\$1,000,000 \times \frac{\$100,000}{\$2,000,000}\}$	50,000
Country Y:	
Limitation with respect to income from sources within country Y	
$\{\$1,000,000 \times \frac{\$150,000}{\$2,000,000}\}$	75,000

Example (2). Assume the same facts as in example (1) except that M elects the overall limitation for 1969 and also has for that year $80,000 of taxable income consisting of section 904(f) interest from sources within country Y on which M pays to country Y $12,000 income tax. The limitation under section 904(a)(2) on M's credit for foreign taxes is determined as follows, assuming U.S. tax (before credit) of $1,040,000 and total taxable income of $2,080,000:

Country X: Limitation with respect to section 904(f) interest from sources within country X	
$\{\$1,040,000 \times \frac{\$50,000}{\$2,080,000}\}$	$25,000
Country Y: Limitation with respect to section 904(f) interest from sources within country Y	
$\{\$1,040,000 \times \frac{\$80,000}{\$2,080,000}\}$	40,000
Overall limitation with respect to other income from countries X and Y	
$\{\$1,040,000 \times \frac{\$250,000}{\$2,080,000}\}$	125,000

Example (3). Assume the same facts as in example (2) except that M does not elect the overall limitation and that during 1969 M also received a dividend of $30,000 from its wholly owned subsidiary N, a corporation organized under the laws of country Y which is not a less developed country corporation and which does not meet the tests of section 245. An income tax of $1,500 imposed by country Y is withheld by N from the dividend paid to M; in addition, on receipt of the dividend, M is deemed under section 902(a)(1) to have paid $10,000 foreign income tax to country Y. Assuming a U.S. tax (before credit) of $1,060,000 and total taxable income of $2,120,000, M's total credit for foreign income taxes for 1969 is $163,500, determined as follows:

Country X:		
Taxes paid to country X with respect to section 904(f) interest from sources within country X		$15,000
Limitation with respect to such section 904(f) interest		
$\{\$1,060,000 \times \frac{\$50,000}{\$2,120,000}\}$		25,000
Credit allowed under section 901(b)(1) with respect to section 904(f) interest from sources within country X		15,000
Taxes paid to country X with respect to other income from sources within country X		60,000
Limitation with respect to such other income		
$\{\$1,060,000 \times \frac{\$100,000}{\$2,120,000}\}$		50,000
Credit allowed under section 901(b)(1) with respect to other income from sources within country X		50,000
Country Y:		
Taxes paid to country Y with respect to section 904(f) interest from sources within country Y		12,000
Limitation with respect to such section 904(f) interest		
$\{\$1,060,000 \times \frac{\$80,000}{\$2,120,000}\}$		40,000
Credit allowed under section 901(b)(1) with respect to section 904(f) interest from sources within country Y		12,000
Taxable income (other than section 904(f) interest) from sources within country Y:		
Dividend	$30,000	
Gross-up under section 78	10,000	
Other income	150,000	190,000
Taxes paid (and deemed paid under section 902(a)(1)) with respect to other income from sources within country Y ($75,000+$1,500+$10,000)		86,500
Limitation with respect to such other income		
$\{\$1,060,000 \times \frac{\$190,000}{\$2,120,000}\}$		85,000
Credit allowed under section 901 with respect to other income from sources within country Y		86,500
Summary of allowable credit:		
Country X tax with respect to:		
Section 904(f) interest	$15,000	
Other income	50,000	
Country Y tax with respect to:		
Section 904(f) interest	12,000	
Other income	86,500	
Total allowable credit		163,500

(b) *Transactions directly related to the active conduct of a trade or business*—(1) *Definition of active conduct of a trade or business.* For purposes of applying section 904(f) and this section, a determination of whether a taxpayer is engaged in the active conduct of a trade or business in a foreign country or possession of the United States shall be made based upon the facts and circumstances in the particular case. However, in no case shall the mere purchasing, holding, or disposing of investment properties, such as stocks or securities, by a taxpayer for his own account be considered, for such purposes, as the active conduct of a trade or business. The fact that a taxpayer is considered or is not considered, for purposes of a section of the Code other than section 904(f), to be engaged in the active conduct of a trade or business in a foreign country or possession of the United States may be taken into account, but shall not necessarily be controlling, for purposes of this subparagraph. Thus, for example, if a corporation is considered, for purposes of section 355 and the regulations thereunder, to be engaged in the active conduct of a trade or business in a foreign country or possession of the United States, this factor may be taken into account for purposes of determining if such corporation is so engaged for purposes of this subparagraph. The period of time for which a taxpayer has conducted a trade or business in a foreign country or possession of the United States may be taken into account in determining whether the conduct of such trade or business is the active conduct of a trade or business for purposes of this subparagraph. The fact that a foreign corporation is treated under section 1504(d) as a domestic corporation will not preclude the interest income of such corporation from qualifying under paragraph (a)(2)(i) of this section.

(2) *Direct relationship of transaction*—(i) *In general.* The transactions which shall be considered directly related to a trade or business which, in accordance with subparagraph (1) of this paragraph, constitutes the active conduct of a trade or business in a foreign country or possession of the United States include, but are not limited to—

(*a*) The sale, exchange, or other disposition of (*1*) property which is purchased, manufactured, produced, constructed, grown, or extracted in the ordinary course of such trade or business or (*2*) asset which is used in, or held for use in, the conduct of such trade or business,

(*b*) The performance in the ordinary course of such trade or business of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or similar services,

(*c*) The performance of any activity which is an ordinary and necessary incident to the conduct of such trade or business, or

(*d*) The satisfaction of any requirement or condition for carrying on such trade or business.

Thus, for example, if credit is extended or money is advanced by a taxpayer in the ordinary course of his trade or business in order to secure an outlet for goods or services furnished by the taxpayer, then such extension or advance shall, for purposes of this section, be considered a transaction which is directly related to the active conduct of that trade or business. In further illustration, if, pursuant to the laws of a foreign country or possession of the United States or a judicial or administrative interpretation made under such laws, a taxpayer who is engaged in the active conduct of a trade or business in that country or possession is required, as a condition to the conduct of that trade or business, to acquire bonds issued by such country or possession, such acquisition shall, for purposes of this section, be considered a transaction which is directly related to the active conduct of that trade or business. Also, if cash in excess of immediate business requirements is retained as an ordinary and necessary incident to the active conduct of a trade or business in a foreign country or possession of the United States to provide for peak requirements resulting from seasonal fluctuations or similar occurrences, interest from short-term securities in which such cash is invested shall be considered to be derived from a transaction which is directly related to the active conduct of that trade or business. For purposes of this paragraph, a transaction may be directly related to a trade or business which is actively conducted in more than one foreign country or possession of the United States, and any interest derived from that transaction may be excluded under section 904(f)(2)(A) even though it is derived from sources outside such countries or possessions.

(ii) *Assets used in trade or business.* For purposes of subdivision (i)(*a*)(*2*) of this subparagraph an asset shall be treated as used in, or held for used in, the active conduct of a trade or business in a foreign country or possession of the United States if the asset is—

(*a*) Held for the principal purposes of promoting the present conduct of that trade or business,

(*b*) Acquired and held in the ordinary course of that trade or business, as, for example, in the case of an account or note receivable arising from that trade or business, or

(*c*) Otherwise held in a direct relationship to that trade or business, as determined under subdivision (iii) of this subparagraph.

(iii) *Relationship between holding of asset and trade or business.* In determining for purposes of subdivision (ii)(*c*) of this subparagraph whether an asset is held in a direct relationship to a trade or business actively conducted in a foreign country or possession of the United States, principal consideration shall be given to whether the asset is needed in that trade or business. An asset shall be considered needed in a trade or business, for this purpose, only if the asset is held to meet the present needs of that trade or business and not its anticipated future needs. An asset shall be considered as needed in the trade or business actively conducted in a foreign country or possession of the United States if, for example, the asset is held to meet the operating expenses of that trade or business. Conversely, an asset shall be considered as not needed in the trade or business conducted in a foreign country or possession of the United States if, for example, the asset is held for the purpose of providing for (*a*) future diversification into a new trade or business, (*b*) expansion of the taxpayer's trade or business activities conducted outside such country or possession, (*c*) future plant replacement, or (*d*) future business contingencies. Generally, an asset will be treated as held in a direct relationship to the trade or business conducted in a foreign country or possession if the asset was acquired with funds generated by the trade or business conducted in such country or possession, the income from the asset is retained or reinvested in the trade or business conducted in such country or possession, and the asset is managed and controlled by personnel who are present in such country or possession and actively involved in the conduct of the trade or business conducted in such country or possession.

(c) *Banking, financing, or similar business*—(1) *In General.* A taxpayer will be considered to be engaged in the conduct of a banking, financing, or similar business for purposes of paragraph (a)(2)(ii) of this section if he is engaged in business, whether in the United States or in a foreign country or possession of the United States, and the activities of such business consist of any one or more of the following activities carried on in transactions with persons situated within or without the United States:

(i) Receiving deposits of money from the public,

(ii) Making personal, mortgage, industrial, or other loans to the public,

(iii) Purchasing, selling, discounting, or negotiating, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness,

(iv) Issuing letters of credit and negotiating drafts drawn thereunder,

(v) Providing trust services for the public,

(vi) Financing foreign exchange transactions for the public, or

(vii) Carrying on an insurance company business.

Although the fact that the taxpayer is subjected to the banking and credit laws of a foreign country or possession of the United States shall be taken into account in determining whether he is engaged in the conduct of a banking, financing, or similar business in that country or possession, the character of the business actually carried on during the taxable year therein shall determine whether the taxpayer is conducting a banking, financing, or similar business therein. This paragraph shall be applied without reference to paragraph (b) of this section.

(2) *Relation of asset to the business.* If securities are acquired as an ordinary and necessary incident to the conduct of a banking, financing, or similar business, as defined in subparagraph (1) of this paragraph, interest income from such securities shall be considered to be derived in the conduct of a banking, financing, or similar business for purposes of this section but only so long as the retention of such securities remains an ordinary and necessary incident to the conduct of such business. Thus, the acquisition of a security acquired as a result of, or in order to prevent, a loss in a banking, financing, or similar business upon a loan contracted in the ordinary course of such business shall be considered ordinary and necessary to the conduct of such business, but interest on such security shall be considered derived in the conduct of a banking, financing, or similar business only so long as the holding of such security remains an ordinary and necessary incident to the conduct of such business. The term "securities", as used in this subparagraph, means any note, bond, debenture, or other evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.

(3) *Income from other business activity.* If, in addition to conducting a banking, financing, or similar business, a taxpayer carries on other business activities (for example, the business of selling or manufacturing, goods or merchandise, from which it realizes income, gain, or loss) only the interest derived in the conduct of the banking, financing, or similar business shall be excluded under section 904(f)(2)(B) and paragraph (a)(2)(ii) of this section (see, however, paragraph (a)(2)(i) of this section).

(d) *General rules for carryback and carryover of unused foreign tax applicable to section 904(f) interest*—(1) *Modifications in use of § 1.904–2.* For purposes of applying the provisions of § 1.904–2 in conjunction with this section, and except as otherwise provided in paragraph (e) of this section—

(i) The term "unused foreign tax", when used with respect to section 904(f) interest for any taxable year, means, with respect to a particular foreign country or possession of the United States, the excess of (*a*) the income, war profits, and excess profits taxes paid or accrued in such year to such foreign country or possession with respect to such interest, as determined under subparagraph (2) of this paragraph, over (*b*) the separate limitation for such year with respect to such interest. Any unused foreign tax for such year with respect to income other than section 904(f) interest shall be determined under subdivision (i) or (ii), whichever applies, of § 1.904–2(b)(2) without taking into account any amounts used in applying the preceding provisions of this subdivision.

(ii) The amount of an unused foreign tax for any taxable year with respect to section 904(f) interest, in the case of a particular foreign country or possession of the United States, which shall be deemed paid or accrued in any other taxable year to which such unused foreign tax may be carried under paragraph (b) of § 1.904–2 shall be equal to the smaller of—

(*a*) The portion of such unused foreign tax which, under paragraph (b) of § 1.904–2, is carried to such other taxable year, or

(*b*) Any excess limitation for such other taxable year with respect to such unused foreign tax (as determined under subdivision (iii) of this subparagraph). The amount of an unused foreign tax for any taxable year with respect to income other than section 904(f) interest which is deemed paid or accrued in such other taxable year shall be determined under subparagraph (1) or (2), whichever applies, of § 1.904–2(c) without taking into account any amounts used in applying the preceding provisions of this subdivision.

(iii) The excess limitation for any taxable year (hereinafter called the "excess limitation year") applicable to an unused foreign tax with respect to section 904(f) interest, in the case of a particular foreign country or possession of the United States, for another taxable year (hereinafter called the "year of origin") shall be the amount, if any, by which the limitation for the excess limitation year in the case of that foreign country or possession with respect to section 904(f) interest exceeds the sum of—

(*a*) The income, war profits, and excess profits taxes actually paid or accrued to such foreign country or possession in the excess limitation year with respect to section 904(f) interest, and

(*b*) The portion of the unused foreign tax with respect to section 904(f) interest, in the case of such foreign country or possession for any taxable year earlier than the year of origin, which is absorbed as taxes deemed paid or accrued in the excess limitation year under subdivision (ii) of this subparagraph.

The excess limitation for such excess limitation year with respect to income other than section 904(f) interest shall be determined under subparagraph (1)(ii) or (2)(ii), whichever applies, of § 1.904–2(c) without taking into account any amounts used in applying the preceding provisions of this subdivision.

(iv) Notwithstanding section 904(e)(2) and subparagraphs (1)(iii) and (2)(iii) of § 1.904–2(c), but subject to the limitations of this subparagraph—

(*a*) An unused foreign tax with respect to section 904(f) interest for any taxable year may be deemed paid or accrued in another taxable year for which the overall limitation provided in section 904(a)(2) applies, even though the taxable year from which such tax is carried is a taxable year for which the per-country limitation provided in section 904(a)(1) applies,

(*b*) An unused foreign tax with respect to section 904(f) interest for any taxable year may be deemed paid or accrued in another taxable year for which the per-country limitation provided in section 904(a)(1) applies, even though the taxable year from which such tax is carried is a taxable year for which the overall limitation provided in section 940(a)(2) applies, and

(*c*) An unused foreign tax for any taxable year with respect to income other than section 904(f) interest may be deemed paid or accrued in another taxable year for which the separate limitation with respect to section 904(f) interest applies, if the same limitation applies for both of such taxable years with respect to income other than section 904(f) interest.

(v) In applying this subparagraph—

(*a*) No portion of an unused foreign tax with respect to section 904(f) interest for any taxable year may reduce the excess limitation for any other taxable year with respect to income other than section 904(f) interest,

(*b*) No portion of an unused foreign tax for any taxable year with respect to income other than section 904(f) interest may reduce the excess limitation for any other taxable year with respect to section 904(f) interest, and

(*c*) If an unused foreign tax with respect to section 904(f) interest for any taxable year is not deemed paid or accrued in another taxable year to which such unused foreign tax may be carried under paragraph (b) of § 1.904–2, such other taxable year is to be counted as one of the years to which such unused foreign tax may be carried.

The application of this subdivision may be illustrated by the following example:

Example. Domestic corporation D, a calendar year taxpayer, does not elect the overall limitation for 1963, 1964, and 1965, in each of which years it chooses the benefits of section 901. For 1965 D has an unused foreign tax of $100 with respect to section 904(f) interest. For 1963 D has an excess limitation of $200, but only with respect to income other than section 904(f) interest. Since the unused foreign tax for 1965 consists only of income taxes imposed on section 904(f) interest and an excess limitation does not exist with respect to such taxes for 1963, the unused foreign tax for 1965 shall not be deemed paid or accrued under section 904(d) in 1963.

(2) *Amount of taxes paid with respect to section 904(f) interest*—(i) *In general.* Except as provided in subdivision (ii) of this subparagraph, the amount of taxes paid or accrued with respect to section 904(f) interest for purposes of this section shall include only those foreign income taxes which are actually paid or accrued by a taxpayer to a foreign country or possession of the United States with respect to such interest. Thus, for such purposes, the amount of taxes a taxpayer is deemed to have paid for a taxable year under a section of the Code other than section 904(d) shall not be considered taxes paid with respect to section 904(f) interest.

(ii) *Taxes not specifically allocable to included interest.* If a taxpayer has paid or accrued for a taxable year an amount of foreign income taxes with respect to income which consists only in part of

section 904(f) interest, but such taxes cannot be specifically allocated to the section 904(f) interest, the amount of such taxes which may be taken into account for purposes of subdivision (i) of this subparagraph is that amount which bears the same ratio to the total of such foreign income taxes as the net section 904(f) interest bears to the total net amount of such income. For purposes of such apportionment of net section 904(f) interest and the total net income are to be determined by deducting any credits, expenses, losses, and other deductions which are properly allocable to the gross amount of such income under the law of the foreign country or possession of the United States to which the foreign income taxes have been paid or accrued. If the taxpayer determines that because of the facts and circumstances in a particular case the application of the two proceeding sentences does not result in a proper allocation of the foreign income taxes to the section 904(f) interest, he may make such other reasonable allocation as will, in the opinion of the district director, more clearly reflect the proper allocation of the foreign income taxes to the section 904(f) interest. For purposes of this section, the term "foreign income taxes" means income, war profits, and excess profits taxes, and taxes included in the term "income, war profits, and excess profits taxes" by reason of section 903, imposed by a foreign country or a possession of the United States.

(3) *Illustration.* The application of this paragraph may be illustrated by the following example:

Example. N, a calendar year taxpayer using the cash receipts and disbursements method of accounting, pays foreign income taxes for the first time in 1965. For each of the taxable years set forth below N chooses the benefits of section 901 and elects the overall limitation. N has section 904(f) interest only from foreign countries X and Y for the years involved. Based upon the taxes actually paid to foreign countries X and Y for each of the taxable years with respect to section 904(f) interest, and the foreign income taxes paid with respect to the other income from sources without the United States, the unused foreign tax deemed paid under section 904(d) is as follows:

Taxable years	1965	1966	1967	1968	1969	1970
Separate limitation with respect to sec. 904(f) interest:						
Country X	$50	$130	$70	$90	$50	$60
Country Y	240	190	180	120	160	230
Taxes actually paid with respect to sec. 904(f) interest:						
Country X	50	100	70	90	80	40
Country Y	300	190	180	200	110	160
Overall limitation with respect to other income	150	250	200	300	500	400
Taxes actually paid with respect to other income	150	200	600	250	300	400
Unused foreign tax with respect to—						
Sec. 904(f) interest from:						
Country X					30	
Country Y	60			80		
Other income			400			
Excess limitation with respect to—						
Sec. 904(f) interest from:						
Country X		30				20
Country Y					40	120
Other income		50		50	200	
Unused foreign tax absorbed as taxes deemed paid under sec. 904 (d) with respect to—						
Sec. 904(f) interest from:						
Country X						20
Country Y and carried:						
From 1965					40	20
From 1968						80
Other income		50		50	200	

(e) *Transitional rules for carrybacks and carryovers with respect to pre-1962 years*—(1) *Carrybacks to years before Revenue Act of 1962.* (i) Where, under the provisions of section 904(d), taxes paid or accrued to any foreign country or possession of the United States in any taxable year beginning after October 16, 1962, are deemed paid or accrued in one or more taxable years beginning on or before that date, the amount of the taxes so deemed paid or accrued shall be determined without regard to the provisions of section 904(f) and this section.

(ii) To the extent the taxes paid or accrued to a foreign country or possession of the United States in any taxable year beginning after October 16, 1962 (hereinafter referred to as the "year of origin") are not, after applying subdivision (i) of this subparagraph, deemed paid or accrued in any taxable year beginning on or before that date, such taxes shall, for purposes of applying section 904(d) and this section, be deemed paid or accrued in another taxable year beginning after that date—

(*a*) With respect to section 904(f) interest, in the same ratio as the amount of taxes paid or accrued to such country or possession with respect to such interest for the year of origin (to the extent in excess of the applicable limitation for that year) bears to the total amount of taxes paid or accrued to such country or possession for the year of origin (to the extent in excess of the applicable limitation for that year), and

(*b*) With respect to other income, in the same ratio as the amount of taxes paid or accrued to such country or possession with respect to such other income for the year of origin (to the extent in excess of the applicable limitation for that year) bears to the total amount of taxes paid or accrued to such country or possession for the year of origin (to the extent in excess of the applicable limitation for that year).

(iii) The apportionment provided by subdivision (ii) of this subparagraph shall not apply if, after applying section 904 (d) and (e) and paragraph (d) of § 1.904–2 in respect of any unused foreign tax for a taxable year beginning after October 16, 1962, no taxes are in fact deemed paid or accrued in any taxable year beginning on or before that date to which such unused foreign tax may be carried back. Thus, no taxes are deemed paid or accrued in any taxable year beginning on or before October 16, 1962, and the apportionment provided by subdivision (ii) of this subparagraph shall not apply if—

(*a*) There is no excess limitation for any such taxable year beginning on or before that date;

(*b*) The per-country limitation provided by section 904(a)(1) applies to each such year, and the unused foreign tax is carried back from a taxable year beginning after October 16, 1962, for which the overall limitation provided by section 904(a)(2) applies; or

(*c*) The overall limitation provided by section 904(a)(2) applies to each such year, and the unused foreign tax is carried back from a taxable year beginning after October 16, 1962, for which the per-country limitation provided by section 904(a)(1) applies.

(iv) The application of this subparagraph may be illustrated by the following examples:

Example (1). M, a calendar year taxpayer using the cash receipts and disbursements method of accounting, chooses to claim a credit under section 901 for 1962 through 1965, foreign income taxes being paid for the first time in 1962. Based upon the taxes actually paid to foreign country X, and the use of the pre-country limitation in each of such years, the unused foreign tax deemed paid under section 904(d) is as follows:

Taxable years	1962	1963	1964	1965
Per-country limitation	$100			
Taxes actually paid to country X	90			
Limitation with respect to—				
Sec. 904(f) interest		$50	$50	$50
Other income		80	50	60
Taxes actually paid to country X with respect to—				
Sec. 904(f) interest		20	20	50
Other income		80	90	10
Unused foreign tax with respect to—				
Other income			40	
Excess limitation with respect to—				
Sec. 904(f) interest		30	30	
Other income				50
Total income	10			
Unused foreign tax absorbed as taxes deemed paid under sec. 904(d) with respect to—				
Sec. 904(f) interest				
Other income ($30×$40/$40)				30
Total income	10			

Example (2). The facts are the same as in example (1) except for the changes in the amounts of the limitation and of the taxes actually paid. The unused foreign tax deemed paid under section 904(d) is as follows:

Taxable years	1962	1963	1964	1965
Per-country limitation	$100			
Taxes actually paid to country X	90			
Limitation with respect to—				
Sec. 904(f) interest		$50	$50	$60.00
Other income		80	50	50.00
Taxes actually paid to country X with respect to—				
Sec. 904(f) interest		20	60	25.00
Other income		80	90	10.00
Unused foreign tax with respect to—				
Sec. 904(f) interest			10	
Other income			40	
Excess limitation with respect to—				
Sec. 904(f) interest		30		35.00
Other income				40.00
Total income	10			
Unused foreign tax absorbed as taxes deemed paid under sec. 904(d) with respect to—				
Sec. 904(f) interest:				
($40×$10/$50)		8		
($32×$10/$50)				6.40
Other income ($32×$40/$50)				25.60
Total income	10			

Example (3). A, a calendar year taxpayer using the cash receipts and disbursements method of accounting, chooses to claim a credit under section 901 for each of the taxable years set forth below, foreign income taxes being paid for the first time in 1962. Based upon the taxes actually paid to foreign country X, and the use of the per-country limitation in each of such years, the unused foreign tax deemed paid under section 904(d) is as follows:

Taxable years	1962	1963	1964	1965	1966	1967	1968
Per-country limitation	$350						
Taxes actually paid to country X	250						
Per-country limitation with respect to—							
Sec. 904(f) interest		$100	$200	$150	$300	$225	$250.00
Other income		200	400	195	400	450	430.00
Taxes actually paid to country X with respect to—							
Sec. 904(f) interest		300	200	100	150	200	200.00
Other income		600	250	275	400	400	300.00
Unused foreign tax with respect to—							
Sec. 904(f) interest		200					
Other income		400		80			
Excess limitation with respect to—							
Sec. 904(f) interest				50	150	25	50.00
Other income			150			50	130.00
Total income	100						
Unused foreign tax for 1963 absorbed as taxes deemed paid under sec. 904(d) with respect to—							
Sec. 904(f) interest:							
($350×$200/$600; or limitation, if less)				50			
($300×$200/$600; or limitation, if less)					100		
($300×$200/$600; or limitation, if less)						25	
($125×$200/$600; or limitation, if less)							41.67
Other income:							
($500×$400/$600; or limitation, if less)			150				
($200×$400/$600; or limitation, if less)						50	
($125×$400/$600; or limitation, if less)							83.33
Total income	100						
Unused foreign tax for 1965 absorbed as taxes deemed paid under sec. 904(d) with respect to—							
Sec. 904(f) interest							
Other income ($130—$83.33)							46.67

Example (4). D, a calendar year taxpayer using the cash receipts and disbursements method of accounting, pays foreign income taxes for the first time in 1962. For each of the taxable years set forth below D chooses the benefits of section 901 and elects the overall limitation. D has section 904(f) interest only from foreign country X for the years indicated. Based upon the taxes actually paid to foreign countries X and Y for each of the taxable years with respect to income other than section 904(f) interest, and the taxes paid to country X with respect to section 904(f) interest, the unused foreign tax deemed paid under section 904(d) is as follows:

Taxable years	1962	1963	1964	1965	1966	1967	1968
Separate limitation with respect to sec. 904(f) interest		$100	$200	$150	$300	$233	$250
Taxes actually paid to country X with respect to sec. 904(f) interest		300	200	100	150	200	200
Overall limitation with respect to other income	$350	300	400	195	400	400	430
Taxes actually paid with respect to other income	250	600	250	275	500	400	300
Unused foreign tax with respect to—							
Sec. 904(f) interest		200					
Other income		300		80	100		
Excess limitation with respect to—							
Sec. 904(f) interest				50	150	33	50
Other income			150			90	130
Total income	100						
Unused foreign tax for 1963 absorbed as taxes deemed paid under sec. 904(d) with respect to—							
Sec. 904(f) interest:							
($250×$200/$500; or limitation, if less)				50			
($300×$200/$500; or limitation, if less)					80		
($120×$200/$500; or limitation, if less)						33	
($15×$200/$500; or limitation, if less)							6
Other income:							
($400×$300/$500; or limitation, if less)			150				
($120×$300/$500; or limitation, if less)						72	
($15×$300/$500; or limitation, if less)							9
Total income	100						
Unused foreign tax with respect to other income absorbed as taxes deemed paid under sec. 904(d) and carried from:							
1965						18	62
1966							89

Example (5). N, a calendar year taxpayer using the cash receipts and disbursements method of accounting, pays foreign income taxes for the first time in 1962. N chooses the benefits of section 901 for each of the taxable years set forth below and for 1962 elects the overall limitation, which, with the Commissioner's consent, is revoked for 1966. N has section 904(f) interest only from foreign country X for the years involved. Based upon the taxes actually paid to foreign countries X and Y for each of the taxable years with respect to income other than section 904(f) interest, and the taxes paid to country X with respect to section 904(f) interest, the unused foreign tax deemed paid under section 904(d) is as follows:

Taxable years	Overall				Per-country		
	1962	1963	1964	1965	1966	1967	1968
Separate limitation with respect to sec. 904(f) interest		$100	$200	$150	$300	$233	$250.00
Taxes actually paid to country X with respect to sec. 904(f) interest		300	200	100	150	200	200.00
Limitation with respect to other income:							
Country X					100	200	100.00
Country Y					300	200	330.00
Aggregate	$330	300	400	195			
Taxes actually paid with respect to other income to—							
Country X					100	200	100.00
Country Y					400	200	200.00
Aggregate	250	600	250	275			
Unused foreign tax with respect to—							
Sec. 904(f) interest		200					
Other income from:							
Country X							
Country Y					100		
Aggregate		300		80			
Excess limitation with respect to—							
Sec. 904(f) interest				50	150	33	50.00
Other income from:							
Country X							
Country Y						90	130.00
Aggregate	100		150				

(2) *Carryover to years after Revenue Act of 1962.* (i) Where, under the provisions of section 904(d), taxes paid or accrued to any foreign country or possession of the United States in any taxable year beginning on or before October 16, 1962, are deemed paid or accrued in one or more taxable years beginning after that date, the amount of such taxes which shall be deemed paid or accrued in any taxable year beginning after that date (hereinafter referred to as the "later year") shall be—

(*a*) With respect to section 904(f) interest, an amount which bears the same ratio to the amount of such taxes deemed paid or accrued in the later year as the amount of the foreign income taxes paid or accrued to such country or possession for the later year with respect to section 904(f) interest bears to the total amount of the foreign income taxes paid or accrued to such country or possession for such later year, and

(*b*) With respect to other income, an amount which bears the same ratio to

the amount of such taxes deemed paid or accrued in the later year as the amount of the foreign income taxes paid or accrued to such country or possession for the later year with respect to income other than section 904(f) interest bears to the total amount of the foreign income taxes paid or accrued to such country or possession for such later year.

(ii) The apportionment provided by subdivision (i) of this subparagraph shall not apply to any taxable year beginning after October 16, 1962, if, after applying section 904 (d) and (e) and paragraph (d) of § 1.904–2 in respect of any unused foreign tax for a taxable year beginning on or before that date, no taxes are in fact deemed paid in the taxable year beginning after October 16, 1962, even though there may be an excess limitation with respect to section 904 (f) interest for that year. Thus, no taxes are deemed paid or accrued in the taxable year beginning after October 16, 1962, and the apportionment provided by subdivision (i) of this subparagraph shall not apply if—

(*a*) There is no excess limitation for the taxable year beginning after October 16, 1962;

(*b*) The per-country limitation provided by section 904(a)(1) applies to such taxable year, and the unused foreign tax is carried over from a taxable year beginning on or before October 16, 1962, for which the overall limitation provided by section 904(a)(2) applies; or

(*c*) The overall limitation provided by section 904(a)(2) applies to such taxable year, and the unused foreign tax is carried over from a taxable year beginning on or before October 16, 1962, for which the per-country limitation provided by section 904(a)(1) applies.

(iii) The application of this subparagraph may be illustrated by the following examples:

Example (1). N, a calendar year taxpayer using the cash receipts and disbursements methods of accounting, chooses to claim a credit under section 901 for 1962 through 1965, foreign income taxes being paid for the first time in 1962. Based upon the taxes actually paid to foreign country X, and the use of the per-country limitation in each of such years, the unused foreign tax deemed paid under section 904(d) is as follows:

Taxable years	1962	1963	1964	1965
Per-Country limitation	$100			
Taxes actually paid to country X	350			
Limitation with respect to—				
Sec. 904(f) interest		$140	$40	$300
Other income		30	85	95
Taxes actually paid to country X with respect to—				
Sec. 904(f) interest		20	40	40
Other income		30	20	40
Unused foreign tax with respect to—				
Sec. 904(f) interest				
Other income				
Total income	250			
Excess limitation with respect to—				
Sec. 904(f) interest		120		60
Other income			65	55
Unused foreign tax absorbed as taxes deemed paid under sec. 904(d) with respect to—				
Sec. 904(f) interest:				
($250×$20/$50)		100		
($100×$40/$80)				50
Other income:				
($150×$20/$60)			50	
($100×$40/$80)				50

Example (2). B, a calendar year taxpayer using the cash receipts and disbursements method of accounting, chooses to claim a credit under section 901 for each of the taxable years set forth below, foreign income taxes being paid for the first time in 1961. Based upon the taxes actually paid to foreign country X, and the use of the per-country limitation in each of such years, the unused foreign tax deemed paid under section 904(d) is as follows after taking into account the 5-year limit on the carryover from 1961 and the prohibition provided in subparagraph (1)(iii) of this paragraph against the apportionment of the unused foreign tax for 1963:

Taxable years	1961	1962	1963	1964	1965	1966	1967	1968
Per-country limitation	$200	$350						
Taxes actual paid to country X	900	250						
Limitation with respect to—								
Sec. 904(f) interest			$100	$200	$150	$300.00	$425.00	$250
Other income			200	400	595	400.00	750.00	480
Taxes actually paid to country X with respect to—								
Sec. 904(f) interest			300	200	100	550.00	200.00	200
Other income			600	250	275	500.00	600.00	300
Unused foreign tax with respect to—								
Sec. 904(f) interest			200					
Other income			400		80	100.00		
Total income	700							
Excess limitation with respect to—								
Sec. 904(f) interest					50	150.00	225.00	50
Other income				150			350.00	180
Total income		100						
Unused foreign tax for 1961 absorbed as taxes deemed paid under sec. 904(d) with respect to—								
Sec. 904(f) interest:								
($450×$100/$375; or limitation, if less)					50			
($400×$150/$650; or limitation, if less)						92.31		
Other income:								
($600×$250/$450; or limitation, if less)				150				
Total income		100						
Unused foreign tax for 1963 with respect to sec. 904(f) interest absorbed as taxes deemed paid under sec. 904(d)						57.69	142.31	
Unused foreign tax with respect to other income absorbed as taxes deemed paid under sec. 904(d) and carried from:								
1963							350.00	50
1965								80
1966								50

Example (3). C, a calendar year taxpayer using the cash receipts and disbursements method of accounting, pays foreign income taxes for the first time in 1962 and chooses the benefits of section 901 for each of the taxable years set forth below. For 1962, C uses the per-country limitation and in 1963 elects the overall limitation. C's only section 904(f) interest income for the years indicated is from foreign country X. Based upon the taxes actually paid for each of the taxable years with respect to income other than section 904(f) interest, and the taxes paid to country X with respect to the section 904(f) interest, no unused foreign tax is deemed paid under section 904(d), determined as follows:

Taxable years	1962	1963	1964	1965
Separate limitation with respect to sec. 904(f) interest		$100	$300	$150
Taxes actually paid with respect to sec. 904(f) interest		50	200	100
Limitation with respect to other income:				
Per-country limitation	$100			
Overall limitation		250	280	315
Taxes actually paid with respect to other income	160	200	220	280
Unused foreign tax with respect to—				
Sec. 904(f) interest				
Other income	60			
Excess limitation with respect to—				
Sec. 904(f) interest		50	100	50
Other income		50	60	35
Unused foreign tax absorbed as taxes deemed paid under sec. 904(d) with respect to—				
Sec. 904(f) interest				
Other income				

PAR. 6. Section 1.905–2 is amended by adding thereto the following new paragraph:

§ 1.905–2 Conditions of allowance of credit.

* * * * *

(c) *Special schedule.* Any taxpayer claiming the benefit of paragraph (a)(2)(iv) or (v) of § 1.904–4 must attach to the Form 1118 required by this section a schedule showing in sufficient detail the manner in which the taxpayer satisfies the requirement of owning, directly or indirectly, 10 percent of the voting stock in each corporation from which such taxpayer receives an interest payment, or in which the taxpayer owned 19 percent of the voting stock, and with respect to which such benefit is claimed.

[FR Doc.73-25404 Filed 11-30-73;8:45 am]

SUBCHAPTER H—INTERNAL REVENUE PRACTICE

PART 601—STATEMENT OF PROCEDURAL RULES

Miscellaneous Amendments

This document contains miscellaneous amendments to the Statement of Procedural Rules (26 CFR Part 601) which was last amended on April 12, 1973 (38 FR 9227).

The Statement of Procedural Rules sets forth the procedural rules of the Internal Revenue Service respecting all taxes administered by the Service.

The amendments to the Statement of Procedural Rules contained in this document are adopted by this document. A discussion of the most significant of these amendments follows:

Revised procedures are set forth under § 601.105(b)(5) to indicate the time a taxpayer has to reply to a statement of facts and questions prepared by the district director's office to accompany a request for technical advice. The time within which the Service will schedule a conference with the taxpayer relating to a request for technical advice is indicated. Related changes affecting technical advice procedures are included.

Secton 601.106(a)(1) is amended to clarify the jurisdiction of the Appellate Division and the requirements for Appellate conferences.

A new paragraph (r) is added to § 601.201, which makes changes relating to procedures applicable for trusts described in section 4947(a)(1) of the Internal Revenue Code of 1954 in obtaining determinations of their foundation status under section 509(a)(3) of the Code. Procedures are also furnished for processing requests by section 4947(a)(1) trusts to determine their foundation status.

A new paragraph (s) is added to § 601.201 to explain the Service's position with respect to advance rulings or determination letters.

Revised procedures are set forth in § 601.201(e)(15) for the handling of protests of adverse rulings under section 367 of the Code. Under such revised procedures, the decisions regarding such rulings are made by the Assistant Commissioner (Technical) based upon recommendations made to him by an ad hoc advisory board.

Amendments to the statement of procedural rules. This part as filed with the FEDERAL REGISTER on June 29, 1955, was last amended on April 12, 1973 (38 FR 9227). The following amendments are made to Part 601:

PARAGRAPH 1. Section 601.105(b)(5) is amended by revising subdivisions (iii) (*c*) and (*d*), (iv) (*b*) and (*c*), and (v) (*a*) and (*d*), and by adding a new sentence after the second sentence of subdivision (v)(*b*). These revised provisions read as follows:

§ 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

* * * * *

(b) *Examination of returns.* * * *

(5) *Technical advice from the National Office.* * * *

(iii) *Requesting technical advice.* * * *

(*c*) After receipt of the statement of facts and specific questions from the district office, the taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Audit Division. Every effort should be made to reach agreement as to the facts and specific point at issue. If agreement cannot be reached, the taxpayer may submit, within 10 calendar days after receipt of notice from the district office, a statement of his understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Audit Division.

(*d*) If the taxpayer initiates the action to request advice, and his statement of the facts and point or points at issue are not wholly acceptable to the district officials, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer will be given 10 calendar days after receipt of the written notice to reply to the district official's letter. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Audit Division. If agreement cannot be reached, both the statements of the taxpayer and the district official will be forwarded to the National Office.

* * * * *

(iv) *Appeal by taxpayers of determinations not to seek technical advice.* * * *

(*b*) The taxpayer may appeal the decision of the examining officer or conferee not to request technical advice by submitting to that official, within 10 calendar days after being advised of the decision, a statement of the facts, law, and arguments with respect to the issue, and the reasons why he believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Audit Division.

(*c*) The examining officer or conferee will submit the statement of the taxpayer through channels to the Chief, Audit Division, accompanied by a statement of his reasons why the issue should not be referred to the National Office. The Chief, Audit Division, will determine, on the basis of the statements submitted, whether technical advice will be requested. If he determines that technical advice is not warranted, he will inform the taxpayer in writing that he proposes to deny the request. In the letter to the taxpayer the Chief, Audit Division, will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief, Audit Division, whether he agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Audit Division, not to request technical advice from the National Office. However, if he does not

agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Audit Division, for review. After review in the National Office, the district office will be notified whether the proposed denial is approved or disapproved.

* * * * *

(v) *Conference in the National Office.* (a) If, after a study of the technical advice request, it appears that advice adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer. The conference will be arranged by telephone, if possible, and must be held within 21 calendar days after contact has been made. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief.

(b) * * * In appropriate cases the examining officer may also attend the conference to clarify the facts in the case. * * *

* * * * *

(d) It is the responsibility of the taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but were not previously or adequately presented in writing. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief. Any additional material and a copy thereof should be addressed to and sent to the National Office which will forward the copy to the appropriate district director. The district director will be requested to give the matter his prompt attention. He may verify the additional facts and data and comment upon it to the extent he deems it appropriate.

* * * * *

PAR. 2. Section 601.106(a)(1) is amended by revising the second and fourth sentences to read as follows:

§ 601.106 **Appellate functions.**

(a) *General.* (1) * * *

* * * Unless they otherwise specify, taxpayers living outside the United States use the facilities of the Washington, D.C., branch office of the Appellate Division of the Mid-Atlantic Region * * *

A written protest is required if the total amount of proposed additional tax, proposed over-assessment, or claimed refund exceeds $2,500 for any taxable period; or in an offer-in-compromise, if the tax, penalty, and assessed (but not accrued) interest sought to be compromised exceeds $2,500 for any taxable period. * * *

* * * * *

PAR. 3. Section 601.201 is amended by adding a new sentence after the third sentence in paragraph (b)(1), by adding a new sentence after the last sentence in paragraph (c)(5), by revising paragraphs (e) (11) and (12), by adding paragraphs (e) (13), (14), and (15), by deleting paragraphs (l) (9) and (10), by redesignating paragraph (l)(11) as (l) (9), and by adding paragraphs (r) and (s). These added and revised provisions read as follows:

§ 601.201 **Rulings and determinations letters.**

* * * * *

(b) *Rulings issued by the National Office.*

(1) * * * The National Office issues rulings as to the foundation status of certain organizations under section 509 (a) of the Code only to the extent provided in paragraph (r) of this section. * * *

* * * * *

(c) *Determination letters issued by district directors.* * * *

(5) * * * Selected district directors also issue determination letters as to the qualification of certain organizations for foundation status under section 509(a) of the Code, to the extent provided in paragraph (r) of this section.

* * * * *

(e) *Instructions to taxpayers.*

* * * * *

(11) The Director, Income Tax Division, has primary responsibility for issuing rulings in areas involving the application of Federal income and employment taxes and the interest equalization tax to corporate and noncorporate taxpayers (including individuals, partnerships, estates, and trusts); those involving income tax conventions or treaties with foreign countries; those involving depreciation, depletion, and valuation issues; and those involving the taxable status of exchanges and distributions in connection with corporate reorganizations, organizations, liquidations, etc.

(12) The Director, Miscellaneous and Special Provisions Tax Division, has primary responsibility for issuing rulings with respect to organizations exempt from income tax; matters involving the qualification of pension, annuity, profit-sharing, stock bonus, and bond purchase plans, the tax treatment of employees and their beneficiaries and deductions for employer contributions under such plans; areas involving the application of Federal estate and gift taxes, including estate and gift tax conventions or treaties with foreign countries; certain excise taxes; the procedure and administration provisions of the Internal Revenue Code; and matters requiring actuarial determinations.

(13) A taxpayer or his representative desiring to obtain information as to the status of his case may do so by contacting the followin offices with respect to matters in the areas of their responsibility:

Official:	*Telephone Numbers (Area Code 202)*
Director, Income Tax Division	964-4504 or 964-4505.
Director, Miscellaneous and Special Provisions Tax Division	964-3767 or 964-3788.

(14) When a taxpayer receives a ruling or determination letter prior to the filing of his return with respect to any transaction that has been consummated and that is relevant to the return being filed, he should attach a copy of the ruling or determination letter to the return.

(15) The taxpayer may, within 90 days after receipt of an adverse ruling letter under section 367 of the Code, protest the adverse determination by letter to the Assistant Commissioner (Technical). The Assistant Commissioner (Technical) will establish an ad hoc advisory board to consider each protest. The Assistant Commissioner will not be a member of the board but will be present at any conference granted. Neither the Director, Income Tax Division, the Chief, Reorganization Branch, nor any member of their staffs will be a member of the board. However, the Director, Income Tax Division, and Chief, Reorganization Branch, will be either present or represented by any conference granted. The board will consider all materials submitted in writing by the taxpayer and oral arguments presented at the conference. Whether or not a conference is granted, all protests will be considered by the board, which will make its recommendation to the Assistant Commissioner (Technical) for his decision. The specific procedures to be used by a taxpayer in protesting an adverse ruling letter under section 367 of the Code will be published from time to time in the Internal Revenue Bulletin (see, for example, Rev. Proc. 73-5, I.R.B. 1973-8, 37).

* * * * *

(l) *Effect of rulings.* * * *

(9) In the case of rulings involving completed transactions, other than those described in paragraphs (1) (7) and (8) of this paragraph, taxpayers will not be afforded the protection against retroactive revocation provided in paragraph (1)(5) of this paragraph in the case of proposed transactions since they will not have entered into the transactions in reliance on the rulings.

* * * * *

(r) *Rulings and determination letters with respect to foundation status classification*—(1) through (5) [Reserved]

(6) *Nonexempt charitable trusts claiming nonprivate foundation status under section 509(a)(3) of the Code*—(i) *General.* (a) A trust described in section 4947(a)(1) of the Code is one that is not exempt from tax under section 501(a)

of the Code, has all of its unexpired interests devoted to one or more of the purposes described in section 170(c)(2)(B) of the Code, and is a trust for which a charitable deduction was allowed. These trusts are subject to the private foundation provisions (Part II of subchapter F of chapter 1 and chapter 42 of the Code) except section 508 (a), (b), and (c) of the Code. The procedures to be used by nonexempt charitable trusts to obtain determinations of their foundation status under section 509(a)(3) of the Code will be published from time to time in the Internal Revenue Bulletin (see, for example, Rev. Proc. 72-50, 1972-2 C.B. 830).

(s) *Advance rulings or determination letters*—(1) *General.* It is the practice of the Service to answer written inquiries, when appropriate and in the interest of sound tax administration, as to the tax effects of acts or transactions of individuals and organizations and as to the status of certain organizations for tax purposes prior to the filing of returns or reports as required by the Revenue laws.

(2) *Exceptions.* There are, however, certain areas where, because of the inherently factual nature of the problems involved or for other reasons, the Service will not issue advance rulings or determination letters. Ordinarily, an advance ruling or determination letter is not issued on any matter where the determination requested is primarily one of fact (e.g., market value of property), or on the tax effect of any transaction to be consummated at some indefinite future time or of any transaction or matter having as a major purpose the reduction of Federal taxes. A specific area or a list of these areas is published from time to time in the Internal Revenue Bulletin (see, for example, Rev. Proc. 72-9, 1972-1 C.B. 718). Such list is not all inclusive. Whenever a particular item is added to or deleted from the list, however, appropriate notice thereof will be published in the Internal Revenue Bulletin. The authority and general procedures of the National Office of the Internal Revenue Service and of the offices of the district directors of internal revenue with respect to the issuance of advance rulings and determination letters are outlined in paragraphs (b) and (c) of this section.

[SEAL] DONALD C. ALEXANDER,
Commissioner.

[FR Doc.73-25556 Filed 11-30-73;8:45 am]

Title 47—Telecommunications

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 1—PRACTICES AND PROCEDURE

PART 95—CITIZENS RADIO SERVICE

Class B Stations

In the matter of editorial amendment of parts 1 and 95 of the Commission's rules and regulations to delete reference to Class B stations in the Citizens Radio Service.

1. By its second report and order in Docket 13847, released on February 9, 1968, 34 FR 3114, the Commission terminated the operation of Class B stations in the Citizens Radio Service, effective November 1, 1971.

2. An editorial change is desirable in order to delete obsolete material. The amendments hereby adopted are editorial revisions merely deleting existing rule provisions or references to Class B stations which are no longer necessary. Therefore, prior notice of rulemaking, public procedure, and effective date provisions are unnecessary, pursuant to the Administrative Procedure and Judicial Review provisions of 5 U.S.C. 553.

3. *Accordingly, it is ordered,* That pursuant to sections 4(i), 5(d), and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules and regulations, that effective December 7, 1973, Parts 1 and 95 are amended as set forth below.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

Adopted: November 21, 1973.

Released: November 23, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] STANLEY E. MCKINLEY,
Deputy Executive Director.

Parts 1 and 95 of 47 CFR Ch. I are amended as follows:

1. In §§ 1.912(d), 1.922 (Form 505), 1.926(b)(10), 95.5(a), 95.6(b), 95.13 (a) and (c), 95.15(b), 95.19 (a) and (a)(3), 95.35(b), 95.37(c), the note to 95.83(a)(7), 95.101(a), 95.117(c), 95.119(d), wherever the reference to Class B is made it is deleted and the footnote accompanying § 95.15(b) is deleted.

2. Section 95.41(b) is deleted an designated [Reserved].

3. Section 95.47(b) is deleted and designated [Reserved].

4. Section 95.49(b) is deleted and designated [Reserved].

[FR Doc.73-25545 Filed 11-30-73;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S. O. 1102, Amdt. 3]

PART 1033—CAR SERVICE

Delaware and Hudson Railway Co. and Penn Central Transportation Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of November 1973.

Upon further consideration of Service Order No. 1102, (37 FR 13697, 28634; and 38 FR 17843), and good cause appearing therefor:

It is ordered, That: § 1033.1102 *Service Order No. 1102* (Delaware and Hudson Railway Company and Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., trustees, authorized to assume joint supervisory control over railroad operations of Albany Port District Commission, Albany, New York) be, and it is hereby, amended by substituting the following paragraph (d) for paragraph (d) thereof:

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

Effective date. This amendment shall become effective at 11:59 p.m., November 30, 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.73-25558 Filed 11-30-73;8:45 am]

[S.O. 1106, Amdt. 4]

PART 1033—CAR SERVICE

Baltimore and Ohio Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 23rd day of November 1973.

Upon further consideration of Service Order No. 1106 (37 FR 15307, 38 FR 3332 and 14754), and good cause appearing therefor:

It is ordered, That: § 1033.1106 *Service Order No. 1106* (The Baltimore and Ohio Railroad Company authorized to operate over tracks of Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., trustees) 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., January 31, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., November 30, 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.73-25559 Filed 11-30-73;8:45 am]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Ch. 31

PERIODS OF ELIGIBILITY

On page 28844 of the FEDERAL REGISTER of October 17, 1973, there was published a notice of proposed regulatory development to amend § 21.42 to define and categorize the periods of basic eligibility in more simple and citable terms. Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations.

No written comments have been received and the proposed regulations are hereby adopted without change and are set forth below.

Effective date.—These VA Regulations are effective November 26, 1973.

Approved: November 26, 1973.

By direction of the Administrator.

[SEAL] RICHARD L. ROUDEBUSH, *Assistant Deputy Administrator.*

1. Section 21.42 is revised to read as follows:

§ 21.42 Dates of eligibility.

Basic dates			Extension under § 21.41(a)–(e)			Extension under § 21.41(f)	
(1) Date disability incurred.	(2) Date of discharge.[1]	(3) Basic termination date (Last pay date).	If the basic termination date is less than 4 years away or has already passed, consideration should first be given for the 4-year extension and § 21.41(a) through (e). See Columns (4) and (5).	(4) Beginning and ending date of critical[2] period § 21.41(a) through (e).	(5) Extended termination date under § 21.41(a) through (e) (last pay date).	If veteran does not have sufficient training time for completion of rehabilitation by his basic termination date or by any applicable extension under § 21.41(a) through (e), then extension under § 21.41(f) should be considered. See Column (6).	(6) Extended termination date under § 21.41(f). Seriously Disabled.
(a) 9-16-40 to 7-25-47.	After 9-15-40.	9 years after discharge date.		4 years and 9 months to 5 years after discharge date.	13 years after discharge date.[3]		6-30-75 or 10 years after termination date whichever is later.[5]
(b) 7-26-47 to 6-26-50.	Before 10-15-62.	10-14-71.		7-14-67 to 10-14-67.	10-14-75.		
	After 10-14-62.	9 years after discharge date.		4 years and 9 months to 5 years after discharge date.	13 years after discharge date.[3]		
(c) 6-27-50 to 1-31-55.	After 6-26-50.	9 years after discharge date.[4]		4 years and 9 months to 5 years after discharge date.	13 years after discharge date.[3]		
(d) After 1-31-55.	Before 10-15-62.	10-14-71.		7-14-67 to 10-14-67.	10-14-75.		
	After 10-14-62.	9 years after discharge date.		4 years and 9 months to 5 years after discharge date.	13 years after discharge date.		

[1] Date of discharge refers to the first unconditional discharge or release following the period of service in which the disability occurred.

[2] Critical period is the 90-day period immediately preceding the date falling exactly 4 years prior to the veteran's basic termination date. It is a 90-day period which permits the veteran time to complete counseling and select an objective which can be reached within the 4-year period immediately following.

[3] When extended termination date under § 21.41(a) through (e) for these service dates has expired, further extension may only be granted if the veteran qualifies under § 21.41(f).

[4] In no case was basic termination date (last pay date) earlier than 8-19-63 or extended termination date earlier than 8-19-67.

[5] Applicable termination date is 9 years after discharge or 13 years if training was extended under § 21.41(a) through (e).

2. In § 21.43, paragraph (b) is amended to read as follows:

§ 21.43 Severance of service connection—reduction to noncompensable degree.

* * * * *

(b) *Reduction while in training.* If the proposed rating action is taken while the veteran is in training and results in a reduction to a noncompensable rating of his disability, the veteran may be retained in training until the attainment of his objective, except if "discontinued" under § 21.283 he may not reenter. See also § 21.252.

* * * * *

[FR Doc.73-25540 Filed 11-30-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 166—EXEMPTION OF FEDERAL AND STATE AGENCIES FOR USE OF PESTICIDES UNDER EMERGENCY CONDITIONS

On April 17, 1973, notice was published in the FEDERAL REGISTER (38 FR 9519) proposing regulations for the exemption of Federal or State Agencies for the use of pesticides under emergency conditions pursuant to the provisions of Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (86 Stat. 995) (hereinafter referred to as the "Act"). See the preamble of the proposed rulemaking for a description of the purposes of the regulations.

Written comments on the proposed rulemaking were invited and received from interested parties. A number of verbal comments were also received. All written comments are on file with the Agency. Certain of these comments have been adopted or substantially satisfied by editorial changes, deletions from or additions to the regulations. These changes are described below.

Section 166.1 *General.* A commenter has suggested that the term "emergency"

be defined. While the Agency does not believe that under Section 18 we should limit by definition the right of any Federal or State agency to apply for an exemption, we agree that guidance should be given on the criteria the Agency intends to use in determining that an emergency condition exists. Accordingly, language has been added setting forth such criteria. The Agency will also give consideration to any additional facts requiring the use of Section 18 as are presented by the applicant.

Section 166.2(a) *Specific exemption.* (1) Several commenters raised questions regarding the use of the words "predictable or unpredictable" in the first sentence of this section as proposed. The words "predictable or unpredictable" were used to emphasize that the Agency does not intend to limit the right of any Federal or State agency to apply for an exemption. However, since these words have raised questions and are unnecessary to the intended meaning, we have stricken the words "predictable or unpredictable" from the first sentence of § 166.2(b).

(2) A commenter suggested that the regulations list possible restrictions which may be prescribed by the Administrator in granting an exemption. A sentence has been added to this Section listing types of restrictions which may be prescribed.

Section 166.2(b) *Quarantine—Public Health Exemption.* (1) Several commenters suggested that the definition of "foreign pest" be clarified. The comments fall into two categories: (a) That the definition include those pests which, while not previously known to occur within the United States, have become "recently established" in the United States and (b) that the definition include pests not known to occur in a particular State.

This type of exemption was provided to cover Federal and State programs where immediate pesticide treatments may be required to prevent the introduction of pests at ports of entry or against new pest outbreaks which may occur in the United States (See Cong. Rec., October 12, 1972, H 9797). It is recognized that new pests—pests not known to occur within the United States—may breach the first line of defense, i.e. ports of entry, and be detected at some other point within the country. Here, as at ports of entry, it is of importance that immediate action be taken to prevent such pests from becoming established within the United States. It is not the intention of this Agency to limit the ability of a Federal or State agency to react to this situation. However, it is also believed that this exemption should be limited to new pests; it should not be expanded to cover pests which are known to be established within the United States. In such cases, where control agencies are dealing with previously established pests, there should either be a pesticide registered for use against such a pest or the situation is one which may be covered under a specific exemption. The definition of "foreign pest" has been changed to make clear that it includes a pest not previously known to be established within the United States but which has become newly established, or threatens to become established, within the United States.

(2) A requirement of this section is that, where a pesticide has been used under this exemption and recurrence of the pest can be reasonably expected, the Federal or State agency shall take prompt action to comply with the registration requirements of the Act for the particular use. A sentence has been added to make clear that if such request for registration is refused, the pesticide shall not be further used for the particular use under the exemption.

(3) A provision has been added that no pesticide may be used under this exemption if the registration of such pesticide has been suspended. Such change is consistent with a similar requirement in § 166.2(c). The Agency believes that where a pesticide has been suspended, any further use of such pesticide should be made only upon a determination by the Administrator on a case-by-case basis.

(4) USDA informed the Agency that its programs to prevent the introduction or spread of a foreign pest into or throughout the United States are not carried out under statutes technically imposing quarantines, but are conducted under broad authorities delegated to the Secretary under other statutes. USDA has raised the question of whether the language used to define this exemption may be construed to exclude its activities under such statutes. It is our intention in this exemption to cover any Federal or State program concerned with preventing the introduction or spread of a foreign pest into or throughout the United States, irrespective of the term which may be applied to such programs under the Federal or State statute. Accordingly, the first sentence of § 166.2(b) has been changed to make clear this intent.

Section 166.2(c) *Crisis exemption.* (1) Several commenters suggested that the crisis exemption be eliminated. This suggestion has not been adopted.

The crisis exemption is a narrowly drawn exemption. The exemption is created to cover, principally, the types of emergencies which occur as a result of catastrophes such as floods and hurricanes. It is anticipated that practically all emergencies will be handled under the provisions of these regulations for specific or quarantine—public health exemptions. However, it is recognized that there may be situations where there is an unpredictable outbreak of a pest and where time will not allow the requesting of a specific or quarantine—public health exemption. Crisis exemptions are granted to cover these situations upon a determination by the responsible official of the Federal or State agency that (a) there is no readily available pesticide registered for the particular use to eradicate or control the pest and (b) that the time element with respect to the application of the pesticide is so critical that there was no time to request a specific or quarantine—public health exemption and where the other requirements of § 166.8 are met.

(2) Several commenters suggested that cancelled pesticides, as well as suspended pesticides, be prohibited from use under this exemption. We have adopted this suggestion. It is the view of this Agency that where a product has been the subject of a final cancellation order by the Administrator, it should not be used in a manner contrary to such order under this exemption.

In reaching this decision, we have given careful consideration to comments from USDA and some of the States as to the need to use cancelled pesticides in certain emergency situations. However, we believe that where a use of a pesticide has been prohibited by a cancellation order of the Administrator, such use should not be allowed under Section 18 except upon prior approval of the Administrator. In short, it is our view that this is a matter which should be handled under the specific exemption provisions of these regulations rather than the crisis exemption provisions.

We are mindful, also, of the time factors involved in these situations. We wish to assure other Federal and State agencies that procedures have been and are being established to handle these emergency applications within a practical time frame.

Section 166.3 *Application for specific exemption.* (1) A commenter suggested that a provision be added requiring the applicant to furnish a statement of economic losses and benefits resulting from the granting or denying of the application and under certain alternatives. The Agency believes that this is a reasonable and necessary requirement and such a provision has been added.

(2) Several commenters suggested that, under § 166.3(a)(3), the applicant state what efforts have been made to determine "whether a pesticide registered for a particular use, or other method of eradicating or controlling the pest, is available to meet the emergency." We believe it is reasonable to request that an agency inform us of the basis for its determination under this section and have added appropriate language. Similar language has been added with respect to like determinations made under the quarantine—public health exemption (§ 166.4(a)(2)) and the crisis exemption (§ 166.8(b)).

(3) Several commenters suggested that a provision be added to § 166.3(a)(5) requiring the agency to give a description of the area or place of application of the pesticide. Such a provision has been added to § 166.3(a)(5).

Section 166.4 *Application for quarantine—public health exemption.* A provision has been adding requiring the applicant to submit an Environmental Impact Statement with the application for an exemption, if an Environmental Impact

Statement has been prepared and is relevant to such application. Such change makes this provision consistent in this respect with the requirements under § 166.3(a)(7).

Section 166.5 *Procedures under specific exemption.* (1) The language has been changed to make clear that the monitoring activities which are to be initiated are such monitoring activities as may have been specified by the Administrator in granting the exemption.

(2) A commenter suggested that a provision be added requiring an applicant for a specific exemption, whether or not the exemption was granted or denied, to submit a summary report on the action taken and on the outcome. A provision has been added requiring the submission of such a summary report in cases where the specific exemption is granted. We believe that this Agency has a responsibility to follow up where exemptions are denied and intend to do so through our Regional Offices in situations where an exemption which would involve the use of a significant amount of pesticide is not granted.

Section 166.8 *Crisis exemptions—procedures to be followed.* (1) This section has been changed to provide that whenever a Federal or State agency has determined that it will initiate the application or use of a pesticide pursuant to a crisis exemption, it shall, within thirty-six (36) hours of such determination, give notice to the Administrator by telegram. The proposed regulation would have required such notice within thirty-six (36) hours of the initiation of the application or use of the pesticide. This change will give notice to the Administrator at the earliest possible time that an agency intends to avail itself of a crisis exemption.

(2) Several commenters felt that the ten-day period allowed insufficient time for an agency to make a report and to file an application for a specific exemption if treatment was expected to continue for more than fifteen days. Other commenters asked clarification of the provision relating to the continuance of the treatment for more than fifteen days. They stated that there will be instances where treatment must continue beyond fifteen days to be effective.

The time schedules of this provision have been carefully reexamined in the light of the comments received. It is not believed that the ten-day reporting requirement, or the requirement for application for a specific exemption, are such that it should cause an undue burden on any agency availing itself of this exemption. Therefore, we have made no changes in such time schedules.

The purpose in requiring an application for a specific exemption to be filed within ten days, where treatment is expected to continue beyond fifteen days, is to give the Administrator the opportunity to determine whether, and the extent to which, the treatment should be allowed to continue. This will be done under the specific exemption provisions. It was not the intention to automatically cut off these emergency treatments at the end of fifteen days. In order to clarify this matter, the last sentence of this section has been changed to provide that a Federal or State agency which has initiated treatment pursuant to the crisis exemption and has complied with the provisions of §§ 166.2(c) and 166.8, may, if a responsible official of the agency determines that there is a need for a continuation of such treatment beyond fifteen (15) days, continue such treatment until such time as the application for a specific exemption is denied or the Administrator otherwise notifies such agency that the treatment should be discontinued.

Section 166.10 *Publication.* A commenter suggested that provision be made for notice of, and opportunity for comment on, applications for exemptions. The proposed regulation limited publication in the Federal Register to the granting of any exemption and any notification that a Federal or State agency has availed itself of a crisis exemption. We believe that the time factor in most cases will be such that to require FEDERAL REGISTER publication in all instances could well frustrate the purposes of Section 18 of the statute. As stated above, applications for exemptions will be handled on an expedited basis. However, it is recognized that there may be instances where an application for an exemption raises questions of such importance that public notice and opportunity for comment should be given. This is a matter which should be left to the discretion of the Administrator. To accomplish this, a sentence has been added to Sec. 166.10 providing that the Administrator, in his discretion, may publish notice of an application for an exemption in the FEDERAL REGISTER prior to the granting or denying of the exemption, with opportunity for comment by interested persons.

Section 166.11 *Exemption from penalties.* A section has been added which will exempt from the penalty provisions of the statute a person who ships, delivers or sells an unregistered pesticide to a Federal or State agency for use under an exemption. This section provides that, in the case of an application for an exemption for the use of a pesticide which has been suspended or finally cancelled, the applicant shall state its source of the pesticide and the Administrator will, if the exemption is granted, exempt the supplier of the pesticide from the penalty provisions of the Act. In granting such exemption, the Administrator will also specify the labeling which will be required for such pesticide.

Effective date. These regulations shall become effective on December 10, 1973: *Provided, however,* That with respect to ongoing Federal or State quarantine or public health programs, said regulations shall become effective on March 1, 1974, in order that agencies administering such programs may be afforded sufficient time to achieve compliance.

Dated: November 16, 1973.

CHARLES L. ELKINS,
Acting Assistant Administrator for Hazardous Materials Control.

A new Part 166, Chapter I, Title 40 of the Code of Federal Regulations is established, to read as follows:

Sec.

AUTHORITY: Sec. 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (86 Stat. 997).

§ 166.1 General.

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (86 Stat. 995), the Administrator may exempt from the requirements of the Act a Federal or State agency if he determines that emergency conditions exist which may require such an exemption. An emergency will be deemed to exist when: (a) A pest outbreak has or is about to occur and no pesticide registered for the particular use, or alternative method of control, is available to eradicate or control the pest, (b) significant economic or health problems will occur without the use of the pesticide, and (c) the time available from discovery or prediction of the pest outbreak is insufficient for a pesticide to be registered for the particular use. In determining whether an emergency condition exists, the Administrator will also give consideration to such additional facts requiring the use of section 18 as are presented by the applicant. Set forth herein are the procedures that Federal or State agencies must follow in requesting such an exemption.

§ 166.2 Types of exemptions.

Consideration will be given to three types of exemptions.

(a) *Specific exemption.* Specific exemptions may be issued by the Administrator in a situation involving the outbreak of a pest in the United States. Such exemptions, if granted, are valid only for the specific situation involved and are subject to such restrictions as the Administrator may prescribe in granting the exemption. Such restrictions may include, among others, limitation on the quantity of the pesticide to be used, the conditions under which the pesticide may be applied, restrictions as to the persons who may apply the pesticide and the type of monitoring activities which should be conducted. Specific exemptions, if granted, are valid only for the time therein specified but under

no circumstances shall be longer than one (1) year.

(b) *Quarantine—public health exemption.* Quarantine or public health exemptions may be issued by the Administrator to cover Federal or State programs concerned with preventing the introduction or spread of a foreign pest into or throughout the United States. A foreign pest is a pest not known to occur within the United States, or a pest not previously known to be established within the United States but which has become newly established, or threatens to become established, within the United States. Such exemptions, if granted, are valid only for the time therein specified but under no circumstances shall be longer than one (1) year. The Administrator may, in his discretion, renew such exemption annually upon reapplication. Where pesticide is used under this exemption and recurrence of the pest can be reasonably expected, the Federal or State agency shall take prompt action to comply with the registration requirements of the Act for the particular use. If such request for registration is refused, such pesticide shall not be further used for the particular use under the exemption. No pesticide may be used under a quarantine—public health exemption if the registration of such pesticide has been suspended by the Administrator.

(c) *Crisis exemption.* Crisis exemptions are hereby granted to any Federal or State agency in situations involving the unpredictable outbreak of pests in the United States, where the responsible official in authority determines (1) that there is no readily available pesticide registered for the particular use to eradicate or control the pest and (2) that the time element with respect to the application of the pesticide is so critical that there was no time to request a specific exemption and where the other requirements of § 166.8 are met. Crisis exemptions are not available where the Administrator has specifically withdrawn the right to a crisis exemption: For the use of a pesticide or by an agency. No pesticide which has been suspended or finally cancelled may be used under a crisis exemption for any use prohibited under the suspension or final cancellation order for the product.

§ 166.3 Application for specific exemption.

(a) Each specific exemption must be requested in writing, by the head of the Federal agency or the Governor of the State involved, or other official designee, addressed to the Administrator, setting forth the following information:

(1) The nature, scope and frequency of the emergency.

(2) A description of the pest known to occur, the places or times it may be likely to occur, and the estimated time when treatment must be commenced to be effective.

(3) Whether a pesticide registered for the particular use, or other method of eradicating or controlling the pest, is available to meet the emergency, and the basis for such determination.

(4) A listing of the pesticide or pesticides the agency proposes to use in the event of an outbreak.

(5) Description of the nature of the program for eradication or control. Such description should include:

(i) Quantity of the pesticide expected to be applied;

(ii) Area or place of application;

(iii) Method of application;

(iv) Duration of application;

(v) Qualifications of personnel involved in such application.

(6) Statement of economic benefits and losses anticipated with and without the exemption and under reasonable alternatives.

(7) Analysis of possible adverse effects on man and the environment. If an Environmental Impact Statement has been prepared by an agency, in accordance with that agency's regulations implementing the National Environmental Policy Act of 1969, and is relevant to the above, it shall be submitted with the application.

§ 166.4 Application for quarantine—public health exemption.

(a) Quarantine—public health exemptions must be requested in writing, by the head of the Federal agency or the Governor of the State involved, or their official designee, setting forth the following information:

(1) The scope of the quarantine or public health programs concerned and the statutory authorities therefor.

(2) Whether a pesticide registered for the particular use, or other method of eradicating or controlling the pest, is available to implement the quarantine or public health program, and the basis for such determination.

(3) A listing of the pesticide or pesticides the agency proposes to use for such quarantine or public health program.

(4) A description of the nature of the quarantine or public health program for such eradication or control. Such description should include:

(i) Method of application;

(ii) Area or place of application (if possible);

(iii) Duration of application;

(iv) Qualifications of personnel involved in such application.

(5) Statement with respect to possible adverse effects on man and the environment. If an Environmental Impact Statement has been prepared by an agency, in accordance with that agency's regulations implementing the National Environmental Policy Act of 1969, and is relevant to the above, it shall be submitted with the application.

§ 166.5 Procedure to be followed upon approval of a specific exemption.

The Federal or State agency using or applying a pesticide pursuant to a specific exemption shall thereafter:

(a) Immediately inform the Administrator in writing of the time and place of application of such pesticide.

(b) Record the location, quantity, and extent of use of the pesticide involved and furnish such information to the Administrator within ten (10) days of the termination of said application or use.

(c) Initiate such monitoring activities as may have been specified by the Administrator in granting the exemption, to determine if such application or use caused any adverse effects on man or the environment, with results thereof being reported to the Agency as requested by the Administrator in granting the exemption.

(d) Within one year of the granting of the exemption, provide the Administrator with a summary report on what action was taken to meet the emergency and on the outcome of such action.

§ 166.6 Procedure to be followed after application of a pesticide pursuant to a quarantine—public health exemption.

The Federal or State agency using or applying pesticides pursuant to a quarantine—public health exemption shall thereafter:

(a) Maintain records of all such treatments which shall be available to the Administrator. Such records shall include:

(1) Location where treatment was applied;

(2) Pesticide used;

(3) Rate of application; and

(4) Quantity used.

(b) One month after the expiration date of a quarantine—public health exemption, any agency which has availed itself of such exemption, shall file with the Administrator and the Hearing Clerk of the Agency a report listing the number of treatments, the pesticides used for each type of treatment, and the steps taken to comply with the registration requirements of the Act. Copies of such reports filed with the Hearing Clerk shall be open to the public.

§ 166.7 Withdrawal of a specific or quarantine—public health exemption.

If the Administrator determines that an exempted agency is not complying with any of the requirements set forth in this part or if such action is necessary to protect man or the environment, the exemption shall be immediately withdrawn.

§ 166.8 Crisis exemptions—procedures to be followed.

(a) Whenever a Federal or State agency has determined that it will avail itself of a crisis exemption (except as prohibited by a withdrawal of the priviledge by the Administrator as provided by § 166.9) the head of the Federal agency or the Governor of the State or their designees shall, within thirty-six (36) hours of the determination, notify the Administrator by telegram of such determination. Within ten (10) days of the application or use of the pesticide, the head of the Federal agency or the Governor of the State or their designees shall file in writing with the Administrator the following certified information:

(1) The nature and scope of the emergency, including the pest involved:

(2) That no pesticide registered for the particular use to eradicate or control the pest was readily available, and the basis for such determination;

(3) That the time element was so critical that there was no time to request either a specific or quarantine or public health exemption;

(4) The location, quantity, method of application, duration of application and the qualifications of the personnel involved in such application;

(5) Description of steps being taken to reduce possible adverse effects on man and the environment; and

(6) Any other information requested by the Administrator thereafter.

(b) If treatment pursuant to the crisis exemption is expected to continue for more than a total of fifteen (15) days, such report shall be accompanied by an application for a specific exemption.

(c) A Federal or State agency which has initiated treatment pursuant to the crisis exemption and has complied with the provisions of §§ 166.2(c) and 166.8, may, if a responsible official of the agency determines that there is a need for a continuation of such treatment beyond fifteen (15) days, continue such treatment until such time as the application for a specific exemption is denied or the Administrator otherwise notifies such agency that the treatment should be discontinued.

§ 166.9 Withdrawal of the crisis exemption.

At any time that the Administrator determines that an exempted agency is not complying with any of the requirements set forth in this Part or if such action is necessary to protect man or the environment, he may (a) withdraw the crisis exemption for the use of any specific pesticide or (b) withdraw from the exempted agency the right to resort to a crisis exemption for any pesticide in the future, in whole or in part.

§ 166.10 Publication.

At any time any exemption is granted by the Administrator, or when the Administrator is notified that a Federal or State agency has availed itself of a crisis exemption and filed the information required by § 166.8, he shall give prompt notice in the FEDERAL REGISTER. The Administrator, in his discretion, may publish notice of an application for an exemption in the FEDERAL REGISTER prior to the granting or denying of the exemption, with opportunity for comment by interested persons.

§ 166.11 Exemption from penalty provisions.

In the case of an application for an exemption for the use of a pesticide which has been suspended or finally cancelled, the applicant shall state its source of the pesticide and the Administrator will, if the exemption is granted, exempt the supplier of the pesticide from the penalty provisions of the Act. In granting such exemption, the Administrator will also specify the labeling which will be required for such pesticide.

[FR Doc.73-25446 Filed 11-30-73;8:45 am]

Proposed Rules

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Parts 317, 381]

MEAT PRODUCTS AND POULTRY PRODUCTS

Net Weight Labeling

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that pursuant to the authority contained in the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.), and in the Poultry Products Inspection Act, as amended (21 U.S.C. 451 et seq.), the Animal and Plant Health Inspection Service proposes to amend Part 317 of the Federal meat inspection regulations (9 CFR Part 317) and the poultry products inspection regulations (9 CFR Part 381) to provide uniform labeling requirements and prescribe uniform procedures for determining compliance with label statements of net contents of containers of meat products or poultry products at the originating federally inspected establishments as well as at destination.

Statement of considerations: Prior to enactment of the Wholesome Meat Act in 1967 and the Wholesome Poultry Products Act in 1968, USDA had very limited responsibility for taking action against misbranded and adulterated meat products and poultry products after they left an official establishment.

These Acts, however, extended the Department's authority over federally inspected products after they leave the official establishments.

Weights and Measures officials of most States and municipalities are generally authorized to take action against food products in their States or municipalities which fail to meet the labeled statement of net contents. Their authority, however, is limited when federally inspected meat products or poultry products are involved. The States are precluded from imposing additional or different requirements than those made under the Federal Meat Inspection Act, as amended, or the Poultry Products Inspection Act, as amended, with respect to marking or labeling of the quantity of contents of containers of federally inspected products.

The Department had been aware that its meat and poultry inspection regulations concerning net content procedures needed revision and clarification. Actions against product by various States and municipalities, and industry complaints of lack of uniformity of interpretation, have focused our attention on this matter. Accordingly, Department personnel have been working with the National Bureau of Standards, and the Food and Drug Administration, as well as agencies within the Department, in an effort to find an acceptable solution.

In the recent case of The Rath Packing Company v. M. H. Becker, et al., the U.S. District Court for the Central District of California, held that the State of California and its political subdivisions are precluded by the Federal Meat Inspection Act (section 408, 21 U.S.C. 678) from imposing "different" State net weight labeling requirements on federally inspected meat products, and that provisions of the Act regarding mislabeling or misbranding are applicable to such products at an official plant and at any level of distribution including the retail store. However, the court held that § 317.2(h)(2) of the Federal meat inspection regulations (9 CFR 317.2(h)(2)) concerning net weight labeling is void for vagueness; and that no "reasonable variations" with respect to net weight labeling had been promulgated by the Secretary under the Act (see section 1(n)(5), 21 U.S.C. 601(n)(5)).

It is necessary, therefore, that an amendment to the present regulations be adopted as quickly as possible in order to correct the noted deficiencies in the regulations. However, inter-agency work toward a uniform net weight procedure covering all agricultural commodities will continue, and any provisions adopted in this rulemaking proceeding would be amended, if necessary and appropriate, to conform to any uniform procedure ultimately promulgated.

The proposal would prescribe variations of products from net weight label statements which would be considered reasonable when determined by the procedures prescribed in this proposal. The States and local governmental agencies would have concurrent jurisdiction pursuant to section 408 of the Federal Meat Inspection Act and section 23 of the Poultry Products Inspection Act to enforce these provisions.

The undefined phrase "reasonable variations caused by gain or loss of moisture" would be removed from the regulations. It would be the sole responsibility of the official establishment to so package and market its products that the correct quantity of contents is maintained throughout their distribution.

Heretofore, the inspector checked several finished lots per week for compliance at official establishments. This proposal would require official establishments to have an acceptable plant quality control procedure for all lots of product to be sold to household consumers in packages with labels bearing net weight statements placed on the packages at the producing establishment. In keeping with the establishment's responsibility under the Acts, samples of all lots of such product would be examined for compliance by the establishment employees. The inspector would monitor the system for effectiveness, including making lot inspections of the products and determining whether they comply with the regulations on the basis of the procedures prescribed in the proposal.

The proposed lot inspection procedures are designed to determine compliance of specific lots of product both at the official establishments and other distribution points. The lot would be considered as meeting the label weight if the average net weight of the sample units representing the lot meets the label weight at the official establishment and complies with a sample allowance table at other distribution points, and in each case there are no unreasonable shortages in individual sample units. To attain a high degree of confidence that his products will be in compliance at all distribution levels, a packer must average more product per container than the labeled weight. The exact overage would vary among products, container sizes, and packers, and depend to a large extent upon the packer's ability to limit the net weight variability. Application of these procedures outside the producing establishment, e.g. at the retail level, would give assurance that the consumer making continued purchases of a particular product would receive on the average more than the labeled net weight even though an occasional package may be slightly low.

Immediate containers of bulk shipments of unlabeled product intended for further processing or packaging or for retail sale at which time a net weight statement is applied, and shipping containers holding small random weight packages for sale at retail intact, whose net weights would be applied at the retail outlet, would not need to be covered by an approved plant quality control program. If the label on such immediate or shipping container bears a statement of net weight, the official establishment would be responsible for assuring that the net weight statement is accurate at all points as determined by the procedure outlined in the proposal.

One of the most difficult of all products to control with respect to weight during the course of distribution has been ice packed poultry. Many factors

affect the total weight of a shipping container (e.g. type of container, length of time since packed, and condition of poultry at time of slaughter). Since the consumer pays by weight applied at the retail market, labeling of immediate containers for bulk shipments of ice packed poultry by count at official establishments would serve as an accurate statement of their contents without creating an adverse effect on consumer protection. This type of labeling would be limited to poultry or poultry products within specified weight ranges.

Many of the same factors affect unlabeled meat product shipped in labeled immediate containers in bulk for further processing or packaging, or for sale at retail at which time a net weight statement is applied. Therefore, under the proposal such immediate containers could also be labeled by count. This type of labeling would be limited to meat products within specified weight ranges.

The method of determining the tare weight at retail would be defined, and the products to which a wet or dry tare is applicable would be identified.

It is proposed to amend Part 317 of the meat inspection regulations as set forth below.

1. Section 317.2(h) would be amended by: Revising subparagraphs (1) and (2); Revising the first sentence in subparagraph (4); Adding one sentence to the end of subparagraph (5); Revising subdivision (ii) of subparagraph (9); Revising subparagraph (11); Revising subparagraph (13); Adding a new subparagraph (14), to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(h)(1)(i) The label shall bear a statement of the quantity of contents in terms of net weight or measure as provided in paragraph (h)(4) of this section. However, immediate containers of bulk shipments of unlabeled product intended for further preparation or packaging, or for retail sale at which time a net weight statement is applied, may be marked with the number of units of product in lieu of the net weight of the total contents of such containers: *Provided*, That the maximum weight range of the units in any such container is not greater than 2 pounds and the weight range of the units within each container is also marked on each container. Further, random weight packages for sale at retail intact need not bear a statement of the net weight: *Provided*, That such packages are "small packages" within the meaning of section 1(n)(5) of the Act; *And Provided*, That the shipping container bears a statement "Net weight to be marked on packages prior to display and sale"; *And provided further*, That the total net weight of the contents of the shipping container is marked on such container; *And provided further*, That the shipping container bears a statement "Tare weight of consumer package" and in close proximity thereto, the actual tare weight (weight of packaging material), weighed to the nearest one-eighth ounce or less, of the individual consumer package in the shipping container. The above-specified statements may be added to Program-approved shipping container labels upon approval by the inspector in charge.

(ii) The statement of net quantity of contents shall appear, except as otherwise permitted under this paragraph (h), on the principal display panel of all containers to be sold at retail intact, in conspicuous and easily legible boldface print or type, in distinct contrast to other matter on the container, and shall be declared in accordance with the provisions of this paragraph (h).

(2) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container, exclusive of wrappers and packaging substances; *Provided however*, That variations from the net weight stated on the label, as defined in § 317.18, are hereby found to be reasonable and are allowable.

* * * * *

(4) Except as provided in § 317.7 or in paragraph (h)(1) of this section, the statement shall be expressed in terms of net avoirdupois weight or liquid measure. * * *

(5) * * *. Paragraph (h)(9) of this section permits certain exceptions from the provisions of this subparagraph (5) for small random weight packages, and paragraph (h)(12) of this section permits certain exceptions from the provisions of this subparagraph (5) for multi-unit packages.

* * * * *

(9) * * *

(ii) Labels for the random weight packages exempt from the requirement for a net weight statement under paragraph (h)(1) of this section shall also be exempt from the type size, dual declaration and placement requirements of this paragraph (h).

* * * * *

(11) For the purpose of this section, a random weight package is one which is one of a lot, shipment, or delivery of packages of the same product with varying weights and which does not resemble a package having an expected standard net weight.

* * * * *

(13) Shingle-packed sliced bacon cartons containing product weighing other than 8 ounces, 1 pound, or 2 pounds shall have the statement of the net weight shown with the same prominence as the most conspicuous feature on the label and printed in a color of ink contrasting sharply with the background.

* * * * *

(14) To provide maximum assurance that product in immediate containers bearing net weight statements conforms with the statement of net weight on the labels of the product, the operator of the official establishment packaging the product shall install a quality control system which must receive prior approval of the Administrator. As a minimum, the application for approval of the system shall include a written description of the sampling procedures including the number of sample units to be drawn at any one time, the frequency of sampling, the minimum number of sample units upon which determination of compliance would be based, and limits for individual sample units, sample groups, and averages of all sample units representing a production run which it exceeded would result in retention of product. The limits for individual sample units may not exceed those defined in Table II of § 317.18 and the average of all sample units must equal at least the labeled net weight of the immediate container. The methods of establishing tare weights must be described if they are used. Testing procedures employed to check the accuracy of filling equipment and scales shall be described, and Shewhart control charts or other systematic records must be maintained of all determinations and corrective actions, and must be made available to the Program employee. Acceptance is based on the ability of the system to provide the controls and information necessary to give a high degree of assurance that the product will meet the labeling claims of net weight when determined by the procedures prescribed in § 317.18 of this subchapter; that variations within packages will remain within the limits prescribed in § 317.18; and that product found out of compliance will be held for proper disposition in accordance with the regulations in this subchapter; and that the system will permit proper monitoring for effectiveness by plant personnel and Program inspectors.

Approval of a system under this subparagraph (14) does not relieve the operator of the official establishment from complying with the requirements of § 317.18 of this subchapter. However, such a system is not required with respect to immediate containers of bulk shipments of unlabeled products intended for further preparation or packaging or for retail sale at which time a net weight statement is applied and shipping containers holding small random weight packages for sale at retail intact, whose weights would be applied at the retail outlet. If the label on such immediate or shipping container bears a statement of net weight, the official establishment shall be responsible for assuring that the net weight statement as determined by the procedure prescribed in § 317.18 is accurate at all points. The inspector shall monitor the plant's system for proper application and effectiveness to determine whether it is resulting in labeling which meets the requirements of this paragraph and § 317.18, including conducting such samplings and weighings of products as are necessary to enable him to determine that the products prepared at the official establishment are not misbranded. Plant systems which do not result in the labeling of products in accordance with this paragraph must be

revised to conform to Program standards.

2. A new § 317.18 would be added to read as follows:

§ 317.18 Quantity of contents labeling; reasonable variations when determined by prescribed procedures.

(a) The Act requires that labels on immediate containers of products show an accurate statement of the quantity of contents in terms of weight, measure or numerical count, subject to reasonable variations, small package exemptions established by regulations under the Act.

(b) (1) This paragraph prescribes variations of products from net weight label statements, which are found reasonable when determined by the prescribed procedures, including defined sampling plans. Variations determined by such procedures are to be used at the official establishment; by the inspector for monitoring all products at the producing establishment; and for all products outside the official establishment.

(2) The following procedures shall be used:

(i) Select the group to which the product belongs as defined in Table I.

TABLE I

	Group definitions for immediate containers of—	
	Homogeneous products that are fluid when filled	All other products
Group 1	Less than 3 oz	Less than 3 oz.
Group 2	3 to 16 oz	
Group 3	Over 16 oz	3 to 7 oz.
Group 4		Over 7 to 48 oz.
Group 5		Over 48 to 160 oz.
Group 6		Over 160 oz.

(ii) Randomly select 10 immediate containers from any lot[1] containing 250 packages or less of product in Group 1, 2, 3, 4 or 5, or from any size lot of product in Group 6. Select 30 packages from lots (other than Group 6) containing more than 250 packages. These randomly selected packages constitute the sample for the purposes of this section.

(iii) Determine the net weight of each package in the sample. The net weight of all products packed without packing media, of products packed in nutritive packing media, and of products which lose juices during the course of normal marketing procedures shall be the gross weight of the immediate container and its contents minus the tare weight. The tare weight shall be determined at the official establishment packaging the product by averaging the weight of a representative number of dry containers, provided that if a wet product is packed in a container which absorbs moisture, the tare weight shall be determined by averaging the weight of a representative number of containers and packaging materials after immersing them in water and allowing them to absorb liquid. The tare weight so determined may be printed on the immediate container or shipping carton as provided for in § 317.2(h). When the net weight is determined at other than the producing establishment, the tare weight of packages having an expected standard net weight, e.g. 1 pound, shall be determined by opening and emptying three containers, wiping the surfaces of all packaging material to remove clinging pieces of product and moisture, weighing the cleaned packaging material, and dividing the total weight of the two heaviest containers by two. At any location, the net weight of products which are packed in random weight packages shall be the gross weight of the individual immediate container minus the tare weight printed on the immediate container, if any; otherwise, it shall be the gross weight of each immediate container minus the packaging material cleaned as described in this subparagraph. At any location, the net weight of all products packed with media such as brine, water, ice, agar, etc., which are essentially nonnutritive, shall be the weight of the product after removing the product from the container, removing loose ice which may be present, and draining the product for 2 minutes on a No. 8 standard mesh screen 8 inches in diameter for product of less than 3 pounds, and on a No. 8 standard mesh screen 12 inches in diameter for product which weighs 3 pounds or more.

(iv) Calculate the average net weight by totaling all net weights in the sample and dividing by the number of packages in the sample.

(v) With respect to product at the producing establishment, if the sample average is less than the labeled net weight, reject the lot represented by the sample.

(vi) With respect to product at the producing establishment, if the sample average equals at least the labeled net weight, compare the largest minus variation of any package with the limits defined in Table II of this paragraph, and if the variation is less than that in the table, accept the lot represented by the sample; and if the variation is greater than that in the table, reject the lot.

(viii) With respect to product at a location other than the producing establishment, if the sample average is less than the labeled net weight minus the sample allowance prescribed in Table III of this paragraph, reject the lot represented by the sample.

(viii) Wth respect to product at a location other than the producing establishment, if the sample average equals at least the labeled net weight minus the sample allowance prescribed in Table III of this paragraph, compare the largest minus variation of any package with the limits defined in Table II of this paragraph, and if the variation is less than that in the table, accept the lot represented by the sample; and if the variation is greater than that in the table, reject the lot.

TABLE II—LIMITS FOR IMMEDIATE CONTAINERS FOR GROUPS 1 THROUGH 6[1]

Group 1	Group 2	Group 3	Group 4	Group 5	Group 6
10 percent of label weight.	4.15 gm	8.31 gm	20.77 gm	41.53 gm	(2)
	0.15 oz	0.29 oz	0.73 oz	1.47 oz	(2)
	4½2 oz	9½2 oz	23½2 oz	1 1½2 oz	(2)
	2⅛ oz	4⅛ oz	1 1⅛ oz	2⅞ oz	(2)
	1/10 oz	2/10 oz	5/10 oz	1 4/10 oz	(2)
	⅛ oz	¼ oz	⅝ oz	1¼ oz	(2)
	(3)	¼ oz	⅝ oz	1¼ oz	(2)
	0.01 lbs	0.02 lbs	0.04 lbs	0.09 lbs	(2)

[1] Use the limits recorded in terms of calibrations of the scale being used. E.g.—If the scale is in 16ths, use limits in 16ths; if in grams, use gram limits. Do not convert.
[2] The limit for Group 6 shall be 5 percent of the labeled net weight with a maximum allowance of 3 pounds.
[3] The limit is the labeled net weight when the sensitivity of the scales being used does not permit calibrations as precise as those recorded above.

TABLE III.—SAMPLE ALLOWANCE FOR NET WEIGHT AVERAGES (AT OTHER THAN PRODUCTION POINT)

For sample size of—		In Group
10	30	
2 percent of label weight.	1 percent of label weight.	1
0.03 oz	0.02 oz	2
0.05 oz	0.03 oz	3
0.13 oz	0.07 oz	4
0.26 oz	0.15 oz	5
2 percent of label weight		6

(c) Product failing to meet the provisions of this section shall be retained at official establishments, and is subject to detention elsewhere, for disposition in accordance with § 318.2 or 329.1 of this subchapter.

Further, the poultry products inspection regulations in Part 381 would be amended as set forth below.

3. Section 381.121 would be amended by: Revising paragraph (a); Revising subparagraph (5) of paragraph (c); Revising subparagraph (6) of paragraph (c); Adding a new subparagraph (9) to paragraph (c); and Adding a new paragraph (d) to read as follows:

§ 381.121 Quantity of contents.

(a) The label shall bear a statement of the quantity of contents in terms of net weight or measure as provided in paragraph (a)(5) of this section. However, immediate containers of bulk shipments of unlabeled poultry product intended for further processing or packaging, or for retail sale at which time a net weight statement is applied, may be marked with the number of units of poultry product in lieu of the net weight of the total contents of such containers: *Provided*, That the maximum weight

[1] A "lot" for purposes of this section shall be one type and style of product, produced by one establishment and bearing identical labels and available for inspection at one place at one time.

range of the units in any such container is not greater than 2 pounds for whole turkeys nor greater than 1 pound for any other poultry product and the weight range of the units within each container is also marked on each container. Further, random weight packages for sale at retail intact need not bear a statement of the net weight: *Provided*, That such packages are "small packages" within the meaning of section 4(h)(5) of the Act; *And provided*, That the shipping container bears a statement "Net weight to be marked on packages prior to display and sale"; *And provided further*, That the total net weight of the contents of the shipping container is marked on such container; *And provided further*, That the shipping container bears a statement "Tare weight of consumer package" and in close proximity thereto, the actual tare weight (weight of packaging material), weighted to the nearest one-eighth ounce or less, of the individual consumer package in the shipping container. The above-specified statements may be added to Inspection Service approved shipping container labels upon approval by the inspector in charge.

* * * * *

(c) * * *

(5) The terms "net weight" or "net wt." shall be used when stating the net quantity of contents in terms of weight and the terms "net contents" or "contents" when stating the net quantity of contents in terms of fluid measure. Except as provided in § 381.128 or in paragraph (a) of this section, the statement shall be expressed in terms of net avoirdupois weight or liquid measure. Where no general consumer usage to the contrary exists, the statement shall be in terms of liquid measure, if the product is liquid, or in terms of weight if the product is solid, semisolid, viscous or a mixture of solid and liquid. On packages containing less than 1 pound or 1 pint, the statement shall be expressed in ounces or fractions of a pint, respectively. On packages containing 1 pound or 1 pint or more, and less than 4 pounds or 1 gallon, the statement shall be expressed as a dual declaration both in ounces and (immediately thereafter in parenthesis) in pounds, with any remainder in terms of ounces or common or decimal fraction of the pound, or in the case of liquid measure, in the largest whole units with any remainder in terms of fluid ounces or common or decimal fraction of the pint or quart. For example, a declaration of three-fourths pound avoirdupois weight shall be expressed as "Net Wt. 12 oz."; a declaration of 1½ pounds avoirdupois weight shall be expressed as "Net Wt. 24 oz. (1 lb. 8 oz.)," "Net Wt. 24 oz. (1½ lb.)," or "Net Wt. 24 oz. (1.5 lbs.)." However, on random weight packages the statement shall be expressed in terms of pounds and decimal fractions of the pound carried out to not more than two decimal places, for packages over 1 pound and for packages which do not exceed 1 pound the statement may be in decimal fractions of the pound in lieu of ounces. Paragraph (c)(8) of this section permits certain exceptions from the provisions of this subparagraph (5) for multiunit packages, and paragraph (c)(9) of this section permits certain exceptions from the provisions of this subparagraph (5) for small random weight packages.

(6) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container, exclusive of wrappers and packaging substances; *Provided however*, That variations from the net weight stated on the label, as defined in paragraph (d) of this section are hereby found to be reasonable and are allowable. The statement shall not include any term qualifying a unit of weight, measure or count such as "jumbo quart," "full gallon," "giant quart," "when packed," "minimum" or words of similar import, except as provided in paragraph (b) of this section.

(9) The following exemptions from the requirements contained in this paragraph (c) are hereby established:

(i) Individually wrapped and labeled packages of less than ½-ounce net weight which are in a shipping container, need not bear a statement of net quantity of contents as specified in this paragraph (c) when the statement of net quantity of contents on the shipping container meets the requirements of this paragraph (c);

(ii) Labels for the random weight packages exempt from the requirement for a net weight statement under paragraph (a) of this section shall also be exempt from the type size, dual declaration and placement requirements of this paragraph (c). For the purpose of this section, a random weight package is one which is one of a lot, shipment, or delivery of packages of the same product with varying weights and with no fixed weight pattern.

(d) To provide maximum assurance that poultry product in immediate containers bearing net weight statements conforms with the statement of net weight on the labels of the product, the operator of the official establishment packaging the product shall install a quality control system which must receive prior approval of the Administrator. As a minimum, the application for approval of the system shall include a written description of the sampling procedures including the number of samples drawn at any one time, the frequency of sampling, the minimum number of samples upon which determination of compliance would be based, and limits for individual sample units, sample groups, and averages of all samples representing a production run which if exceeded would result in retention of product. The limits for individual sample units may not exceed those defined in Table II of § 381.121a and the average of all sample units must equal at least the labeled net weight of the immediate container. The method of establishing tare weights must be described if they are used. Testing procedures employed to check the accuracy of filling equipment and scales shall be described, and Shewhart control charts or other systematic records must be maintained of all determinations and corrective actions, and must be made available to the Inspection Service employee. Acceptance is based on the ability of the system to provide the controls and information necessary to give a high degree of assurance that the product will meet the labeling claims of net weight when determined by the procedures prescribed in § 381.121a; that reasonable variations within packages will remain within the limits prescribed in § 381.121a; and that product found out of compliance will be held for proper disposition in accordance with the regulations in this Part; and that the system will permit proper monitoring for effectiveness by plant personnel and Inspection Service inspectors.

Approval of a system under this paragraph (d) does not relieve the operator of the official establishment from complying with the requirements of § 381.121a. However, such a system is not required with respect to immediate containers of bulk shipments of unlabeled products intended for further processing or packaging or for retail sale at which time a net weight statement is applied, and shipping containers holding small random weight packages for sale at retail intact, whose weights would be applied at the retail outlet. If the label on such immediate or shipping container bears a statement of net weight, the official estblishment shall be responsible for assuring that the net weight statement as determined by the procedure prescribed in § 381.121a is accurate at all points. The inspector shall monitor the plant's system for proper application and effectiveness to determine whether it is resulting in labeling which meets the requirements of this paragraph and § 381.121(a), including conducting such samplings and weighings of poultry products as are necessary to enable him to determine that the poultry products prepared at the official establishment are not misbranded. Plant systems which do not result in the labeling of poultry products in accordance with this paragraph must be revised to conform to Inspection Service standards.

4. A new § 381.121a would be added to read as follows:

§ 381.121a Quantity of contents labeling; reasonable variations when determined by prescribed procedures.

(a) The Act requires that labels on immediate containers of products show an accurate statement of the quantity of the product in terms of weight, measure or numerical count, subject to reasonable variations and exemptions as to small packages or articles not in packages or other containers established by regulations under the Act.

(b)(1) This paragraph prescribes variations of products from net weight label statements, which are found reasonable

when determined by the prescribed compliance procedures, including defined sampling plans. Variations determined by such procedures are to be used at the official establishment for all products other than those covered by the plant quality control system prescribed under § 381.121(d); by the inspector for monitoring all products at the producing establishment; and for all products outside the official establishment.

(2) The following procedures shall be used:

(i) Select the group to which the product belongs as defined in Table I.

TABLE I

	Group definitions for immediate containers of—	
	Homogeneous products that are fluid when filled	All other products
Group 1	Less than 3 oz.	Less than 3 oz.
Group 2	3 to 16 oz.	
Group 3	Over 16 oz.	3 to 7 oz.
Group 4		Over 7 to 48 oz.
Group 5		Over 48 to 160 oz.
Group 6		Over 160 oz.

(ii) Randomly select 10 immediate containers from any lot[1] containing 250 packages or less of poultry product in Group 1, 2, 3, 4 or 5, or from any size lot of product in Group 6. Select 30 packages from lots (other than Group 6) containing more than 250 packages. These randomly selected packages constitute the sample for the purposes of this section.

(iii) Determine the net weight of each package in the sample. The net weight of all poultry products packed without packing media, of products packed in nutritive packing media, and of poultry products which lose juices during the course of normal marketing procedures shall be the gross weight of the immediate container and its contents minus the tare weight. The tare weight shall be determined at the official establishment packaging the product by averaging the weight of a representative number of dry containers, provided that if a wet product is packed in a container which absorbs moisture, the tare weight shall be determined by averaging the weight of a representative number of containers and packaging materials after immersing them in water and allowing them to absorb liquid. The tare weight so determined may be printed on the immediate container or shipping carton as provided for in § 381.121. When the net weight is determined at other than the producing establishment, the tare weight of packages having an expected standard net weight, e.g. 1 pound, shall be determined by opening and emptying three containers, wiping the surfaces of all packaging material to remove clinging pieces of product and moisture, weighing the cleaned packaging material, and dividing the total weight of the two heaviest containers by two. The net weight of products which are packed in random weight packages shall be the gross weight of the individual immediate container minus the tare weight printed on the immediate container, if any; otherwise, it shall be the gross weight of each immediate container minus the packaging material cleaned as described in this subparagraph. The net weight of all products packed with media such as brine, water, ice, agar, etc., which are essentially nonnutritive, shall be the weight of the product after removing the product from the container, removing loose ice which may be present, and draining the product for 2 minutes on a No. 8 standard mesh screen 8 inches in diameter for product of less than 3 pounds, and on a No. 8 standard mesh screen 12 inches in diameter for product which weighs 3 pounds or more.

(iv) Calculate the average net weight by totaling all net weights in the sample and dividing by the number of packages in the sample.

(v) With respect to product at the producing establishment, if the sample average is less than the labeled net weight, reject the lot represented by the sample.

(vi) With respect to product at the producing establishment, if the sample average equals at least the labeled net weight, compare the largest minus variation of any package with the limits defined in Table II of this paragraph, and if the variation is less than that in the table, accept the lot represented by the sample; and if the variation is greater than that in the table, reject the lot.

(vii) With respect to product at a location other than the producing establishment, if the sample average is less than the labeled net weight minus the sample allowance prescribed in Table III of this paragraph, reject the lot represented by the sample.

(viii) With respect to product at a location other than the producing establishment, if the sample average equals at least the labeled net weight minus the sample allowance prescribed in Table III of this paragraph, compare the largest minus variation of any package with the limits defined in Table II of this paragraph, and if the variation is less than that in the table, accept the lot represented by the sample; and if the variation is greater than that in the table, reject the lot.

TABLE II—LIMITS FOR IMMEDIATE CONTAINERS FOR GROUPS 1 THROUGH 6 [1]

Group 1	Group 2	Group 3	Group 4	Group 5	Group 6
10 percent of label weight.	4.15 gm	8.31 gm	20.77 gm	41.53 gm	(2)
	0.15 oz	0.29 oz	0.73 oz	1.47 oz	(2)
	1/32 oz	9/32 oz	23/32 oz	1 1/32 oz	(2)
	3/16 oz	5/16 oz	1 1/16 oz	1 7/16 oz	(2)
	1/16 oz	2/16 oz	3/16 oz	1 5/16 oz	(2)
	1/8 oz	2/8 oz	3/8 oz	1 3/8 oz	(2)
	(3)	1/4 oz	3/4 oz	1 1/4 oz	(2)
	0.01 lbs	0.02 lbs	0.04 lbs	0.09 lbs	(2)

[1] Use the limits recorded in terms of calibrations of the scale being used. E.g.—If the scale is in 16ths, use limits in 16ths; if in grams, use gram limits. Do not convert.
[2] The limit for Group 6 shall be 5 percent of the labeled net weight with a maximum allowance of 3 pounds.
[3] The limit is the labeled net weight when the sensitivity of the scales being used does not permit calibrations as precise as those recorded above.

TABLE III.—SAMPLE ALLOWANCE FOR NET WEIGHT AVERAGES (AT OTHER THAN PRODUCTION POINT)

For sample size of—		In group
10	30	
2 percent of label weight.	1 percent of label weight.	1
0.03 oz	0.02 oz	2
0.05 oz	0.03 oz	3
0.13 oz	0.07 oz	4
0.26 oz	0.15 oz	5
2 percent of label weight		6

(c) Product failing to meet the provisions of this section shall be retained at official establishments and is subject to detention elsewhere, for disposition in accordance with §§ 381.145 or 381.210.

Any person wishing to submit written data, views, or arguments concerning the proposed amendments may do so by filing them in duplicate with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by April 5, 1974.

Any person desiring opportunity for oral presentation of views should address such requests to the Systems Development and Sanitation Staff, Scientific and Technical Services, Meat and Poultry Inspection Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, so that arrangements may be made for such views to be presented prior to the date specified in the preceding paragraph. A record will be made of all views orally presented.

All written submissions and records of oral views made pursuant to this notice will be made available for public inspection in the Office of the Hearing Clerk during regular hours of business, unless the person makes the submission to the Staff identified in the preceding paragraph and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect such person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in support of the request, the material will be held confidential; otherwise, notice will be given of denial of such request and an opportunity

[1] A "lot" for purposes of this section shall be one type and style of product, produced by one establishment and bearing identical labels and available for inspection at one place at one time.

afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential (7 CFR 1.27(c)).

Comments on the proposal should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

Done at Washington, D.C., on November 26, 1973.

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

[FR Doc.73-25356 Filed 11-30-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 1000]

CONTROL OF ELECTRONIC PRODUCT RADIATION

Assembly and Reassembly of Diagnostic X-ray Systems

On February 28, 1973, the Commissioner of Food and Drugs published notices of proposed rulemaking in the FEDERAL REGISTER (38 FR 5349) to amend Part 278, Subpart B—Definitions, Interpretations, and Statements of General Policy by adding two new sections, §§ 278.102 and 278.103 (21 CFR 278.102 and 278.103). These proposals expressed the Food and Drug Administration's policies with respect to the assembly and remanufacturing (rebuilding and reassembly) of diagnostic x-ray equipment.

Interested persons were given 60 days, after the date of publication in the FEDERAL REGISTER, to file written comments regarding these proposals. The Conference of Radiation Control Program Directors requested that State and local radiation control agencies be given the opportunity to comment on the proposals until May 18, 1973. This request was informally granted since additional time was needed by these agencies to assess the full impact of the proposals upon their programs.

Based upon the comments received following publication of these proposals, the Commissioner has determined that it is necessary to revise the policies originally proposed in §§ 278.102 and 278.103, and to publish the revised policies as a new proposed rule. This new proposal combines the topics, addressed separately in §§ 278.102 and 278.103, into a single revised § 278.102 (§ 1000.16 pursuant to the recodification of Part 278—Regulations for the Administration and Enforcement of the Radiation Control for Health and Safety Act of 1968, as a new Subchapter J—Radiological Health, published in the FEDERAL REGISTER of October 15, 1973 (38 FR 28623)).

The proposed § 278.102 *Policy on assembly of diagnostic x-ray equipment* as published in the FEDERAL REGISTER on February 28, 1973, was intended to specify the applicability of § 278.213 *Diagnostic x-ray systems and their major components* (now §§ 1020.30, 1020.31, and 1020.32) in situations in which a major component, as listed in § 278.213–1(a)(1) (now § 1020.30(a)(1)), is manufactured prior to the effective date of §§ 1020.30, 1020.31, and 1020.32, but assembled into a diagnostic x-ray system after that date. The proposed § 278.102 would have required that components which are sold to a purchaser and assembled into a diagnostic x-ray system after the effective date of the standard be only those which have been certified by the component manufacturer in accordance with § 1020.30(c). This section also addressed the assembly of components into x-ray systems containing components, all of which have been certified by the component manufacturer(s) pursuant to § 1020.30(c) and would not permit the assembler to file a report of noncompatibility, as defined in § 1020.30(d)(2), for such acts of assembly.

The proposed § 278.103 *Applicability of performance standards for diagnostic x-ray systems to rebuilt or reassembled x-ray equipment*, as published in the FEDERAL REGISTER on February 28, 1973, addressed the applicability of §§ 1020.30, 1020.31, and 1020.32 to diagnostic x-ray equipment originally assembled prior to the effective date of those sections, but subsequently rebuilt or reassembled after that date. Section 278.103 would have considered the rebuilding, refurbishing, or reassembly of x-ray equipment, except for the reassembly of a system in a new location without an associated change of ownership, to be manufacturing within the meaning of the Radiation Control for Health and Safety Act, and would have required that such equipment be rebuilt, refurbished or reassembled so that it complies with §§ 1020.30, 1020.31, and 1020.32.

It was intended that the effective date of the final order on proposed §§ 278.102 and 278.103, would be August 15, 1973, to coincide with the effective date of the performance standard for diagnostic x-ray systems and their major components (§§ 1020.30, 1020.31, and 1020.32). However, on June 12, 1973, the Commissioner of Food and Drugs published an order in the FEDERAL REGISTER (38 FR 15444) extending the effective date of §§ 1020.30, 1020.31, and 1020.32 to August 1, 1974. This order also stated that any final rule on proposed §§ 278.102 and 278.103 would not become effective prior to the effective date of §§ 1020.30, 1020.31, and 1020.32.

Comments on proposed § 278.102. Fifteen letters commenting on the proposed § 278.102 were received. Eleven were from manufacturers of diagnostic x-ray equipment or their associations and four from State and local radiation control agencies. Manufacturers opposed the proposed rule on the grounds that it would not allow the installation of uncertified components sold to a purchaser after the effective date of the standard. They stated that they had assumed that components produced prior to the effective date could be sold and installed for an indefinite period of time and as a result had not taken action to deplete their inventories. These manufacturers asserted that they anticipated financial losses from inventories of uncertified equipment, since such equipment could not be sold prior to the effective date or modified to meet the standard, except at great expense. They stated that these losses would lead to an increase in the cost of their products to the medical community. Some manufacturers objected that if the proposed rule was adopted, the applicability of the standard would be determined by the date on which the dealer sold the x-ray unit. Several manufacturers requested clarification of the date of sale referred to in paragraphs (a) and (b) of the proposed § 278.102, stating that this could be interpreted either as the date an order is placed by the purchaser, or the date the purchaser takes possession of the equipment.

While objecting to the policy as proposed, three manufacturers specifically stated that they felt that some limit should be placed on the period of time allowed for the sale of uncertified components after the effective date of the standard. Eight manufacturers suggested a delay in the implementation of the policy for periods varying from six months to one year after August 15, 1973, in order to allow the sale of present inventories. Of the four State and local radiation control agencies submitting comments, two agencies expressed disagreement with the proposed policy for similar reasons to those stated by manufacturers and two suggested modifications for the purpose of clarification. No comments were received regarding the compatibility requirement of § 278.102(c).

Comments on proposed § 278.103. A total of 169 letters commenting on proposed § 278.103 were received. These were from physicians, State or local physicians' organizations, State or local radiation control agencies, manufacturers of diagnostic x-ray equipment, professional associations and others. The following points summarize the major comments submitted:

1. A total of 108 letters, received from physicians and physicians' organizations, stated almost unanimous opposition to the proposed rule. They asserted that it is not possible or economically feasible to upgrade current equipment to meet the standard, and that therefore, uncertified equipment requiring rebuilding or reassembly after the effective date of the standard would have to be discarded, resulting in the total loss of trade-in value. These letters frequently stated a belief that the loss of trade-in value of used equipment would lead to an increase in the cost of x-ray diagnostic services to the consumer. A number of comments indicated a concern that the proposed policy would seriously reduce the availability of used x-ray equipment for use in low workload facilities, which cannot afford new equipment, such as those located in rural areas, and that this would result in a serious impairment of medical care in such areas.

2. Thirty-six representatives of State and local radiation control agencies expressed similar objections. They were also concerned that the proposal would discourage owners of x-ray equipment from adding improvements to their units since such action might be considered "rebuilding" and necessitate upgrading the entire unit to meet all the requirements of the standard. Some agencies stated that the proposal might discourage purchasers from buying new, certified equipment since their old units would have little trade-in value. They expressed concern that if they required an owner of an x-ray unit to comply with a State or local regulation, this might be considered "rebuilding" and place the owner in a position such that the entire unit would have to be upgraded to meet the Federal standard. Two radiation control agencies supported the proposed rule.

3. A number of manufacturers of x-ray equipment asserted that the design and production of certified replacement components for past models would require the investment of manpower and resources which are currently unavailable due to the fact that they are being devoted to designing and producing new equipment to meet the standard. Some manufacturers also requested that the terms "rebuild" and "refurbish" be rigorously defined.

4. Twenty-one comments expressed the opinion that some requirements upon remanufactured equipment should be adopted. A number suggested alternative mechanisms to control the continued sale and use of antiquated equipment, such as establishing a date of obsolescence or a separate set of requirements for used equipment less stringent than those of the standard.

The Commissioner of Food and Drugs after an analysis of comments and supporting evidence has concluded that:

1. The Administration's policies with respect to the assembly of x-ray components must assure the purchaser of certified x-ray equipment that the performance is in accordance with the specifications of the standard, and that such equipment will not be downgraded as a result of the installation of uncertified components. Therefore, the installation of uncertified components into a diagnostic x-ray system containing one or more certified components should be prohibited after the effective date of the standard.

2. Proposed § 278.103 could cause the removal from service of some useful equipment of relatively recent manufacture, which would normally be resold and reassembled, since it may not be possible or economically feasible to upgrade many of these units to meet the Federal standard. This could lead to a reduction in the availability of x-ray diagnostic services in areas unable to afford the purchase of new equipment. Also, certified replacement components may not be available for current x-ray units for some time after the effective date of the standard. Therefore, the public interest would be best served by the adoption of a policy which would provide a more gradual mechanism for the upgrading of used equipment.

3. In their comments regarding proposed § 278.103, representatives of the medical profession stated that x-ray equipment has a normal useful lifetime of 5 to 7 years in high workload facilities, such as those located in metropolitan area hospitals, and that the sale of x-ray units from the facilities constitutes a major source of used x-ray equipment for use in rural areas and private practice. Therefore, in order to assure the continued availability of equipment to such areas, a period of five years after the effective date of the standard should be allowed in which uncertified components may be assembled or reassembled into systems containing no certified components. However, after this five year period, all components assembled or reassembled into a diagnostic x-ray system should be certified. It is anticipated that within 5 years most equipment in use in high workload facilities will be certified, and therefore an adequate supply of used certified equipment will be available. Manufacturers will aso have had adequate time to produce certified replacement components for uncertified systems which remain in use.

4. During this five year period the public health will be protected since the Food and Drug Administration has the authority under Part 278 (21 CFR 278), Subpart F—Notification of Defects in, and Repair or Replacement of, Electronic Products (now Part 1003—Notification of Defects or Failure to Comply, and Part 1004—Repurchase, Repairs, or Replacement of Electronic Products) to require the repair, replacement or refunding of the cost of x-ray equipment manufactured after October 18, 1968, which fails to meet the manufacturer's radiation safety design specifications, emits radiation which creates a risk of injury, or fails to accomplish the intended purpose of the product. In addition, x-ray units presently in use must meet State and local radiation safety requirements.

The Commissioner has determined that since this policy represents a substantial change from the originally proposed §§ 278.102 and 278.103, a new notice of proposed rulemaking should be published. It is proposed to make this policy effective 10 days after publication of a final order in the FEDERAL REGISTER. The acts of assembly and remanufacturing may be generally considered as acts of assembly for purposes of administration and enforcement of the standards. Therefore, the topics addressed in proposed §§ 278.102 and 278.103 have been combined in the now proposed § 1000.16. Section 1000.16 would apply to both the assembly of components listed in § 1020.30(a)(1), which have not been previously sold to a purchaser, and to the reassembly of used components when the act of reassembly is associated with a change of ownership.

Section 1000.16(a) would require that any x-ray component(s) listed in § 1020.30(a)(1), assembled after August 1, 1974, and prior to August 1, 1979, into a system which will contain one or more certified components upon completion of the assembly, be themselves certified. This requirement would prevent both the installation of complete systems containing a combination of certified and uncertified components, and the installation of uncertified components into existing systems which contain one or more certified components. It is necessary to prohibit these practices since they would have a serious adverse effect upon those advantages offered by certified x-ray products to the consumer and the public. The performance of many components is dependent upon other components within the system. Therefore, the radiation protection features of some certified components could be impaired if such acts of assembly were permitted. Also, the purchaser of a system containing a mixture of certified and uncertified components would find it difficult to determine liability if the system did not meet the performance requirements of the standard. Section 100.16(a) would also promote the gradual upgrading of existing units by requiring that once a certified component is installed into an x-ray system, future components installed must also be certified.

Section 1000.16(b) would prohibit the assembly of components listed in § 1020.30(a)(1), which have not been certified pursuant to § 1020.30(c), into any diagnostic x-ray system after August 1, 1979. Therefore, an assembler would be prohibited from installing new or used uncertified components into a new or existing system after that date.

Section 1000.16(c) would consider units, which are sold to a new owner and reassembled in a different location, to be remanufactured. Therefore, components which are reassembled into such systems after August 1, 1979, must be certified. The requirements of paragraphs (b) and (c) would assure that all new x-ray equipment installed after August 1, 1979, meets the requirements of the standard. It would also establish a mechanism through which existing uncertified systems would eventually be upgraded to meet these requirements.

Section 1000.16(d), retained from the original proposal, would require that an assembler, who installs components listed in § 1020.30(a)(1) into a diagnostic x-ray system consisting of components all of which are certified, assemble only components of the type called for by the standard in accordance with the manufacturer's instructions and file a report as specified in § 1020.30(d)(1). Only certified components could be installed into diagnostic x-ray systems after August 1, 1979. Therefore, under § 1000.16(b) and (c) assemblers would be required to file a report pursuant to § 1020.30 (d)(1) or (d)(2) for all acts of assembly or reassembly associated with the sale of components to a purchaser completed after that date.

The Commissioner of Food and Drugs published in the FEDERAL REGISTER on July 31, 1973 (38 FR 20356), guidelines for manufacturers and assemblers of x-ray components listed in § 1020.30(a)(1) concerning early certification of these components and their assembly into diagnostic x-ray systems. As set forth in this guideline, certification by a manufacturer prior to August 1, 1974, will advance the effective date of the performance standard for that certified component or system from August 1, 1974, to the date of certification. However, the provisions of the final order for § 1000.16 would not become effective until after August 1, 1974.

Therefore, pursuant to provisions of the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (sections 354, 355, 356, and 358, 82 Stat. 1173–1175, 1177; 42 U.S.C. 263b–263d, 263f) and under authority delegated to him (21 CFR 2.120), the Commissioner of Food and Drugs proposes to amend subpart B of Part 1000 by adding the following new section:

§ 1000.16 Assembly and reassembly of diagnostic x-ray components.

The following provisions shall apply to the assembly and reassembly of diagnostic x-ray components specified in § 1020.30(a)(1) of this chapter into diagnostic x-ray systems.

(a) Specified components which are assembled, after August 1, 1974, and prior to August 1, 1979, into those x-ray systems which will be composed, upon completion of the assembly, of one or more components certified pursuant to § 1020.30(c) of this chapter, shall be only those which have themselves been certified in accordance with § 1020.30(c) of this chapter. For example, after August 1, 1974:

(1) An assembler who installs a new, complete diagnostic x-ray system may not assemble a system consisting of both certified and uncertified components.

(2) An assembler who installs components into an existing diagnostic x-ray system, containing one or more certified components prior to such installation, may only install components which have been certified by the component manufacturer(s), regardless of whether or not the certified components themselves are replaced.

(3) An assembler who installs a group of components into an existing diagnostic x-ray system, containing no certified components prior to the assembly, may not install a combination of certified and uncertified components. He may install all uncertified components, or all certified components, into such a system.

(4) Except as required by paragraph (c) of this section, an assembler may reassemble a previously existing (used) system for resale whether or not the system is comprised of all uncertified or a combination of certified and uncertified components. However, any new components added to an original system comprised of one or more certified components must be certified.

(b) Specified components which are assembled into a diagnostic x-ray system after August 1, 1979, shall be only those which have been certified pursuant to § 1020.30(c) of this chapter. For example, after August 1, 1979:

(1) An assembler who installs a complete diagnostic x-ray system may not install components which have not been certified by the component manufacturer(s).

(2) Only those components which have been certified by the component manufacturer may be installed into an existing diagnostic x-ray system whether or not the system contained certified components prior to the assembly.

(c) Specified components which are reassembled after August 1, 1979, into diagnostic x-ray systems pursuant to the relocation and sale of such systems to a purchaser, shall be only those which have been certified in accordance with § 1020.30(c) of this chapter. For example, after August 1, 1979:

(1) An assembler who reassembles an existing diagnostic x-ray system in a new location, following the sale of the system to a new owner, may only reassemble those components into the system which are certified.

(2) An assembler who reassembles an existing diagnostic x-ray system in a new location may install uncertified components which were contained in the system prior to disassembly, provided that the reassembly is not associated with a change of ownership of the system. However, any new components added to the original system must be certified.

(d) Specified components which are certified pursuant to § 1020.30(c) of this chapter shall be assembled, and a report filed, in accordance with § 1020.30(d) of this chapter. For example:

(1) An assembler who installs a complete diagnostic x-ray system after August 1, 1974, which consists of specified components all of which are certified, must assemble components of the type required by § 1020.31 or § 1020.32 of this chapter and must assemble these components in accordance with the manufacturers' instructions. The assembler must also file a report in accordance with § 1020.30(d)(1), of this chapter and may not file a report of noncompatibility as provided for in § 1020.30(d)(2) of this chapter.

(2) An assembler who installs certified components into an existing diagnostic x-ray system may only file a report of noncompatibility if the conditions specified in § 1020.30(d)(2) of this chapter are satisfied.

(3) After August 1, 1979, all specified components which are sold to a purchaser and installed into a diagnostic x-ray system must be certified. Therefore, an assembler must file a report pursuant to § 1020.30(d)(1) or (d)(2) of this chapter upon completion of the assembly of one or more of such components into any diagnostic x-ray system after that date.

Interested persons may, on or before February 1, 1974, file with the Hearing Clerk, Food and Drug Administration, Room 6–86, 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: November 19, 1973.

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

[FR Doc.73-25530 Filed 11-30-73;8:45 am]

CIVIL SERVICE COMMISSION

[5 CFR Part 731]

FEDERAL EMPLOYMENT

Revised Basis for Disqualification and Dismissal

Notice is hereby given that under authority of section 3301 of title 5, United States Code, it is proposed to revise § 731.20 (e) and (g) and to add § 731.202 to Subpart B of 5 CFR Part 731. These Regulations state the grounds for disqualifying applicants for employment and for dismissing Federal employees as not suitable for Federal employment.

Section 731.201(e) is revised by adding the phrase "or illegal use of narcotics or dangerous drugs." This section presently provides the grounds for disqualifying a person for habitual use of intoxicating beverages to excess. The proposed change provides the basis for disqualification because of illegal use of narcotics or dangerous drugs. This provision would be applied in cases in which, despite counseling and rehabilitation programs, there is little chance for effective rehabilitation, or in cases in which the individual's condition would pose a threat to the individual or to other employees.

Section 731.201(g) is revised by removing the phrase "legal or other" and substituting the word "statutory." The purpose of this paragraph is to exclude persons whose employment would be precluded by any statute (e.g., the nepotism statute, 5 U.S.C. 3110). The proposed change is intended to clarify the language of this paragraph.

Section 731.202 is added to provide a statement of factors to be considered in evaluating the conduct of individuals in relation to the grounds for disqualification that are stated in § 731.201. The intent of this proposed addition is to assure that, in applying any of the provisions of § 731.201, the evaluator will consider the circumstances surrounding each case and the effect of the individual's conduct on the ability of the individual to perform the duties and responsibilities assigned and on the ability of the agency to carry out its programs.

These proposed changes are the result of an extended study of the existing Regulations in relation to court decisions of recent years, trends in society and Government, and other factors. Generally speaking, the trend of court decisions in this area of concern has been to require the employer to show a specific rational connection between an individual's conduct and his ability to perform the duties

and responsibilities of his position or the ability of the Federal agency to carry out its mission without a deleterious effect on the efficiency of the service in general.

Interested persons may submit written comments or suggestions regarding these proposed revisions to the Bureau of Personnel Investigations, U.S. Civil Service Commission, Washington, D.C. 20415, on or before January 2, 1973. The complete text of the regulations, including these proposed revisions, is set out below:

1. Section 731.201 is amended as follows:

§ 731.201 Reasons for disqualification.

Subject to Subpart C of this part, the Commission may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee for any of the following reasons:

(a) Dismissal from employment for delinquency or misconduct;

(b) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct;

(c) Intentional false statement or deception or fraud in examination or appointment;

(d) Refusal to furnish testimony as required by § 5.3 of this chapter;

(e) Habitual use of intoxicating beverages to excess; or illegal use of narcotics or dangerous drugs;

(f) Reasonable doubt as to the loyalty of the person involved to the Government of the United States; or

(g) Any statutory disqualification which makes the individual unfit for the service.

Section 731.202 is added as follows:

§ 731.202 Factors to be considered.

In making determinations under § 731.201, the Commission shall consider, among other factors:

(a) Whether the individual's conduct would interfere with or prevent effective performance in the position applied for or employed in;

(b) Whether the individual's conduct would interfere with or prevent effective performance by the employing agency of its duties and responsibilities;

(c) The kind of position for which the person is applying or in which the person is employed;

(d) The nature and seriousness of the conduct;

(e) The circumstances surrounding the conduct;

(f) The recency of the conduct;

(g) The age of the applicant or appointee at the time;

(h) Causative, social or environmental conditions; and

(i) The absence or presence of rehabilitation or efforts toward rehabilitation.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-25633 Filed 11-30-73;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

Agency for International Development

DIRECTOR AND DEPUTY DIRECTOR, OFFICE OF HOUSING

Redelegation of Authority

Pursuant to the authority delegated to me by Delegation of Authority No. 88, as amended, from the Administrator, AID, dated November 4, 1970 (35 FR 17675), I hereby amend further the redelegation of authority to the Director and Deputy Director, Office of Housing, dated November 5, 1970 (35 FR 17675), as follows:

1. Section 1.A. is revised to read, as follows:

A. All of the authorities delegated to me by the above-mentioned Delegation of Authority No. 88, as amended, except for the authority to prescribe and amend interest rates provided in section 223(f) of the Act.

2. Section 2 is revised to read as follows:

2. With respect to the authorities redelegated herein:

A. The authority to execute contracts of guaranty with U.S. investors and amendments thereto shall not be further redelegated.

B. All other authorities may be redelegated.

C. Redelegations under this section other than to officials in the Office of Housing (including Regional Housing and Urban Development Offices located in the field) or Regional Assistant Administrators, shall be subject to approval by the appropriate Regional Assistant Administrator or his designee.

This amendment to the redelegation of authority to the Director and Deputy Director, Office of Housing, shall be effective immediately.

Dated: June 21, 1973.

JAMES F. CAMPBELL,
Assistant Administrator for Program and Management Services.

[FR Doc.73-25450 Filed 11-30-73;8:45 am]

DEPARTMENT OF DEFENSE

Air Force

HISTORICAL ADVISORY COMMITTEE

Notice of Meeting

NOVEMBER 27, 1973.

The Advisory Committee on the Air Force Historical Program will meet at the Forrestal Building, Washington, D.C., on December 6 and 7, 1973.

The purpose of this meeting is to examine the mission, scope, progress, and productivity of the Air Force Historical Program and make recommendations thereon for the consideration of the Secretary of the Air Force.

A portion of this meeting will be open for public attendance on December 6, 1973, from 10 a.m. until approximately 11:30 a.m., in Room 5E069, Forrestal Building. Among the topics on the tentative agenda during the open portion of the meeting are: Status of field programs; Staffing; Publication; Fellowships; and Reservist utilization.

The remainder of the meeting will pertain to internal Historical program policies, procedures, and classified matters and will be held in closed session.

If additional information is desired, contact Headquarters United States Air Force (AF/CHO), Washington, D.C. 20314, telephone 202-693-7373.

STANLEY L. ROBERTS,
Colonel, USAF, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.73-25473 Filed 11-30-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CRAIG DISTRICT ADVISORY BOARD

Notice of Meeting

The Craig District Grazing Advisory Board will meet at 10 a.m. on December 4 and 5, 1973, at the District Office, Craig, Colorado.

The purpose of the meeting will be to consider district grazing applications, licenses, and transfer of grazing privileges in the Little Snake, Kremmling, and White River Resource Areas.

Other topics for discussion include the reorganization of the Advisory Board and matters related to wild horse and burro management.

The meeting is open to the public. Requests for additional information should be submitted to the District Manager, 455 Emerson St., P.O. Box 248, Craig, Colorado 81625, telephone number (303) 824-3289.

DALE R. ANDRUS,
State Director.

[FR Doc.73-25538 Filed 11-30-73;8:45 am]

LEWISTOWN DISTRICT ADVISORY BOARD

Notice of Meetings

Notice is hereby given that the Lewistown District Advisory Board will hold a meeting on January 11, 1974, at 9:30 a.m., MST, Home Service Room #418, Bank Electric Building, 501 W. Main, Lewistown, Montana.

The agenda for the January meeting will include election of board officers, board recommendations on 1974 grazing applications, allotment management plans, range improvement projects, planning system progress, wild and free roaming horse regulations, and recent changes in BLM policies, programs, and priorities.

The meeting will be open to the public. Time will be available for a limited number of brief statements by members of the public. Those wishing to make an oral statement should inform the Advisory Board Chairman, Swend Holland, prior to the meeting. Any interested persons may file a written statement with the Board for its consideration. Written statements should be submitted prior to the meeting to Swend Holland, c/o District Manager, Bureau of Land Management, Drawer 1160, Lewistown, Montana 59457.

Further information concerning this meeting may be obtained from the District Manager. Minutes of the meeting will be available for public inspection 30 days after the meeting.

A second meeting (if necessary) is scheduled on February 21, 1974 (same time and place), to consider protests from actions recommended in the January 11, 1974, meeting.

WINSTON B. SHORT,
Acting District Manager.

[FR Doc.73-25464 Filed 11-30-73;8:45 am]

VERNAL DISTRICT GRAZING ADVISORY BOARD, UTAH

Notice of Meeting

Notice is hereby given that the Vernal District Grazing Advisory Board will hold a meeting December 18, 1973, in the district office in the Cooper Building, Vernal, Utah, beginning at 9 a.m.

The agenda will include reorganization of the Board, transfers of base property qualifications, review of grazing applications, review of change in class of livestock, wild horse program, progress report on Division of Wildlife Resources, local energy resource related problems, review updated allotment management plans, and the predator control program.

BARTON E. BENNION,
Acting District Manager.

[FR Doc.73-25449 Filed 11-30-73;8:45 am]

WYOMING

Modification of Administrative District Office Boundaries and Jurisdictions

Pursuant to the authority vested in the Secretary of the Interior, as delegated to the Director, Bureau of Land Management by 235 DM 1.1, and as redelegated to State Directors, the following modifications of administrative district boundaries and jurisdictions in Wyoming are announced. These changes become effective on or about January 5, 1974.

1. The Bureau of Land Management office located at Lander, Wyoming, is redesignated as a Resource Area Headquarters office. It will be known as the Lander Resource Area Headquarters office and will come under the administrative jurisdiction of the Rawlins District office. This jurisdictional change does not affect the status or use of the national resource lands in the former Lander District other than placing them under the administrative jurisdiction of the Rawlins District. Service to the public in Lander will continue to be provided by the Lander Resource Area Headquarters Office.

2. As a result of the change noted in item 1 the Copper Mountain and Sweetwater Resource Areas are consolidated and the name changed to Lander Resource Area. Headquarters for this resource area will be Lander. The Great Divide and Baggs Resource Areas of the Rawlins District are also consolidated and the name changed to Divide Resource Area. Headquarters for this resource area will be in the District Office in Rawlins. These changes do not affect the status or use of the national resource lands in the resource areas involved.

3. The Bureau of Land Management office located at Pinedale, Wyoming, is redesignated as a Resource Area Headquarters office. It will be known as the Pinedale Resource Area Headquarters office and will come under the administrative jurisdiction of the Rock Springs District Office. This jurisdictional change does not affect the status or use of the national resource lands in the former Pinedale District other than placing them under the administrative jurisdiction of the Rock Springs District except as noted in item 5 below. Service to the public in Pinedale will continue to be provided by the Pinedale Resource Area Headquarters office.

4. As a result of the change noted in item 3, the Piney and Pinedale resource areas of the present Pinedale District are consolidated and the name for the total area will be the Pinedale Resource Area. Headquarters for this resource area will be Pinedale.

5. Responsibility for coordination of activities with Yellowstone National Park will be transferred from the present Pinedale District to the Worland District.

6. The Shell-Nowood, Clarks Fork-Shoshone, and Gooseberry-Tatman Mountain resource areas of Worland District will be consolidated into the Washakie and Shoshone Resource Areas with headquarters at the Worland District Office.

7. These modifications have no affect on jurisdiction, responsibilities or role of established district advisory boards.

Dated: November 21, 1973.

DANIEL P. BAKER,
State Director.

Approved:

CURT BERKLUND,
Director, Bureau of Land Management.

[FR Doc.73-25465 Filed 11-30-73;8:45 am]

Bureau of Mines

ADVISORY COMMITTEE ON COAL MINE SAFETY RESEARCH

Notice of Meeting

Notice is hereby given that the Advisory Committee on Coal Mine Safety Research will meet December 3 and 4, 1973, commencing at 9 a.m. at the Ramada Inn North, 232 New Circle Road, Lexington, Kentucky. The purpose of the Committee is to consult with and to make recommendations to the Secretary on matters involving or relating to coal mine safety research. The meeting will be open to the public on December 3, 1973. On December 4, 1973, the committee will meet in an Executive Session at 2 p.m. at which there will be considered proposed research contracts which contain commercial or financial information which is privileged or confidential matter under 5 U.S.C. 552(b)(4). This session will not be open to the public. Persons desiring further information concerning this meeting may contact Dr. Earl T. Hayes, Department of the Interior, Bureau of Mines, Room 3610, Telephone (202) 343-5643.

The agenda of the two-day meeting is set forth below.

Dated: November 28, 1973.

STEPHEN A. WAKEFIELD,
Assistant Secretary, Energy and Minerals.

AGENDA

Advisory Committee on Coal Mine Safety Research, Twelfth Meeting, Ramada Inn North, 232 New Circle Road, Lexington, Kentucky, December 3 and 4, 1973.

DECEMBER 3—PRESENTATIONS BY VARIOUS UNION MEMBERS ON SAFETY RESEARCH NEEDS

9 a.m.	United Mine Workers of America, Southern Labor Union, Progressive Mine Workers of America.
12 noon	Lunch.
1 p.m.	Subcommittee report on research areas identified during eleventh meeting on October 10 and 11.
4 p.m.	Adjournment.

DECEMBER 4—PRESENTATIONS BY VARIOUS COAL OPERATORS ON SAFETY RESEARCH NEEDS

9 a.m.	Jewell Smokless Coal Corp., Inc., Vansant, Virginia; Kentucky Elkhorn Coal Co., Inc., Virgie, Kentucky; AKP Coal Company, Hindman, Kentucky; Crawford Engineering, Whitesburg, Kentucky; New Virginia Coal Company, Virgie, Kentucky; Terry Glenn Coal Company, Crummies, Kentucky; Universal Coal Corporation, Richlands, Virginia.
12 noon	Lunch.
1 p.m.	Continuation of presentations if not completed prior to 12 noon.
2 p.m.	Executive session. Closed to public.
4 p.m.	Adjournment.

[FR Doc.73-25534 Filed 11-30-73;8:45 am]

National Park Service

INDIANA DUNES NATIONAL LAKESHORE ADVISORY COMMISSION

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Indiana Dunes National Lakeshore Advisory Commission will be held at 1:30 p.m. on December 6, 1973, at the Indiana Dunes National Lakeshore Building, Chesterton, Indiana.

The purpose of the Indiana Dunes National Lakeshore Advisory Commission is to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the administration and development of the Indiana Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. William L. Lieber, Indianapolis, Ind. (Chairman).
Mr. Harry W. Frey, Michigan City, Ind.
Mrs. Ione F. Harrington, Chesterton, Ind.
Mr. John A. Hillenbrand, II, Batesville, Ind.
Mr. Harold G. Rudd, Portage (Ogden Dunes), Ind.
Mr. John R. Schnurlein, Kouts, Ind.
Mr. Ed Masiulis, Beverly Shores, Ind.

The purpose of this meeting is to present to the Commission the West Beach Development Plans, and the expansion legislation for the Indiana Dunes National Lakeshore.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who want to file written statements, may contact James R. Whitehouse, Superintendent, Indiana Dunes National Lakeshore, at 219-926-7561. Minutes of the meeting will be available for public inspection three weeks after the meeting at the Superintendent's Office of the Indiana Dunes National Lakeshore located at the

intersection of State Park Road and U.S. Highway 12, Chesterton, Indiana.

Dated: November 26, 1973.

ROBERT M. LANDAU,
Liaison Officer, Advisory Commissions, National Park Service.

[FR Doc.73-25619 Filed 11-30-73;8:45 am]

Office of Oil and Gas

EMERGENCY PETROLEUM SUPPLY COMMITTEE, ET AL.

Notice of Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the following meetings:

The Supply and Distribution Subcommittee of the Emergency Petroleum Supply Committee will meet at 10 a.m. on December 6, 1973, in Room 4601, 1251 Avenue of the Americas, in New York City. The agenda will include discussions of data compiled by the Subcommittee in response to a request by the Emergency Petroleum Supply Committee.

The Transportation Subcommittee of the Emergency Petroleum Supply Committee will meet at 2 p.m. on December 6, 1973, in Room 4601, 1251 Avenue of the Americas, in New York City. The agenda will include discussions of data compiled by the Supply and Distribution Subcommittee in response to a request by the Emergency Petroleum Supply Committee.

The Emergency Petroleum Supply Committee will meet at 10:30 a.m. on December 11, 1973, in Room 5160 at the Department of the Interior in Washington, D.C. The agenda will include discussion of data compiled by the Supply and Distribution Subcommittee.

The purpose of the Emergency Petroleum Supply Committee is to assist the U.S. Government in coping with problems resulting from disruptions of foreign petroleum supply.

These meetings will not be open to the public because the discussions will deal with matters listed in section 552(b) of title 5, United States Code. Specifically, these matters are related to matters that are specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy and trade secrets and commercial or financial information obtained from a person and privileged or confidential. The short notice is due to emergency developments.

Dated: November 30, 1973.

BEN TAFOYA,
Secretary, Emergency Petroleum Supply Committee.

[FR Doc.73-25665 Filed 11-30-73;11:00 am]

DEPARTMENT OF AGRICULTURE

Forest Service

EAST BRADFIELD RIVER SALE

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the East Bradfield River Timber Sale, USDA-FS-DES (Adm) 74-42.

The environmental statement concerns a proposed action to harvest.

This draft environmental statement was filed with CEQ on November 26, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, So. Agriculture Bldg., Room 3230, 12th St. & Independence Ave. SW., Washington, D.C. 20250.

USDA, Forest Service, Hogue Alley and G Street, Petersburg, Alaska 99833.

A limited number of single copies are available upon request to Area Manager, Stikine Area, Tongass National Forest, P.O. Box 722, Petersburg, Alaska 99833.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

Comments are invited from the public and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Area Manager, Tongass National Forest, P.O. Box 722, Petersburg, Alaska 99833. Comments must be received by January 26, 1974, in order to be considered in the preparation of the final environmental statement.

GENE S. BERGOFFEN,
Acting Deputy Chief, Forest Service.

NOVEMBER 27, 1973.

[FR Doc.73-25531 Filed 11-30-73;8:54 am]

THREE-YEAR ROAD CONSTRUCTION PROGRAM

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Three-Year Road Construction Program for the Flathead National Forest, Report Number USDA-FS-FES (Adm 73-7).

The environmental statement concerns the development of a three-year program of road construction and reconstruction on the Flathead National Forest. The Forest covers a large portion of Flathead County and smaller portions of Missoula, Lake, Powell, Lincoln, and Lewis and Clark Counties, Montana.

The final environmental statement was filed with CEQ on November 28, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3231, 12th St. & Independence Ave. SW., Washington, D.C. 20250.

USDA, Forest Service, Region 1—Northern Region, 200 East Broadway, Missoula, Montana 59801.

USDA, Forest Service, Flathead National Forest, 290 North Main, Kalispell, Montana 59901.

USDA, Forest Service, Swan Lake Ranger Station, Bigfork, Montana 59911.

A limited number of single copies are available upon request to Edsel L. Corpe, Forest Supervisor, Flathead National Forest, 290 North Main, Kalispell, Montana 59901.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

GENE S. BERGOFFEN,
Acting Deputy Chief, Forest Service.

NOVEMBER 28, 1973.

[FR Doc.73-25554 Filed 11-30-73;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

NATIONAL INDUSTRIAL ENERGY CONSERVATION COUNCIL

Notice of Public Meeting

The first meeting of the National Industrial Energy Conservation Council will be held from 10 a.m. to noon on Monday, December 10, 1973, in Room 4830, Main Commerce Building, 14th and E Streets NW., Washington, D.C.

The Council is established to advise the Secretary of Commerce on programs and problems relating to the conservation of energy within the industrial and commercial sectors, and to provide a forum for the exchange of views on energy conservation between government and the industrial and commercial sectors.

The preliminary agenda for this initial meeting includes opening remarks by the Secretary of Commerce, discussion as to how Government and Business and Industry might cooperate in order to foster energy conservation, and organizational issues such as schedule of meetings. A detailed agenda will be available at the meeting.

The meeting will be open to the public and media representatives to the extent of available space in the conference

room. Oral statements or participation by the public in the meeting will not be permitted, but any member of the public who wishes to file a written statement with the Council shall be permitted to do so, either before, or after, the meeting.

Persons who wish to attend should contact Mr. Phillip J. Carroll, Room 6892, Main Commerce Building, telephone (202) 967-3535. Any questions regarding the meeting should also be directed to Mr. Carroll.

ALAN J. POLANSKY,
Acting Deputy Assistant Secretary for Resources and Trade Assistance.

NOVEMBER 29, 1973.

[FR Doc.73-25639 Filed 11-30-73;8:45 am]

UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 73-00499-00-27000. Applicant: University of California, Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, N. Mex. 87544. Article: Image converter tube with 9 x 8 mm S-20 extended red photocathode. Manufacturer: John Hadland Ltd., United Kingdom. Intended use of article: The article is intended for replacement use in an Ima-Con Model 700 image converter camera to aid in the operation of the camera in accomplishing studies of radiation emitted by high energy neon plasma and by highly dosed air. The article aids the image converter camera in obtaining as many as 15 or 20 pictures of the plasma in various wave lengths of light with time resolution in the range of 50 nanoseconds to a few microseconds.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to a compatible component for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used.

The Department of Commerce knows of no similar component being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.73-25549 Filed 11-30-73; 8:45 am]

Office of the Secretary

NATIONAL INDUSTRIAL ENERGY CONSERVATION COUNCIL

Notice of Establishment

In accordance with the provisions of the Federal Advisory Committee Act (P.L. 92-463) and OMB/Justice Department guidelines on the Act, and after consultation with the Office of Management and Budget, the Secretary of Commerce has determined that the establishment of the National Industrial Energy Conservation Council is in the public interest in connection with the performance of duties imposed on the Department by law.

The Council will advise the Secretary on programs and problems relating to the conservation of energy within the industrial and commercial sectors, and provide a forum for the exchange of views on energy conservation between government and the industrial and commercial sectors.

The Council will consist of approximately 20 members, representatives of business and industry appointed by the Secretary, who shall serve without either compensation or reimbursement of expenses. A Chairman and Vice-Chairman shall be designated by the Secretary.

Due to the urgency of the national energy situation, the Office of Management and Budget has granted, in response to Department of Commerce request, a waiver of the administratively-prescribed waiting period between the date of this notice and the filing of the Council's charter under section 9(c) P.L. 92-463. Accordingly, the Council's charter, signed by the Secretary of Commerce, will be filed immediately.

HENRY B. TURNER,
Assistant Secretary for Administration.

NOVEMBER 29, 1973.

[FR Doc.73-25638 Filed 11-30-73;8:45 am]

ADVISORY COUNCIL ON INTERGOVERNMENTAL PERSONNEL POLICY

NOTICE OF PUBLIC MEETING

Pursuant to the provisions of section 10 of Public Law 92-463, effective January 5, 1973, notice is hereby given that a meeting of the Advisory Council on Intergovernmental Personnel Policy will be held from 8:30 am., Wednesday, December 12, through 4:30 pm., Thursday, December 13, 1973.

The meeting will be held in Room 5A06A (Enter 5H09) of the Civil Service Commission Building, 1900 E Street NW., Washington, D.C.

The Advisory Council's responsibility is to study and make recommendations regarding personnel policies and programs for the purpose of—

(1) Improving the quality of public administration at State and local levels of government, particularly in connection with programs that are financed in whole or in part from Federal funds;

(2) Strengthening the capacity of State and local governments to deal with complex problems confronting them;

(3) Aiding State and local governments in training their professional, administrative, and technical employees and officials;

(4) Aiding State and local governments in developing systems of personnel administration that are responsive to the goals and needs of their programs and effective in attracting and retaining capable employees; and

(5) Facilitating temporary assignments of personnel between the Federal Government and State and local governments and institutions of higher education.

At this meeting the Council will consider policy alternatives in the areas of equal employment opportunity and labor management relations in the public sector. Time will also be devoted to an initial examination of issues in the following areas: (a) Government employee political activity; (b) training and education in the public service; and (c) a survey of progress of Intergovernmental Personnel Act programs to date, including a highlight of problems.

The meeting will be open to the public. Seating will be available to accommodate up to twenty observers. No time will be devoted during the meeting to participation or presentations by members of the public. However, individuals and groups are invited to submit material in writing to the Chairman concerning matters felt to be deserving of the Council's attention. Such material should be addressed to: Chairman, Advisory Council on Intergovernmental Personnel Policy, Room 2315, 1900 E Street NW., Washington, D.C. 20415, Attention: Executive Secretary.

Persons wishing additional information concerning this meeting should contact the Executive Secretary at the above address or by telephone (202) 632-6248.

E. C. WAKHAM,
Executive Secretary, Advisory Council on Intergovernmental Personnel Policy.

[FR Doc.73-25552 Filed 11-30-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-382A]

LOUISIANA POWER AND LIGHT CO.

Notice and Order for Third Prehearing Conference

In the matter of Waterford Steam Electric Generating Station, Unit 3.

Take notice, that pursuant to the Atomic Energy Commission's notice of

February 23, 1973, published in the FEDERAL REGISTER (38 FR 5502) March 1, 1973, the Commission's Memorandum and Order of September 28, 1973, and in accordance with the Commission's rules of practice, a Third Prehearing Conference will be held in the subject proceedings on December 10, 1973, at 10 a.m. at the Postal Rate Commission, Suite 500, 2000 L Street NW., Washington, D.C.

The subject of this Prehearing Conference will be factual stipulations and such other matters as will aid in the disposition of these proceedings. The hearing room will be available on December 11, 1973 if it becomes apparent that the conference should be continued for another day.

All of the participants in these proceedings will be admitted by the Board as Parties. An order to that effect will be issued shortly.

Issued at Washington, D.C. this 27th day of November 1973.

By order of the Atomic Safety and Licensing Board.

HUGH K. CLARK,
Chairman.

[FR Doc.73-25479 Filed 11-30-73;8:45 am]

[Docket No. PRM-40-19]

R. S. LANDAUER, JR. AND CO.

Filing of Petition for Rule Making

Notice is hereby given that R. S. Landauer, Jr. and Company, Glenwood Science Park, Glenwood, Illinois, by letter dated October 22, 1973, has filed with the Atomic Energy Commission a petition for rulemaking.

The petitioner requests that the Commission amend § 40.13 of 10 CFR Part 40 by addition of the following exemption from the licensing requirements of Part 40: personnel dosimeters containing not more than 50 milligrams of thorium per dosimeter.

The petitioner states that it has conducted developmental studies which would lead to the implementation of a personnel neutron monitoring service utilizing fission fragment detection devices. The petitioner states further that the most effective design for such a monitoring system requires the incorporation of a thorium foil within the dosimeter holder.

The petitioner discusses the benefits of the fission fragment fast neutron dosimeter in comparison with the fast neutron dosimeter, NTA film (Nuclear Track Emulsion—Type A), including a comparison of the two systems with respect to energy response, information fading, evaluation integrity, dose range, and effects of other radiation.

A copy of the petition for rule making is available for public inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. A copy of the petition may be obtained by writing the Rules and Proceedings Branch at the below address.

All interested persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Rules and Proceedings Branch, Office of Administration—Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545, on or before February 1, 1974.

Dated at Germantown, Md., this 28th day of November 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-25636 Filed 11-30-73;8:45 am]

[Docket No. 50-202]

UNIVERSITY OF NEVADA

Intent To Issue Order Authorizing Dismantling of Facility

By application notarized July 25, 1973, and supplement dated September 20, 1973, the University of Nevada requested authorization to dismantle their L-77 reactor in accordance with a plan submitted to the Commission. Operation of the facility has been discontinued and all fuel will be removed from the reactor and put in authorized storage containers.

The Commission has reviewed the application in accordance with the provisions of the Commission's regulations and has found that the dismantlement and storage of component parts of the facility in accordance with the regulations in 10 CFR Chapter I and the application, as modified, will not be inimical to the common defense and security or to the health and safety of the public. The basis for the findings is set forth in the Safety Evaluation by the Regulatory staff which is being issued concurrently with this notice.

Accordingly, an appropriate Order will be issued on December 18, 1973 authorizing the University of Nevada, following transfer of all fuel to authorized storage containers, to dismantle their L-77 reactor covered by License No. R-91, as amended, in accordance with the application and the Commission's regulations.

Date of Issuance: November 27, 1973.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Operating Reactors Directorate of Licensing.

[FR Doc.73-25635 Filed 11-30-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Dockets Nos. 25581, 26078]

JUGOSLOVENSKI AEROTRANSPORT

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on December 10, 1973, at 10 am. (local time), in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Administrative Law Judge William H. Dapper.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before December 6, 1973.

Dated at Washington, D.C., November 27, 1973.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.73-25551 Filed 11-30-73;8:45 am]

CIVIL SERVICE COMMISSION

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:

Thursday, December 6, 1973
Thursday, December 13, 1973
Wednesday, December 19, 1973

The meetings will convene at 10 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 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.

NOVEMBER 27, 1973.

[FR Doc.73-25466 Filed 11-30-73;8:45 am]

COUNCIL OF ECONOMIC ADVISERS

ADVISORY COMMITTEE ON THE ECONOMIC ROLE OF WOMEN

Meeting

NOVEMBER 9, 1973.

Advisory Committee on the Economic Role of Women pursuant to P.L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Advisory Committee on the Economic Role of Women will take place in Washington, D.C., on December 5, 1973. It will

be held from 9:30 a.m. to 3 p.m. in Room 2010 New Executive Office Building. The meeting will be an open meeting.

The theme of the meeting will be "Planning Session for Calendar Year 1974."

JAMES H. AYRES,
Administration Officer.

[FR Doc.73-25535 Filed 11-30-73;8:45 am]

DELAWARE RIVER BASIN COMMISSION

COMPREHENSIVE PLAN

Notice of Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 12, 1973, in Room 1600 of the Municipal Services Building, 15th and Kennedy Blvd., Philadelphia, Pa., beginning at 2 p.m. The subject of the hearing will be a proposal to amend the Comprehensive Plan so as to include therein the following projects.

1. *T. H. Biondi, Inc.* A sewage treatment project to serve a residential development known as Broad Run in West Bradford Township, Chester County, Pa. The treatment facility will have a capacity of 150,000 gallons per day and provide removal of 91 percent of BOD_5 and 92 percent of suspended solids. Treated effluent will discharge to Broad Run, a tributary of West Branch Brandywine Creek.

2. *Camelback Ski Corp.* A sewage treatment project to serve the Camelback ski area, including proposed condominiums, in Pocono Township, Monroe County, Pa. The treatment facility will have a capacity of 75,000 gallons per day and provide removal of 96 percent of BOD_5 and 92 percent of suspended solids. Treated effluent will discharge to an unnamed tributary of Pocono Creek.

3. *Federated Home & Mortgage Co.* A sewage treatment project to serve the Holiday Inn motel and restaurant in Stroud Township, Monroe County, Pa. The treatment facility will have a capacity of 73,000 gallons per day and provide removal of 96 percent of BOD_5 and 97 percent of suspended solids. Treated effluent will discharge to Pocono Creek.

4. *Warminster Township Municipal Authority.* A project to expand the capacity of the existing sewage treatment plant serving portions of Warminster, Warrington, Horsham, and Montgomery Townships, Bucks County, Pa. The new treatment facility will have a capacity of 4 million gallons per day, increasing the total treatment capacity to 7.8 million gallons per day, and the new facility will provide removal of 96 percent of BOD_5. Treated effluent will be discharged to Little Neshaming Creek via a new outfall line.

5. *Medford Township.* Expansion of the sewage treatment plant in Medford Township, Burlington County, N.J. Plant capacity will be increased to one million gallons per day and provide removal of about 90 percent of BOD_5. Treated effluent will discharge to the southwest branch of Rancocas Creek.

6. *Horsham Township Authority.* A well water supply project to augment public water supplies in portions of Horsham and Warminster Townships, Montgomery County, Pa. Designated as Well No. 20, the new facility is expected to yield 432,000 gallons per day.

7. *Bells Lake Water Co.* A well water supply project to augment public water supplies in the Bells Lake Estates development community in Washington Township, Gloucester County, N.J. Combined withdrawals from two existing wells will be increased to a maximum average of 617,000 gallons per day during any 30-day period.

8. *Cambridge Developers Water Co.* A well water supply project to augment public water supplies in the Fairways-At-Brookside residential community in Lower Macungie Township, Lehigh County, Pa. Designated as Well No. 1, the new facility is expected to yield 124,000 gallons per day.

9. *Upper Hanover Township Sewer Authority.* A sewage interceptor and pumping project to augment waste management in Upper Hanover Township, Montgomery County, Pa. About 4.2 miles of interceptor sewer will be constructed to convey an ultimate flow of 1.4 million gallons per day to the Upper Montgomery Joint Authority treatment plant.

10. *Delaware Dept. of Highways and Transportation.* A project to stabilize eroded embankments along the Causeway in Kent County, Del. The Causeway crosses State-owned wetlands designated as the Woodland Beach Wildlife Area, and provides the only overland access to Woodland Beach and Bombay Hook Island. Approximately 30,000 cubic yards of material will be dredged from a tidal tributary to Duck Creek and used to replace eroded sections of the Causeway.

Documents relating to the above projects may be examined at the Commission offices. Persons wishing to testify are requested to notify the Secretary prior to the hearing.

W. BRINTON WHITALL,
Secretary.

NOVEMBER 23, 1973.

[FR Doc.73-25451 Filed 11-30-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

REVIEW OF NEW OR MODIFIED INDIRECT SOURCES

Notice of Public Hearing

On Tuesday, October 30, 1973 (38 FR 29893), the Administrator of the Environmental Protection Agency published proposed regulations providing legally enforceable procedures for review prior to construction of indirect sources of air pollution. The times and location of public hearings on the proposed regulations were published in the FEDERAL REGISTER on November 23, 1973 (38 FR 32267).

The purpose of this notice is to change the public hearing date for the State of Kentucky. The hearing for Kentucky will be held at the time and place specified below.

December 10 at 10 a.m., Kentucky State Department of Health Building Auditorium, 275 E. Main Street, Frankfort. Hearing Officer: Gene B. Welsh.

Dated November 28, 1973.

ROBERT L. SANSOM,
Assistant Administrator for Air and Water Programs.

[FR Doc.73-25563 Filed 11-30-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 19874, 19875; File No. BR-2875 et al.]

HERTZ BROADCASTING OF BIRMINGHAM, INC., AND JOHNSTON BROADCASTING CO.

Order and Notice of Apparent Liability Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Hertz Broadcasting of Birmingham, Inc. (WENN and WENN-FM), Birmingham, Alabama, Docket No. 19874, File Nos. BR-2875, BRH-2454, for renewal of license. Johnston Broadcasting Company (WJLD and WJLN(FM)), Birmingham, Alabama, Docket No. 19875, File Nos. BR-1174, BRH-328, BRSCA-970, for renewal of license (Main and SCA).

1. The Commission has before it for consideration: (a) The captioned applications, and (b) its inquiries into the operation by Hertz Broadcasting of Birmingham, Inc., of Radio Stations WENN and WENN-FM, Birmingham, Alabama; and the operation by Johnston Broadcasting Company of WJLD, Fairfield, and WJLN(FM), Birmingham, Alabama.[1]

2. Information before the Commission raises serious questions as to whether either of the captioned applicants possesses the qualifications to be or to remain a licensee of the captioned stations. In view of these questions, the Commission is unable to find that a grant of the renewal applications would serve the public interest, convenience and necessity, and must, therefore, designate the applications for hearing.

3. A Commission field investigation was conducted to develop the facts surrounding the filing of a complaint against Radio Station WJLD, in which it was alleged that principals of WJLD had bribed the complainant to file a false complaint against Radio Station WENN. The complainant had first alleged that WENN discriminated against him by refusing to sell him advertising time on the station. The complainant claimed that WENN so refused because the station had made all the time available to its own disk jockeys to promote shows the disk jockeys sponsored. The disk jockeys' shows were in competition with shows the complainant was sponsoring.

[1] WJLD is licensed to Fairfield, Alabama, a suburb of Birmingham; however, the offices of Johnston Broadcasting Company are in Birmingham.

Serious questions of fact remain unresolved which must be settled in a hearing. Since either of the complainant's allegations, if found to be true, bears on the qualifications of the captioned applicants to remain licensees of the Commission, both the licensees of WJLD and WENN are joined in this proceeding.

4. *Accordingly, it is ordered*, That in view of the serious charges and countercharges he made against both captioned applicants, the Reverend Robert McKinney is made a party to this proceeding.

5. *It is further ordered*, That the captioned applications are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, at a time and place specified in a subsequent Order, upon the following issues:

With respect to the applications of Hertz Broadcasting of Birmingham, Inc., and Johnston Broadcasting Company:

(a) To determine all the facts and circumstances surrounding the filing of complaints by Robert McKinney alleging that Hertz Broadcasting of Birmingham, Inc., denied McKinney advertising time on WENN and WENN–FM for the purpose of advertising shows in which McKinney has or had a financial interest.

(b) In light of the evidence adduced under issue (a) above, to determine whether Hertz Broadcasting of Birmingham, Inc., denied McKinney advertising time because it reserved all time available for its own employees.

(c) To determine all the facts and circumstances surrounding the filing by Hertz Broadcasting of Birmingham, Inc., of an affidavit signed by McKinney retracting his complaint against WENN and to determine whether the affidavit is truthful.

(d) In light of the evidence adduced under issues (a) through (c) inclusive, to determine whether the principals of Johnston Broadcasting Company bribed, coerced, paid, or offered to pay McKinney or anyone else any consideration for filing with the Commission any complaint.

(e) In light of the evidence adduced under issues (a) through (d) inclusive, to determine whether the principals of Hertz Broadcasting of Birmingham, Inc., bribed, coerced, paid, of offered to pay McKinney or anyone else any considera- bribed, coerced, paid, or offered to pay complaint or the filing with the Commission of any document constituting a complaint.

(f) To determine all the facts and circumstances surrrounding the broadcast in 1971 by the applicants of certain announcements promoting a performance known as "The World Series of Gospel", and to determine whether the announcements included advertisements for, or information concerning, a lottery.

(g) In light of the evidence adduced under issue (f) above, to determine whether either or both applicants broadcast an advertisement or information concerning a lottery in violation of Title 18 U.S.C. section 1304 (1964).

With respect to the application of Hertz Broadcasting of Birmingham, Inc.:

(h) To determine all the facts and circumstances surrounding the filing by the applicant of all letters or other documents addressed to the Federal Communications Commission, especially with regard to documents dated January 5, April 3, and April 19, 1972, and August 10, 1973; and in light of the facts adduced, to determine whether the statements made therein were truthful and candid.

(i) In light of the evidence adduced under issue (h) above, to determine whether the applicant or any of its officers, directors, stockholders, employees, or other persons were lacking in candor or have made any false statements or misrepresentations to the Commission.

(j) To determine all the facts and circumstances surrounding the degree of control exercised by the applicant over its employees, especially concerning those controls necessary to prevent conflicts of interest between the applicant's employees and the employees' personal business interests.

(k) To determine all the facts and circumstances surrounding the purchase of advertising time on WENN and WENN–FM by employees of the applicant, and to determine whether the applicant permitted the sale of such advertising time at discounted rates so as to constitute unfair methods of competition with regard to dance and show promoters who were not employees of the applicant.

(l) In light of the evidence adduced under issue (k) above, to determine whether the applicant exercised the degree of caution required to prevent practices which tend to constitute unfair methods of competition, and whether the applicant exercised constant scrutiny and supervision over the stations' commercial policies to avoid anticompetitive results.

(m) To determine all the facts and circumstances surrounding the process by which program logs are kept and used by the applicant, with special regard to the applicant's procedures for ensuring that its program logs are accurate in reflecting the matter actually broadcast over WENN and WENN–FM.

(n) In light of the evidence adduced under issue (m) above, to determine whether the applicant violated §§ 73.111, 73.112, 73.281, and 73.282 of the Commission's rules concerning program logs.

(o) In light of the evidence adduced under issues (m) and (n) above, to determine whether the applicant violated section 317 of the Communications Act of 1934, as amended, and §§ 73.119 and 73.289 of the Commission's rules concerning sponsorship identification announcements.

(p) To determine all the facts and circumstances surrounding the preparation, dissemination, or utilization by the applicant of certain promotional materials claiming that WENN is the "No. 1 Negro Station in the South's 4th Negro Market," or making other claims as to the station's audience rating.

(q) In light of the evidence adduced under issue (p) above, to determine whether the applicant violated the Commission's policy as set forth in its Public Notice adopted October 27, 1965, concerning the making of audience claims and the proper qualifying thereof by licensees.

With respect to the applications of Johnston Broadcasting Company:

(r) To determine all the facts and circumstances surrounding the applicant's procedures for maintaining program logs and ensuring that proper sponsorship identification announcements are made.

(s) In light of the evidence adduced under (r) above, to determine whether the applicant has violated Section 73.112 of the Commission's rules concerning program logs.

(t) In light of the evidence adduced under issues (r) and (s) above, to determine whether the applicant has violated section 317 of the Communications Act of 1934, as amended, or § 73.119 of the Commission's rules concerning sponsorship identification.

With respect to both captioned applicants:

(u) To determine, in light of the evidence adduced under issues (a) through (t), inclusive, whether either applicant possesses the requisite qualifications to be or to remain a licensee of the Commission, and whether a grant of the applications would serve the public interest, convenience, and necessity.

6. *It is further ordered*, That if it is determined that the hearing record does not warrant an order denying the captioned applications for renewal of license of Stations WENN and WENN–FM, it shall also be determined whether the applicant has repeatedly or willfully violated sections 317 and 508 of the Communications Act of 1934, as amended, §§ 73.112, 73.119, 73.282, and 73.289 of the Commission's rules, or Title 18 U.S.C. Section 1304.[2] If so, it shall also be determined whether an Order of Forfeiture pursuant to section 503(b) of the Communications Act of 1934, as amended, in the amount of $10,000 or some lesser amount should be issued for violations which occurred within one year preceding the issuance of the Bill of Particulars in this matter.

7. *It is further ordered*, That if it is determined that the hearing record does not warrant an order denying the captioned applications for renewal of license of Stations WJLD and WJLN (and its SCA), it shall also be determined whether that applicant has repeatedly or willfully violated section 317 of the Communications Act of 1934, as amended, or §§ 73.112 and 73.119 of the Commission's rules.[2] If so, it shall also be determined whether an Order of Forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, in the amount of $10,000 or some lesser amount should be issued for violations which occurred within one year preceding the issuance of the Bill of Particulars in this matter.

[2] See Bill of Particulars for specific dates and details of each alleged violation.

8. *It is further ordered*, That this document constitutes a Notice of Apparent Liability as to Hertz Broadcasting of Birmingham, Inc., and Johnston Broadcasting Company, for forfeiture for violations of the Communications Act of 1934, as amended, and the Commission's rules set out in paragraphs 5 and 6 above. The Commission has determined that, in every case designated for hearing involving revocation or denial of renewal of license for alleged violations which also come within the purview of section 503(b) of the Act, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is thus a routine or standard one, we stress that inclusion of this Notice is not to be taken as in any way indicating what the initial or final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.

9. *It is further ordered*, That the Chief of the Broadcast Bureau is directed to serve upon the captioned applicants and Reverend Robert McKinney within thirty (30) days of the release of this Order, a Bill of Particulars with respect to issues (a) through (t), inclusive.

10. *It is further ordered*, That the Broadcast Bureau proceed with the initial presentation of the evidence with respect to issues (a) through (t) inclusive, and the applicants then proceed with their evidence and have the burden of establishing that they possess the requisite qualifications to be and to remain licensees of Stations WENN, WENN-FM, WJLD, and WJLN and that a grant of their applications would serve the public interest, convenience, and necessity.

11. *It is further ordered*, That to avail themselves of the opportunity to be heard, the applicants and Party Respondent, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of this Order file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. *It is further ordered*, That the applicants herein, pursuant to section 331(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, shall give notice of the hearing within the time and in the manner prescribed in such rule and shall advise the Commission thereof as required by § 1.594(g) of the rules.

13. *It is further ordered*, That the Secretary of the Commission send a copy of this Order by Certified Mail-Return Receipt Requested to Hertz Broadcasting of Birmingham, Inc., licensee of WENN and WENN-FM, and Johnston Broadcasting Company, licensee of WJLD, Fairfield, and WJLN, Birmingham, Alabama, and to the Reverend Robert McKinney.

By direction of the Commission.

Adopted: November 14, 1973.

Released: November 21, 1973.

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

[FR Doc.73-25546 Filed 11-30-73;8:45 am]

[Docket Nos. 19836, 19878; File Nos. BLCT-2237, BPH-8078]

PANHANDLE BROADCASTING CO., INC., AND BRANNEN AND BRANNEN

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of: Panhandle Broadcasting Company, Inc. (WDTB-TV), Panama City, Florida, Docket No. 19836, File No. BLCT-2237, application for license. Denver T. Brannen, Joel T. Brannen, and Eugenia S. Brannen, dba Brannen and Brannen, Key West, Florida, Docket No. 19878, File No. BPH-8078, Requests: 95.5 MHz, No. 238; 100 kW (H & V); 257 feet for a construction permit.

1. The Commission has before it: (a) The above applications; (b) petitions for reconsideration and stay of our Memorandum Opinion and Order of September 26, 1973, in which we set aside our July 3, 1973, grant of Brannen and Brannen's application for a construction permit for a new FM broadcast station in Key West, Florida, and returned that application to pending status; and (c) an opposition pleading by Florida Keys Broadcasting Corporation.[1]

2. Mr. Denver T. Brannen owns 60 percent of Brannen and Brannen and 40 percent of Panhandle Broadcasting Company, Inc. (Panhandle). In our Memorandum Opinion and Order of September 26, 1973 (FCC 73-1006), we stated that information contained in an affidavit of Mr. Brannen, which was filed with Panhandle's application for license to cover its construction permit for television station WDTB-TV, Panama City, Florida, and other data available to the Commission, raised possible questions concerning the basic qualifications of Panhandle and its principals to be licensees of the Commission. In light of that information, we concluded that the grant of Brannen and Brannen's application for a new FM station in Key West should be set aside and returned to pending status "until the Commission determines the course to be taken in this matter." By Memorandum Opinion and Order In re application of Panhandle Broadcasting Company, Inc. (FCC 73-1025), we designated Panhandle's license application for hearing on qualifications issues. These issues relate to the same matters which had formed the basis of the Commission's action setting aside the grant of Brannen and Brannen's application. Brannen and Brannen now requests that we either reinstate the grant of its application, imposing such conditions as we deem necessary to protect the public interest, or that we designate its application for hearing to permit an exploration of the questions to which the Commission alluded in rescinding the grant.

3. Section 309(e) of the Communications Act of 1934, as amended, provides that if the Commission is unable for any reason to make the finding that the public interest, convenience, and necessity will be served by the granting of an application before it, then it shall formally designate the application for hearing on the grounds or reasons then obtaining. Thus, Brannen and Brannen contends that if the Commission is not disposed to reinstate its action granting Brannen and Brannen's application, then the Act demands that a hearing be held. In addition, Brannen and Brannen asserts that if neither of these alternative requests is granted, section 1.591 of our rules would allow competing applications for channel 233 at Key West to be considered by the Commission. While we cannot perceive any compelling public interest reasons for reinstating the grant of Brannen and Brannen's application, even if the grant was conditioned on the outcome of the Panhandle proceeding, it does appear that the application should be designated for hearing. Thus, since the basic qualification issues designated in the Panhandle proceeding involve many questions of fact which formed the basis of our action setting aside the grant of Brannen and Brannen's application, we shall designate Brannen and Brannen's application for hearing in a consolidated proceeding with Panhandle's application in Docket No. 19836.

4. *Accordingly, it is ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the captioned applications are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the facts and circumstances which led to the listing of L. Charles Hilton as a 25 percent stockholder in Panhandle Broadcasting Company, Inc., rather than Small Business Assistance Corporation of Panama City, Florida.

2. To determine whether Panhandle Broadcasting Company, Inc., or any of its officers and directors knew or should have known the actual facts concerning the relationship of the Small Business Assistance Corporation and L. Charles Hilton to Panhandle Broadcasting Company, Inc.

3. To determine in light of the evidence adduced pursuant to the above issues whether Panhandle Broadcasting

[1] Florida Keys Broadcasting Corporation is the licensee of stations WKIZ(AM) and WFYN-FM, Key West, Florida.

Company, Inc., or its officers and directors complied with the requirements of section 1.615 of the rules to report the true facts as to actual ownership as soon as these facts were known.

4. To determine in light of the evidence adduced pursuant to the foregoing issues whether Panhandle Broadcasting Company, Inc., or its officers and directors misrepresented facts as to the ownership of Panhandle Broadcasting Company, Inc., and, if so, whether such misrepresentations of fact were willful, material, or repeated.

5. To determine in light of the evidence adduced pursuant to the foregoing issues whether Panhandle Broadcasting Company, Inc., has the requisite qualifications to be a licensee of the Commission and whether grant of its application for license would serve the public interest, convenience, and necessity.

6. To determine in light of the evidence adduced pursuant to the foregoing issues, whether Brannen and Brannen has the requisite qualifications to be a permittee of the Commission and whether grant of its application for a construction permit for a new FM station in Key West, Florida, would serve the public interest, convenience, and necessity.

5. *It is further ordered*, That the specification of issues herein shall supersede the specification of issues in the Commission's Memorandum Opinion and Order of October 3, 1973, in this proceeding.

6. *It is further ordered*, That Brannen and Brannen's petitions for stay and reconsideration are granted to the extent indicated above, and are denied in all other respects.

7. *It is further orderd*, That Brannen and Brannen shall file a written appearance stating an intention to appear and present evidence on the specified issues, within the time and in the manner required by § 1.221(c) of the rules.

8. *It is further ordered*, That Brannen and Brannen shall give notice of the hearing within the time and in the manner specified in § 1.594 of the rules, and shall seasonably file the statement required by § 1.594(g).

Adopted: November 21, 1973.

Released: November 28, 1973.

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

[FR Doc.73-25547 Filed 11-30-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. RI74-55]

ASHLAND OIL, INC.

Notice of Petition for Special Relief

NOVEMBER 26, 1973.

Take notice that on October 24, 1973, Ashland Oil, Inc. (Petitioner), P.O. Box 1503, Houston, Texas 77001, filed a petition for special relief in Docket No. RI74-55, pursuant to section 2.76 of the Commission's general policy and interpretations. Petitioner requests that it be granted special relief from the area rate ceiling in Opinion No. 607, Docket Nos. AR67-1, et al., issued October 29, 1971, and seeks to collect from Colorado Interstate Gas Company, its pipeline purchaser, a price of 40 cents per Mcf, plus ½¢ per Mcf per year escalation, with Btu adjustment, for gas sold under its FPC Gas Rate Schedule No. 110 from the Minnie B. Ross No. 2 Well to be drilled in section 28-5N-9ECN, Cimmarron County, Oklahoma. The net rate after Btu adjustment would be 32.6 cents per Mcf.

Petitioner proposes to drill said well in order to hold its lease, and estimates that there is a potential gross reserve of 500 MMCF of natural gas, all of which will be lost to interstate commerce if the well is not drilled.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 18, 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 will not serve to make the protestants parties to the proceeding. Any party 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.73-25495 Filed 11-30-73;8:45 am]

[Docket Nos. RI-71-1154, et al.]

ATLANTIC RICHFIELD CO., ET AL.

Order Vacating Order

NOVEMBER 23, 1973.

By order issued October 1, 1973, we terminated the above-entitled proceedings relating to sales of natural gas in Southern Louisiana under the erroneous impression that the proposed rates exceeded the ceilings prescribed in Opinion No. 598, but had not been placed in effect subject to refund.[1] Further review, however, indicates that these increased rate filings do not exceed the ceilings under Opinion No. 598.

In view of the foregoing and the fact that judicial review of Opinion No. 598 has not yet come to an end,[2] it would not be appropriate to terminate these proceedings at this time, and we shall vacate our October 1 order.

[1] Mobil Oil Corporation on October 25, 1973, filed an application for rehearing of the October 1 order.

[2] The Court in Placid Oil Co., et al. v. F.P.C. (CA5 No. 71-2761, decided April 16, 1973) affirmed Opinion No. 598. However, petitions for certiorari have been filed with the United States Supreme Court.

The Commision orders

For the reasons set forth above, the order issued October 1, 1973, in the above-entitled proceedings is vacated.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25511 Filed 11-30-73;8:45 am]

[Docket Nos. CI74-116, CI74-117]

BEREN CORP.

Order Providing for Hearing, Consolidating Proceedings, Permitting Interventions and Prescribing Procedures

NOVEMBER 26, 1973.

On April 15, 1971, the Commission, acting pursuant to the authority of the Natural Gas Act, as amended, particularly Sections 4, 5, 7, 8, 10, and 16 thereof (52 Stat. 822, 823, 824, 825, 826, 830; 56 U.S.C. 717c, 717d, 717f, 717g, 717i, and 717), issued Order 431 promulgating a Statement of General Policy with respect to the establishment of measures to be taken for the protection of as reliable and adequate service as present natural gas supplies and capacities will permit.

On August 20, 1973, Beren Corporation (Applicant) filed in Docket Nos. CI74-116 and CI74-117 applications pursuant to section 7(c) of the Natural Gas Act and section 2.70 of the Commission's General Policy and Interpretations thereunder for two year limited term certificates of public convenience and necessity with pre-granted abandonment authorizing the sale of natural gas to El Paso Natural Gas Company (El Paso) from acreage in Lea County, New Mexico, and Eddy County, New Mexico, respectively.

The limited term certificate applications provide for Applicant to sell approximately 1,000 Mcf of gas per day in Docket No. CI74-116 and approximately 2,000 Mcf of gas per day in Docket No. CI74-117, all at 55.0 cents per Mcf (14.65 p.s.i.a.), subject to upward and downward Btu adjustment from a 1,000 Btu base.

Applicant states that it commenced the sales of gas to El Paso from both areas on July 1, 1973, pursuant to § 157.29 of the Commission's regulations and proposes to continue the sales for two years from the end of the sixty day emergency periods.

In Order 431, the Commission amended Part 2, Subchapter A, General Rules, Chapter I, Title 18 of the Code of Federal Regulations by adding a new § 2.70, which, in part, reads:

(3) The Commission recognizing that additional short-term gas purchases may still be necessary to meet the 1971-1972 demands, will continue the emergency measures referred to earlier for the stated 60-day period. If the emergency purchases are to extend beyond the 60-day period, paragraph 12 in the Notice issued by the Commission on July 17, 1970, in Docket No. R-389A should be utilized (35 FR 11638). The Commission will consider if the pipeline demonstrates emergency need * * *

Paragraph 12 of R-389A provided, in part, that applicants, requesting certificates for sales of natural gas in excess of the ceiling or guideline rate, shall state the grounds for claiming that the present or future public convenience and necessity requires issuance of certificates on the terms proposed in the applications.

The applications in this proceeding represent a significant volume of gas potentially available to the interstate market. It is of critical importance that interstate pipelines procure emergency supplies of gas to avoid disruption of service to consumers; nevertheless, we must determine whether the rate to be paid serves the public convenience and necessity. It is therefore necessary that these applications be set for public hearing and expeditious determination. The hearing will be held to allow presentation, cross-examination, and rebuttal of evidence by any participant. This evidence should be directed to the issue of whether the present or future public convenience and necessity requires issuance of limited-term certificates on the terms proposed in the applications.

We take further note, however, that the Commission in a recent order has held that an emergency exists on El Paso's Southern Division System. See Skelly Oil Company, ____ FPC ____, Docket No. CI73-902, issued on September 6, 1973. We conclude, therefore, that there is an emergency on El Paso's Southern Division System which would warrant the issuance of certificates if the price conforms to the public convenience and necessity.

Petitions to intervene in the subject proceedings were filed by Southern California Gas Company (SoCal) on September 10, 1973, and by El Paso on September 14, 1973.

The Commission finds

(1) Good cause exists to set for formal hearing the applications for limited term certificates herein.

(2) The proceedings in Docket Nos. CI74-116 and CI74-117 cortain common issues of law and fact and, accordingly, good cause exists to consolidate those proceedings for the purposes of hearing and decision.

(3) It may be in the public interest to permit SoCal and El Paso to intervene in this proceeding.

The Commission orders

(A) The proceedings in Docket Nos. CI74-116 and CI74-117 are hereby consolidated for purposes of hearing and decision.

(B) Pursuant to the authority contained in and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, including particularly sections 7, 15, and 16, and the Commission's rules and regulations under that Act, a public hearing shall be held commencing December 18, at 10 a.m. (e.s.t.) at a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, concerning whether the present or future convenience and necessity requires the issuance of limited-term certificates for the sales of natural gas on the terms proposed in these applications and whether the issuance of said certificates should be conditioned in any way.

(C) El Paso Natural Gas Company and Southern California Gas Company are hereby permitted to become interveners subject to the rules and regulations of the Commission; *Provided, however,* That participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene; and, *Provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in these proceedings.

(D) The Applicant and all parties supporting the applications shall, on or before December 6, 1973, file with the Commission and serve on all parties to this proceeding, including Commission Staff, all testimony to be sponsored in support of the instant applications.

(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 hearings in this proceeding and shall prescribe relevant procedural matters not herein provided.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-25486 Filed 11-30-73;8:45 am]

[Docket No. E-8471]

CENTRAL LOUISIANA ELECTRIC CO., INC.

Compliance Filing

NOVEMBER 26, 1973.

Take notice that Central Louisiana Electric Company, Inc. on November 5, 1973, tendered for filing a letter agreement with Morgan City, Louisiana regarding Supplement No. 1 to Supplement No. 4 of Rate Schedule FPC No. 25. Since the City's peak load was less than expected, the City did not utilize the reserve capacity provided for in Supplement No. 1 to Supplement No. 4. Therefore, payments made to the Company for anticipated requirements will be returned to the City.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or December 7, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-25510 Filed 11-30-73;8:45 am]

[Docket No. CP74-123]

COLORADO INTERSTATE GAS CO.

Notice of Application

NOVEMBER 26, 1973.

Take notice that on November 5, 1973, Colorado Interstate Gas Company, a division of Colorado Interstate Corporation (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP74-123 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to exchange gas with Phillips Petroleum Company (Phillips) and Natural Gas Pipeline Company of America (Natural), and the construction and operation of certain facilities related thereto, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to exchange with Phillips and Natural approximately 7,653,000 Mcf annually of natural gas on a thermal basis. Under this proposed arrangement Applicant is to deliver unprocessed raw gas it receives from Panhandle Producing Company (Panhandle) and Mapco Production Company and Milton F. Schaffer (Mapco/Schaffer) to Phillips at Applicant's Sanford Compressor Station in Hutchinson County, Texas. Phillips will receive gas into its existing gathering system for processing at a remote plant and use in Phillips' local system in the Hutchinson County area. Phillips will redeliver a thermally equivalent volume of gas to Natural at an existing interconnection of their pipeline systems in Hansford County, Texas, to be credited by Natural against Applicant's FPC Rate Schedule F-1.

Applicant states that it presently receives approximately 20,000 Mcf per day of both sweet and sour gas from Panhandle. Said gas in its raw unprocessed state is rich in liquid hydrocarbons which must be stripped by Panhandle at its Henderson Plant in order to meet pipeline specifications. Applicant states that this plant is old and inefficient ambient temperature absorption plant which is expensive to operate and maintain. Under the proposed gas exchange Panhandle will deliver unprocessed gas to Applicant for compression and delivery to Phillips permitting Panhandle to shut down its Henderson Plant. The application states that funds released by this closing will then be available to Panhandle for use in installing field compression and making repairs on Panhandle's gathering field.

Applicant proposes to increase the current price paid to Panhandle for said gas from 17 cents to 26.3 cents per Mcf pursuant to an amendment to the Gas

Purchase Contract between the parties, dated July 23, 1973.[1]

Applicant states further that existing facilities at its Sanford Station are inadequate to meet the conditions required by this new arrangement. Applicant therefore requests authorization to construct and operate two gas scrubbers, an aerial cooler, liquid reinjection facilities, and approximately 1,000 feet of 16-inch piping which will be used to reroute the gas within the Sanford yard area and deliver condensate liquids to Phillips.

Applicant states that the total cost of all facilities proposed in this application is estimated to be $121,959, which will be financed by Applicant from available working funds, funds from operations, short-term borrowing, or long-term financing.

Applicant anticipates a substantial gas supply deficiency in both peak day and annual requirements on its system beginning in fiscal 1975. Applicant states that the proposed gas exchange will assist Applicant in maintaining its existing gas supplies.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 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 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.73-25500 Filed 11-30-73;8:45 am]

[1] Applicant states this price includes 14.5 cents per Mcf which is the effective area ceiling price, 9.3 cents for gathering system cost and maintenance, and an additional 2.5 cents per Mcf as an exploration and development incentive for Panhandle. Applicant will be reimbursed 0.4 cent per Mcf as consideration for compressing and handling the raw gas.

[Docket Nos. RP73-86, RP73-85]

COLUMBIA GAS TRANSMISSION CORP. AND COLUMBIA GULF TRANSMISSION CO.

Order Granting, in Part, Motion To Examine Conjunctive Billing Practices and Consolidating the Issue of the Imposition of Volumetric Limitations

NOVEMBER 23, 1973.

By order of April 13, 1973, we accepted proposed tariff changes filed by Columbia Gas Transmission Corporation (Columbia) in RP73-86, suspended the effective date thereof, consolidated RP73-86 with the pending RP73-85 case of Columbia Gulf Transmission Company, and ordered a hearing on the issues raised. Staff has moved that the issue of conjunctive billing on the Columbia system be addressed in this or a companion proceeding.

After stating that the Commission recently has required that the issue of conjunctive billing practices be examined in pipeline rate proceedings [El Paso Natural Gas Company, Docket Nos. RP71-137 and RP72-151, Order issued November 7, 1972; Texas Eastern Transmission Company, Docket No. RP72-98, Order issued June 28, 1973], Staff states its belief that it is appropriate to try herein the issue of the justness and reasonableness of conjunctive billing with respect to Columbia. Staff states that Columbia's tariff does not provide for maximum amounts of gas to be delivered at each delivery point of Columbia's multi-delivery point customers.

Staff's motion is opposed by the following:

1. Baltimore Gas & Electric Co. (Baltimore); filed August 17, 1973.
2. Joint—
   (a) The Cincinnati Gas and Electric Co., (Cincinnati) filed August 29, 1973.
   (b) The Union Light, Heat & Power Co. (Union).
3. Joint—
   (a) Columbia Gas of Ohio, Inc
   (b) The Ohio Valley Gas Company
   (c) Columbia Gas of Pa., Inc
   (d) Columbia Gas of N.Y., Inc
   (e) Columbia Gas of West Va., Inc
   (f) Columbia Gas of Va., Inc
   (g) Columbia Gas of Ky., Inc
   (h) Columbia Gas of Md., Inc

   (Columbia Distribution Companies) filed Sept. 4, 1973.
4. Columbia—filed August 15, 1973.
5. Commonwealth Natural Gas Corporation (Commonwealth); filed September 4, 1973.
6. Dayton Power & Light Company (Dayton Co.); filed August 30, 1973.
7. New York State Electric & Gas Corporation (NYSEG); filed August 30, 1973.
8. Orange and Rockland Utilities, Inc., (Orange & Rockland); filed August 27, 1973.
9. UGI Corporation (UGI); filed August 17, 1973.
10. Washington Gas Light Company (Washington); filed August 21, 1973.

UGI contends that in essence, Staff proposes a collateral attack on certificate authorization which has been issued by this Commission almost from the beginning of the operation of the Natural Gas Act.

UGI says that it would seem the Commission has indicated it might deal with conjunctive billing on a much broader basis in Rulemaking Docket No. R-467. UGI suggests that until the decision is rendered in Southern Natural Gas Co., Docket No. RP72-91, it would be a needless expense to Columbia and its customers, as well as a needless burden on an already overburdened Commission, to try the same issue either in this case or in a separately instituted proceeding. UGI points out that following suspension for the full statutory period Columbia's newly proposed rates are scheduled to become effective September 14, 1973.

Columbia Distribution Companies opposes Staff's motion, arguing that a multiplicity of delivery points exist on the Columbia Distribution Companies because of historic development. In Docket No. CP71-132, according to Columbia Distribution Companies, the Commission authorized numerous points of delivery related to various realignment steps.

Columbia Distribution Companies also say that the establishment of volumetric limitation at each of the delivery points would be unmanageable and impossible to control, and that elimination of these small delivery points would require unnecessary duplication of facilities or an acquisition of jurisdictional pipeline facility.

It is also stated that several Columbia Distribution Companies have installed peak-shaving facilities in localized areas to protect current total daily entitlements and that elimination of conjunctive billing would not permit the utilization of these facilities to operate the plants in certain areas and balance load requirements in other areas.

Baltimore in addition to supporting the position of UGI, also supports the answer filed by Columbia Distribution Companies. Also, Baltimore says the delivery points enable it to peak shave and supply certain areas of its distribution system and balance the load requirements in other areas, resulting in a more even distribution of gas requirements for its entire system.

Columbia in opposing Staff's motion contends that the consolidated proceedings of Columbia in Docket No. RP73-86 and of Columbia Gulf Transmission Company in Docket No. RP73-85 (pending rate increase filings and hearing to take place thereon) represent the proper form for the trial of all issues relative to Columbia's rates and billing procedures. Thus, there is no justification

for the initiation of a show cause proceeding, since any party including Staff is free to raise the issue of conjunctive billing at said hearing.

Columbia says that its grid system currently has 1,845 points of delivery to its 76 wholesale customers. Columbia refers to the same history that Columbia Distribution Companies did above and says similarly that elimination of conjunctive billing cannot be the proper way to carry out the Commission's end-use objectives.

Dayton Company besides supporting UGI's answer, supports in principle the answer of Columbia, Washington and Baltimore, and says that its present total daily entitlement from Columbia is 543,000 Mcf. If conjunctive billing were eliminated, the total of the total entitlements for each delivery point would have to be more than 543,000 Mcf because of the elimination of diversity and because of the restricted economic capacity of the propane facilities. Thus, all of the Dayton Company's consumers would have to pay the higher gas prices caused by the deterioration of billing load factors.

Commonwealth says that all of its purchases from Columbia are delivered at one billing point. Commonwealth believes that Staff's attempt to impose conjunctive billing is solely a means of conserving gas during the current shortage and says that if so, its application will be capricious in the extreme and discriminatory against many customers.

We agree with Columbia that a separate proceeding to determine issues relating to conjunctive billing is neither necessary nor appropriate. These issues may be fully examined, and indeed they should be fully examined, in the consolidated RP73-86 dockets. We also agree with Staff, however, that should the decision in Docket No. RP73-86 be one requiring modification or elimination of existing billing practices, concurrent changes in Columbia's certificate authorization may be necessary to effectuate such a decision.

We express no position on the merits, or demerits, of conjunctive billing as practiced on the Columbia system; We believe, however, that this matter should be explored in an evidentiary hearing, and that orderly administration of our responsibilities under the Natural Gas Act requires that such a hearing take place in a procedural framework which will permit implementation of our decision, whatever it may be.

Accordingly, we modify our order of April 13, 1973, to give notice that the hearing held shall be pursuant to the authority of section 7 of the Natural Gas Act, as well as sections 4 and 5 thereof, and the final decision reached herein shall determine whether or not any amendment of Columbia's certificates of public convenience and necessity is required to implement and make effective a Commission decision on conjunctive billing practices. All parties, and Staff, shall present such evidence in this proceeding as they may choose, bearing on rate and certificate issues relating to conjunctive billing, including but not limited to evidence relating to whether daily and/or annual volumetric limits should be established on each Columbia delivery point, and if so, the appropriate limitation for each.

The Commission orders:

(A) Staff's Motion is granted to the extent set forth in this order and in all other respects is denied.

(B) The hearings held in this consolidated docket shall be pursuant to the authority of sections 4, 5, and 7 of the Natural Gas Act, and the decision reached herein shall determine rate and certificate issues relating to the practice of conjunctive billing on the Columbia system.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-25514 Filed 11-30-73;8:45 am]

[Docket No. RP74-38]

CONSOLIDATED GAS SUPPLY CORP.

Rate Increase Changes

NOVEMBER 26, 1973.

Take notice that on November 7, 1973, Consolidated Gas Supply Corporation (Consolidated) tendered for filing the following Tariff Sheets to its FPC Gas Tariff, Original Volume No. 3:

Tariff sheets transmitted:	*Rate schedules involved*
Second Revised Sheets Nos. 80 through 83	F-8
Third Revised Sheets Nos. 143 through 146	F-10
Second Revised Sheets Nos. 228 through 231	F-12
Second Revised Sheets Nos. 440 and 441, and	----
Third Revised Sheets Nos. 442 and 443	F-17

Consolidated states that these Tariff Sheets are submitted pursuant to the provisions of section 4 of the Natural Gas Act and the Commission's regulations thereunder particularly § 154.94, *Changes in Rate Schedules* (18 CFR 154.94), and § 154.105, *Area Rates—Southern Louisiana Area* (18 CFR 154.105), the latter as promulgated by the Commission's Opinion No. 598 and accompanying Order issued July 16, 1971, as amended, in Docket Nos. AR61-2 et al., and AR69-1 (Southern Louisiana Area), determining just and reasonable rates for natural gas produced in the Southern Louisiana Area. Consolidated states that the Sheets embody changes in the referred-to Rate Schedules to increase the rates to be charged thereunder, effective as of October 1, 1973, by the one-half cent (0.5¢) per Mcf upward adjustment in the base area rates expressly provided for gas sold under contracts dated prior to October 1, 1968 (18 CFR 154.105(c)(3)), such higher rates being permitted by the contract provisions of the said Schedules. According to Consolidated, the Sheets set forth for the respective Rate Schedules the current and the proposed new rates, and the estimated sales volume and comparative revenues for the twelve-month period succeeding the effective date.

Consolidated submits that the higher rates should be permitted to become effective as of October 1, 1973, in accordance with the Commission's July 17, 1971, Southern Louisiana Area rate decision, notwithstanding submission of the Tariff Sheets involved subsequent to their proposed effective date, due in part to inadvertence and in part to conflicting engagements of counsel concerned. Wherefore, Consolidated requests waiver of any rules and regulations of the Commission as may be necessary to permit the enclosed Tariff Sheets to become effective as proposed.

Consolidated certifies that copies of the Tariff Sheets involved have been mailed to each purchaser as applicable under each respective Rate Schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 5, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-25483 Filed 11-30-73;8:45 am]

[Docket No. RP72-134]

EASTERN SHORE NATURAL GAS CO.

Proposed Changes in Rates and Charges

NOVEMBER 26, 1973.

Take notice that Eastern Shore Natural Gas Company (Eastern) on October 29, 1973, tendered for filing to its FPC Gas Tariff, Original Volume 1, Fifth Revised Sheet No. 3A and Fifth Revised PGA-1, to become effective December 1, 1973. The above revised tariff sheets would increase the demand and capacity volume charges of Eastern's rate schedule GSS-1 by 1.0¢ and .002¢ respectively, per Mcf. This increase reflects the purchased gas cost increase by Transcontinental Gas Pipe Line Corporation on October 15, 1973, in Docket No. RP73-3, to be effective December 1, 1973. Eastern requested that the notice requirements of § 154.51 of the Regulations under the Natural Gas Act be waived to permit these tariff increases as of December 1, 1973.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol

Street, NE. Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 31, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25494 Filed 11-30-73;8:45 am]

[Docket No. RP73-104]

EL PASO NATURAL GAS CO.

Filing of Motion To Place Tariff Sheets in Effect

NOVEMBER 26, 1973.

Take notice that on October 30, 1973, El Paso Natural Gas Company filed with the Commission a motion to have certain tariff sheets to its FPC Gas Tariff, Original Volume No. 1 and Original Volume No. 2A placed in effect as of November 2, 1973. The tariff sheets set forth rate levels identical to those suspended in this docket by Commission Order of June 1, 1973, until November 2, 1973, modified to include a uniform increase of 4.94¢ per Mcf above the levels originally filed in this docket to reflect the approval of such increase by the Commission's Order of October 16, 1973, in Docket Nos. RP72-150 and RP 72-155.

Any person desiring to be heard or to protest said filing should file comments with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such comments should be filed on or before November 30, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken. Those previously permitted to become a party need not file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25507 Filed 11-30-73;8:45 am]

[Docket Nos. G-18033, CP73-332]

EL PASO NATURAL GAS CO. AND NORTHWEST PIPELINE CORP.

Petition To Amend Orders

NOVEMBER 23, 1973.

Take notice that on November 16, 1973, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, and Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket Nos. G-18033 and CP73-332 a petition to amend the Commission's orders of October 16, 1960 (24 FPC 134), and September 21, 1973 (50 FPC ____), authorizing the importation of natural gas from Canada pursuant to Section 3 of the Natural Gas Act by authorizing the importation of additional volumes of natural gas at the Kingsgate, British Columbia, import point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The Commission's order in Docket No. G-18033 authorized El Paso to import into the United States at the Kingsgate import point 151,731 Mcf of gas on a peak day and 51 million Mcf of gas annually purchased from Westcoast Transmission Company Limited (Westcoast). By its order in Docket No. CP73-331 et al., the Commission authorized Northwest to continue this importation from Canada upon the conveyance of El Paso's Northwest Division System to Northwest. El Paso and Northwest are also authorized to import at Sumas, Washington, natural gas purchased from Westcoast.

Petitioners state that Westcoast has notified Petitioners that it anticipates curtailing deliveries of natural gas to El Paso's Northwest Division System by approximately 120,000 Mcf per day at the Sumas import point. Petitioners state that this curtailment will impair El Paso's ability to render firm service to its Northwest Division customers. According to Petitioners, Westcoast can deliver to El Paso during the term ending October 31, 1974, at the Kingsgate import point approximately 30,000 Mcf of gas on an average day and on a peak day approximately 120,000 Mcf of gas which it will obtain from Alberta and Southern Gas Company Limited (Alberta). Petitioners state that El Paso and ultimately Northwest will purchase the additional volumes of gas on a cost-of-service basis pursuant to El Paso's gas purchase contract with Westcoast dated September 23, 1960. The price of the gas is estimated to be about 45.0 cents per Mcf and includes the average cost of the gas received from Alberta, the price of transporting it to Kingsgate, plus an additional 10 percent. The cost of the additional volumes of gas would be passed on to El Paso's Northwest Division customers via the purchased gas cost adjustment provision of the general terms and conditions of El Paso Natural Gas Company's FPC Gas Rate Tariff, First Revised Volume No. 3.

Petitioners seek authorization to import this additional gas to reduce the impact of Westcoast's curtailment of gas at the Sumas import point, and state that the gas will be used by El Paso and subsequently by Northwest to serve only existing customers.

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 December 7, 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 in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25505 Filed 11-30-73;8:45 am]

[Docket No. E-8121]

GULF STATES UTILITIES CO.

Order Denying Rehearing, Denying Motion for Stay and Clarifying Prior Order

NOVEMBER 23, 1973.

By order of August 7, 1973, the Commission granted rehearing of its order of June 14, 1973, in this docket, to Southwest Louisiana Electric Membership Corporation (Southwest) pending further consideration and action upon a letter agreement (Agreement) between Southwest and Gulf States Utilities Company (Gulf States) filed May 4, 1973, in Docket No. E-8179. At issue was Southwest's contention, in a July 13, 1973, application for rehearing, that this Agreement extends the term of Southwest's contract with Gulf States (FPC Rate Schedule No. 72) at the rates and charges contained in the contract and eliminates the contract demand ceiling. Such an amendment to the contract would have an effect upon the treatment of a general rate increase filed by Gulf States in this docket on April 10, 1973, applicable to a number of municipal and cooperative customers, including Southwest. In its June 14 order, the Commission treated the contract as fixed rate and rejected the proposed rate increase except as the increase would apply to amounts of deliveries sold above the contract demand ceiling. For these amounts, the proposed rates were treated as initial rates.

By order of August 8, 1973, the Commission accepted for filing the Agreement in Docket No. E-8179, to be effective as of August 1, 1973, and consolidated that docket with this docket, but only for the purpose of investigating, under section 206 of the Federal Power Act, the justness and reasonableness of the fuel clause proposed.

By order of October 19, 1973, in this docket the Commission denied Southwest's petition for rehearing of the June 14 order, but found that the Agreement does extend Southwest's contract (until August 1, 1983) and does remove the limitations as to demand in the contract. The Commission found that since the Agreement becomes effective as of August 1, 1973, there is, after that date,

no demand ceiling in Southwest's contract. The rates to be charged for all amounts of demand after August 1 are, therefore, those fixed rates charged under the contract.

On October 26, 1973, Gulf States filed an application for rehearing, motion for investigation, hearing and extraordinary relief, and motion for clarification of order (Application). The Application states that nothing in Gulf States' filing of the Agreement in Docket No. E-8179 or in the Commission's August 8 order accepting such Agreement for filing reflects any intention or understanding by Gulf States or Southwest that such letter Agreement was intended to foreclose Gulf States from seeking rate relief by unilateral application to the Commission. Gulf States points out that the Commission had already found on June 14 that such a right existed at least as to deliveries in excess of the contract maximum stated in Article III of the original contract, and such stated maximum was not dealt with in the 1970 letter Agreement. Gulf States further alleges that there is an inconsistency in now ordering that the new rates may not be imposed by the Company on excess deliveries after August 1, 1973, when the Commission had so authorized such charge on June 14, and that the result the Commission reaches is inconsistent with other cases.[3] Finally, Gulf States suggests that the construction of the contract and the letter Agreement must be made within the context of Louisiana contract law.

Nowhere have we suggested that the letter Agreement filed in Docket No. E-8179, evinces an intent by either of the parties to foreclose Gulf States from seeking rate relief. It does, however, evince an intent to remove, after August 1, the demand ceiling in the original contract. Our interpretation of the effect of such removal, in light of the directives of the Mobile-Sierra cases, is that the fixed contract rates must as a result be applied to all amounts of demand after August 1. The Commission's June 14 order only addressed itself to the contract between the parties as it existed prior to the August 1 effective date of the Agreement amending the contract. Thus there is no inconsistency in the Commission's action of October 19. We also find no inconsistency with the prior Commission orders which Gulf States cites. We are dealing here with a contract amendment which completely eliminates the demand ceiling in the contract with Southwest and there is, therefore, no longer the question of initial rates which the Commission addressed itself to in the Appalachian and Philadelphia cases.[4] Finally, as to Gulf States' suggestion that Louisiana contract law should be applied in our construction of the contract as amended by the letter Agreement, the cases cited by Gulf States do not support its contention that fixed rate contracts may be abrogated upon unilateral application by one of the parties.[5] These cases concern the legal right of certain state commissions to abrogate private contracts pursuant to state police powers. These commissions are characterized in the decisions as "rate making" commissions. The crucial distinction in character between these regulatory agencies and this Commission is discussed at some length in the Mobile case[6], where sections 4 and 5 of the Natural Gas Act (which are analogous to sections 205 and 206 of the Federal Power Act) were construed by the Supreme Court. We believe that our construction of the contract and Agreement in question was required by the Mobile-Sierra cases and that there is nothing in the general of law contract which would alter such construction.

Gulf States asks that the Commission: (1) reconsider its finding that the letter Agreement removes the limitations as to demand in the contract; (2) institute our investigation with regard to the application of the proposed rates to deliveries in excess of the contract maximum limits; and, (3) clarify the October 19 order to confirm that the section 206 investigation, originally ordered on June 14 to determine whether or not the rates charged under the fixed rate contract are in the public interest, will also apply to the fixed rates now charged for all sales under the Southwest contract. For the above discussed reasons, we shall deny all but Gulf States final request. The fixed contract rates applicable to all sales under the Southwest contract after August 1, 1973, shall be a subject of investigation under the section 206 proceeding previously instituted in this docket.

On November 8, 1973, Gulf States also filed a motion for stay of the October 19 order, wherein Gulf States states that it has been charging Southwest for service above the contract maximum demand at the initial rates which were originally permitted in the Commission's June 14 order. The Company requests that it be allowed to continue such practice pending the outcome of the investigation pursuant to Section 206 which has been instituted in this docket. As previously discussed, the initial rates allowed by the Commission's June 14 order have been effectively terminated by the letter Agreement, which removes the maximum demand from the contract. Under sections 205 and 206 of the Federal Power Act, as interpreted pursuant to the *Mobile-Sierra* rule, we must deny this motion.

The Commission finds: The application for rehearing and other relief filed by Gulf States on October 26, 1973, and the motion for stay filed on November 8, 1973, should be denied except as to the requested clarification of the Commission's order of October 19, 1973.

The Commission orders: (A) The Application for rehearing and other relief filed by Gulf States on October 26, 1973, is hereby denied except as to the request for clarification.

(B) The Commission's Orders Denying Rehearing of October 19, 1973, is hereby clarified to confirm that the fixed contract rates as applicable to all sales of energy made under the Southwest contract after August 1, 1973, shall be a subject of the Section 206 investigation previously instituted in this docket.

(C) The motion for stay filed by Gulf States on November 8, 1973, is denied.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc. 73-25515 Filed 11-30-73;8:45 am]

[Docket No. E-8055]

IDAHO POWER CO.

Proposed Stipulation and Offer of Settlement

NOVEMBER 26, 1973.

Take notice that on October 9, 1973, as supplemented on November 9, 1973, Idaho Power Company filed in this docket a proposed stipulation and offer of settlement. The subject settlement proposal, if approved, would resolve all issues in this proceeding.

Any person wishing to do so may submit comments with respect to the proposed offer of settlement on or before December 21, 1973. The settlement proposal is on file with the Commission and available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-25508 Filed 11-30-73;8:45 am]

[Docket No. CI74-294]

LARIO OIL & GAS CO.

Notice of Application

NOVEMBER 26, 1973.

Take notice that on November 6, 1973, Lario Oil & Gas Company (Applicant), 301 South Market Street, Wichita, Kansas 67202, filed in Docket No. CI74-294 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to discontinue the sale of casinghead gas to Warren Petroleum Corporation, a Division of Gulf Oil Corporation (Warren), from certain of Applicant's gas producing leases located in the Sand Hills Tubb Area, Crane County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

---

[1] Gulf States refers to: Appalachian Power Co., order dated February 14, 1973 in Docket No. E-7775; Philadelphia Electric Co. order dated January 4, 1973, in Docket No. E-7795.

[2] See footnote 1, supra.

[3] Gulf States cites: City of Plaquemine, La. v. Public Service Commission, No. 52, 926 in the Supreme Court of La., Opinion issued August 20, 1973; Alexandria & W. Ry. Co. v. Long Pine Lumber Co., 152 La. 399, 93 So. 199 (1922); City of Shreveport v. Southwestern Gas & Electric Co.; 151 La. 864, 92 So. 365 (1922).

[4] United Gas Co. v. Mobile Gas Corp., 350 U.S. 332 at pp. 338-343 (1956).

Applicant states that under a certain percentage sales casinghead gas contract between Applicant and Warren, dated August 20, 1965, Applicant sells casinghead gas to Warren at the latters' Waddell Processing Plant. Warren processes said casinghead gas and sells the residue gas resulting therefrom to El Paso Natural Gas Company at the tailgate of the Waddell plant under Warren's FPC Gas Rate Schedule No. 43. Applicant states 371,400 Mcf of casinghead gas was delivered to Warren under said contract for the twelve months ending September 1973 for which Applicant received an average price of approximately 9 cents per Mcf. Applicant states the subject contract has expired by its own terms.

Applicant proposes to abandon such deliveries to Warren made under the expired contract and has entered into a new Gas Processing Agreement with Warren which will allow Applicant to sell the subject residue to El Paso while utilizing the same facilities previously used under the expired contract. Applicant states further that it has entered into a Residue Gas Purchase Agreement with El Paso under which Applicant, holder of a small producer certificate in Docket No. CS71-564, intends to sell residue gas to El Paso pursuant to its small producer certificate at an initial price of 36 cents per Mcf for a period commencing on delivery and extending through January 1, 1974. Under the terms of the agreement with El Paso the price is to escalate one cent per Mcf for each succeeding year throughout the term of the agreement which expires January 1, 1989, and El Paso is to pay ¾ of any additional tax.

Applicant alleges the proposed abandonment of the sale to Warren will have no effect on the supply of gas in interstate commerce since the gas will be sold directly to El Paso.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 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.73-25493 Filed 11-30-73;8:45 am]

[Docket No. CP74-131]

LONE STAR GAS CO.

Notice of Application

NOVEMBER 23, 1973.

Take notice that on November 12, 1973, Lone Star Gas Company (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP74-131 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction during the calendar year 1974, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system additional supplies of natural gas in areas generally co-extensive with said system.

Applicant states the total cost of all facilities will not exceed $3,000,000, with no single project to exceed a cost of $750,000. Applicant states said costs will be financed from working capital.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 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 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.73-25516 Filed 11-30-73;8:45 am]

[Docket No. CP74-130]

LONE STAR GAS CO.

Notice of Application

NOVEMBER 23, 1973.

Take notice that on November 12, 1973, Lone Star Gas Company (Applicant), 301 South Harwood Street, Dallas, Texas 75201 filed in Docket No. CP74-130 an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act, as implemented by § 157.7(g) of the Commission regulations thereunder (18 CFR 157.7(g)), for a certificate of public convenience and necessity authorizing the construction and for permission and approval for the abandonment, during the calendar year 1974, and operation of field gas compression and related metering 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 states the purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in the construction and abandonment of facilities which will not result in changing Applicant's system salable capacity or service from that authorized prior to filing of the instant application.

Applicant states that the total cost of the facilities proposed herein is $700,000 with no single project costing in excess of $175,000. Applicant states said cost will be financed from working capital.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with 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.73-25517 Filed 11-30-73;8:45 am]

[Docket No. CP74-127]

LONE STAR GAS CO.

Notice of Application

NOVEMBER 23, 1973.

Take notice that on November 12, 1973, Lone Star Gas Company (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP74-127 an application pursuant to section 7(b) of the Natural Gas Act, as implemented by § 157.7(e) of the Commission's regulations thereunder (18 CFR 157.7(e)), for permission and approval to abandon, during the calendar year 1974, certain minor direct sales facilities no longer required for deliveries of natural gas to Applicant's customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in abandoning service and removing direct sales measuring, regulating, and related minor facilities no longer required for deliveries to its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 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 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.73-25518 Filed 11-30-73;8:45 am]

[Docket No. CP74-128]

LONE STAR GAS CO.

Notice of Application

NOVEMBER 23, 1973.

Take notice that on November 12, 1973, Lone Star Gas Company (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP74-128 an application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(c) of the Commission's regulations thereunder (18 CFR 157.7(c)), for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas sales or transportation facilities to enable Applicant to make miscellaneous rearrangements of existing facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making changes in existing field operations and miscellaneous rearrangements and relocations of existing facilities when required by highway, dam, and other similar construction projects which will not result in any change in service.

Applicant states that the total cost of the facilities proposed herein is $300,000, with no single project costing in excess of $75,000. Applicant states said cost will be financed from cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 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 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.73-25519 Filed 11-30-73;8:45 am]

[Docket No. E-8466]

LOUISIANA POWER AND LIGHT CO.

Proposed Emergency Assistance Agreement

NOVEMBER 23, 1973.

Take notice that on October 31, 1973, the Louisiana Power and Light Company (LPL) tendered for filing an Emergency Assistance Agreement dated September 7, 1972 providing for the delivery of emergency electric service to the Town of Rayville, Louisiana (Rayville). LPL states that the proposed agreement provides for service only in case of emergencies and that future sales and revenues are too unpredictable to be estimated with any relative accuracy. LPL further states that the proposed agreement was made with Rayville for emergency assistance on Rate Schedule EAS-2, which rate schedule was filed with the Commission September 19, 1968, accepted for filing and made effective October 24, 1968 for the City of Minden, FPC Schedule No. 29, and later for seven other towns and cities.[1]

According to LPL, the facilities to implement the proposed agreement have

[1] The City of Ruston, FPC Schedule No. 30; the City of Thibodaux, FPC Schedule No. 39; the City of Monroe, FPC Schedule No. 40; the City of Houma, FPC Schedule No. 43; the Town of Lake Providence, FPC Schedule No. 45, and the Town of Homer, FPC Schedule No. 47.

been completed and the emergency assistance service is available to Rayville. LPL states that a copy of the proposed filing has been sent to Rayville and requests that the proposed agreement be accepted for filing to become effective on the date on which service is initially rendered.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10).

All such petitions or protests should be filed on or before December 6, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25510 Filed 11-30-73;8:45 am]

[Docket No. E-8130]

MIDDLE SOUTH SERVICES, INC.

Certification of Settlement Agreement

NOVEMBER 26, 1973.

Take notice that on November 8, 1973, the Presiding Administrative Law Judge certified to the Commission a proposed settlement agreement in the above-entitled proceeding. The agreement would, if approved, resolve all issues in the proceeding.

Any person wishing to do so may submit comments with respect to the proposed settlement agreement on or before December 13, 1973. The settlement agreement is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25503 Filed 11-30-73;8:45 am]

[Docket No. E-8488]

MISSOURI POWER AND LIGHT CO.

Proposed New Electric Service Agreement

NOVEMBER 23, 1973.

Take notice that Missouri Power and Light Company (Missouri) on November 12, 1973, tendered for filing a proposed Electric Service Agreement with the City of Canton, Missouri. The proposed agreement would have an effective date of January 1, 1973, and would be identical, with minor modifications, to FPC Rate Schedules No. 41 and No. 38 presently on file with the Commission. According to Missouri, service has been made upon the City of Canton.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 6, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25521 Filed 11-30-73;8:45 am]

NATIONAL POWER SURVEY EXECUTIVE ADVISORY COMMITTEE

Order Designating Additional Member

NOVEMBER 26, 1973.

The Federal Power Commission, by order issued August 11, 1972, established the Executive Advisory Committee of the National Power Survey.

2. *Membership.* An additional member of the Executive Advisory Committee, as selected by the Chairman of the Commission, with the approval of the Commission, is as follows:

Charles E. Wyckoff, Member, President, National Rural Electric Cooperative Association.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25487 Filed 11-30-73;8:45 am]

NATIONAL POWER SURVEY EXECUTIVE ADV SORY COMMITTEE

Order Designating an Additional Member

NOVEMBER 26, 1973.

The Federal Power Commission by Order issued August 11, 1972, established the Executive Advisory Committee of the National Power Survey.

1. Membership. The Honorable Ben T. Wiggins, President of the National Association of Regulatory Utility Commissioners and a Member of the Georgia Public Service Commission, was nominated by the Chairman of the Commission with the approval of the Commission to serve as a member of the Executive Advisory Committee of the National Power Survey during the term of his office as President succeeding Arthur L. Padrutt as the official representative of the National Association of Regulatory Utility Commissioners on the Executive Advisory Committee.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25439 Filed 11-30-73;8:45 am]

NATIONAL POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON POWER SUPPLY

Order Designating Additional Members

NOVEMBER 26, 1973.

The Federal Power Commission, by order issued September 28, 1972, established certain advisory committees.

2. *Membership.* Additional members of the Technical Advisory Committee on Power Supply, as selected by the Chairman of the Commission, with the approval of the Commission, are as follows:

Mr. L. A. Esswein, Member, Assistant Director of Corporate Planning, Union Electric Company.

Mr. Edward J. Hanrahan, Member, Assistant Director for Energy and Environment, U.S. Atomic Energy Commission Office of Planning and Analysis.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25488 Filed 11-30-73;8:45 am]

[Docket Nos. E-8251, E-8169]

NEW ENGLAND POWER CO.

Extension of Time and Postponement of Prehearing Conference and Hearing

NOVEMBER 23, 1973.

On November 9, 1973, Rhode Island Consumers' Council filed an extension of the procedural dates fixed by the order issued July 30, 1973 in the above-designated matter. On November 16, 1973 Staff counsel also filed a motion for an extension of the procedural dates. The motion states that all parties concur in the motion.

Upon consideration, notice is hereby given that the procedural dates are modified as follows:

Service of Staff's evidence, February 5, 1974.
Service of Intervenor's evidence, February 19, 1974.
Service of Rebuttal evidence, March 5, 1974.
Prehearing Conference, March 19, 1974 (10:00 a.m.).
Hearing, March 19, 1974 (Commences upon the conclusion of the Prehearing Conference).

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25522 Filed 11-30-73;8:45 am]

[Docket No. RI74-24]

NORMAN B. FROST, OPERATOR

Petition for Special Relief

NOVEMBER 26, 1973.

Take notice that on August 7, 1973, Norman B. Frost, Operator (Petitioner), 500 Southern Building, Washington, D.C. 20005, filed a petition for special relief in Docket No. RI74-24, pursuant to section 2.76 of the Commission's general policy and interpretations. Petitioner requests that it be granted special relief from the flowing gas ceiling established in Opinion No. 662 (Permian II), and be

permitted to collect a 40¢ per Mcf rate for sales of natural gas to El Paso Natural Gas Company from Gas Well No. 4, Allison Lease, Sutton County, Texas.

Petitioner states that Well No. 4 drilled in May, 1961, is the only remaining gas well on the Allison Lease, Sutton County, Texas, and is capable of producing from 300,000 to 400,000 cubic feet of gas per day, and that it has been shut in for the past six months because of economic conditions arising from salt water production and disposal. Petitioner further states that he will have to abandon the subject well unless given relief.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 18, 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 party 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.73-25496 Filed 11-30-73;8:45 am]

[Docket No. E-7777]

PACIFIC GAS AND ELECTRIC CO.

Extension of Time

NOVEMBER 26, 1973.

On November 20, 1973, Pacific Gas and Electric Company filed a motion for an extension of time within which to respond to the Motion for Extraordinary Relief filed November 7, 1973, by the Cities of Alameda, California et al. The motion states that neither counsel for the Cities, Northern California Power Agency, nor Staff Counsel had any objection to the requested extension.

Upon consideration, notice is hereby given that the time is extended to and including December 6, 1973, within which Pacific Gas and Electric Company may respond to the above motion for extraordinary relief.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73-25482 Filed 11-30-73;8:45 am]

[Docket No. RP73-111]

PACIFIC GAS TRANSMISSION CO.

Extension of Time and Postponement of Prehearing Conference and Hearing

NOVEMBER 21, 1973.

On November 8, 1973, Pacific Gas Transmission Company filed a motion for a continuance of the procedural dates fixed by order issued September 13, 1973, and amended by order issued October 23, 1973. The motion states that neither interveners nor staff counsel oppose the motion.

Upon consideration, notice is hereby given that the procedural dates are modified as follows:

Service of Exhibits and Testimony by PGT, January 4, 1974.
Prehearing Conference, January 16, 1974 (10 a.m., e.s.t.).
Hearing (commences upon the conclusion of the Prehearing Conference) January 16, 1974.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25523 Filed 11-30-73;8:45 am]

[Docket No. E-8446]

PENNSYLVANIA ELECTRIC CO.

Filing of Service Agreements

NOVEMBER 26, 1973.

Take notice that Pennsylvania Electric Company (Penelec) on November 9, 1973, tendered for filing copies of service agreements with the Boroughs of Berlin, East Conenaugh, Girard, Hooversville, Smethport, and Summerhill, Pennsylvania. Copies of service agreements were also filed in regard to one associated investor-owned utility, Waterford Electric Company, and four non-associated investor-owned utilities, Rockingham Light, Heat and Power Company, Elkland Electric Company, Wellsborough Electric Company, and Windber Electric Corporation. The service agreements are in unexecuted form except for the agreement with Elkland Electric Company. Panelec requests that the filing be effective as of December 12, 1973.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before December 7, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25497 Filed 11-30-73;8:45 am]

[Docket No. CI74-287]

PETRO-LEWIS CORP.

Notice of Application

NOVEMBER 26, 1973.

Take notice that on November 5, 1973, Petro-Lewis Corporation 1600 Broadway, Denver, Colorado 80202, filed in Docket No. CI74-287 an application pursuant to section 7(c) of the Natural Gas Act and § 2.75 of the Commission's general policy and interpretations (18 CFR 2.75) for a certificate of public convenience and necessity authorizing the sale for resale and deliver of natural gas in interstate commerce to Southern Natural Gas Company (Southern) from Coffee Bay Field, LaFourche Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes under the optional gas pricing procedure to sell natural gas to Southern from the Coffee Bay Field at an initial rate of 45.0 cents per Mcf at 15.025 p.s.i.a., with the price to be reduced by 0.1026 percent for each Btu. below a total Btu content of 975 Btu. per cubic foot, pursuant to the terms of a contract between Applicant and Southern, dated April 2, 1958, as amended by agreement dated September 13, 1973. Said agreement calls for fixed periodic increases in price of one cent per Mcf for each additional two-year period, with Southern to pay ¾ of any additional tax.

Applicant states that additional natural gas is critically needed and alleges that the issuance of the requested certificate at the rate contracted for is necessary to justify the expenditure by Applicant of the amounts necessary to perform the drilling, deepening, and recompletion activity contemplated in the instant contract with Southern.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. 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.73-25492 Filed 11-30-73;8:45 am]

[Project 2101]

SACRAMENTO MUNICIPAL UTILITY DISTRICT

Order Providing for Hearing

NOVEMBER 26, 1973.

On January 23, 1973, Sacramento Municipal Utility District, Licensee for the Upper American River Project No. 2101, filed an application seeking Commission approval of two separate lands transfers of project property of the aforesaid project.

The first transfer, accomplished May 25, 1964, conveyed to the United States Forest Service (Forest Service) 1131.2 acres of land within project boundaries, adjacent to Union Valley and Ice House Reservoirs. The Licensee in turn received from Forest Service 682.81 acres of land known as the Big Hill property located one mile south of the Union Valley Reservoir.

The purpose of this transfer was, according to the above application, to convey all privately owned lands within project boundaries to the Forest Service who was thought by the Licensee to be better equipped to administer public recreational facilities within the project.

Two reservations were placed on the above transfer. The first granted the Licensee such flowage rights as may be required by the license issued for Project No. 2101, subject to damages for any Forest Service improvements placed on the property that would be rendered unuseable. The second guaranteed that the land would remain open to the public for outdoor recreation as authorized by Public Law 86-517 (74 Stat. 215)[1] and administered so as to permit controlled public use of the reservoir area for recreation as required by the license issued for Project No. 2101.

The second transfer, accomplished December 24, 1968, transferred to the United States Department of Justice (Department of Justice) 1281.48 acres of land, of which 276.31 acres were within project boundaries, adjacent to Ice House, Loon Lake, Gerle Creek, and Junction Reservoirs and the Camino Tunnel adit. This property was transferred as part settlement of a fire damages claim filed against the Licensee by the Department of Justice.

One reservation was placed on this transfer, granting the Licensee all right, title and interest in all improvements upon the property that form a part of, or are necessary or convenient to Project No. 2101. No further reservation or conditions were included.

According to the above application the 1968 transfer fulfilled the Licensee's original plan to transfer all private properties within the project boundaries to Forest Service. Though the Licensee transferred its lands to the Department of Justice, they informally understood that the lands would be transferred at some future date to Forest Service.

After the Department of Justice received the 1968 lands, they declared them to be excess of its needs and turned them over to the General Services Administration (GSA). Forest Service then requested that these lands be transferred to the Department of Agriculture to be included within the Eldorado National Forest. On October 28, 1971, the Office of Management and Budget (OMB) disapproved Forest Service's request stating that present value of the planned use by Forest Service would be considerably less than the present value of its sale. Forest Service then requested reconsideration by OMB. On July 12, 1972, OMB reaffirmed its decision of October 28, 1971. Currently the lands are still in the possession of GSA and Forest Service has again requested reconsideration by OMB.

The aforesaid transfers were made without Commission approval and would appear to be in violation of Articles 2 and 23 of the license for Project No. 2101. Article 2 provides that no substantial changes shall be made in maps, plans and specifications without Commission approval[2]. Article 23 provides that during the period of the license, the licensee shall retain all property, easements, water rights or rights of occupancy and use necessary or useful to the project and for development, transmission and distribution of power and prohibits transfer of such property and interests without Commission approval[3].

Further, the transfer of these lands within project boundaries coupled with the Licensee's plan to have Forest Service administer recreational activities raise the possibility that Article 42 of the aforementioned license has also been violated. Article 42 provides that the licensee is required to acquire title to private lands within project boundaries which are necessary to provide access to and allow for controlled public use of the reservoir area for recreation[4].

The Commission finds: (A) It is appropriate and in the public interest as provided herein to hold a public hearing respecting matters involved and issues presented in this proceeding on the application by Sacramento Municipal Utility District for approval of land transfers and such other purposes set forth in this order.

(B) It is appropriate and in the public interest to allow all the federal agencies and departments that dealt with or have an interest in the aforementioned land to be made parties to this proceeding.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly sections 4(g), 10(a) and 308 thereof, and the Commission's Rules of Practice and Procedure, a public hearing shall be held in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, respecting the matters involved and issues presented in this proceeding. The time for the submission of testimony and exhibits by the participants and the time for convening hearing sessions in Washington, D.C., and such other places as may be necessary shall be determined by the presiding Administrative Law Judge.

(B) The purpose of the hearing shall be to consider the application of Sacramento Municipal Utility District requesting approval of transfers of project

[1] Public Law 86-517 (74 Stat. 215) is known as the Multiple-Use Sustained-Yield Act of 1960. (16 U.S.C. 528-531).

[2] Article 2 states "No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: *Provided*, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission."

[3] Article 23 states "The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy, and use; and none of such properties necessary or useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee."

[4] Article 42 states "The Licensee will acquire such title to all private lands within the project boundary as is necessary to provide access to and allow for, controlled public use of the reservoir areas for recreation."

property of Project No. 2101 by developing a formal record pertaining to:

(1) Whether the Commission shall request the Attorney General of the United States to have the aforesaid transfer revoked or reformed so as to achieve compliance with the provisions of the license for Project No. 2101 and in particular Articles 2, 23, and 42;

(2) Whether the Commission should take any further action that would be appropriate to remedy the Licensee's violation of the provisions of the Federal Power Act or any lawful regulation or order promulgated thereunder; and

(3) All other relevant matters raised by the parties.

(C) Formal parties submitting evidence for admission to the record shall submit their exhibits and testimony in writing in advance to be subject to cross-examination upon the opening of the hearing in accordance with a schedule to be fixed by the Administrative Law Judge.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-25485 Filed 11-30-73;8:45 am]

[Dockets Nos. RP72-74, RP74-6]

SOUTHERN NATURAL GAS CO.

Notice Fixing Prehearing Conference and Deferring Procedural Dates

NOVEMBER 23, 1973.

On November 9, 1973, Southern Natural Gas Company filed a motion to defer the procedural dates fixed by order issued October 31, 1973, in the above-designated matter. The motion also requests that a prehearing conference be held on December 4, 1973, rather than the evidentiary hearing as now scheduled.

Upon consideration, notice is hereby given that a prehearing conference is scheduled for December 4, 1973, at 10 a.m. in a hearing room of the Federal Power Commission at 825 North Capitol Street NE., Washington, D.C. 20426. All the other procedural dates are deferred pending further order of the Commission.

MARY B. KIDD, *Acting Secretary.*

[FR Doc.73-25525 Filed 11-30-73;8:45 am]

SOUTHERN NATURAL GAS CO.

[Docket No. RP74-6, et al]

Motion for Extraordinary Relief

NOVEMBER 23, 1973.

On October 23, 1973, Mississippi Chemical Corporation (MCC) filed a petition for extraordinary relief with the Commission which was referred to as a request for pendente lite relief in the petition. In that request, MCC sought extraordinary relief from the Index of Requirements filed by Southern Natural Gas Company (Southern) on October 1, 1973, as part of its FPC Gas Tariff.

MCC asserts that the above mentioned Index of Requirements lists at pages 68 and 69 the total requirements of MCC as 29,313 Mcf per day, 29,000 of which is firm contract demand and 313 of which is category 7 priority gas. It is the position of MCC that its actual total requirements at its Yazoo City chemical fertilizer plant are 44,000 Mcf per day (rounded), 29,000 of which is category 2 gas as stated in Southern's Index of Requirements, 11,814 of which is category 3 gas and 2,817 of which is category 7 gas.

MCC states that on September 1, 1971, Southern filed an abandonment application in Docket No. CP72-52 seeking to abandon the sale in question, but that that case was tentatively settled by a stipulation and agreement which is currently under advisement by the assigned administrative law judge. The stipulation and agreement is said by MCC to obligate Southern to deliver 44,000 Mcf per day to MCC until December 31, 1975, less that amount delivered by Shell Oil Company on any given day.

Petitioner asserts that there is no alternative supply of natural gas nor of any alternative fuel available for use in its plant. Consequently, it states, if it is denied its full requirements of 44,000 Mcf per day, it will be compelled to curtail its operations, thus creating hardship and irreparable injury.

It appears reasonable and consistent with the public interest in this proceeding 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 protest said application, should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10) on or before December 3, 1973. The notices and petitions for intervention previously filed in this proceeding will not operate to make those parties interveners or protestants with respect to the instant filing. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. This filing which was made with the Commission is available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-25526 Filed 11-30-73;8:45 am]

[Docket Nos. RP73-64, RP72-91 (Phase II), et al.]

SOUTHERN NATURAL GAS CO.

Proposed Changes in FPC Gas Tariff

NOVEMBER 26, 1973.

Take notice that Southern Natural Gas Company (Southern) on November 16, 1973 tendered for filing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1 to become effective January 1, 1974. Such filing is pursuant to Section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FPC Gas Tariff, Sixth Revised Volume No. 1 and Article II and Article III of the Stipulation and Agreement approved by the Commission's order dated July 23, 1973 in Southern's Docket Nos. RP72-91 (Phase II) et al. The proposed changes would increase revenues from jurisdictional sales by 4.25¢ per Mcf in its commodity and one-part rates. The increase is made up of the following items:

(1) An adjustment to the Base Tariff Rates pursuant to Article III of the Stipulation and Agreement approved by the Commission's order dated July 23, 1973 for increases in the levels for advance payments of $6,971,559 above the advance payment levels presently reflected in Southern's rates. The jurisdictional cost increase due to additional advance payments is $878,486.

(2) A Current Adjustment for increased cost of purchased gas to jurisdictional customers of $17,424,001.

(3) A Surcharge Adjustment pursuant to Article II of the Stipulation and Agreement approved by the Commission's order dated July 23, 1973 for advance payments accumulated during the period of June 1, 1973 through August 31, 1973 of $433,118.

(4) A Surcharge Adjustment pursuant to § 17.3 of the General Terms and Conditions of Southern's FPC Gas Tariff for unrecovered purchased gas costs.

Copies of the filing have been served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 7, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene unless such petition has been filed previously. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-25506 Filed 11-30-73;8:45 am]

[Docket No. RP73-99]

SOUTHWEST GAS CORP.

Filing of Settlement Agreement

NOVEMBER 21, 1973.

Take notice that on November 19, 1973, Southwest Gas Corporation (Southwest) filed a motion with the Commission for approval of a Settlement Agreement in the instant proceeding. The motion had

attached to it a Stipulation and Agreement, proposed rates, settlement cost of service, and an analysis of the proposed revenues and cost of service. Under the proposed settlement agreement Southwest would receive increased jurisdictional revenues approximating $215,000.00.

Southwest states that the proposed Settlement Agreement was reached at a conference open to all parties held on October 2, 1973, and that the agreement is intended to resolve all issues in the proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, and 1.10). All such petitions or protests should be filed on or before December 7, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25524 Filed 11-30-73;8:45 am]

[Rate Schedule 277, et al.]

SUN OIL CO.

Rate Change Filings

NOVEMBER 26, 1973.

Take notice that the producers listed in the Appendix attached hereto have filed proposed increased rates to the applicable area new gas ceiling based on the interpretation of vintaging concepts set forth by the Commission in its Opinion No. 639, issued December 12, 1972.

The information relevant to each of these sales is listed in the Appendix.

Any person desiring to be heard or to make any protest with reference to said filings should on or before December 18, 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 party 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.

APPENDIX

Filing date	Producer	Rate schedule No.	Buyer	Area
Nov. 12, 1973	Sun Oil Co., Southland Center, P.O. Box 2880, Dallas, Tex. 75221.	277	Texas Eastern Transmission Corp.	Texas Gulf Coast.
Do	Pennzoil Producing Co., 900 Southwest Tower, Houston, Tex. 77002.	42	United Gas Pipe Line Co.	Other Southwest.
Do	do	209	do	Do.
Do	do	210	do	Do.
Nov. 13, 1973	Phillips Petroleum Co., Bartlesville, Okla. 74004.	[1] 532	Northern Natural Gas Co.	Permian.
Do	do	[2] 533	do	Do.
Nov. 14, 1973	Texaco, Inc., P.O. Box 52332, Houston, Tex. 77052.	102	United Gas Pipe Line Co.	South Louisiana.
Nov. 15, 1973	Mobil Oil Corp., 3 Greenway Plaza East, Suite 800, Houston, Tex. 77046.	205	do	Other Southwest.
Nov. 19, 1973	do	414	Texas Eastern Transmission Corp.	Do.

[1] Tentative designation. Phillips has filed a superseding contract for sales from Benedum Plant presently made under Phillips Petroleum Co. FPC Gas Rate Schedule No. 18.
[2] Tentative designation. Phillips has filed a superseding contract for sales from Sprayberry Plant presently made under Phillips Petroleum Co. FPC Gas Rate Schedule No. 18.

[FR Doc.73-25501 Filed 11-30-73;8:45 am]

[Docket No. RP74-24]

TENNESSEE GAS PIPELINE CO.

Order Amending Order and Vacating Suspension of Tariff Sheets

NOVEMBER 26, 1973.

By order issued October 30, 1973, we suspended eleven tariff sheets filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) reflecting changes in its FPC Gas Tariff Ninth Revised Volume No. 1.[1] Tennessee's revised tariff sheets contained its proposed curtailment plan filed pursuant to Order No. 431 in Docket No. R-418.

By our order of October 30, 1973, we suspended the tariff sheets for one day, since they were not in strict conformity with the policy statement issued in Docket No. R-469, Order No. 467-B.

Upon reconsideration, we find the deviations to be minor, and in the interests of certainty for pipeline and customer planning, we will, on our own motion, vacate the suspension of Tennessee's filing.

The Commission orders:

(A) Our order of October 30, 1973, in this docket, is hereby amended to vacate the suspension and the deferral of the effectiveness of the tariff sheets filed by Tennessee as required by Ordering Paragraph B and in place thereof Paragraph B is hereby amended to read as follows:

(B) Original Sheet Nos. 213E, 213F, 213G, 213H, 213I, 213J, and 213K, First Revised Sheet Nos. 12A, 12B, 209, and 213D to Tennessee Gas Pipeline Company's FPC Gas Tariff Ninth Revised Volume No. 1 are hereby accepted for filing without suspension.

(B) In all other respects our order of October 30, 1973, remains in full force and effect.

By the Commission.[2]

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25504 Filed 11-30-73;8:45 am]

[Docket No. CI74-300]

TEXACO INC.

Notice of Application

NOVEMBER 26, 1973.

Take notice that on November 13, 1973, Texaco Inc. (Applicant), P.O. Box 3109, Houston, Texas 79701, filed in Docket No. CI74-300 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 the Hamon (5270') Field, Reeves County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas on October 16, 1973, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for two years within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell up to 2,000 Mcf of gas per day at 45.0 cents per Mcf at 14.65 p.s.i.a., subject to upward and downward Btu adjustment. The initial rate, including all adjustments and tax reimbursement, is 47.39 cents per Mcf for gas containing 1,050 Btu per cubic foot.

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 December 10, 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] Original Sheet Nos. 213E, 213F, 213G, 231H, 213I, 213J, and 213K, First Revised Sheet Nos. 12A, 12B, 209, and 213D.

[2] Commissioner Springer dissenting filed a separate statement, filed as part of the original document.

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 with 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.73-25480 Filed 11-30-73;8:45 am]

[Docket No. RP74-39-2 [1]]

TEXAS EASTERN TRANSMISSION CORP.

Petition for Emergency Relief

NOVEMBER 27, 1973.

On November 2, 1973, the Town of Utica, Mississippi (Utica) filed a Petition for Emergency Relief, pursuant to § 1.7 (b) of the Commission's rules of practice and procedure, requesting that the Commission issue an interlocutory order increasing Utica's annual entitlement of Natural Gas by 6,547 Mcf.

Utica claims that its present annual entitlement of 57,800 Mcf is inadequate and does not allow the Town to meet a commitment for firm industrial service made in 1970. Utica further claims that it did not receive the same consideration toward increasing its entitlement as did other customers of its sole supplier, Texas Eastern Transmission Corporation.

The requested increase, Utica states, is needed by Kitchen Brothers Manufacturing Company, a small industrial customer of the Town's Gas System. Utica has classified Kitchen Brothers in priority-of-service category two. Utica claims that Kitchen Brothers can find no alternate fuel, and that, being a firm customer, it is not equipped to use other fuels. Kitchen Brothers has told Utica that unless it receives the needed gas it will shut down and move to another locality.

Utica requests that the Commission issue forthwith an interlocutory order increasing Utica's entitlement by 6,547 Mcf "with the understanding that in the regularly scheduled hearings in this proceeding," the burden of proof will be on Utica to sustain its position, and that the Commission will not in any manner be bound by said interlocutory order in its final determination of this issue on the merits."

In the alternative, Utica asks that the petition be promptly noticed and handled in a separate proceeding.

Any person desiring to be heard or to make protests with reference to said petition should on or before December 6, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The petition is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25481 Filed 11-30-73;8:45 am]

[Docket No. RP72-98]

TEXAS EASTERN TRANSMISSION CORP.

Order Approving Stipulation and Agreement With a Condition as To Demand Charge Adjustments

NOVEMBER 26, 1973.

On July 25, 1973, Texas Eastern Transmission Corporation (Texas Eastern) filed a Second Revised Stipulation and Agreement which closely follows earlier Stipulation and Agreements submitted in this proceeding except that the instant Stipulation and Agreement contains rates which are designed in accordance with the principles set-out in Seaboard.[2] In our order of March 5, 1973, which pertained to the first proposed Stipulation and Agreement we found unacceptable design of the rates contained stating:

> In our order in this docket issued August 9, 1972, * * * we stated we intended to review our pricing mechanism of Texas Eastern, including cost classification, allocation and rate design in Docket No. RP72-98. The arguments advanced by counsel and testimony presented on the record by witnesses in this proceeding in support of the settlement rate design has not convinced us that the proposed rate design is just and reasonable and in the public interest, or that any departure from the principles enunciated in Opinion No. 600-A is warranted. Accordingly we shall remand the proceeding to the Administrative Law Judge for further proceedings with encouragement to the parties to reopen discussions which may lead to the resubmission of the Agreement, modified to reflect, in the design of settlement rates, classification on costs in accordance with the unmodified Seaboard method.

The subsequently submitted proposed Revised Stipulation and Agreement was likewise remanded to the Administrative Law Judge because the rates therein did not reflect unmodified Seaboard rate design. In our order of June 28, 1973, remanding the revised agreement we stated:

> The rates contained in the Revised Stipulation and Agreement now before us are not in conformity with that instruction and the record as made before the Presiding Judge on remand has not convinced us that the rate design therein contained is just and reasonable and in the public interest or that any departure from Seaboard rates is warranted.

Our review of the Second Revised Stipulation and Agreement, submitted by Texas Eastern on July 25, 1973, indicates it reflects unmodified Seaboard rates. Accordingly we shall accept said Second Revised Stipulation and Agreement to be effective as of July 14, 1972.

The details of the cost of service, rate base, and rate of return were previously considered in the remanded Stipulation and Agreements,[3] and need not be repeated here. The principal differences between the instant and the earlier Revised Stipulation and Agreements may be summarized as follows:

(1) The Instrument now before us proposes rates which are designed on an unmodified Seaboard cost classification.

(2) The Demand Charge Adjustment Provision is revised to eliminate any adjustment for gas supply deficiency.

(3) The instant instrument provides for tracking of advance payments and proposes to amend the timing of the effectiveness of rate increases due to advance payments.

(4) The Company is allowed rate base treatment for $44,300,000 of advance payments made prior to August 1, 1973.

(5) The instant Agreement, proposes that the conjunctive billing matter shall be considered in Texas Eastern's next general rate increase proceeding.

(6) The instant Agreement contains a provision that upon approval of the instant Stipulation and Agreement Texas Eastern will withdraw its $97.1 million general rate increase filed July 31, 1973, and provides further that Texas Eastern shall not file a further general increase in rates before the latter part of 1973.

Following several conferences at which all parties and our Staff were present, general agreement was reached as to the terms and conditions of the proposed settlement. However, it is noted certain exceptions to the Revised Agreement were taken on the record by Boston Gas Com-

[1] The petition was originally filed in Docket Nos. RP71-130 and RP72-58.

[2] A public hearing to determine whether the curtailment plan filed with the Commission by Texas Eastern is just and reasonable began on November 13, 1973, and is still in progress.

[2] Atlantic Seaboard Corp., et al., 11 FPC 43.

[3] See orders issued March 5, 1973, and June 28, 1973.

pany et al. (the Algonquin Customer Group), and the New York Public Service Commission. The Algonquin Customer Group opposes the use of estimated rather than actual data for the annual jurisdictional sales volumes utilized in determining the level of rates to be effective as of March 1, 1973, and opposes the provision which would relieve Texas Eastern of making demand charge adjustments due to gas supply deficiencies. With respect to these points, we are of the view that the use of estimated volumes for the determination of rates for Texas Eastern in the immediate future is appropriate and proper because of the company's deficiency in gas supply and the inability of Texas Eastern to meet the increasing requirements of its customers. In this regard, we believe that Texas Eastern, as well as any other pipeline company under our jurisdiction, should be afforded the opportunity to recover the cost of service encountered in providing service to its customers and that such costs should reflect an appropriate amount for return. We shall therefore accept and approve the Stipulation and Agreement as hereinafter provided. We note that the demand charge adjustment provision is contained in Texas Eastern's May 31, 1973, filing in Docket No. RP71–130, et al., which by order issued August 30, 1973 we accepted effective September 5, 1973, subject to refund pending development of an evidentiary record on the issues. Accordingly, our approval of that part of the settlement pertaining to the demand charge adjustment will be subject to the final outcome of the proceeding in RP71–130.

The New York Public Service Commission opposes the use of unmodified Seaboard rate design. The New York Commission contends that the use of unmodified Seaboard is meaningless as a device to "achieve the Commission's allocation and husbanding objectives" and, further, that its use is harmful in that "it switches costs between Texas Eastern's customers."

As to the objections of the New York Commission, to the requirement of Seaboard rate design we have stated before[1] our belief that in designing just and reasonable pipeline rates we must recognize the present gas supply situation and give effect to market conditions particularly price of competitive fuels in determining the apportionment of cost between customers and market areas. Just as a rate design where unit Seaboard commodity costs historically may have been "tilted" to enhance the competitive position of natural gas vis a vis alternate sources as an industrial fuel, a rate design which leads to higher commodity rates will help narrow the price gap between natural gas and competitive fuels. Also, since Seaboard rates will produce lower demand rates than tilted Seaboard rates there will be less incentive for distributors to make increased industrial sales.

While we recognize that Seaboard rates will not in and of itself result in a shift of gas away from industrial use we believe it is a minimal but necessary step in the right direction. As we indicated in Opinion No. 671 issued October 31, 1973, in United Gas Pipe Line Company, Docket No. RP72–75 (Phase II) the design of pipeline rates on a volumetric basis may be in order. However, in order to avoid possible disruption on United's system we concluded that 75 percent of fixed costs were to be assigned to the commodity component and 25 percent assigned to demand and left open the possibility that in future pipeline rate cases it may be necessary to design rates for resale for industrial use at a level more in line with the cost of competitive fuels.

Notwithstanding our action in United, since the settlement proposed herein was consummated prior to United we will accept the proposed settlement which reflects Seaboard rates.

Consolidated Gas Supply Corporation in a filed statement informed the Commission that it "supports the Second Revised Stipulation and Agreement as a reasonable, overall solution of the issues in this case" and adds that such "should not be construed to prejudice, in any way, Supply Corporation's objections to the Atlantic Seaboard method."

Based upon our review of the terms and provisions of the proposed settlement and the full record in this proceeding we conclude that the provisions of the Stipulation and Agreement as filed on July 25, 1973, provides a reasonable and appropriate disposition of the issues in this proceeding and the public interest would be served by our approval of the proposed settlement.

The Commission finds

(1) The settlement of this proceeding on the basis of the Stipulation and Agreement submitted by Texas Eastern on July 25, 1973, as herein modified, is reasonable and proper and in the public interest in carrying out the provisions of the Natural Gas Act and should be approved and made effective, subject to the terms and conditions hereinafter ordered.

(2) Good cause exists for the Commission to waive its applicable regulations under the Natural Gas Act in order that the tariff sheets to be filed by Texas Eastern, as hereinafter provided, may become effective March 1, 1973, as proposed in said Stipulation and Agreement.

The Commission orders

(A) The Stipulation and Agreement submitted by Texas Eastern on July 25, 1973, is incorporated by reference and is hereby approved and made effective subject to the terms and conditions of this order and Texas Eastern shall comply with each of the provisions or said Stipulation and Agreement, and this order.

(B) Commission approval of the demand charge adjustment portion of the settlement is subject to the final order in Docket No. RP71–130.

(C) Within 15 days from the date of issuance of this order Texas Eastern shall file revised tariff sheets to reflect the rates contained in Appendices (C) and (D) of said Stipulation and Agreement filed on July 25, 1973.

(D) Within 30 days from the date of issuance of this order, Texas shall refund to its jurisdictional customers the difference between the amounts collected from such customers pursuant to the rates in effect from and after July 14, 1972, and subject to review in this proceeding and the amounts which would have been collected had the rates filed pursuant to Paragraph (C) above been in force in effect plus interest at the rate of 7 percent per annum from the date of collection of such excessive amounts to the date of refund. Texas Eastern shall bear all costs incidental to the making of such refunds.

(E) Within 45 days from the date of the issuance of this order, Texas Eastern shall report to the Commission in writing and under oath, the details of the calculations with respect to the refunds required by paragraph (D) above, together with releases from each of its jurisdictional customers with respect to such refunds.

(F) The Commission's action in the issuance of this order is not to be construed as a concurrence in the cost of service determinations, and the allocation method and the design principles utilized in arriving at the rates and charges setout in the Stipulation and Agreement, and neither the Commission, its Staff, or any other parties to the proceeding are to be prejudiced or bound thereby in future proceedings.

(G) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, Texas Eastern, or any party affected by this order, in any proceeding not pending, or hereafter instituted by or against Texas Eastern, or any other company, person or party affected by this order.

(H) Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.[2]

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-25484 Filed 11-30-73;8:45 am]

[Docket No. RI74-49]

TEXAS PACIFIC OIL CO., INC.

Petition for Special Relief

NOVEMBER 26, 1973.

Take notice that on September 28, 1973, Texas Pacific Oil Company, Inc. (Petitioner), 1700 One Main Place, Dallas,

[1] El Paso Natural Gas Company, Docket No. RP69–6, Opinion No. 600–A and order issued May 8, 1972; Michigan-Wisconsin Pipe Line Company, Docket No. RP72–113, order issued April 10, 1973, Natural Gas Pipeline Company of America, Docket No. RP72–132, order issued July 18, 1973 and Colorado Interstate Gas Company, Docket No. RP72X113, order issued July 5, 1973; United Gas Pipeline Company, Docket No. RP72–75, Opinion No. 671 issued October 31, 1972.

[2] Commissioner Brooke, dissenting, filed a separate statement, filed as part of the original document.

Texas 75250, filed a petition for special relief in Docket No. RI74-49, pursuant to § 2.76 of the Commission's General Policy and Interpretations. Petitioner requests that it be granted special relief from the rate authorized in Opinion No. 586 and seeks to collect from Natural Gas Pipeline Company of America, its pipeline purchase, a price of 23.0¢ per Mcf at 14.65 p.s.i.a. for gas sold under its FPC Gas Rate Schedule No. 88 from four specified wells in the North Farnsworth and Smith-Perryton Fields, Ochiltree County, Texas. The request for relief is based on the installation of compression which Petitioner estimates will increase the remaining recoverable reserves from the subject wells from 0.66 BCF to 1.11 BCF.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 18, 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 party 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.73-25502 Filed 11-30-73;8:45 am]

[Docket No. CP73-211]

TRANSWESTERN PIPELINE CO., ET AL.

Amended Application

NOVEMBER 23, 1973.

Take notice that on November 16, 1973, Transwestern Pipeline Company (Transwestern Pipeline), P.O. Box 2521, Houston, Texas 77001, Transwestern Coal Gasification Company (Transwestern Coal), P.O. Box 2521, Houston, Texas 77001, Pacific Coal Gasification Company (Pacific Coal), 720 West 8th Street, Los Angeles, California 90017, and Western Gasification Company (Western), P.O. Box 2134, Farmington, New Mexico 87401, filed in Docket No. CP73-211 an amended application pursuant to section 7 of the Natural Gas Act for certificates of public convenience and necessity authorizing the implementation of a project involving the production of gas from coal, all as more fully set forth in the amended application which is on file with the Commission and open to public inspection.

Transwestern Coal, Pacific Coal, and Western previously filed in Docket No. CP73-212 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of coal gasification facilities in San Juan County, New Mexico, and the sale of approximately 250,000 Mcf per day of substitute natural gas (SNG) to Transwestern Pipeline with deliveries to be made at the outlet of the plant facilities. Concurrently, Transwestern Pipeline filed in Docket No. CP73-211 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate approximately 67 miles of 36-inch pipeline for the transportation of such gas to its existing pipeline system, including interconnecting facilities, and for the transportaton and resale of said gas in a commingled stream in interstate commerce. On September 4, 1973, the Commission issued its Opinion No. 663 and order in those dockets declaring that the coal gasification facilities and the 67-mile pipeline were not within its jurisdiction and dismissed the application in Docket No. CP73-212. Further, the Commission dismissed Transwestern Pipeline's application in Docket No. CP73-211 insofar as it related to the 67 miles of 36-inch pipeline, but did not dismiss that portion of the application which related to the connecting facilities or the transportation of SNG after commingling with natural gas.

The subject amended application reflects a restructuring of the original project pursuant to which Pacific Coal and Transwestern Coal will sell SNG directly to Transwestern Pipeline's customers, Pacific Lighting Service Company (Pacific Lighting) and Cities Service Gas Company (Cities) with Transwestern Pipeline providing the required transportation service. Accordingly, Applicants request the following authorizations:

(1) Transwestern Coal requests authorization to sell for resale 62,500 Mcf per day of SNG to Pacific Lighting at an existing Transwestern Pipeline delivery point near Needles, California, and 62,500 Mcf per day of SNG to Cities at Transwestern Pipeline's existing delivery points in Texas and Oklahoma;

(2) Pacific Coal requests authorization to sell for resale 125,000 Mcf per day of SNG to Pacific Lighting at Transwestern Pipeline's existing delivery point near Needles, California;

(3) Transwestern Pipeline requests authorization to construct and operate the tap and valves necessary to connect the 67-mile pipeline from the gasification plant with Transwestern Pipeline's mainline, near Gallup, New Mexico, and to transport SNG produced by such plant for Transwestern Coal and Pacific Coal from such point of interconnection to the delivery points referred to in (1) and (2) above. Further, Transwestern Pipeline seeks authorization, to the extent necessary, to make its proposed Rate Schedules T-1, T-2, and T-3 effective; to charge as initial rates the rates derived in accordance with the precedent agreements among the parties set forth in Exhibit I to the amended application; and, to reflect the agreement of the parties that the quantities of gas delivered to Pacific Lighting under Transwestern Pipeline's proposed Rate Schedule T-1 and to Cities under proposed Rate Schedules T-2 and T-3 shall be credited against Transwestern Pipeline's contract demand authorizations provided in its currently effective service agreements with Pacific Lighting and Cities; and (4) Alternatively, should the Commission's Opinion No. 663 and accompanying order be reversed or should the Commission otherwise be vested with or determined to have jurisdiction over the facilities for production of SNG and/or the transportation or sale for resale thereof, prior to commingling with natural gas, Transwestern Coal, Pacific Coal, and Western request all necessary authorizations to implement the project contemplated by the amended application, including the construction and operation of the coal gasification facilities and the 67-mile pipeline and for the transportation and delivery to Transwestern Pipeline of SNG produced in such plant facilities.

The application indicates that the estimated cost of Transwestern Pipeline's interconnecting facilities is $231,000, which cost will initially be funded by interim financing.

Applicants state that the gasification plant will be located about 28 miles southwest of Farmington, New Mexico, and the estimated cost thereof and the 67-mile pipeline is $447,000,000. Applicants further state the financing will be initially provided by interim financing, and later permanently financed by the issuance of bonds and capital stock.

The application indicates that the gas to be sold by Transwestern Coal and Pacific Coal is needed by Pacific Lighting and Cities to help in meeting the needs of their customers.

Any person desiring to be heard or to make any protest with reference to said amended application should on or before December 10, 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.

Persons who have heretofore filed protests or petitions to intervene need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25527 Filed 11-30-73;8:45 am]

[Project 2113]

WISCONSIN VALLEY IMPROVEMENT CO.

Application for Change in Land Rights

NOVEMBER 23, 1973.

Public notice is hereby given that application for approval of a change in land rights was filed May 22, 1972, under the Federal Power Act (16 U.S.C. 791a-825r)

by the Wisconsin Valley Improvement Company (Correspondence to: Mr. L. L. Sheerar, Secretary, Wisconsin Valley Improvement Company, 501 Jefferson Street, Box 988, Wausau, Wisconsin 54401) licensee for Project No. 2113 which is located on the Wisconsin River and its tributaries in Marathon, Lincoln, Oneida, Vilas, and Forest Counties, Wisconsin, and Gogebic County, Michigan.

Applicant seeks Commission approval of a proposed conveyance of a 0.10 acre parcel of project land to an adjacent property owner, Spirit Haven, Inc. The land is located on the south bank of the Spirit Reservoir of Project No. 2113 in Tomahawk Township in Lincoln County, Wisconsin.

Spirit Haven, Inc, wishes to include the parcel in two lots which are part of its recreation development. The land around the subject parcel is privately owned. Licensee states that the instrument of conveyance would be a warranty deed reserving to licensee flowage rights over the land as presently held.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 3, 1973, file with the Federal Power Commission, Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25528 Filed 11-30-73;8:45 am]

[Docket No. RP74-39-3 [1]]

TEXAS EASTERN TRANSMISSION CORP.

Petition for Emergency Relief

NOVEMBER 29, 1973.

Public notice is hereby given that on November 21, 1973, Carnegie Natural Gas Company (Carnegie) filed a petition for emergency relief pursuant to § 1.7(b) of the Commission's rules of practice and procedure, requesting that its gas supply not be curtailed below last year's level of 45,240 Mcf per day. Carnegie expects that this year's level of curtailment may be three times as great as last year's.

Carnegie purchases gas under a firm contract from Texas Eastern Transmission Corporation (TETCO) in Green County, Pennsylvania, and transports, all such gas to the United States Steel Corporation (U.S. Steel) for industrial use near Pittsburgh, Pennsylvania. United States Steel uses the gas directly in the manufacture of steel, the manufacture of ammonia, and for generation of electric power.

In support of its petition Carnegie states that the Nation cannot afford to lose the ammonia and other products which U.S. Steel manufactures using electricity generated with the gas Carnegie purchases from TETCO. U.S. Steel claims that upon the issue of Order No. 467-B, in March, 1973, which classified gas for turbines as boiler fuel, it authorized the replacement of the generators with purchased power, but that the lead time for installation is such that it will have to rely on its generators until December, 1974.

Carnegie further states that it is facing far greater curtailments than necessary in its high priority industrial uses because of distortions arising out of TETCO's implementation of an end use curtailment plan. Specifically, Carnegie opposes the use of a base year for curtailment in which curtailment was already occurring.

A shortened notice period in the proceeding may be in the public interest. Any person desiring to be heard or to make protest with reference to said petition should on or before December 11, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordwith 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 this proceeding. Persons wishing to become parties to this proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The petition is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-25624 Filed 11-30-73;8:45 am]

---

[1] The petition was originally filed in Docket Nos. RP71-130 and RP72-58.

FEDERAL RESERVE SYSTEM

EXCHANGE NATIONAL CORP.

Formation of Bank Holding Company

Exchange National Corporation, Ardmore, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 percent or more of the voting shares of Exchange National Bank and Trust Company, Ardmore, Oklahoma, pursuant to a plan of reorganization under section 170a(B) of the Oklahoma Business Corporation Act. The factors that are considered in acting on the application ore set forth in section 3(5) 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 Kansas City. 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 December 20, 1973.

Board of Governors of the Federal Reserve System, November 23, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-25469 Filed 11-30-73;8:45 am]

FIRST NATIONAL STATE BANCORPORATION

Order Approving Acquisition of Bank

First National State Bancorporation, Newark, New Jersey, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares (less directors' qualifying shares) of the successor by merger to Mechanics National Bank of Burlington County, Burlington Township, New Jersey (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 section 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 section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the largest bank holding company in New Jersey, controls eight banks with aggregate deposits of approximately $1.5 billion, representing 7.6 percent of total deposits in commercial banks in the State.[1] Applicant's acquisition of Bank (deposits of almost $90 million) would increase its share of commercial bank deposits in New Jersey by 0.5 percentage point and there would be no significant increase in the concentration of banking resources in the State.

Bank operates 15 offices in Burlington County, New Jersey; three of those offices are in the Philadelphia-Camden banking market[2] and the remaining 12

[1] All banking data are as of December 31, 1972; all market data are as of June 30, 1972, and reflect holding company formations and acquisitions approved by the Board through September 30, 1973.

[2] The Philadelphia-Camden banking market consists of Camden County and parts of Gloucester and Burlington Counties in New Jersey and Delaware County, Philadelphia County, and parts of Chester, Montgomery, and Bucks Counties in Pennsylvania.

offices are in the Trenton banking market.[3] In the former market there are a total of 50 commercial banking organizations which hold combined deposits of over $12 billion. Bank is the 24th largest organization therein and controls deposits of approximately $41 million, representing only 0.3 percent of total market deposits. Applicant is not represented in this market in which five of New Jersey's multibank holding companies are present. The Board concludes that approval of the proposed acquisition would not eliminate existing competition or adversely affect any banking organization in the Philadelphia-Camden banking market.

The Trenton banking market is presently served by 30 commercial banking organizations holding combined deposits of $1.5 billion; Bank is the ninth largest therein with deposits of over $40 million, representing 2.7 percent of deposits in the market. Four of New Jersey's multibank holding companies, including Applicant, are presently represented in the market. Applicant's subsidiary, First National State Bank of Central Jersey, Trenton (Central), operates three offices in the Trenton market with total deposits of $56.2 million and is the sixth largest bank with 3.9 percent of market deposits. Upon consummation of the proposed acquisition, Applicant would become the third largest banking organization in the Trenton market and hold 6.5 percent of total deposits therein. By comparison, the first and second largest banking organizations in the market would continue to hold 31 percent and 14 percent of those deposits, respectively, and 29 banking organizations would remain in the Trenton market.

The service areas of Bank and Central do not overlap and the nearest existing offices of the two banks are approximately eleven miles apart; there are other banking alternatives located in the intervening area. Central obtains nearly all of its deposits in the Trenton market whereas Bank derives approximately half of its deposits from the Philadelphia-Camden market and the remaining half from the Trenton market. In addition, it should be noted that the respective Trenton market shares of Central and Bank are generated from different portions of that market; accordingly, upon approval, Applicant would develop business from a segment of the Trenton market in which it presently is not represented. Furthermore, Bank does not derive any meaningful business from the service areas of any of Applicant's other subsidiaries. The Board concludes that approval of the proposed acquisition would not eliminate significant existing competition or adversely affect any banking organization in the Trenton banking market.

[3] The Trenton banking market consists of Mercer County and parts of Burlington, Ocean, Monmouth, Middlesex, and Somerset Counties in New Jersey and the eastern portion of Bucks County in Pennsylvania.

It appears that consummation of this proposal is likely to have only a slightly adverse effect on future competition between Applicant and Bank in the aforementioned banking markets. As an alternative to acquiring Bank, Applicant could enter the Philadelphia-Camden market by acquiring one of the market's smaller independent banks, by forming a de novo bank, or by branching into the market through one of its existing subsidiaries. However, foreclosure of this competition is not considered serious inasmuch as the Philadelphia-Camden market contains a large number of independent competitors and bank holding company subsidiaries. Also, approval herein will enable Bank to compete more effectively with the much larger banking organiaztions already operating in this market.

Similarly, the Board does not find a strong likelihood of significant competition developing between Applicant (through Central) and Bank in the Trenton banking market. Legislation recently enacted in the State permits branching by each bank into portions of the market served by the other; thus, Central may now open branches in the Burlington County portion of the market while Bank is permitted to branch into Mercer County. However, the potential for such competition is small at present, as only three municipalities in the Burlington portion of the market are presently open to branching; such entry into the market will be restricted until 1975 when branch office protection is removed. Furthermore, due to Bank's low capital position and poor earnings record, it does not appear that Bank is likely to branch into the Mercer County portion of the market in which Central operates. Although consummation of the proposal would foreclose the possibility that Applicant would expand in the Trenton market through branches of its present subsidiaries, the proposed acquisition would not raise barriers to entry into the Trenton market since numerous independent banks would remain available as possible vehicles for entry. On the basis of these and other facts of record, the Board concludes that consummation of the proposed acquisition would not have any significant adverse effect upon existing competition and would have only a slightly adverse effect on future competition.

The financial condition and managerial resources of Applicant and its subsidiary banks are satisfactory and future prospects for all are favorable; upon consummation, Bank's financial and managerial resources will be satisfactory in view of Applicant's commitment to inject into Bank an additional $2 million of equity capital. Applicant proposes to assist Bank in offering new and improved services including trust, data processing, municipal financing, and international services as well as an improvement in Bank's general lending policies. Although it appears that similar services are presently available in Bank's areas, the increased and improved services would provide customers in both markets with an additional convenient source of full-service banking. Moreover, Bank is the principal bank serving the area encompassing the Fort Dix Army and McGuire Air Force Bases. Bank's activities and services are very limited at these locations and Applicant plans to appreciably increase those services. Therefore, convenience and needs considerations are significant and, in the Board's judgment, outweigh the proposal's slightly adverse effect on competition. 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,[4] the application is approved for the reasons summarized above. The transaction shall not be made (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 New York pursuant to delegated authority.

By order of the Board of Governors,[5] effective November 23, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-25468 Filed 11-30-73;8:45 am]

RICE INSURANCE AGENCY, INC.

Formation of Bank Holding Company

Rice Insurance Agency, Inc., Strasburg, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 86 percent of the voting shares of The First National Bank of Strasburg, Strasburg, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Rice Insurance Agency, Inc., has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to retain voting shares in Rice Insurance Agency, Inc., of Strasburg, Colorado. Notice of the applications was published on October 18, 1973, in The Eastern Colorado News, a newspaper circulated in Strasburg, Colorado. Applicant states that the proposed subsidiary would engage in the activities of acting

[4] Dissenting Statement of Governor Bucher filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of New York.

[5] Voting for this action: Vice Chairman Mitchell and Governors Daane and Holland. Voting against this action: Governor Bucher. Absent and not voting: Chairman Burns and Governors Brimmer and Sheehan.

as agent for all types of insurance, servicing a community not exceeding 5,000 persons. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 18, 1973.

Board of Governors of the Federal Reserve System, November 21, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-25471 Filed 11-30-73;8:45 am]

FORT WORTH NATIONAL CORP.

Proposed Acquisition of American Cattle and Crop Services Corp.; Correction

In FR Document 73-24735 appearing at page 32176 of the issue for Wednesday, November 21, 1973, the first sentence should have read:

The Fort Worth National Corporation, Fort Worth, Texas, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to engage in a joint venture with Shawmut Association, Inc., Boston, Massachusetts, and thereby to acquire voting shares of American Cattle and Crop Services Corp., Guyman, Oklahoma, a de novo corporation.

Board of Governors of the Federal Reserve System, November 26, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-25467 Filed 11-30-73;8:45 am]

UNION CREDIT CORP.

Request for Determination and Order Providing Opportunity for Hearing

Notice is hereby given that a request has been made to the Board of Governors of the Federal Reserve System for a determination pursuant to the provisions of section 2(g)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)(3)), by Union Credit Corporation, Huron, South Dakota (Union).

Union, a bank holding company within the meaning of section 2(a) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(a)), by reason of its ownership of 89.4 percent of the issued and voting shares of stock of First Security Bank, Morristown, South Dakota (Bank), seeks a Board determination that its status as a bank holding company has terminated as a result of the sale and transfer of all of its shares of Bank, and its rights, title, and interest in and to Morristown Insurance Agency and McIntosh Insurance Agency, to one, Stephen Adams.

Union seeks a determination pursuant to section 2(g)(3) of the Act that it will not be capable of controlling the aforementioned Bank notwithstanding a sale agreement whereby approximately 42 percent of the remaining purchase price of the Bank and insurance agencies will be paid to Union by the purchaser over a period of approximately four and one-half years, secured by a second lien on the stock of Bank.

Section 2(g)(3) of the Act provides that shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

It is ordered, That, pursuant to section 2(g)(3) of the Act, an opportunity be and hereby is provided for filing a request for hearing. Any such request should be submitted in writing (in duplicate) to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received on or before December 17, 1973. The request for hearing should contain a statement of the nature of the requesting person's interest in the matter, his reasons for wishing to appear at an oral hearing, and a summary of the matters concerning which said person wishes to give testimony at such hearing. The Board will subsequently designate a time and place for any hearing ordered, and will give notice of such hearing to the transferor, the transferee, and all persons who have requested a hearing. In the absence of a request for a hearing, the Board will proceed with consideration of the requested determination on the basis of documentary evidence filed on or before December 17, 1973.

By order of the Board of Governors, November 21, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-25470 Filed 11-30-73;8:45 am]

GENERAL SERVICES ADMINISTRATION

EXECUTIVE BRANCH POSITION FOR R & D CENTERS

Notice for Comment

Correction

In FR Doc. 73-24933 appearing at page 32536 of the issue for Monday, November 26, 1973, the date by which comments were to be submitted was incorrectly stated. On page 32537, in the first column, second paragraph, the last sentence should read as follows: "to be given consideration, written comments must be submitted not later than January 25, 1974".

National Archives and Records Service

ACCESS TO 1900 CENSUS OF POPULATION

Notice of Availability

Pursuant to 44 U.S.C. 2104 and the regulations relating to Public Use of Records, Donated Historical Materials, and Facilities in the National Archives and Records Service (41 CFR 105-61), notice is hereby given that the 1900 Census of Population in the custody of the Administrator of General Services is available for historical, genealogical, and legal research in the Microfilm Research Room of the National Archives Building, 8th Street and Pennsylvania Avenue NW., Washington, D.C., in accordance with the Restriction Statement for Records of the Bureau of the Census and the Procedures Governing Access to the Schedules of the Census of Population in 1900.

The restriction statement and the procedures provide safeguards to prevent unwarranted invasion of privacy. They are effective immediately. Copies may be obtained by writing to: Director, Central Reference Division (NNC), National Archives (GSA), Washington, D.C. 20408.

JAMES B. RHOADS,
Archivist of the United States.

NOVEMBER 30, 1973.

[FR Doc.73-25605 Filed 11-30-73;8:45 am]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

FREEDMAN COAL MINING CORP. AND PEABODY COAL CO.

Applications for Renewal Permits; 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. 20178, FREEMAN COAL MINING CORPORATION, Orient #4 Mine, Mine ID No. 11 00628 0, Marion, Illinois.
- Section ID No. 036 (2nd South off Northwest).
- Section ID No. 033 (5th South off Northwest).
- Section ID No. 034 (3rd South off Northwest).
- Section ID No. 031 (Northwest Chain Pillars).
- Section ID No. 025 (Southeast Entries).
- Section ID No. 035 (6th North off Southeast).

(2) ICP Docket No. 20249, PEABODY COAL COMPANY, River King Underground No. 1 Mine, Mine ID No. 11 00725 0, Freeburg, Illinois.
- Section ID No. 001 (Main West Entries).
- Section ID No. 012 (Sub-main West Entries).
- Section ID No. 009 (Main East Entries).
- Section ID No. 010 (35th North Panel).
- Section ID No. 004 (Main South Entries).
- Section ID No. 014 (40th North Panel).
- Section ID No. 016 (45th North Panel).
- Section ID No. 020.
- Section ID No. 018 (Main North Entries (left side)).
- Section ID No. 019.
- Section ID No. 017 (Main North Entries (right side)).

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.

NOVEMBER 27, 1973.

[FR Doc.73-25472 Filed 11-30-73;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

FEDERAL-STATE PARTNERSHIP/SPECIAL PROJECTS ADVISORY PANEL

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a meeting of the Federal-State Partnership/Special Projects Advisory Panel to the National Council on the Arts will be held at 9:30 a.m. on December 6, 1973, and 9:30 a.m. on December 7, 1973, in the 11th floor conference room, Shoreham Building, 806 15th Street, Washington, D.C.

A portion of this meeting will be open to the public on December 6 from 3 p.m. to 5:30 p.m. and on December 7 from 9:30 a.m. to 12 p.m. on a space available basis. Accommodations are limited. The remaining sessions of this meeting on December 6 and 7 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of January 10, 1973, these sessions, which involve matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b) (4), (5), and (6)), will not be open to the public.

Further information with reference to this meeting can be obtained from Mrs. Luna Diamond, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 382-5871.

JOYCE FREELAND,
Acting Director of Administration, National Foundation on the Arts and the Humanities.

[FR Doc.73-25536 Filed 11-30-73;8:45 am]

LITERATURE ADVISORY PANEL

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a meeting of the Literature Advisory Panel to the National Council on the Arts will be held at 9:30 a.m. on December 12, 1973, and at 9:30 a.m. on December 13, 1973, in the Liberty Room, New York Sheraton Hotel, 870 5th Avenue, New York, New York 10019.

A portion of this meeting will be open to the public on December 13 from 1:30 p.m. to 5 p.m. on a space available basis. Accommodations are limited. The remaining sessions of this meeting on December 12 and 13 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of January 10, 1973, these sessions, which involve matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b) (4), (5), and (6)), will not be open to the public.

Further information with reference to this meeting can be obtained from Mrs. Luna Diamond, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 382-5871.

JOYCE FREELAND,
Acting Director of Administration, National Foundation on the Arts and the Humanities.

[FR Doc.73-25537 Filed 11-30-73;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

ADVISORY COMMITTEE ON GNP DATA IMPROVEMENT

Notice of Public Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Advisory Committee on GNP Data Improvement to be held in Room 10104, New Executive Office Building, 726 Jackson Place NW., Washington, D.C., on Tuesday, December 18, 1973, at 9:45 a.m.

The purpose of the meeting is to consider additional evidence on the sources of revisions in the quarterly GNP estimates and to discuss specific data gaps in the 5-year I-O benchmarks and in the annual benchmarks.

The meeting will be open to public observation and participation. Anyone wishing to participate should contact the GNP Data Improvement Project, Statistical Policy Division, Room 10222, New Executive Office Building, Washington, D.C. 20503, telephone (202)-395-3793.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.73-25452 Filed 11-30-73;8:45 am]

AMERICAN STATISTICAL ASSOCIATION ADVISORY COMMITTEE ON STATISTICAL POLICY

Notice of Public Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the American Statistical Association Advisory Committee on Statistical Policy to be held in Room 10103, New Executive Office Building, 726 Jackson Place NW., Washington, D.C., on December 10, at 10 a.m.

The purpose of the meeting is to hear remarks from the Acting Chief of the Statistical Policy Division on recent actions which affect the Federal statistical system and on the progress towards achieving the OMB Management by Objectives Projects in statistics and to hear staff reports on a GNP data improvement project and on setting guidelines for maintaining confidentiality in statistics. The committee will also discuss and give counsel on conditions of release of the Decennial Census and on developing statistics to measure program effectiveness. The meeting will be open to public observation and participation.

Anyone wishing to participate should contact the Acting Chief, Statistical Policy Division, Room 10202, New Executive

Office Building, Washington, D.C. 20503, telephone 202-395-4716.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.73-25453 Filed 11-30-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-641; NDA No. 16-865]

EDISON PHARMACEUTICAL CO., INC.

Co-Thyro-Bal; Final Order on Objections and Request for a Hearing Regarding Refusal To Approve New Drug Application

Correction

In FR Doc. 73-23296, appearing at page 30121 in the issue of Thursday, November 1, 1973, on page 30123, third column, 18th line, insert between "alone" and "with" the word "than".

POSTAL SERVICE

INTERNATIONAL POSTAGE RATES AND FEES

Proposed Changes

In a notice published in the daily issue of the FEDERAL REGISTER of October 19, 1973 (38 FR 29198), the Postal Service announced temporary changes in certain domestic postal rates and fees effective January 5, 1974, and noted that it expected shortly to publish a further notice with respect to changes in rates and fees for international mail.

Pursuant to its authority under 39 U.S.C. 407, the Postal Service proposes to change, effective January 5, 1974 (subject to Cost of Living Council procedures), certain rates of postage and fees on international mail to the levels indicated in the tables below.

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirement of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning the proposed changes in rates of postage and fees for international mail. Such materials should be addressed to the Manager, Rates Division, Finance Department, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, D.C. 20260, and submitted on or before December 12, 1973.

PROPOSED RATE AND FEE CHANGES

I. CANADA AND MEXICO

A. *Regular surface rates*—1. *Letter mail.* 10 cents per ounce up to 12 ounces; eighth zone priority mail rates for heavier weights.

2. *Post and postal cards.* 8 cents each.

3. *Printed matter.* 8 cents each 2 ounces up to 16 ounces, minimum charge 10 cents; 85 cents over 1 pound but not over 2 pounds; $1.16 over 2 pounds but not over 4 pounds; 58 cents each additional 2 pounds over 4 pounds.

4. *Small packets.* 8 cents each 2 ounces up to 16 ounces, minimum charge 10 cents. To Mexico only, 85 cents over 1 pound up to 2 pounds.

5. *Parcel post.* $1.40 for the first 2 pounds and .40 for each additional pound or fraction.

B. *Exceptional surface rates for printed matter*—1. *Canada:*

Ounces	Books and sheet music	Publishers' second class	Publishers' controlled circulation
2	$0.20	$0.04	$0.06
4	.20	.07	.08
8	.20	.11	.13
16	.20	.20	.24
32	.34	.34	.41
64	.57	.57	.69
Each additional 32 ounces	.29	.29	.34

2. *Mexico:*

Ounces	Books and sheet music	Publishers' second class	Publishers' controlled circulation
2	$0.20	$0.04	$0.06
4	.20	.06	.08
8	.20	.10	.13
16	.20	.17	.24
32	.28	.28	.41
64	.48	.48	.69
Each additional 32 ounces	.24	.24	.34

C. *Airmail rates*—1. *Letter mail.* 13 cents per ounce.

2. *Post and postal cards.* 11 cents each.

3. *Unsealed printed matter, matter for the blind, and small packets.* (i) To Canada. Letter mail rates.

(ii) To Mexico. .50 cents for the first 2 ounces and 13 cents for each additional 2 ounces.

4. *Air parcel post.* (i) To Canada. Letter mail rates.

(ii) To Mexico. $1.42 first 4 ounces and 28 cents each additional 4 ounces.

II. COUNTRIES OTHER THAN CANADA AND MEXICO

A. *Regular surface rates*—1. *Letter mail, printed matter, and small packets:*

Ounces	Letter mail	Printed matter	Small packets
1	$.18	$.10	$.18
2	.31	.10	.18
4	.41	.16	.18
8	.92	.32	.35
16	1.74	.56	.58
32	2.80	.85	1.04
64	4.62	1.16	
Each additional 32 ounces		.58	

2. *Post and postal cards.* 12 cents each.

3. *Parcel post.* (i) Central America, the Caribbean Islands, Bahamas, Bermuda, and St. Pierre and Miquelon: $1.40 for the first 2 pounds and $.40 for each additional pound or fraction.

(ii) Other countries: $1.55 for the first 2 pounds and $.45 cents for each additional pound or fraction.

B. *Exceptional surface rates*—1. *Postal Union of the Americas and Spain (PUAS) countries:*

Ounces	Books and sheet music [1] [2]	Publishers' second class [1]	Publishers' controlled circulation
2	$0.20	$0.04	$0.06
4	.20	.06	.08
8	.20	.10	.13
16	.20	.17	.24
32	.28	.28	.41
64	.48	.48	.69
Each additional 32 ounces	.24	.24	.34

[1] Except Canada.
[2] Except Spain and Spanish possessions.

2. *Other countries:*

Ounces	Books and sheet music	Publishers' second class	Publishers' controlled circulation
2	$0.20	$0.04	$0.06
4	.20	.07	.08
8	.20	.11	.13
16	.20	.20	.24
32	.34	.34	.41
64	.57	.57	.69
Each additional 32 ounces	.29	.29	.34

C. *Airmail*—1. *Letter mail.* (i) Central America, South America, the Caribbean Islands, Bahamas, Bermuda, and St. Pierre and Miquelon: 21 cents per half ounce up to and including 2 ounces, 17 cents each additional half ounce.

(ii) Other countries. 26 cents per half ounce up to and including 2 ounces, 21 cents each additional half ounce.

(iii) as an exception to (ii) above airmail letters from American Samoa to Western Samoa and from Guam to the Republic of the Philippines: 21 cents per half ounce up to and including 2 ounces, 17 cents each additional half ounce.

2. *Aerogrammes, air post and postal cards.* 18 cents each.

3. *Airmail other articles* (printed matter, matter for the blind, and small packets). (i) Mexico, Central America, the Caribbean Islands, Bahamas, Bermuda, and St. Pierre and Miquelon: 50 cents for the first 2 ounces and 13 cents for each additional 2 ounces.

(ii) South America, Europe (except Estonia, Latvia, Lithuania, and U.S.S.R.), and Mediterranean Africa: 60 cents for the first 2 ounces and 24 cents each additional 2 ounces.

(iii) Other countries: 70 cents for the first 2 ounces and 35 cents for each additional 2 ounces.

4. *Air parcel post.* Individual country rates increased by 15 percent (rounded up to the nearest cent).

III. FEES

A. *Customs clearance and delivery.* The fee on dutiable postal union mail other than small packets will be increased to 50 cents. The fee on dutiable small packets and parcel post will be increased to 80 cents.

B. *Request for recall or change of address.* The fee will be increased to 75 cents.

C. *Inquiries.* The fee will be increased to 35 cents.

(39 U.S.C. 401, 403, 404(2), 407, 410(a).)

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.73-25436 Filed 11-30-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[70-5424]

ALABAMA POWER CO. AND ALABAMA PROPERTY CO.

Proposed Capital Contributions to Wholly-owned Non-utility Subsidiary

NOVEMBER 23, 1973.

Notice is hereby given that Alabama Power Company (Alabama), an electric utility subsidiary of The Southern Company, a registered holding company, and Alabama Property Company (APCO), P.O. Box 2641, Birmingham, Alabama 35291, a non-utility subsidiary of Alabama, have filed a declaration with the Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 12 of the Act and Rule 45 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Declarants state that APCO requires additional working capital to continue to acquire and hold real property for future use by Alabama. APCO's working capital has generally consisted of periodic cash advances from Alabama not exceeding an aggregate of $50,000 annually. Accordingly, Alabama proposes to make capital contributions to APCO, from time to time prior to or on December 31, 1975, in an aggregate amount of $300,000.

Alabama and APCO request authority to file certificates of notification pursuant to Rule 24 on a quarterly basis.

Declarants state that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transaction. The fees and expenses to be incurred in connection with the proposed transaction total $2,600.

Notice is further given that any interested person may, not later than December 18, 1973, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.73-25463 Filed 11-30-73;8:45 am]

[File No. 500-1]

CONTINENTAL VENDING MACHINE CORP.

Suspension of Trading

NOVEMBER 23, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Continental Vending Machine Corporation being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from November 26, 1973, through December 5, 1973.

By the Commission.

[SEAL] SHIRLEY E. HOLLIS,
Senior Recording Secretary.

[FR Doc.73-25455 Filed 11-30-73;8:45 am]

[70-5388]

EASTERN UTILITIES ASSOCIATES, ET AL.

Filing of Application

NOVEMBER 21, 1973.

In the matter of: EASTERN UTILITIES ASSOCIATES, P.O. Box 2333, Boston, Massachusetts 02107, BLACKSTONE VALLEY ELECTRIC COMPANY, P.O. Box 1111, Lincoln, Rhode Island 02685, BROCKTON EDISON COMPANY, 36 Main Street, Brockton, Massachusetts 02403.

Notice of proposed: (1) Issue and sale of short-term notes to banks by holding company, (2) open account advances by holding company to subsidiaries, (3) redemption and retirement of bonds by subsidiary, (4) issue and sale of short-term note by subsidiary to bank, (5) sale of subsidiary's securities from one subsidiary to a second subsidiary, (6) assumption of one subsidiary's short-term debt obligation by a second subsidiary and (7) amendment of subsidiary's bylaws.

Notice is hereby given that Eastern Utilities Associates (EUA), a registered holding company, and its electric utility subsidiary companies, Blackstone Valley Electric Company (Blackstone) and Brockton Edison Company (Brockton), have filed an application-declaration and amendments thereto with this Commission designating sections 6(a), 7, 9(a), 10, 12(b), 12(c), and 12(f) of the Public Utility Holding Company Act of 1935 (Act) and Rules 43(a) and 45(a) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, as amended, which is summarized below, for a complete statement of the proposed transactions.

EUA proposes a series of transactions designed to effect the transfer of Blackstone's proportionate ownership in the securities of Montaup Electric Company (Montaup), the EUA system generating company, to Brockton, with the result that Brockton will own 81 percent of Montaup and EUA's other electric utility subsidiary, Fall River Electric Light Company (Fall River), will continue to own 19 percent.

All of Montaup's outstanding securities (other than short-term notes to banks) presently owned by Blackstone (33 percent), Brockton (48 percent), and Fall River (19 percent), consist of debenture bonds, preferred stock and common stock (Montaup securities), of which Blackstone's present share, which it proposes to sell to Brockton, equals $13,068,000 aggregate principal amount of debenture bonds of six series; 5,000 shares of preferred stock ($500,000 aggregate par value) and 95,320 shares of common stock ($9,532,000 aggregate par value).

Blackstone's Montaup securities are pledged as security under its Indenture of Mortgage and Deed of Trust dated as of November 1, 1943, and in order that it may sell its Montaup securities it is necessary for Blackstone to secure their release under the Indenture. Blackstone accordingly proposes to retire its two outstanding series of bonds (due 1983 and 1997) under the Indenture. The bonds to be retired aggregate $9,196,000 in principal amount and Blackstone will pay a redemption price of 101.675 percent of the principal amount for the series due 1983 (if that series is redeemed before March 1, 1974) and a redemption price of 106.75 percent of the principal amount for the series due 1997 (if that series is redeemed before June 1, 1974). Blackstone will pay a total premium of $508,185 to redeem both series of bonds. Blackstone has previously retired bonds

due November 1, 1973, with funds authorized pursuant to an order in this proceeding on October 30, 1973 (Holding Company Act Release No. 18142).

To enable Blackstone to finance the redemption of the bonds due 1983 and 1997, EUA will borrow $10,500,000 from The Chase Manhattan Bank (N.A.) (Chase), issuing to Chase its note in that amount, maturing in not more than 90 days, bearing interest at 115 percent of the prime rate in effect at Chase from time to time, and prepayable in whole or part without penalty. There is no compensating balance required in connection with the loan. Assuming a prime rate of 9½ percent the interest rate on the loan would be 10.93 percent. EUA will also borrow $200,000 from the First National Bank of Boston pursuant to authorization granted June 29, 1973 (Holding Company Act Release No. 18012). EUA will advance the $10,700,000 so borrowed to Blackstone on open account under an agreement providing, among other things, that the advance will be subordinated to rights of holders of preferred stock of Blackstone and that Blackstone will pay EUA interest thereon at rates incurred by EUA on the aggregate of the $10,700,000 of borrowings. Blackstone will deposit the requisite amount to redeem the 1983 and 1997 bonds with the Trustee under the Indenture and will procure the discharge of the Indenture and the release of all of the property pledged and mortgaged under it, including its Montaup securities.

In order to repay EUA $25,000,000 of the $25,200,000 in advances made to Blackstone in connection with the previous and proposed bond redemptions, it is further proposed that upon discharge of its Indenture, Blackstone borrow $25,000,000 from Chase, issuing to Chase its note in that principal amount, maturing in 360 days, bearing interest at 115 percent of the prime rate and secured by a lien on certain physical assets of Blackstone. No compensating balance will be required in connection with this borrowing.

Blackstone also proposes to borrow $15,000,000 from First National City Bank (FNCB), issuing its note to FNCB in that principal amount, maturing in 360 days, bearing interest at 115 percent of the base rate in effect at FNCB and secured a lien on Blackstone's Montaup securities. The note and a loan agreement between Blackstone and FNCB will provide, among other things, that the note may be assumed by Brockton and that in the event of such assumption, the maturity of the note will be extended (subject to regulatory approvals) to mature five years from the date of its issuance. Blackstone will utilize the $15,000,000 borrowed from FNCB to reduce open account advances previously made by EUA to Blackstone.

With respect to the loans from Chase and from FNCB, Blackstone will in each case pay to the lending bank a commitment fee at the rate of ½ percent of 1 percent per annum, computed from August 15, 1973, in the case of the loan from Chase, and computed from July 5, 1973, in the case of the loan from FNCB, to the date each borrowing is made. As to the FNCB loan, EUA will maintain a $100,000 balance in an account with FNCB while such loan is outstanding.

Brockton proposes to purchase Blackstone's Montaup securities for: (1) Cash in an amount equal to the cost to Blackstone of its Montaup securities ($23,100,000) plus an amount equal to Blackstone's equity (33 percent on and after October 25, 1973) as of the end of the calendar month next preceding such sale in the unappropriated retained earnings of Montaup (said equity amount to $2,162,140 as of August 31, 1973, calculated on the 33 percent ratio), diminished by the amount of the obligations of Blackstone under the FNCB loan at that time, and (2) Brockton's assumption of Blackstone's obligations under the FNCB loan.

Blackstone will apply as large a portion as possible of the cash received from Brockton as consideration for the Montaup securities to reduce outstanding advances made by EUA to Blackstone and to reduce short-term unsecured borrowings of Blackstone from banks. EUA will apply any such cash received from Blackstone to reduce its $11,000,000 borrowing from Chase, as described below.

For Brockton to obtain the funds required to purchase Blackstone's Montaup securities, EUA will borrow up to $11,000,000 from Chase on the same terms as the previously described Chase loan and make an advance on open account to Brockton in the same amount. EUA's cash advance to Brockton will be under an agreement providing that the advance will be subordinated to rights of holders of preferred stock of Brockton and that Brockton will pay EUA interest thereon at the rate incurred by EUA on the borrowing.

It is stated that the Montaup contract would be amended to expressly permit the pledge of Blackstone's Montaup securities to FNCB and that Montaup's By-Laws would be amended by action of the owner companies as stockholders to eliminate existing restrictions on transfer of the Montaup securities. It is also stated that the Montaup contract would be further amended to permit Blackstone, though no longer a stockholder company, to receive its power requirements from Montaup on the same terms as those on which Brockton and Fall River purchase their power from Montaup.

Applicants-declarants state that in order for Montaup to raise permanent capital, it must sell securities to the owner companies in proportion to their respective demands for power. The three owner companies in turn must sell their securities to the public (or to EUA) which when divided into three components of capitalization may amount to as many as nine transactions. It is stated that the cost associated with such financing of Montaup could be lowered if Brockton increased its portion of the securities of Montaup held by the owner companies and thereby became the principal vehicle for raising capital for Montaup.

It is stated that a further consequence of the present system is that Blackstone must pay Rhode Island State tax on the income it receives from the Montaup securities and that Brockton must pay Massachusetts State tax on the income it receives from the Montaup securities. If Blackstone sells it Montaup securities to Brockton then: (1) Blackstone will no longer have income from Montaup on which it would have to pay the Rhode Island tax, and (2) Brockton's stock ownership in Montaup would be increased to more than 80 percent, which under Massachusetts law would free Brockton from the Massachusetts tax on the Montaup dividends. The annual aggregate amounts of tax savings would be $151,858; $232,690; and $313,522 per year after the 1973, 1975, and 1977 financing of Montaup, respectively.

It is stated that the proposed acquisition by Brockton of Blackstone's Montaup securities and the proposed assumption by Brockton of the FNCB Loan (with maturity extended to a term greater than one year) are subject to the jurisdiction of the Department of Public Utilities of the Commonwealth of Massachusetts. It is also stated that the proposed amendment of the Montaup Contract is subject to the jurisdiction of the Federal Power Commission. Under an order of the Department of Public Utilities of the Commonwealth of Massachusetts, a copy of that amendment is also required to be filed with that Department and will be subject to the Department's review. It is stated that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment.

Notice is further given that any interested person may, not later than December 17, 1973, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission

may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-25462 Filed 11-30-73;8:45 am]

[File No. 500-1]

HOME-STAKE PRODUCTION CO.

Suspension of Trading

NOVEMBER 23, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Home-Stake Production Company being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from November 26, 1973 through December 5, 1973.

By the Commission.

[SEAL] SHIRLEY E. HOLLIS, *Senior Recording Secretary.*

[FR Doc.73-25456 Filed 11-30-73;8:45 am]

[File No. 500-1]

KORACORP INDUSTRIES, INC.

Suspension of Trading

NOVEMBER 23, 1973.

The common stock of Koracorp Industries, Incorporated, being traded on the New York Stock Exchange and the Pacific Coast Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Koracorp Industries, Incorporated, being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchanges and otherwise than on a national securities exchange is suspended, for the period from November 26, 1973, through December 5, 1973.

By the Commission.

[SEAL] SHIRLEY E. HOLLIS, *Senior Recording Secretary.*

[FR Doc.73-25457 Filed 11-30-73;8:45 am]

[File No. 500-1]

PATTERSON CORP.

Suspension of Tra ing

NOVEMBER 21, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Patterson Corporation being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 2 p.m. (e.s.t.) on November 21, 1973, through November 30, 1973.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-25459 Filed 11-30-73;8:45 am]

[File No. 500-1]

SANITAS SERVICE CORP.

Suspension of Trading

NOVEMBER 21, 1973.

The common stock of Sanitas Service Corporation being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Sanitas Service Corporation being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended for the period from November 23, 1973 through December 2, 1973.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-25458 Filed 11-30-73;8:45 am]

[File No. 500-1]

SAYRE AND FISHER CO.

Suspension of Trading

NOVEMBER 21, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Sayre and Fisher Company being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 2 p.m. (e.s.t.) on November 21, 1973 through November 30, 1973.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-25461 Filed 11-30-73;8:45 am]

[File No. 500-1]

STRATTON GROUP, LTD.

Suspension of Trading

NOVEMBER 23, 1973.

The common stock of Stratton Group, Ltd., being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Stratton Group, Ltd., being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from November 26, 1973, through December 5, 1973.

By the Commission.

[SEAL] SHIRLEY E. HOLLIS, *Senior Recording Secretary.*

[FR Doc.73-25454 Filed 11-30-73;8:45 am]

[File No. 500-1]

WESTGATE CALIFORNIA CORP.

Suspension of Trading

NOVEMBER 21, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock (class A and B), the cumulative preferred stock (5 percent and 6 percent),

the 6 percent subordinated debentures due 1979, and the 6½ percent convertible subordinated debentures due 1987 being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 2 p.m. (e.s.t.) on November 21, 1973, through November 30, 1973.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-25460 Filed 11-30-73;8:45 am]

VETERANS ADMINISTRATION

ADVISORY COMMITTEE ON STRUCTURAL SAFETY OF VETERANS ADMINISTRATION FACILITIES

Notice of Meeting

The Veterans Administration gives notice pursuant to PL 92-463 that the initial meeting of the Advisory Committee on Structural Safety of Veterans Administration Facilities will be held in Room 442 at the Veterans Administration Central Office, 811 Vermont Avenue NW., Washington, D.C., on December 17, 1973, at 10 a.m. This is an introductory meeting for the purpose of acquainting non-government committee members with the committee's objectives and scope of activity. The committee members will subsequently review current Veterans Administration construction standards and criteria and develop a program for accomplishing the committee's objectives.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity it will be necessary for those wishing to attend to contact Mr. James Lefter, Director, Civil Engineering Service, Office of Construction, VA Central Office (phone 202-389-2868), prior to December 14, 1973.

By Direction of the Administrator.

Dated: November 23, 1973.

[SEAL] RUFUS H. WILSON, *Associate Deputy Administrator.*

[FR Doc.73-25539 Filed 11-30-73;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V-73-37]

PORT HURON TERMINAL CO.

Application for Variance and Interim Order; Grant of Interim Order

I. *Notice of application.* Notice is hereby given that Port Huron Terminal Company, P.O. Box 273, Port Huron, Michigan 48060, has made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596), and 29 CFR 1905.11 for a variance, and interim order pending a decision on the application for a variance, from the standards prescribed in 29 CFR 1918.74 concerning cranes and derricks other than vessels gear.

The address of the place of employment that will be affected by the application is as follows:

Port Huron Terminal Company, 2336 Military, Port Huron, Michigan 48060.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by 29 CFR 1918.74(a)(9) which requires load-indicating devices or alternative devices in cranes used to load or discharge cargo into or out of a vessel.

The applicant states that it operates two Lorain gantry cranes which have a rated capacity of 5,300 lbs at 50 feet, the maximum radius at which the cranes can work vessels. Due to its geographical location the port does not handle general cargo. The cargoes handled by the cranes consist of newsprint at 2,100 lbs per roll; wood pulp at 440 lbs per bale, 3,520 lbs per draft; bagged beans at 100 lbs per bag, 3,200 lbs per pallet; and sometimes automobiles whose weights are known. The heaviest single load would be an occasional loading of a lift truck which weighs 7,620 lbs.

In summary, the applicant states that cab cards and angle indicating devices are located in the cabs of the cranes, and the operators are aware of the weight of each load in relation to the capacity of the cranes. If any cargoes not normally handled by the port are offered with lifts in excess of 5,000 lbs, the applicant states that the ship's gear would be used.

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Room 508, Washington, D.C. 20210, and at the following Regional and Area Offices:

U.S. Department of Labor,
Occupational Safety and Health Administration, 300 South Wacker Drive, Room 1201, Chicago, Illinois 60606.

U.S. Department of Labor,
Occupational Safety and Health Administration, Michigan Theatre Bldg., Room 626, 220 Bagley Avenue, Detroit, Michigan 48226.

All interested persons, including employers and employees, who believe they would be affected by the grant or denial of the application for a variance are invited to submit written data, views, and arguments relating to the pertinent application no later than January 2, 1974. In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application no later than January 2, 1974, in conformity with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing should be in quadruplicate, and must be addressed to the Office of Standards at the above address.

II. *Interim order.* It appears from the application for a variance and interim order, that an interim order is necessary to prevent undue hardship to the employer and employees pending a decision on the variance. Therefore, it is ordered, pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, and 29 CFR 1905.11(c) that Port Huron Terminal Company be, and it is hereby, authorized to continue its operations without the use of load-indicating devices, provided the following conditions are strictly observed:

1. Automobiles shall be of known weight, shall be handled one at a time, and the weight of the lift, including handling gear, shall not exceed 5,300 lbs.

2. Wood pulp bales shall be of known weight and the number of bales handled shall not exceed a total of 5,300 lbs., including any handling gear utilized.

3. Beans shall be handled in bags or sacks of known weight and the number of bags handled shall not exceed a total of 5,300 lbs., including any handling gear utilized.

4. Newsprint shall be handled in quantities of not more than two rolls each of 2,100 lbs., per draft.

5. Any other cargo which may from time to time be handled shall be of known weight per unit where uniform, and otherwise shall have the weights individually marked on each unit, the maximum lift handled not to exceed 5,300 lbs. per draft, including handling gear.

6. The 7,620 lb. lift truck is not to be handled by Lorain cranes, serial number 30632 and 30636, but must be handled by ship's gear, for which purpose said gear shall be rated to handle in excess of 7,620 lbs. under the rigging arrangement utilized. If conventional union purchase gear is fitted, the use of a single swinging boom of not less than four ton's capacity is recommended.

Port Huron Terminal Company shall give notice of this interim order to employees affected thereby, by the same means required to be used to inform them of the application for a variance.

Effective date. This interim order shall be effective as of December 3, 1973, and shall remain in effect until a decision is rendered on the application for a variance.

Signed at Washington, D.C., this 27th day of Nov. 1973.

JOHN STENDER, *Assistant Secretary of Labor.*

[FR Doc.73-25543 Filed 11-30-73;8:45 am]

Office of the Secretary

ADVISORY COMMITTEE ON WOMEN TO THE SECRETARY OF LABOR

Notice of Meeting

It is hereby announced that a meeting will be held by the Advisory Committee on Women to the Secretary of Labor, pursuant to the Secretary's establishment of the Committee on September 12, 1973, under Sec. 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463).

The meeting will convene at 9:30 a.m. on December 18, 1973, in Conference Room B at the rear of the Departmental Auditorium, between 12th and 14th Streets on Constitution Avenue NW., Washington, D.C. It will be reconvened at 9:30 a.m. on December 19 in Conference Room C.

Subjects to be discussed during the meeting will be scheduled in the following order: Review of agenda and statement of committee purpose; Overview of DOL programs (Part I); Issues of concern to women workers; Overview of DOL programs (Part II); Committee priorities, organization, and procedures; and Developing work program and priorities.

Members of the public are invited to attend the discussions. Any written data, views, or arguments pertaining to the agenda must be received on or before December 11, 1973, by the Committee's executive secretary. Twenty-five duplicate copies are needed for the members and for inclusion in the minutes of the meeting.

Persons wishing to address the Committee members during the meeting should submit to the executive secretary no later than December 11, 1973, a request to be heard, stating the nature of their intended presentation and the amount of time needed. The chairman will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Communications to the executive secretary should be addressed as follows:

Elaine Ambrose, Executive Secretary, Advisory Committee on Women to the Secretary of Labor, Department of Labor Building, Room 1329, Washington, D.C. 20210.

Signed at Washington, D.C., this 27th day of November 1973.

CARMEN R. MAYMI,
Director, Women's Bureau, and Executive Director, Advisory Committee on Women to the Secretary of Labor.

[FR Doc.73-25541 Filed 11-30-73;8:45 am]

NATIONAL MANPOWER ADVISORY COMMITTEE

NOTICE OF MEETING

The National Manpower Advisory Committee will meet at the Department of Labor on December 7, 1973. Appointed by the Secretary of Labor in 1962, the Committee makes recommendations to the Secretary relative to the carrying out of his duties under the Manpower Development and Training Act. Members of the Committee are chosen from representatives of labor, management, agriculture, education, training, and the public at large. The chairman is Dr. Eli Ginzberg of Columbia University.

At its meeting on December 7 the National Manpower Advisory Committee will consider questions related to management information and evaluation systems under manpower revenue sharing; matters concerning the United States Employment Service and the Unemployment Insurance Service; and issues to be emphasized in the President's Message in the 1974 Manpower Report of the President. The meeting will be held in Conference Room 107 in the Department of Labor starting at 9:30 a.m., and is expected to adjourn soon after 4 p.m. The meeting will be open to the public.

Signed at Washington, D.C., this 27th day of November 1973.

ROBERT R. BEHLOW,
Executive Secretary.

[FR Doc.73-25542 Filed 11-30-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 398]

ASSIGNMENT OF HEARINGS

NOVEMBER 28, 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 730 Sub 349, Pacific Intermountain Express Co., now assigned December 5, 1973, at San Francisco, Calif., is cancelled and the application is dismissed.

MC 116073, Sub 270, Barrett Mobile Home Transport, Inc., now assigned December 3, 1973, at Dallas, Texas, is cancelled and the application is dismissed.

MC-67200 Sub-Nos. 39 and 40, The Furniture Transport Company, Inc., now assigned December 3, 1973, at Boston, Mass., is cancelled and the application is dismissed.

MC 105881 Sub 47, M. R. & R. Trucking Co., now assigned January 14, 1974, at Atlanta, Ga., is postponed indefinitely.

MC 112422 Sub 5, Sam Vam Galder, Inc., now assigned December 4, 1973, at Madison, Wis., is postponed indefinitely.

No. 35870, Continental Southeastern Lines, Inc., The Moore Tours, Inc., Travel Tours, Inc., and Wilcox Travel Agency, Inc.—Investigation of Operations and Practices, now being assigned hearing February 25, 1974 (2 days), at Charlotte, N.C., in a hearing room to be later designated.

MC 118831 Subs 40, 44, 97, and 98, Central Transport, Inc., now being assigned hearing February 27, 1974 (3 days), at Charlotte, N.C., in a hearing room to be later designated.

MC-F-11811, Watkins Carolina Express, Inc.—Control and Merger—Lloyd Motor Express, Ltd., and MC 30280 Sub 64, Watkins Carolina Express, Inc., now being assigned hearing March 4, 1974 (1 week), at Charlotte, N.C., in a hearing room to be later designated.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-25557 Filed 11-30-73;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 28, 1973.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before December 18, 1973.

FSA No. 42778—*Chemicals from Points in Texas.* Filed by Southwestern Freight Bureau, Agent (No. B-450), for interested rail carriers. Rates on carbon tetrachloride and methylene chloride, in tank-car loads, as described in the application, from specified points in Texas, to Chicago, Illinois, and points taking same rates, East St. Louis, Illinois, and St. Louis, Missouri.

Grounds for relief—Market competition.

Tariff—Supplement 32 to Southwestern Freight Bureau, Agent, tariff 354-C, I.C.C. No. 5084. Rates are published to become effective on December 26, 1973.

AGGREGATE-OF-INTERMEDIATES

FSA No. 42779—*Chemicals to Points in Texas.* Filed by Southwestern Freight Bureau, Agent (No. B-451), for interested rail carriers. Rates on carbon tetrachloride and methylene chloride, in tank-car loads, as described in the application, from specified points in Texas, to Chicago, Illinois, and points taking same rates, East St. Louis, Illinois, and St. Louis, Missouri.

Grounds for relief—Maintenance of depressed rates published to meet market competition, without use of such rates as factors in constructing combination rates.

Tariff—Supplement 32 to Southwestern Freight Bureau, Agent, tariff 354-C, I.C.C. No. 5084. Rates are published to become effective on December 26, 1973.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-25560 Filed 11-30-73;8:45 am]

[Notice 400]

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 December 24, 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 matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-74593 (B). By order of November 20, 1973, the Motor Carrier Board approved the transfer to Cargo and Transportation Services, Inc., Pueblo, Colo., of Certificate No. MC 128164 (Sub No. 1) issued to Alton M. Johnson, d.b.a. Colorado-Kansas Truck Line, Pueblo, Colo., authorizing the transportation of: General commodities, with exceptions, between specified points in Colorado and Kansas. John H. Lewis, Attorney, The 1650 Grant Bldg., Denver, Colo. 80203, Robert S. Stauffer, Attorney, 3539 Boston Road, Cheyenne, Wyo. 82001.

No. MC-FC-74753. By order of November 20, 1973, the Motor Carrier Board approved the transfer to Reyco Motor Express, Inc., Fort Smith, Ark., of: (1) Certificates of Registration Nos. MC-97270 (Sub-No. 2) and MC-97270 (Sub-No. 3) issued on July 2, 1964, and October 17, 1967, respectively, to Alvin G. Hasen, doing business as Hasen Truck Line, Booneville, Ark., corresponding in scope to the intrastate authority granted in Certificate No. B-212 by the Arkansas Commerce Commission; and (2) Certificate No. MC-97270 (Sub-No. 1) issued on September 4, 1964, to Alvin G. Hasen, doing business as Hasen Truck Line, Bonneville, Ark., authorizing the transportation of general commodities between Fort Smith, Ark., and Booneville, Ark. Mr. Tom Harper, Jr., Attorney at Law, P.O. Box 43, Fort Smith, Ark. 72901.

No. MC-FC-74788. By order entered November 21, 1973, the Motor Carrier Board approved the transfer to Southeastern Transfer & Storage Co., Inc., Smyrna, Ga., of the operating rights set forth in Certificates Nos. MC-119566 (Sub-No. 1), MC-119566 (Sub-No. 3), MC-119566 (Sub-No. 5), and MC-119566 (Sub-No. 7), issued by the Commission September 1, 1965, December 19, 1966, August 10, 1967, and January 19, 1972, respectively, to A. B. & A. Truck Lines, Inc., Smyrna, Ga., authorizing the transportation of poles and posts, and rough lumber, from, to, or between points in Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. J. Raymond Clark, 1250 Connecticut Ave. NW., Washington, D.C. 20036, attorney for applicants.

No. MC-FC-74815. By order entered November 20, 1973, the Motor Carrier Board approved the transfer to Jack E. Heckert, York, Pa., of the operating rights set forth in Permits Nos. MC-105708 (Sub-No. 2), and MC-105708 (Sub-No. 3), issued by the Commission October 16, 1946, and February 23, 1951, respectively, to Eugene J. Breighner, York, Pa., authorizing the transportation of ground agricultural limestone, over irregular routes, from Thomasville, Pa., to points and places in Frederick, Carroll, Baltimore, and Hartford Counties, Md.; and ground agricultural limestone, in bulk, over irregular routes, from Thomasville, Pa., to points in Delaware and Maryland, except those in Frederick, Carroll, Baltimore, and Harford Counties, Md. Paul S. Shaffer, 25 North George St., York, Pa. 17401, attorney for applicants.

No. MC-FC-74862. By order of November 26, 1973, the Motor Carrier Board approved the transfer to Pinkett's Shore Lines, Inc., Denton, Md., of Certificate No. MC-100853 and subs thereunder, issued to W. Howard Pinkett, Denton, Md., authorizing the transportation of: Passengers and their baggage, in regular route, and charter operations, serving points and areas in Delaware, Maryland, Washington, D.C., Pennsylvania, New Jersey, New York, Virginia, North Caroline, South Carolina, Georgia, and Florida. Charles Ephraim, Attorney, 1250 Connecticut Ave. NW., Washington, D.C. 20036.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-25561 Filed 11-30-73;8:45 am]

[Notice 162]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 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 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.

MOTOR CARRIERS OF PROPERTY

No. MC 2229 (Sub-No. 181 TA), filed November 15, 1973. Applicant: RED BALL MOTOR FREIGHT, INC., 3177 Irving Boulevard, P.O. Box 47407 (Box zip 75247), Dallas, Tex. 75207. Applicant's representative: Douglas Anderson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), ALTERNATE ROUTES FOR OPERATING CONVENIENCE ONLY: (1) Between Memphis, Tenn., and New Orleans, La., in connection with carrier's authorized regular route operations, serving no intermediate points: From Memphis over U.S. Highway 51 and/or Interstate Highway 55 to the junction of Interstate Highway 10 at or near Frenier, La., thence over Interstate Highway 10 to New Orleans and return over the same route. RESTRICTION: Service over the route specified immediately above shall be restricted against the transportation of traffic moving between Memphis, Tenn., on the one hand, and, on the other, Mobile, Ala., and Gulfport, Miss., and their respective commercial zones. (2) Between Fort Smith, Ark., and Shreveport, La., serving the intermediate point of Texarkana, Tex., for the purpose of joinder only: From Fort Smith, Ark., over U.S. Highway 71 to Shreveport, La., and return over the same route; (3) between Fort Smith, Ark., and Texarkana, Tex., serving no intermediate points: From Fort Smith, Ark., over U.S. Highway 71, to Texarkana, Tex., and return over the same route; (4) between Fort Smith, Ark., and Dallas, Tex., serving the intermediate point of Paris, Tex., for the purpose of joinder only: From Fort Smith, Ark., over U.S. Highway 271 to its intersection with Texas Highway 24, thence over Texas Highway 24 to its intersection with U.S. Highway 67 and/or Interstate Highway 30 to Dallas, Tex., and return over the same route; (5) between Kansas City, Mo., and Dallas, Tex., serving no intermediate points: From Kansas City, Mo., over U.S. Highway 69 to its intersection with U.S. Highway 75, thence over U.S. Highway 75 to Dallas,

Tex., and return over the same route; (6) between Kansas City, Mo., and Sherman, Tex., serving no intermediate points: From Kansas City, Mo., over U.S. Highway 69 to its intersection with U.S. Highway 75, thence over U.S. Highway 75 to Sherman, Tex., and return over the same route; (7) between Kansas City, Mo., and Paris, Tex., serving no intermediate points: From Kansas City, Mo., over U.S. Highway 69 to its intersection with Indian Nation Turnpike, thence over Indian Nation Turnpike to its intersection with U.S. Highway 271, thence over U.S. Highway 271 to Paris, Tex., and return over the same route; (8) between Dallas, Tex., and Kansas City, Missouri-Kansas, serving no intermediate points: From Dallas, Tex., over U.S. Highway 75 to junction U.S. Highway 50 and/or Interstate Highway 35, thence over U.S. Highway 50 and/or Interstate Highway 35 to Kansas City, and return over the same route; and (9) between Monroe, La., and Memphis, Tenn., serving no intermediate points: From Monroe, La., over U.S. Highway 165 to junction U.S. Highway 82, thence over U.S. Highway 82 to junction U.S. Highway 61, thence over U.S. Highway 61 to Memphis and return over the same route, for 180 days.

NOTE.—Applicant does intend to tack its authority with MC 2229 and Subs.

SUPPORTING SHIPPER: Broadway Warehouses, 3310 Quebec, Dallas, Tex. 75247. SEND PROTESTS TO: Transportation Specialist Gerald T. Holland, Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 30319 (Sub-No. 145 TA), filed November 15, 1973. Applicant: SOUTHERN PACIFIC TRANSPORT COMPANY OF TEXAS AND LOUISIANA, 7600 South Central Expressway, Dallas, Tex. 75216. Applicant's representative: John F. Heard, 3000 One Shell Plaza, Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving New Orleans, La., and its Commercial Zone as defined by the Commission in connection with applicant's presently authorized operations in Texas and Louisiana without restriction, for 180 days.

NOTE.—Applicant does intend to tack with MC 30319 and at all interchange gateways.

SUPPORTING SHIPPERS: There are approximately 452 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: Transportation Specialist Gerald T. Holland, Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 30844 (Sub-No. 483 TA), filed November 15, 1973. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, P.O. Box 5000 (Box zip 50704), Waterloo, Iowa 50702. Applicant's representative: Paul Rhodes (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, 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 the plantsite and facilities of Swift Fresh Meats Company at or near Gering, Nebr., to points in Delaware, Connecticut, Maine, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Swift Fresh Meats Company, Division of Swift & Company, 115 West Jackson Boulevard, Chicago, Ill. 60604. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 33641 (Sub-No. 108 TA), filed November 14, 1973. Applicant: IML FREIGHT, INC., 2175 South 3270 West St., P.O. Box 2277, Salt Lake City, Utah 84110. Applicant's representative: William S. Richards, 900 Walker Bank Building, P.O. Box 2465, Salt Lake City, Utah 84110. 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, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) serving the mine and mine site of the Victoria Mine of the Anaconda Company located near White Horse Pass in Nevada as an off-route point in connection with carrier's regular-route operation to and from Ely, Nev., for 180 days.

NOTE.—Applicant intends to tack the requested authority to that in their MC 33641 and Subs, and requests that interline be allowed at all authorized service points.

SUPPORTING SHIPPER: F. C. Torkelson Company, 10 W. Broadway, Salt Lake City, Utah 84101 (C. Ray Turner, Purchasing Agent). SEND PROTESTS TO: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 125 South State Street, 5239 Federal Building, Salt Lake City, Utah 84138.

No. MC 42487 (Sub-No. 814 TA), filed November 16, 1973. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. 94025. Applicant's representative: V. R. Oldenburg, P.O. Box 5138, Chicago, Ill. 60680. 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 Holiday Industrial Park, De Soto County, Miss., as an off-route point in connection with carrier's presently authorized regular-route operations, for 180 days.

NOTE.—Applicant intends to tack the proposed authority to serve Holiday Industrial Park, De Soto County, Miss. with its existing authority in Docket No. MC 42487 (Sub-No. 708) at Memphis, Tenn. and applicant also proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in tariffs on file with the Interstate Commerce Commission.

SUPPORTING SHIPPER: Holiday Inns Inc., 3796 Lamar Avenue, Memphis, Tenn. 38118. SEND PROTESTS TO: District Supervisor Claud W. Reeves, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 76032 (Sub-No. 302 TA), filed November 14, 1973. Applicant: NAVAJO FREIGHT LINES, INC., 1205 South Platte River Drive, Denver, Colo. 80223. Applicant's representative: Eldon E. Brezee (same address as applicant). 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 the Commission's "Description in Motor Carrier Certificates," from Pueblo and Minnequa, Colo., to points in Alabama, Arizona, Arkansas, California, Georgia, Idaho, Illinois, Indiana, Kansas, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, Nebraska, New Mexico, New York, North Carolina, Oklahoma, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming, for 180 days. SUPPORTING SHIPPER: C.F. & I. Steel Corporation, P.O. Box 316, Pueblo, Colo. 81002. SEND PROTESTS TO: District Supervisor Roger L. Buchanan, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 96784 (Sub-No. 7 TA), filed November 14, 1973. Applicant: SVENSSON FREIGHT LINES, 800 Pacific Avenue, P.O. Box 4849, Yuma, Ariz. 85364. Applicant's representative: Harold G. Hernly, Jr., 118 North St. Asaph Street, Alexandria, Va. 22314. 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 requiring special equipment and commodities in bulk), serving points within 25 miles of Phoenix, Ariz., as off-route points in connection with the carriers authorized regular route operations between Phoenix and Yuma, Ariz., as set forth in Docket No. MC 96784 (Sub-No. 6 TA), for 180 days.

NOTE.—Applicant intends to tack with MC 96784 (Sub-No. 6 TA).

SUPPORTING SHIPPERS: There are approximately 15 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: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 3427 Federal Bldg., 230 N. First Ave., Phoenix, Ariz. 85025.

No. MC 99284 (Sub-No. 7 TA), filed November 16, 1973. Applicant: SULLIVAN'S MOTOR DELIVERY, INC., 711 South First Street, Milwaukee, Wis. 53204. Applicant's representative: James R. Madler, 327 So. La Salle Street, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* in shipments weighing less than 50 pounds per shipment and not more than 108 inches in circumference and no more than 100 pounds from one consignor to one consignee in any one day, between the commercial zones of Chicago, Waukegan, North Chicago, Lake Bluff, Lake Forest, and Highland Park, Ill., on the one hand, and, on the other, the commercial zones of Kenosha, Racine, Milwaukee, West Bend, Fond du Lac, Oshkosh, Neenah, Menasha, Appleton, DePere, Green Bay, Two Rivers, Port Washington, Manitowoc, Sheboygan, Cedarburg, and Grafton, Wis., for 180 days. SUPPORTING SHIPPERS: There are approximately 48 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: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 108375 (Sub-No. 34 TA), filed November 15, 1973. Applicant: LEROY L. WADE & SON, INC., 10550 I Street, P.O. Box 27053, Omaha, Nebr. 68127. Applicant's representative: Arlyn L. Westergren, Suite 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: *Used automobiles*, from Omaha, Nebr., to points in Minnesota, Kansas, and South Dakota (except Lawrence, Custer, Meade, Pennington, Butte, and Fall River Counties, S. Dak.), for 180 days. SUPPORTING SHIPPER: Auction Recon, Inc., 7425 Dodge Street, Omaha, Nebr. 68114. SEND PROTESTS TO: Carroll Russell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite 620, Union Pacific Plaza Building, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 109397 (Sub-No. 288 TA), filed November 7, 1973. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113 E. on Interstate, Business Route 44, Joplin, Mo. 64801. Applicant's representative: Max G. Morgan, 600 Leininger Building, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from San Jose, Alameda, Oakland, San Leandro, Sacramento, Hollister, Gilroy, Sunnyvale, Thornton, Merced, Fullerton, Fresno, Madera, Hayward, Davis, Oakdale, and points within 5 miles of Modesto and Stockton (including the named cities), Calif., to points in Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Mississippi, Nebraska, Ohio, Oklahoma, Tennessee, and Texas, for 180 days. SUPPORTING SHIPPERS: California Canners & Growers, 3100 Ferry Building, San Francisco, Calif. 94106; Stanislaus Food Products Company, Box 3591, Modesto, Calif. 95352; N.C.C. Food Corporation, 570 Race Street, San Jose, Calif. 95150; Castle & Cooke, Inc., 5th at Virginia, Box 5130, San Jose, Calif. 95150; Tri Valley Growers, 100 California Street, San Francisco, Calif. 94111; Del Monte Corporation, 211 Fremont St., San Francisco, Calif.; and Hunt-Wesson Foods, Inc., 1645 West Valencia Drive, Fullerton, Calif. 92634. SEND PROTESTS TO: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 109689 (Sub-No. 258 TA), filed November 13, 1973. Applicant: W. S. HATCH CO., Off: 643 South 800 West, Woods Cross, Utah 84087, and Mail: P.O. Box 1825, Salt Lake City, Utah 84110. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in containers, from Solar, Utah, to incorporated towns and cities in New Mexico, for 180 days. SUPPORTING SHIPPER: American Salt Company, 3142 Broadway, Kansas City, Mo. 64111, (John Branham, Traffic Manager). SEND PROTESTS TO: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, 125 South State Street, Salt Lake City, Utah 84138.

No. MC 111401 (Sub-No. 400 TA), filed November 16, 1973. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid, Okla. 73701. Applicant's representative: Victor R. Comstock (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid distillers solubles*, from Atchison, Kans., to Perryton, Tex., and Lucern, Colo., for 180 days. SUPPORTING SHIPPER: Midwest Solvents Company, Inc., Tom Monk, Vice-President, 1300 Main, Atchison, Kans. 66002. 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 112822 (Sub-No. 302 TA), filed November 15, 1973. Applicant: BRAY LINES INCORPORATED, 1401 N. Little, P.O. Box 1191, Cushing, Okla. 74023. Applicant's representative: Robert A. Stone (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Butter*, from points in California, to points in Minnesota, Wisconsin, Tennessee, Ohio, and Texas, for 180 days. SUPPORTING SHIPPER: Swift Dairy and Poultry Company, R. W. Retzlaff, Director of Distribution, 11 West Jackson Blvd., Chicago, Ill. 60604. SEND PROTESTS TO: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old P.O. Building, 215 NW. Third, Oklahoma City, Okla. 73102.

No. MC 112989 (Sub-No. 34 TA), filed November 15, 1973. Applicant: WEST COAST TRUCK LINES, INC., P.O. Box 668, Coos Bay, Oreg. 97420. Applicant's representative: Rick Kelley, Route 4, Box 194R, Eugene, Oreg. 97405, and John G. McLaughlin, 620 Blue Cross Bldg., Portland, Oreg. 97201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel* and *iron and steel articles; construction materials, equipment, and supplies*, from points in California, to points in Utah, for 180 days. SUPPORTING SHIPPERS: Western Tube & Conduit Corporation, 370 Eighth Avenue, Oakland, Calif. 94606; Western Tube & Conduit Corporation, 2730 E. Thirty-Seventh Street, Los Angeles, Calif. 90058; Atlas Prestressing Corp., 14649 Lanark St., Panorama City, Calif. 91402; A. M. Castle & Co., Pac. Metals Div., 939 South 6th West, Salt Lake City, Utah 84104; Johns-Manville Products Corporation, Pittsburg, Calif. 94565; and Master Fence Fittings, Inc., P.O. Box 365, La Habra, Calif. 90631. SEND PROTESTS TO: District Supervisor A. E. Odoms, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, 319 SW. Pine, Portland, Oreg. 97204.

No. MC 115831 (Sub-No. 11 TA), filed November 15, 1973. Applicant: TIDEWATER TRANSIT COMPANY, INC., P.O. Box 189, Off Corner Herritage & Caswell Sts., Kinston, N.C. 28501. Applicant's representative: George G. Harper (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fuel oil*, in bulk, in tank vehicles, from Savannah, Ga., to points in Jackson, Watauga, Burke, and Wake Counties, N.C., for 180 days. SUPPORTING SHIPPER: Colonial Oil Industries, Incorporated, P.O. Box 576, Savannah, Ga. 31402. SEND PROTESTS TO: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 121082 (Sub-No. 8 TA), filed November 14, 1973. Applicant: ALLIED DELIVERY SYSTEM, INC., 2201 Fenkell, Detroit, Mich. 48238. Applicant's representative: Richard S. Ewing, 1229 Nineteenth Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, toilet preparations, and other commodities* sold in retail and discount drug stores, between Detroit, Mich., and points in the Michigan Lower Peninsula, for 150 days. SUPPORTING SHIPPER: Revlon, Inc., Route 27 & Talmadge Rd., Edison, N.J. 08817; Clairol, One Blachley Road, Stamford, Conn. 06902; The Gillette Company, 30 Burtt Road, Andover, Mass. 01810; and William H. Rorer, Inc., Fort Washington, Pa. 19034. SEND PROTESTS TO: Melvin F. Kirsch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell, Detroit, Mich. 48226.

No. MC 124160 (Sub-No. 8 TA), filed November 14, 1973. Applicant: SAVAGE BROTHERS, INCORPORATED, 602 East Main Street, American Fork, Utah 84003. Applicant's representative: Lon Rodney Kump, 720 Newhouse Building, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in bulk, from the Carbon Fuel Mine located near Martin, Utah (in Carbon County, Utah), to the railroad head at Castle Gate, Utah (Carbon County, Utah), restricted to traffic having a subsequent out-of-state movement, for 180 days. SUPPORTING SHIPPER: Braztah Corporation, P.O. Box 506, Helper, Utah (Boyd J. Harvey, General Manager). SEND PROTESTS TO: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 125 South State Street, 5239 Federal Building, Salt Lake City, Utah 84138.

No. MC 125925 (Sub-No. 12 TA), filed November 20, 1973. Applicant: SAM TOWLER, 3319 Colins Street, Annandale, Va. 22003. Applicant's representative: Frank B. Hand, Jr., Route 1, P.O. Box 446, Berryville, Va. 22601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Stone dust*, from LeGore, Md., to the plantsite of Leesburg Concrete Block, Inc., at or near Leesburg, Va., for 180 days. SUPPORTING SHIPPER: Leesburg Concrete Block, Inc., P.O. Box 1335, Leesburg, Va. 22075. SEND PROTESTS TO: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th Street & Constitution Avenue NW., Washington, D.C. 20423.

No. MC 133119 (Sub-No. 31 TA), filed November 14, 1973. Applicant: HEYL TRUCK LINES, INC., 235 Mill Street, P.O. Box 206, Akron, Iowa 51001. Applicant's representative: A. J. Swanson, 521 South 14th Street, P.O. Box 81840, Lincoln, Nebr. 68501. 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 and C of Appendix I to the report in "Descriptions in Motor Carrier Certificates." 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities of John Morrell & Co., Sioux Falls, S. Dak., and St. Paul, Minn., to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee, for 180 days. RESTRICTION: Restricted to traffic originating at the above-named origin points and destined to points in the named states. SUPPORTING SHIPPER: John Morrell & Co., 208 South La Salle Street, Chicago, Ill. 60604. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Suite 620, Union Pacific Plaza Building, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 133689 (Sub-No. 36 TA), filed November 16, 1973. Applicant: OVERLAND EXPRESS, INC., 651 First Street SW., P.O. Box 2667, New Brighton, Minn. 55112. Applicant's representative: James Aronson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potatoes and frozen potato products*, from the plantsite of Western Potato Service, Inc., of Grand Forks, N. Dak., to points in Illinois, Michigan, Indiana, Ohio, Kentucky, and Tennessee, for 180 days. SUPPORTING SHIPPER: Western Potato Service, Inc., P.O. Box 518, Highway 2 West, Grand Forks, N. Dak. 58201. SEND PROTESTS TO: District Supervisor Raymond T. Jones, Interstate Commerce Commission, Bureau of Operations, 448 Federal Bldg. & U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 134387 (Sub-No. 20 TA), filed November 14, 1973. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyon Avenue, South Gate, Calif. 90280. Applicant's representative: David P. Christianson, 825 City National Bank Building, 606 South Olive Street, Los Angeles, Calif. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty cans and can ends*, from points in Los Angeles County, Calif., to Casa Grande, Ariz., for 180 days. SUPPORTING SHIPPER: Continental Can Company, Inc., 155 Bovet Road, San Mateo, Calif. 94402. SEND PROTESTS TO: Walter W. Strakosch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

No. MC 134477 (Sub-No. 44 TA), filed November 16, 1973. Applicant: SCHANNO TRANSPORTATION, INC., P.O. Box 3496, West St. Paul, Minn. 55165. Applicant's representative: Thomas Fischbach (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Butter, cheese, eggs, milk powder, oleomargarine, and turkeys* when moving with regulated commodities, from Albert Lea, Browerville, Faribault, Minneapolis-St. Paul, Mountain Lake, and Winthrop, Minn., and Eau Claire, Reedsburg, and Spencer, Wis., to Danbury, Hartford, New London, South Windsor, and Suffield, Conn.; Boston, Bridgewater, Cambridge, Canton, Charlestown, Lynn, Norwood, Salem, and Springfield, Mass.; Bayonne, Elizabeth, Jersey City, Plainfield, Secaucus, and Woodbridge, N.J.; Amsterdam, Binghamton, Buffalo, Jamestown, Mount Kisco, New York, Rochester, Schenectady, and Waterford, N.Y.; Harrisburg, Philadelphia, and Scranton, Pa.; Cranston, Cumberland, and Providence, R.I. for 180 days. SUPPORTING SHIPPER: Land O'Lakes, Inc., 614 McKinley Place, Minneapolis, Minn. 55413. SEND PROTESTS TO: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Bldg. and U.S. Court House, 110 S. 4th Street, Minneapolis, Minn. 55401.

No. MC 136326 (Sub-No. 1 TA), filed November 14, 1973. Applicant: FLORIDA ASSEMBLY & DISTRIBUTION, INC., 201 North Federal Highway, Deerfield Beach, Fla. 33441. Applicant's representative: James L. Emerick, Sr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) within Dade, Broward, and Palm Beach Counties, Fla., for 180 days. SUPPORTING SHIPPERS: Industrial Shippers Association, Inc., 1030 West Division Street, Chicago, Ill. 60622; W. D. Allen Manufacturing Company, 2200 West 16 Street, Broadview, Ill. 60153; Scholl, Inc., 211–213 West Schiller St., Chicago, Ill. 60610; and S. S. Kresge Company, P.O. Box 1104, Forest Park, Ga. 30050. SEND PROTESTS TO: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, Palm Coast II Building, Suite 208, Miami, Fla. 33166.

No. MC 136529 (Sub-No. 2 TA), filed November 15, 1973. Applicant: MISSOURI BEEF EXPRESS, INC., 630 Amarillo Bldg., Amarillo, Tex. 79101. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats and packinghouse products* as described in Appendix I to the report in "Descriptions in Motor Carrier Certificates", 61 M.C.C. 209 and 766, from the plantsite of Missouri Beef Packers, Inc., at or near Rockport, Mo., to points in New York, New Hampshire, Massachusetts, Pennsylvania, Connecticut, Rhode Island, Virginia, New Jersey, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Missouri Beef Packers, Inc., P.O. Box 910, Plainview, Tex. 79072. SEND

PROTESTS TO: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 138003 (Sub-No. 5 TA), filed November 14, 1973. Applicant: ROBERT P. KAZIMOUR, 1200 Norwood Drive SE., P.O. Box 2011 (Box zip 52406), Cedar Rapids, Iowa 52403. Applicant's representative: Michael J. Myers, 309 Badgerow Building, Sioux City, Iowa 51101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Appliances*, from Newton, Fort Dodge, and Webster City, Iowa, to points in Kentucky, Tennessee, North Carolina, and South Carolina and (2) *component parts and raw materials* used in the manufacture of appliances, from points in Kentucky and Tennessee, and Charlotte, N.C., to Newton and Jefferson, Iowa, for 180 days. RESTRICTION: Restricted to transportation under a continuing contract or contracts with Franklin Manufacturing Co. and The Maytag Company. SUPPORTING SHIPPERS: The Maytag Company, Newton, Iowa 50208, and Franklin Manufacturing Co., 600 Stockdale Street, Webster City, Iowa 50595. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 139263 (Sub-No. 1 TA), filed November 18, 1973. Applicant: MINUTEMAN EXPRESS, INC., P.O. Box 458, Lexington, Nebr. 68850. 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: *Meat, 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 the plantsite of Cornland Dressed Beef Co., at Lexington, Nebr., to points in Minnesota, Iowa, Missouri, Wisconsin, Illinois (except Chicago and Rockford), Tennessee, Kentucky, Indiana, Michigan, Ohio, Virginia, Pennsylvania, New York, Massachusetts, Connecticut, New Jersey, Washington, D.C., Maryland, North Carolina, South Carolina, Georgia, Florida, and Colorado, for 180 days. RESTRICTION: Restricted to a transportation service to be performed under a continuing contract or contracts, with Cornland Dressed Beef Co. of Lexington, Nebr. SUPPORTING SHIPPER: Cornland Dressed Beef Co., East Highway 30, Lexington, Nebr. 68850. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Suite 620, Union Pacific Plaza Building, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 139268 TA, filed November 16, 1973. Applicant: NAAYKENS TRANSPORT, LIMITED, 104 1st Street South, Beausejour, Manitoba, Canada. Applicant's representative: E. J. Hanson, Box 1177, Grand Forks, N. Dak. 58201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Reactor coolant* (hydrogenated terphenyl), in bulk, in tank vehicles, truckload, between the ports of entry on the United States-Canada International Boundary line in Minnesota and Anniston, Ala., for the account of Atomic Energy of Canada, Limited at Pinawa, Manitoba, Canada, for 180 days. SUPPORTING SHIPPER: Atomic Energy of Canada Limited, Whiteshell Nuclear Research Establishment, Pinawa, Manitoba, Canada ROE 1L0. SEND PROTESTS TO: J. H. Ambs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 2340, Fargo, N. Dak. 58102.

MOTOR CARRIERS OF PASSENGERS

No. MC 139242 (Sub-No. 1 TA), filed November 16, 1973. Applicant: D & T LIMOUSINE SERVICE, INC., 11941 Abbey Road, North Royalton, Ohio 44133. Applicant's representative: James M. Burtch, 100 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers* who are employees of the Penn Central Transportation Company in special operations, between points in Cuyahoga County, Ohio, on the one hand, and, on the other, points in Erie County, Pa., 180 days. SUPPORTING SHIPPER: Penn Central Transportation Company, Cleveland Union Terminal, Cleveland, Ohio 44113. SEND PROTESTS TO: Franklin D. Bail, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Bldg., 1240 East Ninth Street, Cleveland, Ohio 44199.

By the Commission.

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

[FR Doc.73-25562 Filed 11-30-73;8:45 am]

[Ex Parte No. 301]

ENERGY CRISIS AND THE NEED FOR EMERGENCY TRANSPORTATION LEGISLATION

Notice and Order

NOVEMBER 29, 1973.

Transportation is both a major mover and user of energy. It represents the very lifeline of our Nation and plays a key role in the development and exploitation in the public interest of our present and potential fuel supplies. Examples of this essential interdependence range from the Alaskan North Slope oil reserves to the low sulfur coalfields in Wyoming, both of which today lack the necessary transportation access to help alleviate anticipated energy shortages over the longer term. By the same token, commercial transportation reportedly accounts for approximately 13 percent of our country's annual distillate fuel consumption, with the share attributable to those carriers subject to our regulatory jurisdiction (which includes some 4.4 percent of the Nation's present truck fleet) being far less than most people realize—only about 3 percent of the total.

The Interstate Commerce Commission, as the independent regulatory agency charged by the Congress with overseeing the operations of the interstate surface transportation industry—embracing railroads, oil pipelines, motor and domestic water carriers, freight forwarders, and brokers—stands ready to lend its full support and assistance to the development and implementation of policies and programs to alleviate, to the fullest extent practicable, energy shortages for the short as well as the long term.

I. Those policies and programs that apply to transportation ought to include, we believe, encouragement of the prompt movement of critical fuel supplies as well as other essential commerce to those areas of greatest need, with the minimum expenditure of energy and with the least possible dislocation of other areas of our economy. To that end, this Commission has already taken steps—within its present, admittedly limited, statutory authority—to enable carriers subject to its regulation to make more efficient use of energy. And other actions are also planned under our existing statutory authorization. A summary of what we are doing and can do under the prevailing statute would embrace the following:

Our Superhighway and Deviation Rules (49 CFR 1042) enable regular-route motor common carriers of both passengers and property to traverse shorter and more economical routes (including those in the Interstate Highway System) than those specified in their certificates.

Our rail car service and embargo authorities, though somewhat limited and in need of clarification as they might apply in an energy crisis, provide us with some emergency power to direct the most efficient use of the available rail car fleet, to establish some priorities, and to require the joint or common use of terminals and related trackage. Section 1 (10), (15), and (16) of the Interstate Commerce Act.

We can and do encourage and approve the pooling of carriers' services and operations whenever we find that such pooling will be in the interest of better service to the public or economy in operations, and will not unduly restrain competition. Section 5 (1) of the Act.

We can and do issue temporary motor carrier authorities to meet immediate and urgent needs for such service as to a point or points or within a territory as to which there is no carrier service capable of meeting those needs. In instances of area or nationwide transportation stoppages, we issue General Temporary Authority Orders which enable the processing of such matters in our field offices on very short notice.

We issue new operating authorities, upon application and proof of operating economies and efficiencies, to enable motor carriers to traverse more economical alternate routes or to eliminate so-called "gateway" operations.

We are now processing, as expeditiously as possible given the procedural restraints of the National Environment Policy Act of 1969 (NEPA), a general rulemaking proceeding (Ex Parte No. 55 (Sub-No. 8) looking to the elimination or curtailment of those "gateway"

operations that do not allow for the most efficient utilization of fuel. On November 23, 1973, we published a notice of proposed rulemaking and order (119 M.C.C. 170) in this proceeding and comments on the regulations there proposed are now due on or before December 11, 1973.

We are active participants in multi-agency energy task forces and are cooperating fully with other departments and agencies in developing needed energy data and in formulating comprehensive plans to minimize problems associated with the energy crisis.

We are continuing to study, both internally and in cooperation with other departments, restrictions found in motor carrier operating authorities and in published tariffs with the view to removing any unwarranted limitations that may be found to be inimical to the public interest and the national transportation policy. Examples of similar studies would include Removal of Truckload Lot Restrictions, 106 M.C.C. 455, and Restrictions on Service by Motor Common Carriers, 111 M.C.C. 151.

We have stressed, and continue to do so, in the motor carrier licensing process, the operational feasibility of a new operating proposal with the view to minimizing or eliminating the costs of empty vehicle movements. Rogers Cartage Co., a Corporation—Extension, 110 M.C.C. 139. We issued, on November 23, 1973, a general policy statement again emphasizing this factor.

We encourage the provision of piggyback or trailer-on-flatcar service and the maintenance of through routes and joint rates, domestic as well as international, within one mode and between all modes, whether rail, motor, water, or air.

We have approved the use of rail unit-train rates which encourage shippers to tender larger volumes of certain freight to the railroads. This permits a single locomotive to haul a more complete load and to conserve fuel to the maximum extent possible.

Railroad and motor carrier consolidations and mergers are authorized to eliminate or reduce redundant operations in the public interest. Unnecessary duplicative transportation services are also authorized to be abandoned in appropriate circumstances.

This Commission urges shippers to utilize public transportation to the greatest extent possible. Just as local governments seek to relieve traffic congestion and air and noise pollution, and to discourage undue energy consumption, by encouraging their citizens to utilize mass transit facilities to relieve these same problems, we have an obligation to assure the public that for-hire carriers operate efficiently and economically.

11. The Congress of the United States is presently considering the adoption of certain legislation (e.g., S. 2589 and H.R. 11450) which would require this Commission to report to the appropriate Congressional committees within 15 days after the date of enactment on the need for additional regulatory authority in order to conserve fuel during the energy emergency while continuing to provide for the public convenience and necessity. Our reports to the Congress would be required to identify with specificity:

1. the type of regulatory authority needed;
2. the reasons why that authority is needed;
3. the probable impact on fuel conservation of such authority;
4. the probable effect on the public convenience and necessity of the suggested authority; and
5. the competitive impact, if any, of such authority.

Each such report would be further required to make recommendations with respect to changes in any existing fuel allocation programs which are deemed necessary to conserve fuel while providing for the public convenience and necessity.

This Commission has presented testimony before Congressional committees on the above-mentioned and other bills and has proposed certain amendments to those measures as set forth in Appendix A to this notice. We thus have expressed the opinion that the powers to be conferred upon this Commission, and other regulatory agencies, as those bills now stand, are too narrow inasmuch as that authority would be mainly confined to "variances from existing schedules and routings to increase load factors, reduce the number of scheduled trips, or shorten distances traveled, in order to conserve fuel." There are other techniques that may be utilized to alleviate the fuel crisis such as altering routes or rates. We have therefore stated that the legislation set forth in Appendix A hereto would better afford us the needed flexibility to implement the kind of programs needed to combat the energy emergency.

Our proposal would, among other things, grant us authority to impose upon the various categories of nonregulated carriage, fuel conserving measures similar to any that may be promulgated for regulated carriers. In the United States there are approximately 37,000 exempt carriers, 96,000 private carriers, and only 19,000 regulated carriers. The 1973 figures show the number of trucks to now be 20.2 million. As shown in Appendix B, the number of trucks operated by regulated carriers constitutes only 4.4 percent of the total trucks in this country. Therefore, it would appear that, to be effective, many constraints imposed on transportation must be applied on an across-the-board basis but only in the interests of conservation and utilization of fuel in the present emergency.

III. The National Environmental Policy Act of 1969 (NEPA) as interpreted by the Council on Environmental Quality and the courts imposes stringent and time-consuming restraints on an agency's decision-making process. Many procedural steps must be taken before an agency may take necessary appropriate action. Environmentalists as well as others interested more in economic advantage have used NEPA to delay Federal action. Strained interpretations of NEPA seem to disregard the concept that "justice delayed is justice denied." In this period of severe energy shortages, one need only examine the circumstances surrounding a number of Commission activities to note how damaging such delays may be.

This Commission, pursuant to an injunction issued by Judge Frankel in Harlem Valley v. Stafford, 5 ERC (DC SDNY–1973), may not authorize the abandonment of any rail lines unless we (1) determine and state publicly at the outset of each abandonment whether a major Federal action significantly affecting the quality of the human environment is involved within the meaning of NEPA, and if so (2) our staff must prepare a draft impact statement for circulation to the parties prior to the commencement of any hearing. This injunction has severely delayed critical decision-making affecting the distressed Northeast railroads. In many instances those railroads are seeking to abandon operations which from an energy standpoint may be more efficiently handled by truck. A locomotive which must travel over a particular segment of line to pick up a single carload of freight sometimes uses more energy, depending upon local operating conditions, than would trucks capable of transporting the same commodities. Furthermore, existing motor carriers may be presently authorized to transport the involved traffic. Any traffic diverted from the railroads may be utilized to fill partially laden trucks or may result in fewer empty backhauls. This would not significantly increase pollution or energy use, but would rather enable the transportation system to operate more efficiently and economically.

Similarly, the elimination of rail trackage which is truly redundant or which simply duplicates other rail lines capable of heavier utilization will not disrupt existing economic centers and will not cause a shift from rail to any other mode of transportation.

Other Commission decisions being delayed by environmental procedural requirements include the processing of applications to construct rail lines to serve the coalfields in Wyoming and of a petition to eliminate motor carrier gateway requirements. In the former instance, vast coal deposits abound in Wyoming. In order to develop these fields by 1976, rail construction must begin this spring. We cannot, however, approve this application until an impact statement (most likely a multiple agency impact statement) is completed. In the latter case, we are attempting to take action which may save 300 million gallons of fuel a year. Ironically, NEPA requirements are delaying any action which might have beneficial effects on the energy situation.

We recognize that CEQ may shorten the time restraints of their guidelines in emergency situations. This, however, does not relieve an agency of its responsibility to prepare and distribute an impact statement where appropriate. Because of the obvious need to move with dispatch during this current emergency, it would seem that actions taken pursuant to any emergency legislation should not be subject to the procedural requirements of the National Environmental Policy Act of 1969. This would not eliminate any agency's responsibility to evaluate environmental matters, but merely would remove delay from the decision-making process.

IV. This Commission would appreciate the views, comments, and suggestions of

any interested persons relating to any possible constructive legislation we may propose to the Congress. For regardless of whether Congress enacts S. 2589, we believe it to be our public responsibility to propose to the Congress suitable legislation which might alleviate, to the fullest extent practicable consistent with our regulatory duties, the current fuel situation. We ask for public comments in this matter because it is the public that will reap the benefits of any constructive legislation which may be adopted. Such comments are requested within 15 days in view of the energy emergency facing our Nation.

V. *It is ordered*, That any person interested in making representations relating to the above-described matters so as to aid this Commission in formulating its legislative plans concerning the current energy shortage is hereby invited to do so by the submission of written data, views, or arguments on or before December 19, 1973. While the original only of such representations will be accepted and considered, we ask all who can do so to include 15 additional copies of their presentations.

And it is further ordered, That notice to the general public of the matter herein under consideration will be given by depositing a copy of this Notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

APPENDIX A–PROPOSED LEGISLATION

(b) (1) The Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission for the duration of the energy emergency, in addition to their existing powers and notwithstanding any provisions to the contrary in the Interstate Commerce Act, as amended, Federal Aviation Act, as amended, or Shipping Act, as amended, respectively, shall have the authority on their own motion or by motion of any interested person, including the Secretary of Transportation, to review, modify, suspend or otherwise adjust a carrier's operations and the services performed thereunder, in order to conserve fuel while providing for the public convenience and necessity. This authority includes but it not limited to revising the manner and the level of operations, altering routes, territories or points served, shortening distances traveled, and reviewing and revising the rates, fares or charges of such carrier. Actions taken pursuant to this paragraph may be taken in accordance with section 553 of Title 5 of the United States Code, and without the procedural requirement of 42 U.S.C. 4321 et seq. Any person adversely affected by an action shall be entitled to judicial review of such action in accordance with Chapter 7 of Title 5 of the United States Code. Consistent with the purposes of this Act, the Interstate Commerce Commission may impose upon the various categories of nonregulated carriage under the Interstate Commerce Act fuel conserving restraints, rules and regulations, comparable to those adopted pursuant to this Act to limit the service of the carriers subject to its jurisdiction.

(2) Any person knowingly and willfully violating any requirement of section 203(b) of this Act shall, upon conviction thereof be fined not less than $200 nor more than $500 for the first offense, and not less than $500 nor more than $1,000 for any subsequent offense. Each day of such violation will constitute a separate offense.

APPENDIX B

DISTRIBUTION OF TRUCKS BY TYPE OF VEHICLE AND USE—1972 [1]

Trucks and combinations	Private [2]		For-hire		Total	
	Number	Percent of total	Number	Percent of total	Number	Percent of total
Single unit trucks:						
2 axles	17,486,200	93.8	331,200	38.6	17,817,400	91.4
3 axles	633,800	3.4	53,300	6.2	687,100	3.5
All single unit trucks	18,120,000	97.2	384,500	44.8	18,504,500	94.9
Combinations:						
3 axles	111,900	0.6	78,100	9.1	190,000	1.0
4 axles	205,000	1.1	161,500	18.8	366,500	1.9
5 or more axles	205,100	1.1	233,900	27.3	439,000	2.2
All combinations	522,000	2.8	473,500	55.2	995,500	5.1
Total	18,642,000	100.0	858,000	100.0	19,500,000	100.0

[1] The distribution being used in this table is based on the 1967 Census of Transportation, Truck Inventory and Use Survey.
[2] Of the 18,642,000 private trucks about 3,500,000 are farm trucks.

SOURCE: Based on vehicle distribution, Table 20, 1967 Census of Transportation, U.S. Department of Commerce, Bureau of Census, with adjustments to include pick-up and panel trucks.

[FR Doc.73-25662 Filed 11-30-73;9:55 am]

COST OF LIVING COUNCIL

FOOD INDUSTRY WAGE AND SALARY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given that the Food Industry Wage and Salary Committee, established under the authority of section 212(f) of the Economic Stabilization Act, as amended, section 4(a)(iv) of Executive Order 11695, and Cost of Living Council Order No. 14, will meet on December 6, 1973. The meeting will be open to the public on a first-come, first-served basis at 10 a.m. in Conference Room 8202, 2025 M Street NW., Washington, D.C.

The agenda will consist of a discussion of policy questions involving food industry wage cases pending before the Cost of Living Council.

The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business.

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

HENRY H. PERRITT, Jr.,
Executive Secretary,
Cost of Living Council.

[FR Doc.73-25674 Filed 11-30-73;11:30 am]

FEDERAL REGISTER PAGES AND DATE—DECEMBER

33267-33383 ..... Dec. 3

federal register

MONDAY, DECEMBER 3, 1973

WASHINGTON, D.C.

Volume 38 ■ Number 231

PART II

ENVIRONMENTAL PROTECTION AGENCY

■

ARIZONA TRANSPORTATION CONTROL PLAN

Phoenix-Tucson Interstate Air Quality Standards

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Arizona Transportation Control Plan

This rulemaking sets forth a transportation control plan for the Phoenix-Tucson Intrastate Air Quality Control Region (the "Region"). A General Preamble was published on November 6, 1973, in the FEDERAL REGISTER (38 FR 30626) and is incorporated herein by reference.

On March 20, 1973, the Administrator, acting in response to a court order, notified the Governor of Arizona that a transportation control plan for the Region should be submitted by April 15, 1973. On April 11, 1973, the State of Arizona submitted a proposed implementation plan control strategy to the Administrator. This plan demonstrated attainment of the oxidant standard by May 31, 1975. However, although several of the strategies included to control carbon monoxide were approvable in concept, they were not set forth in the required regulatory detail. Accordingly, on June 15, 1973, the Administrator disapproved the plan (38 FR 16555, June 22, 1973).

Because the Administrator disapproved the Arizona control strategies for carbon monoxide, the Administrator was required, under section 11(c) of the Clean Air Act, to propose and subsequently promulgate regulations setting forth substitute measures. Regulations for the attainment and maintenance of the national standards for carbon monoxide were proposed by the Administrator in the FEDERAL REGISTER of July 16, 1973 (38 FR 18942). Public hearings were held on the proposed regulations in Tucson on September 10 and 11, 1973, and in Phoenix on September 12 and 13, 1973.

The Governor of Arizona submitted a revised implementation plan control strategy on September 11, 1973. Notice of receipt of the revised Arizona plan was published in the FEDERAL REGISTER on October 26, 1973 (38 FR 29607). This notice was issued to solicit public comment on the plan prior to the Administrator's approval/disapproval decision. The closing date for public comment is November 16, 1973, which is also the deadline established by the Court of Appeals for promulgation of EPA's Arizona transportation control plan. Consequently, today's promulgation cannot be delayed to review public comment received on or near the closing date for comment.

The Administrator has reviewed the revised Arizona plan, supplemental information, and public comment received to date and finds that the inspection/maintenance and retrofit control measures are, for the most part, approvable as specified herein. Therefore, the Administrator has approved these measures with exceptions and conditions. Upon receipt of the remaining public comment, if any, the Administrator will issue an evaluation report of the Arizona plan and, if necessary, amend this approval and promulgation.

AIR POLLUTION IN THE PHOENIX-TUCSON REGION

Natural features. The Phoenix-Tucson Region is composed of the five Arizona counties of Maricopa, Gila, Pinal, Pima, and Santa Cruz. A total of 1,431,954 people reside in this region, 80.8 percent of the total state population. The region encompasses 29,753 square miles, 26.2 percent of the total state area. There are two major urban areas within the region: Metropolitan Phoenix in Maricopa County and metropolitan Tucson in Pima County. These areas contain 87.5 percent of the region's population. Both metropolitan areas are located at the northeast edge of the southwestern desert, which comprises about a third of the state and is typified by low mountain ranges and desert valleys. Phoenix and Tucson are located about 120 miles apart with the elevation of Phoenix being 1117 feet and of Tucson, 2410 feet.

The climate of the two major metropolitan areas is quite similar, although Tucson temperatures are normally somewhat cooler because of its elevation. Tucson also has more rainfall. Both areas have a large number of days with clear skies and an abundance of sunshine. Average wind speeds in Tucson tend to be slightly higher than in Phoenix.

In the southwest desert areas where clear skies predominate, rapid heating of the surface occurs during the daytime. This rapid heating, in turn, produces an unstable atmospheric condition with good dispersion. Clear skies at night allow rapid cooling and lead to the formation of surface-based inversions.

Because of the longer nights and increased cooling, these inversions are stronger and more persistent in the winter than in the summer. National Weather Service records indicate that radiation inversions can be expected on about two-thirds of the winter nights. Low wind speeds appear to occur more frequently during the night, and the combination of surface inversions and light winds produces the stable atmospheric conditions that are conducive to the accumulation of pollutants near the ground.

Maricopa County records indicate that the highest carbon monoxide concentrations occur during the night in the winter months. This coincides with the period of highest frequency of stable radiation inversion conditions. Both the maximum 1-hour concentration and the maximum 8-hour concentration usually occur between 6:00 p.m. and midnight. In addition to the stable atmospheric conditions during these hours, traffic counts, using October as an example, indicate that there is more traffic in the 5-hour period centered around the evening peak hour (4:00 to 5:00 p.m.) than in the similar 5-hour period centered around the morning peak (7:00 to 8:00 a.m.). High carbon monoxide concentrations do occur during the morning traffic peak period; these concentrations, however, are generally short-lived because the atmosphere is rapidly becoming unstable because of daytime heating. Thus, it would appear that high concentrations of carbon monoxide in these area are a function not only of total emissions, but also of the meteorological conditions that exist during the periods of highest emissions.

It should be noted that the dispersive characteristics of unstable midday atmospheric conditions could be used to reduce high evening carbon monoxide concentrations if measures were adopted that caused the evening peak traffic to occur earlier. The shifted emissions would then occur during a period of good dispersion. To help achieve this shift, employers could reschedule the work shift so that quitting time occurs at 3 p.m. Also, work hours staggered toward an earlier quitting time by a significant number of employers would shift the emissions and, in addition, lessen traffic congestion, which is a source of increased emissions due to stop and go operation. Use of daylight savings time during the winter months would effectively shift peak evening traffic 1 hour earlier with respect to the time of the nondispersive nighttime conditions. Such a measure would also result in significant energy savings.

Air quality monitoring in the region by the Maricopa County Health Department has consisted of one station located in Phoenix. At various times the Arizona Division of Air Pollution Control (DAPC) has in addition monitored air quality at different locations throughout the State using mobile equipment. The data from the mobile monitoring equipment cover short periods (24-hour periods to 4-month periods); the station located in central Phoenix has recorded data continuously since 1967. There has been no continuous air quality monitoring in the metropolitan Tucson area until recently when two monitoring sites were activated in a cooperative program between Arizona DAPC and Pima County Health Department. The State is in the process of procuring five additional carbon monoxide monitors for Phoenix. These monitors were funded by EPA and will be operated by the Maricopa County Health Department. Air quality data for 1 year, or at least for the seasonal period when high concentrations would normally be expected to occur, is required for analysis and selection of carbon monoxide control strategies. The only data available of sufficient duration to permit strategy calculations are those from the central Phoenix monitoring station.

The second highest 1-hour and 8-hour carbon monoxide concentration recorded in 1971 in the Phoenix-Tucson AQCR were 43.5 mg/m³ and 29.36 mg/m³. Use of a proportional rollback technique indicates that control measures adequate to ensure attainment of the 8-hour national carbon monoxide standard (10

mg/m^3) will also ensure meeting the 1-hour standard (40 mg/m^3). Rollback calculations show that a 66 percent reduction from 1971 carbon monoxide emissions is required to meet the national 8-hour standard.

The second highest 1-hour average concentration of photochemical oxidants recorded in the Phoenix-Tucson AQCR for the base year 1971 was 236 $\mu g/m^3$. Using the relationship between hydrocarbon emissions and ambient photochemical oxidant concentrations as defined in Appendix J, 40 CFR Part 51, a 31 percent reduction from 1971 hydrocarbon emissions is required to meet the national standard of 160 $\mu g/m^3$.

Information presented in the State Plan and in the EPA Technical Support Document (which is available at the Office of Public Affairs, EPA Region IX, 100 California Street, San Francisco, California 94111, and at the Freedom of Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460) shows that the anticipated decrease in motor vehicle hydrocarbon emissions as a result of the Federal Motor Vehicle Control Program and the decrease due to approved controls on stationary sources of hydrocarbons will be sufficient to meet the national standard by May 31, 1975, and to maintain the standard through 1980. Attainment of the carbon monoxide standards will not be achieved by these controls. Consequently, supplementary controls are required, and, since mobile sources will account for approximately 93 percent of the carbon monoxide emissions, additional controls on mobile sources are required.

State Transportation Control Plan

As noted previously, the State of Arizona submitted a transportation control plan on April 11, 1973.

Arizona's control strategy included provisions for mandatory annual inspection and maintenance on all light, medium, and heavy duty vehicles, the use of retrofit devices on pre-1976 vehicles, and the conversion of 10,000 vehicles to liquid petroleum gasoline.

The State plan concluded that these measures would achieve emission reductions sufficient to attain the standard. However, EPA analysis, presented in the EPA Evaluation Report, indicated that excessive emission reductions were claimed, and that, in fact, these measures were not sufficient to show attainment of the standard. Consequently, additional measures, which control vehicle usage and consequently total emissions from the vehicle population at large, were considered necessary. EPA calculated that the additional emission reduction necessary to show attainment of the standard could be achieved with a 32 percent reduction in total vehicle miles traveled (VMT).

The difference between EPA estimates and those of the State centered primarily around the applicability and effectiveness of the catalyst retrofit. EPA's analysis did not support the State's claim that 100 percent of the 1968–1974 autos could be readily retrofitted with the catalyst. Not all vehicles in this age class can operate on the unleaded fuel necessary for catalyst function. Considering this limiting factor, EPA estimated that only 20 percent of 1968–1970 vehicles and 75 percent of the 1971–1974 vehicles could be retrofitted with catalyst converters (See An EPA White Paper: The Clean Air Act and Transportation Controls).

For the most part, reductions attainable by the remaining control measures of the State plan were considered realistic and generally approvable.

The transportation control plan, however, lacked the necessary procedures for enforcement and administration. Specifically, the State does not have legal authority for its inspection/maintenance program; there are no regulations and administrative procedures for either inspection/maintenance or the retrofit program; and there is no monitoring and surveillance program. Similarly, the transportation control plan does not indicate that adequate resources have been allocated by the State for implementation of these measures.

On September 11, 1973, the Governor of the State of Arizona submitted a revised transportation control plan that included significant modifications to the earlier State plan.

The inspection/maintenance program was essentially reproposed: however, the revised plan contained a claim that the post-maintenance deterioration curve is more realistic than EPA's, and that, as a result, the program could achieve a 22 percent reduction in carbon monoxide emissions rather than the 12 percent allowed by EPA. EPA had assumed the deterioration to be linear as a function of time, while the State indicated that the emission-reducing effectiveness of maintenance would not begin to deteriorate until much later in the post-maintenance year, thus yielding higher overall emission reductions than would be assumed in a linear deterioration. Based on the analysis of data contained in the EPA Technical Support Document and data referenced by the Arizona Plan, EPA does not believe that the 22 percent reduction claimed by Arizona can be supported at this time.

The State's retrofit program was substantially modified. The use of oxidizing catalyst converters was restricted to 1973–1975 vehicles in accordance with EPA's information on the poor applicability of such devices to older vehicles. Application of the air bleed to the intake manifold device was reproposed for pre-1968 model years. Finally, the State proposed the application of a new air bleed/exhaust gas recirculation device on all 1968–1972 vehicles. The data do not support the applicability of this device on 1972 vehicles, and EPA cannot accept emission reductions attributed to that model year. The State is encouraged to evaluate possible retrofit alternatives.

In short, the revised State plan demonstrate better compatibility between retrofit devices and vehicles of each model year. Consequently, EPA can accept greater emission reductions for the State plan. However, as with the initial State plan, these measures are not sufficient to show attainment of the standard; the necessity for VMT reduction remains. Although the revised plan originally did not include any control measures for VMT reduction, the Governor acknowledged in his letter accompanying the plan that reasonable interim measures to reduce VMT must be adopted. Subsequent submittals on September 21 and October 2, 1973, indicated that the Governor's special task force is vigorously encouraging business and local government to develop carpool incentives; also being developed are parking restrictions, improvements in the public transit system, and traffic flow improvements.

EPA acknowledges that such measures are promising, and that the potential for substantial progress exists. Further, EPA recognizes the firm commitment on the part of State and local governments to fully develop and implement such control strategies. At this point, however, some of Arizona's interim strategies have not been formulated to the point at which EPA can evaluate their effectiveness in reducing VMT, and, ultimately, carbon monoxide emissions.

Finally, the revised State plan, like the earlier version, lacks the necessary procedures for enforcement and administration, and adequate resources for effective implementation. Until this is done, EPA is promulgating the regulations necessary to make the program submitted by the State effective. However, EPA is confident that the State will adopt whatever measures are necessary to carry out its program to a successful conclusion.

Proposed EPA Transportation Control Plan

In the Federal Register of July 16, 1973, the EPA proposed substitute regulations to show attainment of the carbon monoxide standard. Recognizing the effort and progress made by Arizona in its inspection/maintenance retrofit program, the Administrator incorporated these individual control measures into EPA's proposal as viable measures to reduce vehicle emissions, and proposed them in accordance with the schedule set forth in the State plan. However, as these control measures were not sufficient to show attainment of the standard, EPA proposed additional measures designed to achieve the 32 percent reduction in VMT, which EPA considered necessary to attain the standard. EPA's proposal measures included bus/carpool lanes on freeways and major streets, 20 percent reduction in off-street public parking, and limitations on the construction of additional parking facilities—all supplemented by the required availability of a computer-aided carpool- and buspool-matching system. The intent of these measures was to discourage individual use of private vehicles. EPA calculated that these measures

could increase the occupancy factor for work-oriented trips by 50 to 75 percent, and thereby reduce VMT by 10 to 15 percent by 1975.

To assure that this VMT reduction is achieved and to achieve an additional 10 to 15 percent reduction by 1977, EPA proposed to limit gasoline consumption (at the distributor level) to 1972–1973 levels, and to limit the motorcycle population to projected 1975 levels. The gasoline limitation was designed to retard the very rapid VMT growth expected after 1975; the restriction on motorcycle population was designed to prevent counter-productive shifts from automobiles to highly polluting motorcycles as a result of gasoline limitations and parking bans.

The measures proposed by EPA to control VMT were sufficient to demonstrate attainment of the standard. However, the inspection/maintenance and retrofit programs could not be implemented in time to meet the standards by 1975; therefore, a 2-year extension was necessary. To satisfy the remaining legal requirements for such an extension, the control strategy must consider reasonably available control measures for implementation as expeditiously as practicable. At the time the EPA plan was proposed, the VMT reduction measures previously discussed were considered to be reasonably available control measures and sufficient to satisfy the requirements for a 2-year extension.

Public Comment

The EPA hearings in Phoenix and Tucson elicited substantial public comment regarding the control measures proposed by EPA; also, the State of Arizona used the hearings as an opportunity to present its revised transportation control plan. The State also affirmed its commitment to develop and implement effective VMT reduction measures.

Comments were received from a wide range of sources—regional and municipal governments, industry, civic organizations, environmental groups, and individual citizens. Generally, EPA's proposal for the State's inspection/maintenance and retrofit programs received solid support. However, EPA's VMT control measures received generally adverse comment. Many stated that such proposals were unrealistic in view of the area's high degree of dependence on automobiles and lack of alternative modes of transportation.

The workability of the measure for exclusive bus/carpool lanes was doubted. The point was made that without an expanded bus system, exclusive bus lanes would serve no beneficial purpose and that almost no streets could support viable bus lanes. Additional comments were received criticizing the inadequacy and inconvenience of the existing transit systems in both Phoenix and Tucson. Although representatives of these cities spoke of improvements in scheduling and expansion of the service area, commitments for purchase of buses for increasing the existing transit capacity system during the commuting period have not been made. Testimony indicated that the Phoenix bus system is presently at capacity during the commuting period. Substantial comment was received encouraging and supporting carpooling for commuters as the best solution to reduce VMT and congestion, particularly in the absence of a viable transit system.

The required availability of a voluntary computer-aided bus/carpool matching system, which was included in the revised State plan, was generally accepted. Several on-going programs for assisting employees to locate and form carpools were noted.

The parking reduction measure was criticized as having potentially adverse effects on downtown business. Similarly, the parking review proposal was thought to have adverse economic effects. In particular, it was said that such a regulation might threaten the growth of the central business district and the proposed Sky Harbor Airport expansion. Comments received on parking review proposals in other regions stated that EPA should allow state and local organizations the option of developing a parking management supply plan capable of achieving results that were equivalent to the proposed source-by-source review.

Restrictions on the ownership of motorcycles were opposed. Spokesmen for the motorcycle industry requested that EPA establish emission standards for motorcycles. Comment was added that if EPA should set such standards, any problem of motorcycles emissions would be substantially diminished.

Any limitations on the amount of gasoline sold were opposed. The possible adverse impact on agricultural operations was cited. Further, the reduction or control would drastically affect the growth economy, and would not accommodate a continuation of the unprecedented growth that occurred over the last several years.

Environmental groups in both cities generally supported EPA's proposals, and often suggested additional measures such as bicycle paths, mass transit improvements, and land-use controls. One spokesman concluded his statement with words that generally reflect the tenor of the testimony: "Any regulation adopted must have the support of the public."

Considerable comments was received on the applicability of the EPA proposal to the entire Region. The point was made that it can not be shown that there are violations of the national standard in the many communities spread across the five-county region and that auto usage in these communities also could not be shown to contribute to the air pollution problems of Phoenix and Tucson. Therefore, transportation control measures should only apply to the Phoenix and Tucson Metropolitan Areas not the five-county region.

The fact that the amount of reduction for Tucson was based on Phoenix data because of the lack of air quality data for Tucson was of concern to a significant number of those testifying at the hearing in Tucson. Data derived from monitoring during the summer months of 1973 in Tucson and from use of atmospheric diffusion models was presented by the Pima County Air Pollution Control District. These data show that in 1977 the 8-hour carbon monoxide standard would be substantially exceeded. The value derived for the maximum 8-hour concentration in 1977 was 21 mg/m^3.

A transportation control plan also designed to attain the standard by 1977 was submitted by the Pima County Air Pollution Control District at EPA's hearing in Tucson.

This plan relied on the measures in the State plan (namely inspection/maintenance and retrofit) and included increasing the use of carpools, increasing bus service, implementing a computerized traffic control system, instigating a public education effort, and implementing a continuous air quality monitoring program.

Transportation Control Plan

The EPA promulgation is a combination of approval of the Arizona Plan, and promulgation of portions of the EPA proposal as modified by the revised State plan and by testimony received at the hearings. EPA is taking action to approve the plan proposed by the State, specifically, the inspection/maintenance, retrofit, employer incentive, and carpool matching programs; simultaneously, EPA is promulgating certain requirements to assure the effectiveness and implementation of the approved State plan. This combination of approval and promulgation constitutes a complete and viable transportation control plan that satisfies the requirements of the Clean Air Act.

Each specific control measure of both the State plan and the EPA promulgation are described in the following paragraphs.

State plan: Inspection/maintenance program. An inspection/maintenance program has been initiated by the State of Arizona and is being approved by EPA in this plan. This program will require owners of light-duty and medium-duty vehicles to have their vehicles inspected and any needed maintenance performed every year. According to the State plan, the program will commence on July 1, 1975. EPA is requiring several submissions during the development of the inspection program as follows: draft legislation to be submitted by February 1, 1974; legislative authority to be established by May 1, 1974; and regulations to be adopted by September 1, 1974. These dates are necessary to effect the commitment to obtain legislation during the 1974 session of the Arizona legislature.

State plan: Retrofit program. As with the inspection/maintenance program, this control measure has been initiated by the State of Arizona and is being approved by EPA. The State will require that all pre-1976 light-duty vehicles be retrofitted with an appropriate emission-reducing device (1) On pre-1968 vehicles, an air bleed to the intake manifold will be installed beginning on July 1, 1975.

This device increases the air/fuel mixture by metering additional amounts of air to the manifold; the result is a leaner fuel mixture and more complete combustion resulting in fewer emissions. (2) Commencing on July 1, 1975, vehicles in the 1968–71 model years will be controlled using an air/bleed exhaust gas recirculation device. The operation is similar to the air bleed device mentioned previously. (3) Finally, oxidizing catalyst converters are to be installed on 1973–1975 vehicles able to operate on 91 octane unleaded gasoline. Implementation of the oxidizing catalyst aspect of the retrofit strategy will begin June 1, 1976. As with the inspection program, EPA is requiring several submissions concurrent with the development of the retrofit program. In particular, EPA is requiring draft regulations for the retrofit devices by February 1, 1974, and adopted regulations by September 1, 1974.

State plan: Employer carpool incentive program. As part of the Arizona Plan, Arizona submitted details of a program to develop and implement an employer incentive program. EPA is approving this program and is setting certain program requirements. The employer carpool incentive program is a new regulation designed to encourage the use of carpools and mass transit and discourage employees from riding to work alone in their automobiles. The program requires an employer who maintains more than 200 employee parking spaces to provide an incentive program. Each employee carpool incentive program is to be submitted to the State by February 1, 1974. Approval or disapproval will be announced by EPA by June 1, 1974. On August 1, 1974, EPA will prescribe a plan for each employer in the above categories who does not submit an approvable plan. All plans will become effective on September 1, 1974. EPA envisions employer incentive plans to contain incentives such as preferential or covered parking for carpools, charges for use of parking spaces by single passenger automobiles, reductions in the number of parking spaces, subsidies to employees who use mass transit, and/or provision of special charter buses. EPA will evaluate each plan in terms of the effectiveness of the incentives in achieving an increase in the occupancy factor. EPA believes an occupancy factor of two is a reasonable goal.

The incentive program requirements will apply to employers in the highly traveled portions of Phoenix and Tucson.

State Plan: Bus/carpool matching program. EPA is also approving the implementation of a bus/carpool matching program. The purpose of the bus/carpool matching program is to assist commuters who desire to form carpools, or where there are sufficient commuters, to form buspools. Participation in the program would be voluntary. Each participant in the program would be provided with a listing of names and work phone numbers of all other participants who have similar origins and destinations and whose work hours most nearly match their own. The availability of the matching program is phased to include: a demonstration program to make the carpool matching service available to 10,000 employees in the State Capital area of Phoenix and to 2,000 employees in the central business district of Tucson. This phase is to be in operation by March 1, 1974; the program will be extended to include all employees in businesses having more than 200 employees in metropolitan Phoenix and Tucson by September 1, 1974; and, finally, the program will be made available to employees of smaller firms (50 or more employees) in both areas by September 1, 1975.

EPA promulgation: Management of Parking Supply. This regulation will require approval before construction begins for any new or modified parking facility with new capacity or an increase in capacity of 50 or more vehicles. An application requiring information pertinent to assessing the effect on local air quality and VMT in the Metropolitan Phoenix Area and the City of Tucson must be approved by EPA or by an EPA-approved agency. Provision is made for public comment prior to a final decision. As an alternative to instituting review of each parking facility, any local jurisdiction may submit a 5-year comprehensive parking management plan. To be approved, this plan will have to demonstrate that when carried out it will have an effect comparable to a review of each parking facility.

EPA Promulgation: Monitoring transportation trends. In addition to monitoring air quality, EPA will require transportation trend monitoring. This will be accomplished to assure the effectiveness of the inspection and maintenance program and the retrofit program. This regulation requires that the State monitor the actual per-vehicle emissions reduction achieved as a result of the plan. Monitoring of VMT, average vehicle speeds, and occupancy factor in the Metropolitan Phoenix Area and the City of Tucson is also required to evaluate the effectiveness of the employer carpool incentive program and traffic flow improvements. Reports are required quarterly starting with the period from July 1 to September 30, 1974.

Findings

The Clean Air Act requires that national ambient air quality standards be achieved as expeditiously as practicable. The EPA approved and promulgated measures are sufficient to attain the standards. However, attainment is not possible by 1975. The catalyst retrofit program cannot be implemented until 1976, with full emission reductions unattainable until 1977. Although both the remainder of the retrofit program and the inspection/maintenance program will be implemented in mid-1975, the full annual cycle necessary to achieve the projected emission reduction will not be completed by the end of 1975. Therefore, the standard cannot be achieved until 1977. Because all reasonable and available interim measures will be implemented, a 2-year extension is justified and necessary.

Measures not promulgated. There are four measures which EPA has previously proposed, but which are not included in this promulgation. First, the proposed restrictions on motorcycle registration met considerable opposition at the public hearings. Also motorcycle industry spokesmen presented testimony to the effect that emission standards are necessary and that EPA should set them. EPA currently anticipates that such standards will be established in time for the 1976 model year. In view of this, EPA has reevaluated this measure and has determined that it is not reasonable at this time.

Secondly, EPA's proposed measure requiring a reduction in the number of public parking spaces was not supported at the hearings. Testimony presented by city officials indicated that most public parking is associated with downtown areas. Because of this, the measure would affect those who work and shop in the downtown area and park in public parking. Since the air quality problem is associated with the urbanized portions of both cities and not just the downtown areas, this measure has been replaced by measures that affect parking in larger areas. These replacement measures are the employer incentive program, which affects the availability or attractiveness of employee parking, and the management of parking supply, which reviews the construction or modification of all parking.

Thirdly, EPA's proposal to establish exclusive bus/carpool lanes is not being promulgated because no segment of the street network could be identified as capable of supporting a viable bus or carpool lane.

Finally, the proposed limitations on gasoline consumption was opposed by many hearing witnesses. EPA intended that this admittedly harsh measure be implemented only after all other control measures proved ineffective. Its purpose was to compensate for shortcomings in the emission-reducing effectiveness of the other control measures. Because EPA is now approving Arizona's retrofit program, which achieves much higher emission reductions, the gasoline restriction measure is not needed to show attainment of the carbon monoxide standard and will not be promulgated.

Additional VMT reduction proposals that go beyond those of EPA were suggested in the hearings, such as bicycle paths, mass transit improvements, and land-use controls. EPA believes that all such measures are constructive and capable of achieving significant improvements in air quality.

Although, EPA selected those strategies that were capable of achieving large-scale emission reductions in a relatively short time, the Agency strongly encourages local government and interest groups to develop strategies to supplement the promulgated control programs.

Compilation of Control Strategy Effects

Table 1 shows a compilation of control strategy effects. As can be seen, the national standards for carbon monoxide are attained by 1977 and maintained through 1980.

Table 1

Control strategy effects in Phoenix-Tucson AQCR

Source and control measures	Emissions and reduction tons/day		
	1975	1977	1980
Mobile source emissions without proposed control measures	656.5	522.2	338.3
Expected reductions:			
Inspection/maintenance		−62.7	−40.6
Retrofit devices:			
Catalytic converter (1973–1975)		−58.1	−43.2
Exhaust gas recirculation (1968–1971)		−60.2	−28.7
Air bleed (pre-1968)		−70.8	−42.5
VMT reduction measures	−63.0	−25.2	
Motorcycles	14.9	16.8	18.6
Heavy-duty vehicles	69.6	82.3	98.6
Inspection/maintenance		−9.3	−11.4
Other (stationary, aircraft, etc)	25.7	28.7	31.5
Total emissions remaining	702.8	351.7	320.6
Allowable emissions for attainment of CO standards	351.7	351.7	351.7
Estimated second-high 8-hour CO concentration	[1] 20.0	[1] 10.0	[1] 9.1
National 8-hour CO standard	[1] 10	[1] 10	[1] 10

[1] Milligrams per cubic meters.

Basis for Reductions Claimed

As has been previously discussed, the transportation control plan submitted by the State of Arizona shows significantly more reduction for inspection/maintenance and retrofit than has been claimed in this promulgation. The difference is primarily due to the amount of reduction that can be achieved by a loaded inspection program. The average reduction percentage for this program is calculated by the Arizona DAPC to be 22.2 percent of the carbon monoxide emissions from light-duty vehicles. EPA has calculated the reduction to be 12 percent. The difference in the two values results from different estimations of the rate of deterioration between maintenance events. EPA evaluation of the data presented by Arizona to support its claim is that the data do not specifically relate to deterioration when mandatory inspection is required. Although the arguments of Arizona's automotive experts may have merit, EPA policy requires use of the estimated emission reductions contained in Appendix N of 40 CFR, Part 51, except when emissions reductions can be supported by adequate analysis and data. Therefore, reduction values for Appendix N have been used for estimating the effect of an inspection program.

The percentage reductions (50 percent) attributed to use of the catalytic and air bleed retrofit devices are based on information contained in Appendix N. The effectiveness of the exhaust gas recirculation retrofit (40 percent) for 1968–1971 light-duty vehicles was established from limited technical data computed both by EPA and by the manufacturer of one of the devices. Although the data base is small, it is supported by technical judgment.

It has been noted that implementation of the State-selected strategies of inspection/maintenance and retrofit devices by 1977 results in emissions in excess of the allowable emissions. The excess emissions can be negated by a reduction in VMT by light-duty vehicles of approximately 9.6 percent. The VMT reduction measures must therefore achieve this reduction. It is highly desirable to select VMT reduction measures that will be least disruptive to individual mobility and habits and most effective in reducing VMT.

The employee incentive regulations conform to this description for several reasons. First, work trips constitute the largest single class of trips within the Metropolitan Phoenix Area by a factor of more than two: approximately 40 percent of urban travel is work-oriented, 10–20 percent is shopping-oriented, and 11–22 percent is social-recreational. (See Transit and the Phoenix Metropolitan Area, Maricopa County Association of Governments, which is available at EPA Region IX, 100 California Street, San Francisco, California 94111.) Therefore, any strategy affecting work-related VMT would potentially have the greatest reduction. Second, work trips have a definite pattern defined by a specific origin and destination and occur at a specific time each weekday. Carpooling by work commuters with identical origins, destinations, and times is therefore possible without disrupting mobility patterns of individuals as severely as would disrupting shopping, social-recreational, or business trips. Another important aspect is the effectiveness of reducing the work trip VMT because of the significance of the timing of the work trip. This is due to the fact that the highest concentrations of carbon monoxide occur in the evening hours during the winter months when a surface inversion occurs just prior to the evening peak traffic (caused primarily by work VMT) and produces stable atmospheric conditions that promote accumulation of the resultant automobile pollutants.

Specific reduction values for control measures that have the effect of reducing VMT for the Phoenix or Tucson metropolitan areas are not known. It is possible, however, to estimate the percentage reduction in VMT of all urban trips resulting from an increase in work trip occupancy factor (number of persons per vehicle). Once the decrease in total VMT is known for various increases in work trip occupancy factors, the occupancy factor corresponding to the required VMT reduction can be evaluated for realistic attainment in terms of each selected control measure.

Using an estimated occupancy factor of 1.2 persons per vehicle and an estimate that 40 percent of urban travel is work-oriented (see above), the areawide VMT reductions can be achieved for increases in the work trip occupancy factor as noted in Table 2.

Table 2

New work trip occupancy factor	Increase in work trip occupancy factor, percent	Reduction in VMT of all urban trips, percent
1.4	16.7	5
1.5	25	8
1.6	33.3	10

As noted previously, a VMT reduction of 9.6 percent is required. This percentage reduction corresponds to a new work-trip-occupancy-factor of approximately 1.6, which is a 33.3 percent increase. In other words, about one out of every four cars would be removed from the work trip and consequently the occupants of one out of every four cars would be carpooling with the remaining three during the work-related trips.

The first phase of the employer carpool incentive program will affect approximately 30 percent of all employed persons (those in businesses with 200 employee parking spaces). Attainment of an occupancy factor of 2 for those employees will achieve an overall work trip occupancy factor of about 1.4, or, as shown above, a 5 percent reduction in VMT for all urban trips. The second phase of the employer carpool incentive program will extend to all employed persons in businesses with 70 employee parking spaces. The expected effect of the second phase is to raise the work trip occupancy factor to about 1.6 for 10 percent reduction in VMT for all urban trips. The 10 percent VMT reduction can be achieved by attaining an occupancy factor of 2 for 60 percent of all employed persons.

VMT reductions in a future year are calculated from a growth curve, rather than from current levels. The regulation for the review of new parking lots should contribute to VMT reduction by preventing the construction of the new parking lots that cause violations of air quality standards. These parking lots would have been a part of the VMT growth curve. This measure should provide a vehicle for maintaining the air quality standards once they have been achieved.

Economic and Social Impacts of Promulgated Control Strategy

In discussing the impacts of the transportation control plan, it is helpful to understand that the control measures fit into two categories: measures that place control at the source, such as inspection/maintenance and retrofits; and measures that control the total mileage traveled by the vehicle population at-large, such as carpooling and management of parking supply.

Impacts associated with the first class of control measures are primarily economic. The automobile owner will incur directly the cost of annual inspection (approximately $5) and post-inspection maintenance (between $1 and $31), which may be necessary on an annual basis. Such maintenance may result in greater fuel economy and savings. It

should also be noted that the program is self-supporting: the $5 inspection fee will cover the operating costs outlay for inspection equipment.

The automobile owner will also incur direct out-of-pocket expenses when he retrofits his vehicle. For the oxidizing catalyst (vehicle model years 1973–1975), this cost will be approximately $90 to $140; for air bleed/exhaust gas recirculation (1968–1971), approximately $35 to $45. In addition, there will likely be costs incurred for replacement, although the frequency of replacement cannot yet be determined.

The impacts associated with carpooling and management of parking supply are much more difficult to quantify. However, the following assumptions regarding carpooling are reasonable: commuters can realize substantial savings by sharing fuel and parking costs; and, for many families, carpooling may eliminate the need for a second automobile. Both the carpooling program and the parking management supply plan may stimulate more effective land use planning efforts.

On the larger scale, the primary impacts will be cleaner air, diminished health problems, and improvements in the quality of life. In a more immediate sense, these measures are significant in terms of the nation's present energy crisis. The automobile is extraordinarily wasteful of energy and resources, particularly if that automobile transports only one person. Four to five empty seats in each automobile that transports only one person represent an enormous amount of available transportation capacity, and more importantly, a vast unused national resource as well. The carpooling strategies in Arizona and around the country will utilize this available transportation capacity and tap this national resource.

Over 25 percent of the nations energy consumption is used for transportation, with 75 percent of this, or 20 percent of the total, used by automobiles and other motor vehicles. Seventy-five percent of the energy used by automobiles is wasted due to the inefficiency of the automobile engine. In addition, the remaining quarter of the energy is largely wasted in any functional sense, since most American cars are far too big and heavy for their usual job of moving one or two people about.

EFFECTIVE DATE

These regulations promulgated today become effective on December 31, 1973, except in the case of those regulations that impose requirements for specific action at earlier dates. In such cases, the Administrator has found that good cause exists for accelerating the effective date because of the need to take action as expeditiously as practicable in order to attain and maintain the national ambient air quality standards. The regulation for management of parking supply is effective immediately upon publication and, pursuant to court order and previously published notice, applies to actions taken after August 15, 1973.

(42 U.S.C. 1857c-5(c) and 1857g)

Dated: November 21, 1973.

RUSSELL E. TRAIN,
Administrator.

Subpart D of Chapter 1, 40 CFR Part 52 is amended as follows:

Subpart D—Arizona

1. Section 52.120 is amended by revising paragraph (c) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) Supplemental information was submitted on:

(1) March 1, March 2, and May 30, 1972, by the Arizona State Board of Health.

(2) April 11, 1973, and May 10, 1973.

(3) September 11, 1973, by the Governor, and;

(4) September 21, 1973, and October 2, 1973.

2. Section 52.122 is amended by adding paragraph (d) to read as follows:

§ 52.122 Extensions.

* * * * *

(d) The Administrator hereby extends for 2 years the attainment date for the national standards for carbon monoxide in the Phoenix-Tucson Intrastate Air Quality Control Region.

3. Section 52.123 is revised to read as follows:

§ 52.123 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approved Arizona's plan for the attainment of the national standards.

(b) With regard to the transportation control strategies submitted by the State of Arizona, the Administrator approves the inspection program for light-duty and medium-duty vehicles; the program for retrofit of air bleed devices on pre-1968 light-duty vehicles, the retrofit of air bleed/exhaust gas recirculation devices on 1968 through 1971 light-duty vehicles, the retrofit of oxidizing catalytic converters on 1973 through 1975 light-duty vehicles, the gaseous fuel conversion program; the carpool matching program; and the employer carpool incentive programs with the exceptions set forth in § 52.130, § 52.132, § 52.135, and § 52.136.

§ 52.131 [Amended]

4. In § 52.131, the attainment date table is revised by replacing the date "May 31, 1975, d" for attainment of the standards for carbon monoxide in the Phoenix-Tucson Intrastate Air Quality Control Region with the Date "May 31, 1977"; and by revoking and reserving footnote "d".

§ 52.132 [Reserved]

5. Section 52.132 is revoked and reserved.

6. Subpart D is amended by adding § 52.132 to read as follows:

§ 52.132 Transportation control compliance schedule.

The requirements of 51.14 are not fully met with respect to transportation control measures.

(a) Definitions:

(1) "Inspection and maintenance program" means a program to reduce emissions from in-use vehicles through identifying vehicles that need emission control related maintenance and requiring that such maintenance be performed.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb GVW or less.

(3) "Medium-duty vehicle" means a gasoline-powered vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(4) "Air bleed control device" means a system or device (such as a modification to the engine's carburetor) that results in engine operation at an increased air-fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide from 1967 and earlier light-duty vehicles of at least 21 and 58 percent, respectively.

(5) "Air bleed/exhaust gas recirculation device" means a system or device (such as modification of the engine's carburetor or positive crankcase ventilation system) that results in engine operation at an increased air-fuel ratio so as to achieve reductions of hydrocarbons and carbon monoxide of 25 percent and 40 percent, respectively, from light-duty vehicles of model years 1968 through 1971.

(6) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necesary, an air pump to reduce emission of hydrocarbons and carbon monoxide by 50 percent from that vehicle.

(7) All other terms used in this paragraph that are defined in Appendix N to Part 51 of this chapter, are used herein with the meaning therein defined.

(b) This section is applicable in Maricop and Pima Counties in the Phoenix-Tucson Intrastate Region.

(c) To implement the approved control measures specified in Sections 5 and 7 of the plan submitted September 11, 1973, and to complete the requirements of §§ 51.11(b), 51.14 and 51.15 of this chapter, the State of Arizona must submit to the Administrator:

(1) No later than Februray 1, 1974, detailed compliance schedules showing the steps the State of Arizona will take to establish and enforce the inspection and maintenance program for light-duty and medium-duty vehicles; the program for retrofit of air bleed devices on pre-1968 light-duty vehicles, of air bleed/exhaust gas recirculation devices on 1968 through 1971 light-duty vehicles, and of oxidizing catalytic convertors on 1973 through 1975 light-duty vehicles; and the gaseous fuel conversion program. These schedules shall include:

(i) The text of proposed legislation and regulations for the inspection and maintenance program, the gaseous fuel conversion program, and the light-duty vehicle retrofit programs.

(ii) A signed statement from the governor or his designee identifying the sources and amounts of funds for the programs. If funds can not legally be obligated under existing statutory authority, the text of needed legislation shall be submitted.

(iii) The date by which the State will recommend all needed legislation to the State legislature.

(iv) The date by which necessary equipment for the inspection and maintenance and carpool matching program will be ordered.

(2) No later than May 1, 1974, the legislative authority for implementing the inspection and maintenance program and the gaseous fuel conversion program.

(3) No later than September 1, 1974, the adopted regulations and administrative policies necessary for implementation of the control measures cited in paragraph (c)(1) of this section.

(4) No later than January 1, 1974, a compliance schedule for the employee carpool incentive program outlined in section 8 of the State of Arizona Air Pollution Control Implementation Plan, Transportation Control Strategies. This compliance schedule shall conform to the requirements of § 52.137.

(5) No later than January 1, 1974, a compliance schedule for the carpool matching program. This compliance schedule shall conform to the requirements of § 52.138.

(d) The regulations adopted to implement the approved inspection and maintenance program referred to in paragraph (c)(1) of this section shall include as a minimum.

(1) Provisions for inspection of all such motor vehicles at periodic intervals at least once each year by means of an emission test having a loaded mode test cycle.

(2) Provisions for inspection failure criteria consistent with the failure of 50 percent of the vehicles tested during the first inspection cycle.

(3) Provisions to require that failed vehicles receive, within 30 days, the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against noncomplying 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 knowledgeable operators to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement, such as a spot check of idle adjustment, to ensure that, following maintenance, vehicles are not subsequently readjusted or modified in such a way as would cause them to no longer comply with the inspection standards. This program shall include appropriate penalties for violation.

(5) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(6) Requirements that the State, after July 1, 1975, shall not register or allow to operate on its highways any light-duty or medium-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to the approved inspection and maintenance program and to paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

(7) Requirements that after July 1, 1976, no owner of a light-duty vehicle shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures adopted pursuant to the approved inspection and maintenance program and to paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

(8) The State may exempt any class or category of vehicles that the State finds are rarely used on public streets and highways (such as classic or antique vehicles).

(e) The regulations adopted to implement the approved retrofit programs referred to in paragraph (c)(1) of this section shall include as a minimum:

(1) Requirements that on or before May 3, 1977, all gasoline-powered fleet vehicles, and all private light-duty vehicles of 1973 through 1975 model years subject to registration in Maricopa and Pima Counties, shall be equipped with an appropriate oxidizing catalyst control device.

(2) Requirements that on or before August 1, 1976, all gasoline-powered, light-duty vehicles of model year 1968 to 1971 subject under presently existing legal requirements to registration in Maricopa and Pima Counties, shall be equipped with an air bleed/exhaust gas recirculation control device.

(3) Requirements that on or before August 1, 1976, all gasoline-powered, light-duty vehicles of model years prior to 1968 subject to registration in Maricopa and Pima Counties, shall be equipped with an appropriate air bleed device. The State may exempt any class or category of vehicles that the State finds are rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that air bleed retrofit devices are not commercially available.

7. Subpart D is amended by revising § 52.136 to read as follows:

§ 52.136 Control strategy: Carbon monoxide.

(a) The requirements of § 51.14 of this chapter are not met because the plan does not contain sufficient measures to provide for attainment and maintenance of the national standards for carbon monoxide in the Phoenix-Tucson Intrastate Region as expeditiously as practicable.

(b) The requirements of § 51.14 (a) and (b) of this chapter are not met because the plan does not provide a description of enforcement methods, administrative policies, and proposed rules and regulations pertaining to the selected transportation control measures.

(c)(1) The State-submitted inspection and maintenance program is disapproved to the extent it provides for inspection and maintenance of vehicles of over 10,000 lb GVW.

(2) The State-submitted air bleed/EGR retrofit program is disapproved to the extent it provides for the retrofitting of such devices on 1977 model vehicles.

8. Subpart D is amended by adding §§ 52.137, 52.138, 52.139, and 52.140 as follows:

§ 52.137 Employer carpool incentive program.

(a) Definitions:

(1) "Metropolitan Phoenix Area" means the area bounded on the south by I-17 and Buckeye Road to the intersection with I-17, on the east by 48th Street, on the north by the Arizona Canal and Glendale Avenue, and on the west by 43rd Avenue.

(2) "Greater Tucson Area" means an area bounded by a line starting at the intersection of Sweetwater Drive and Silverbell Road, thence 6 miles east, thence 1.5 miles south, thence 5.5 miles east, thence 7.5 miles south, thence 4.5 miles west, thence 3 miles south, thence 5 miles west, thence 5 miles north, thence 2 miles west, thence 7 miles north to the point of origin.

(b) This section is applicable within the Metropolitan Phoenix and Greater Tulson areas in the Phoenix-Tucson Intrastate Air Quality Control Region.

(c) On or before January 1, 1974, the State of Arizona shall submit to the Administrator a compliance schedule implementing the approved employer carpool incentive program. This compliance schedule shall, at a minimum, provide that each employer in areas specified in paragraph (b) of this section who maintains more than 200 employee parking spaces shall, on or before February 1, 1974, submit to the State of Arizona an adequate incentive program designed to encourage the use of carpools and mass transit and discourage employees from using single-passenger automobiles to commute to work. Each program shall contain provisions for preferential parking, covered parking, and other benefits to employees who travel to work by carpool; subsidies to employees who use mass transit; reductions in the number of employee parking spaces or surcharges on the use of such spaces by employees; provision of special charter buses or other modes of mass transit for the use of employees; and/or any other measures acceptable to the Administrator. By April 1, 1974, the State of Arizona shall submit each program so received, together with the State's evaluation of the program and the State's recommendation as to whether that program should be approved or disapproved, to the Administrator.

(d) On or before June 1, 1974, the Administrator shall approve or disapprove each program so submitted. Notice of such approval or disapproval shall be published in this Part 52.

(e) In order to be approvable by the Administrator, each program shall contain procedures whereby the employer will supply the State of Arizona and the Administrator with semiannual certified reports that shall show, at a minimum the following information:

(1) The number of employees at each of the employer's facilities within the areas specified in paragraph (b) of this section on October 15, 1975, and as of the date of the report.

(2) The number of (i) free and (ii) non-free employee parking spaces provided by the employer at each such employment facility on October 15, 1973, and as of the date of the report.

(3) The number of employees regularly commuting to and from work by (i) private automobile, (ii) carpool, and (iii) mass transit at each such employment facility on January 1, 1974, and as of the date of the report.

(4) Such other information as the Administrator may prescribe.

(f) If, after the Administrator has approved a carpool incentive program, the employer fails to submit any reports in full compliance with paragraph (e) of this section, or if the Administrator finds that any such report has been intentionally falsified, or if the Administrator determines that the program is not in operation or is not providing adequate incentives for employee use of carpools and mass transit, the Administrator may revoke the approval of such plan. Such revocation shall constitute a disapproval.

(g) By July 1, 1974, the Administrator shall prescribe a carpool incentive program for each employer to whom paragraph (b) of this section is applicable if such employer has not submitted a program. By August 1, 1974, the Administrator shall prescribe a carpool incentive program for each employer to whom paragraph (b) of this section is applicable if the program submitted is not adequate. Within 2 months after any revocation pursuant to paragraph (f) of this section, the Administrator shall prescribe a carpool incentive program for the affected employer. Any program prescribed by the Administrator shall be published in this Part 52.

(h) All programs approved under paragraph (d) or promulgated under paragraph (g) on account of an initial failure to submit a plan shall be fully implemented on or before September 1, 1974.

(i) Each employer in the Region who maintains more than 70 employee parking spaces shall, on or before April 1, 1975, submit to the Administrator an adequate annual incentive program conforming to the requirements of paragraphs (b) and (e) of this section, except that in paragraph (e) of this section the reference date for reports shall be October 15, 1974, rather than January 1, 1974. Each such program shall be subject to approval or disapproval by the Administrator by June 1, 1975. Each such program, when approved, shall be subject to revocation as provided in paragraph (f) of this section.

(j) By June 1, 1975, the Administrator shall prescribe a carpool incentive program for each employer to which paragraph (i) of this section is applicable if such employer has not submitted a program. By August 1, 1975, the Administrator shall prescribe a carpool incentive program for each employer to which paragraph (i) of this section is applicable if the program submitted is not adequate. Within 2 months after any revocation of any program of any employer pursuant to paragraph (f) of this section, the Administrator shall prescribe a carpool incentive program for the affected employer. Any program prescribed by the Administrator shall be published in this Part 52. All such programs shall be fully implemented on or before September 1, 1975.

§ 52.138 Bus/carpool matching program.

(a) Definitions:

(1) "Metropolitan Phoenix Area" means the area bounded on the south by I–17 and Buckeye Road to the intersection with I–17, on the east by 48th Street, on the north by the Arizona Canal and Glendale Avenue, and on the west by 43rd Avenue.

(2) "Greater Tucson Area" means an area bounded by a line starting at the intersection of Sweetwater Drive and Silverbell Road, thence 6 miles east, thence 1.5 miles south, thence 5.5 miles east, thence 7.5 miles south, thence 4.5 miles west, thence 3 miles south, thence 5 miles west, thence 5 miles north, thence 2 miles west, thence 7 miles north to the point or origin.

(b) This section is applicable within the Metropolitan Phoenix Area and Greater Tucson Area in Phoenix-Tucson Intrastate Air Quality Control Region.

(c) On or before January 1, 1974, the State of Arizona shall submit to the Administrator a compliance schedule for implementing the approved bus/carpool matching program. This compliance schedule shall, at a minimum, provide for implementation of the program in the following phases:

(1) On or before March 1, 1974, bus/carpool matching shall be made available to the following employees:

(i) *Phoenix state capital area.* At least 10,000 employes whose work location is within the area bounded by VanBuren Street on the north, Jefferson Street on the south, Central Avenue on the east, and 19th Avenue on the west.

(ii) *Tucson central business district.* At least 2,000 employees whose work location is within an area bounded by a circle of 2-mile radius centered at the intersection of Congress Street and Stone Avenue.

(2) On or before September 1, 1974, bus/carpool matching shall be made available to the following employees:

(i) *Metropolitan Phoenix Area.* All employees in businesses having more than 250 employees.

(ii) *Greater Tucson Area.* All employees in businesses having more than 100 employees.

(3) On or before September 1, 1975, bus/carpool matching shall be made available to the following employees:

(i) *Metropolitan Phoenix Area.* All employees in businesses having more than 50 employees.

(ii) *Greater Tucson Area.* All employees in businesses having more than 50 employees.

(d) The compliance schedule shall also include the following:

(1) A method of collecting information that shall include the following as a minimum:

(i) Provisions that each affected employee receive an application form with a cover letter describing the matching program.

(ii) Provisions on each application form for applicant identification of time, origin, and destination.

(iii) Provisions for each applicant to receive a list of names and work phone numbers of all other applicants who have similar origins and destinations and whose work hours most nearly match theirs.

(2) A manual or 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 the semirural region surrounding the Metropolitan Phoenix Area and the Greater Tucson Area 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.

(4) An agency or agencies responsible for operating, overseeing, and maintaining the bus/carpool matching program.

§ 52.139 Management of parking supply.

(a) Definitions:

(1) "Parking facility" (also called "facility") means a lot, garage, building, or structure, or combination or portion thereof, in or on which motor vehicles are temporarily parked.

(2) "Vehicle trip" means a single movement by a motor vehicle that originates or terminates at a parking facility.

(3) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land, buildings, or structures, or portions thereof, for use as a facility.

(4) "Modification" means any change to a parking facility that increases or may increase the motor vehicle capacity of, or the motor vehicle activity associated with, such parking facility.

(5) "Commence" means to undertake a continuous program of on-site construction or modification.

(b) This regulation is applicable to the following cities within the Phoenix-Tucson Intrastate Air Quality Control

Region: Phoenix, Tucson, Scottsdale, Tempe, Mesa, and Glendale.

(c) The requirements of this section are applicable to the following parking facilities in the areas specified in paragraph (b) of this section, the construction or modification of which began after August 15, 1973:

(1) Any new parking facility with parking capacity of 50 or more motor vehicles;

(2) Any parking facility that will be modified to increase parking capacity by 50 or more motor vehicles; and

(3) Any parking facility constructed or modified in increments which individually are not subject to review under this section, but which, when all such increments occurring since August 15, 1973, are added together, would as a total subject the facility to review under this section.

(d) No person shall commence construction or modification of any facility subject to this section without first obtaining written approval from the Administrator or an agency designated by him; provided, that this paragraph shall not apply to any construction or modification for which a general construction contract was finally executed by all appropriate parties on or before August 15, 1973.

(e) No approval to construct or modify a facility shall be granted unless the applicant shows to the satisfaction of the Administrator or agency approved by him that:

(1) The design or operation of the facility will not cause a violation of the control strategy that is part of the applicable implementation plan, and will be consistent with the plan's VMT reduction goals.

(2) The emissions resulting from the design or operation of the facility will not prevent or interfere with the attainment or maintenance of any national ambient air quality standard at any time within 10 years from the date of application.

(f) All applications for approval under this section shall include the following information:

(1) Name and address of the applicant.

(2) Location and description of the parking facility.

(3) A proposed construction schedule.

(4) The normal hours of operation of the facility and the enterprises and activities that it serves.

(5) The total motor vehicle capacity before and after the construction or modification of the facility.

(g) The Administrator may require an application for the construction or modification of between 50 and 249 spaces to include the information required by paragraphs (h)(1) through (7) of this section.

(h) All applications under this section for new parking facilities with parking capacity for 250 or more vehicles, or for any modification which, either individually or together with other modifications since August 15, 1973, will increase capacity by that amount, shall, in addition to that information required by paragraph (f) of this section, include the following information unless the applicant has received a waiver from the provisions of this paragraph from the Administrator or agency approved by the Administrator:

(1) The number of people using or engaging in any enterprises or activities that the facility will serve on a daily basis and a peak hour basis.

(2) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projection shall include data concerning the availability of mass transit from such areas.

(3) An estimate of the average and peak hour vehicle trip generation rates, before and after construction or modification of the facility.

(4) An estimate of the effect of the facility on traffic pattern and flow.

(5) An estimate of the effect of the facility on total VMT for the air quality control region.

(6) An analysis of the effect of the facility on site and regional air quality, including a showing that the facility will be compatible with the applicable implementation plan, and that the facility will not cause any national air quality standard to be exceeded within 10 years from date of application. The Administrator may prescribe a standardized screening technique to be used in analyzing the effect of the facility or ambient air quality.

(7) Additional information, plans, specifications, or documents required by the Administrator.

(i) Each application shall be signed by the owner or operator of the facility, whose signature shall constitute an agreement that the facility shall be operated in accordance with the design submitted in the application and with aplicable rules, regulations, and permit conditions.

(j) Within 30 days after receipt of an application, the Administrator or agency approved by him shall notify the public, by prominent advertisement in the Region affected, of the receipt of the application and the proposed action on it (whether approval, conditional approval, or denial), and shall invite public comment.

(1) The application, all submitted information, and the terms of the proposed action shall be made available to the public in a readily accessible place within the affected air quality region.

(2) Public comment submitted within 30 days of the date such information is made available shall be considered in making the final decision on the application.

(3) The Administrator or agency approved by him shall take final action (approval, conditional approval, or denial) on an application within 30 days after close of the public comment period.

(k) As an alternative to satisfying the requirements of paragraphs (d) through (j) of this section, any local jurisdiction or authority may submit to the Administrator a comprehensive parking management plan covering, at a minimum, the next 5 years. The plan must be submitted on or before April 1, 1974. By June 1, 1974, the Administrator shall approve such plans if he finds that:

(1) The agency submitting the plan has full and adequate legal authority to enforce compliance with its requirements.

(2) The area over which the agency exercises the authority described in paragraph (k)(1) of this section is a logical unit for air pollution control planning purposes.

(3) The plan sets forth a complete description of where additional construction of parking facilities will be allowed under the plan, and where parking spaces will be eliminated. The plan shall include any procedures for adjustments or variances to existing zoning or building codes that require parking spaces for new facilities that are inconsistent with the plan. The plan must state in detail the reasons for expecting any anticipated reduction in parking spaces, and must provide that no parking facility may legally be constructed in the area subject to the plan unless such construction is specifically authorized by the plan.

(4) The plan demonstrates that if its terms are carried out, air quality will improve at least as much as if all new parking facilities were subject to the requirements of paragraph (d) through (j) of this section. If any increase in VMT would result under the proposed plan over and above the VMT figure that would result if the review system outlined in paragraphs (d) through (j) of this section were followed, the plan shall show by clear and convincing evidence that any resulting impact on air quality will be insubstantial.

(5) The plan has been adopted after a public hearing held in the conformity with the requirements of § 51.4 of this chapter.

(l) In any area covered by a parking management plan approved under paragraph (k) of this section, no action to expand the number of spaces at parking facilities may be taken that is not explicitly provided for in the plan without a permit issued in accordance with the requirements of paragraphs (d) through (j) of this section.

§ 52.140 Monitoring transportation trends.

(a) This section is applicable to the State of Arizona.

(b) In order to assure the effectiveness of the inspection and maintenance program and the retrofit devices required under the Arizona implementation plan, the State shall monitor the actual per-vehicle emissions reductions occurring as a result of such measures. All data obtained from such monitoring shall be included in the quarterly report submitted to the Administrator by the State in accordance with § 51.7 of this chapter.

The first quarterly report shall cover the period January 1 to March 31, 1976.

(c) In order to assure the effective implementation of §§ 52.137, 52.138, and 52.139, the State shall monitor vehicle miles traveled and average vehicle speeds for each area in which such sections are in effect and during such time periods as may be appropriate to evaluate the effectiveness of such a program. All data obtained from such monitoring shall be included in the quarterly report submitted to the Administrator by the State of Arizona in accordance with § 51.7 of this chapter. The first quarterly report shall cover the period from July 1 to September 30, 1974. The vehicle miles traveled and vehicle speed data shall be collected on a monthly basis and submitted in a format similar to Table 1.

TABLE 1

Time period.....
Affected area.....

Roadway type	VMT or Average Vehicle Speed	
	Vehicle type (1)	Vehicle type (2) [1]
Freeway.....		
Arterial.....		
Collector.....		
Local.....		

[1] Continue with other vehicle types as appropriate.

(d) No later than March 1, 1974, the State shall submit to the Administrator a compliance schedule to implement this section. The program description shall include the following:

(1) The agency or agencies responsible for conducting, overseeing, and maintaining the monitoring program.

(2) The administrative procedures to be used.

(3) A description of the methods to be used to collect the emission data, VMT data, and vehicle speed data; a description of the geographical area to which the data apply; identification of the location at which the data will be collected; and the time periods during which the data will be collected.

[FR Doc.73-25118 Filed 11-30-73;8:45 am]

federal register

MONDAY, DECEMBER 3, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 231

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

■

MEDICAID

Eligibility Requirements

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

MEDICAID

Eligibility Requirements

Notice of proposed rulemaking regarding Medicaid eligibility requirements was published in the FEDERAL REGISTER on June 21, 1973 (38 FR 16309). The proposal related to the following provisions of Pub. L. 92–603, Social Security Amendments of 1972:

1. *Section 255.* Requires that entitlement to Medicaid be retroactive to the third month prior to the month of application if the applicant received medical or remedial care and was (or would have been) eligible for Medicaid at the time he received it (§ 206.10(a)(6)).

2. *Section 249E.* Requires that individuals eligible for financial assistance and entitled to OASDI benefits for August 1972 who become ineligible for financial assistance solely because of the 20-percent increase in OASDI benefits shall continue to be eligible for Medicaid through June 1975, as though they were "categorically needy", i.e. still eligible for a money payment (§§ 248.10(a)(1) and (b)(3); 248.20(b) and (c)(2)).

3. *Section 209(a).* Requires that certain AFDC families which become ineligible for financial assistance solely because of increased income from employment shall continue to be eligible for Medicaid for 4 months. (§§ 248.10(a)(1) and (b)(4); 248.21(b) and (c)(2)).

4. *Section 299B.* Provides Federal financial participation in expenditures for inpatient psychiatric care for individuals under 21, and, under certain circumstances, up to age 22 (§ 248.10(b)(2)(iv) and (d)(2)(i); 248.30(b)(1); and 248.60 (a)(2) and (3)(iv). (Other proposed regulations prescribing requirements for providing such care under the Medicaid program will be published with opportunity for public comment in the near future.)

5. *Section 230.* Repealed section 1903 (e) of the Act, which required States to gradually broaden the scope of care and services and liberalize eligibility requirements under their Medicaid plans so that, by July 1, 1977, comprehensive care and services would be furnished to substantially all individuals who met the eligibility conditions with respect to income and resources under the State plan. Federal financial participation for certain administrative costs has accordingly been terminated.

Comments were received from eight respondents, dealing primarily with provisions required by law, i.e., retroactive coverage (including deceased persons) and continued coverage of AFDC families. It was suggested that uniform eligibility requirements be established; however, this would require legislation. One comment stated that families receiving continued coverage should be treated as categorically needy only if the State has no medically needy program. This change has not been made since all families in like circumstances must be treated similarly. Another respondent believes that OASDI beneficiaries should be covered whether or not the State's Medicaid plan included them as an optional group in August 1972. However, the intent of the legislation was to protect current recipients rather than to bring in new ones. A county official objected to the termination of Federal matching for certain administrative costs, while another comment predicted that termination of such matching would force on the States "a massive accounting problem from which any potential savings will most probably be more than offset by increasing administrative costs." Such termination is required, however, since the statutory support for such matching has been removed.

The following changes have been made in the regulations to clarify the language or to incorporate changes made necessary by new legislation.

(1) An effective date has been added to subparagraph (6) of § 206.10(a) to clarify that this requirement is retroactively effective.

(2) Subparagraphs (3) and (3)(ii)(B) of § 248.10(b) have been amended by inserting "July 1, 1975" in place of "October 1, 1974" as required by Pub. L. 93–66, which was enacted after the proposed rulemaking was published.

(3) Subparagraphs (3)(ii)(A)(2) and (B)(1) and (2) of § 248.10(b) have been clarified.

(4) An effective date has been added and other modifications made to § 248.10(d) to clarify that the limitation on Federal matching is retroactively effective.

Chapter II, title 45 of the Code of Federal Regulations, is amended as set forth below:

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

1. Section 206.10 is amended by revising paragraph (a)(6) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing assistance.

(a) *State plan requirements.* * * *

(6) Entitlement will begin as specified in the State plan, which (i) for financial assistance must be no later than the date of authorization of payment and, for purposes of Federal financial participation, may be as early as the first of the month in which an application has been received and the individual meets all the eligibility conditions, and (ii) for medical assistance, effective July 1, 1973, must be no later than the third month prior to the month of application for financial or medical assistance if the individual was eligible, or on application (regardless of whether or not the individual was alive at the time of application) would have been eligible on the date that he received medical care or services; and may be as early as the first day of such third prior month if he was eligible at any time in such month.

* * * * *

PART 248—COVERAGE AND CONDITIONS OF ELIGIBILITY FOR MEDICAL ASSISTANCE

2. Section 248.10 is amended, as set forth below, by revising paragraphs (a)(1) and (b)(2)(ii) and (iv); renumbering paragraph (b)(3), (4), and (5) as (b)(5), (6), and (7) respectively, revising the renumbered paragraph (b)(7), and adding new paragraphs (b)(3) and (4); and revising paragraphs (d)(1) and (2).

§ 248.10 Coverage and conditions of eligibility for medical assistance.

(a) *Definitions.*—When used in this part:

(1) The term "categorically needy" refers to an individual who is receiving financial assistance under the State's approved plan under title I, IV–A, X, XIV, or XVI of the Social Security Act, or is in need under the State's standards for financial eligibility in such plan. (See § 233.20 of this chapter. See also paragraphs (b)(3) and (4) of this section for individuals who are treated as if they were "categorically needy".)

(2) The term "medically needy" refers to an individual whose income and resources equal or exceed the State's standards under the appropriate financial assistance plan but are insufficient to meet his costs for medical insurance premiums and for necessary medical and remedial care and services recognized under State law but not encompassed in the State plan for medical assistance, plus his costs for medical and remedial care and services included in the State plan.

(b) *State plan requirements.*—A State plan under title XIX of the Social Security Act must:

(1) Provide that medical assistance will be available to the following groups of "categorically needy" persons:

(i) All individuals receiving aid or assistance under the State's approved plans under titles I, IV–A, X, XIV, and XVI of the act; this includes all individuals who (*a*) are essential persons under the State plan and (*b*) could be recipients, if the State plan were as broad as permitted for Federal financial participation;

(ii) All individuals under 21 who are, or would be, except for age or school attendance requirements, dependent children under the State's approved AFDC plan;

(iii) All persons who would be eligible for aid or assistance under one of the other approved State plans except for any eligibility condition or other requirement in such plan that is specifically prohibited in a program of medical assistance under title XIX of the act.

(2) Specify any other groups of "categorically needy" individuals (not covered by subparagraph (1) of this paragraph), that will be included in the program. These may include:

(i) Persons who meet all the conditions of eligibility, including financial eligibility, of one of the State's other approved plans, but have not applied for such assistance.

(ii) Persons in a medical or intermediate care facility who, if they left such facility would be eligible for financial assistance under another of the State's approved plans. This includes persons who have enough income to meet their personal needs while in the facility, but not enough to meet their needs outside the facility according to the appropriate State plan. Children may be included in this group if they would meet all conditions of eligibility under the State's AFDC plan if outside the facility.

(iii) Persons who would be eligible for financial assistance under another State public assistance plan, except that the State plan imposes eligibility conditions more stringent than, or in addition to, those required under the Social Security Act. For example, persons who are needy and 18 years of age or older and permanently and totally disabled under the Federal definition of permanent and total disability, but who are excluded from APTD under the State's more restricted definition of disability; or persons who would be eligible for AFDC if the State's program covered families with children deprived of parental support or care to the full extent permitted under title IV–A of the act, including AFDC for families with unemployed fathers.

(iv) All individuals under 21 who qualify on the basis of financial eligibility, but do not qualify as dependent children under a State's AFDC plan; or groups of such individuals if based on reasonable classifications. Children in foster homes or private institutions for whom public agencies are assuming financial responsibility, in whole or in part, constitute a reasonable classification. The additional inclusion of children placed in foster homes or private institutions by private, nonprofit agencies would also be considered reasonable. Effective July 1, 1973, individuals under age 21 who are in intermediate care facilities, including institutions for the mentally retarded, or in psychiatric hospitals, also constitute a reasonable classification.

(v) Caretaker relatives enumerated in section 406(a)(1) of the Act who have in their care one or more children under 21 who, except for age or school attendance requirements, would be dependent children under the State's AFDC plan.

(vi) Individuals who would be eligible for financial assistance if their work-related child care costs were paid out of earnings rather than as a service expenditure by the agency, provided the State plan for financial assistance otherwise recognizes child care costs in determining the amount of the payment.

(3) Provide that medical assistance, to the same extent and under the same conditions as it is furnished to the categorically needy, will also be furnished, for any month after August 1972 and prior to July 1, 1975, to any individual:

(i) Who, for the month of August 1972, was receiving or eligible for financial assistance under the State's plan approved under title I, IV–A, X, XIV, or XVI of the act and who was also entitled to monthly insurance benefits under title II of the act for the month of August 1972, and

(ii) Who, except for the increase in monthly insurance benefits under title II resulting from enactment of Public Law 92–336, would have been eligible for financial assistance for the current month. Under this requirement:

(A) An individual qualifies as receiving or eligible for financial assistance for August 1972 if, with respect to such month:

(*1*) He was receiving financial assistance; or

(*2*) He met all conditions of eligibility for financial assistance under titles I, IV–A, X, XIV, or XVI as in effect in August 1972 but had not applied, provided the State title XIX plan included such individuals as categorically needy in August 1972; or

(*3*) He was in a medical facility or intermediate care facility, and, had he left, would have been eligible for financial assistance, provided the State title XIX plan included such individuals as categorically needy in August 1972.

(B) An individual is considered as though he were eligible for financial assistance for the current month (after August 1972 and prior to July 1, 1975) if with respect to such month, except for the increase in monthly insurance benefits under title II resulting from enactment of Public Law 92–336:

(*1*) He would meet all conditions of eligibility for financial assistance (however, he need not file an application). In such case he is eligible under the current title XIX plan to the same extent as individuals who are receiving financial assistance; or

(*2*) He is in a medical or intermediate care facility and, if he left, would be eligible for financial assistance, provided the State title XIX plan as then in effect includes such individuals as categorically needy. In such case he is considered as though he were categorically needy and is eligible under the title XIX plan to the same extent as other categorically needy individuals in such a facility. Countable income for categorically needy individuals in such a facility does not include the amount specified as a pass-along in sections 306 of Pub. L. 92–603 and 1007 of Pub. L. 91–172.

(4) Effective January 1, 1974, provide that any family that was receiving assistance under the State's plan under title IV–A in at least 3 of the 6 months immediately preceding the month in which such family became ineligible for such assistance because of increased income from employment, will continue to be eligible for medical assistance to the same extent and under the same conditions as it is furnished to the categorically needy under the current title XIX plan, for a period of 4 calendar months beginning with the month in which such family became ineligible for assistance under title IV–A because of increased earnings, as long as a member of the family is employed.

(5) Specify, if the plan includes the medically needy, that it covers all medically needy groups that correspond to the covered categorically needy groups. Exception: Coverage of "essential" spouses of recipients of OAA, AB, APTD, or AABD does not require coverage of essential spouses of nonmoney payment recipients, either categorically needy or medically needy.

(6) Specify all conditions of eligibility that must be met by members of all optional groups included in the plan.

(7) If the plan includes groups of individuals for whose medical care and services Federal financial participation is not available, specify such groups, and provide that the State agency will establish methods for identifying the expenditures for medical care and services and administration in which Federal financial participation may not be claimed (see para. (d)(1) of this section).

* * * * *

(d) *Federal financial participation*—(1) *Administrative costs.* Effective October 30, 1972, Federal financial participation in the administrative costs of providing medical care and services is limited to such costs for persons covered under the plan, in the cost of whose medical care and services the Federal Government shares.

(2) *Medical assistance.*—Federal financial participation is available, pursuant to part 250 of this chapter, in payments for medical care and services provided under the State plan to any financially eligible individual who is:

(i) Under the age of 21 (or under age 22 and receiving inpatient psychiatric hospital services pursuant to § 249.10(b)(16) of this chapter); or

(ii) A parent or other caretaker relative specified in section 406(a)(1) of the act (see § 233.90(c)(1)(v)(*a*) of this chapter) with whom a child under the age of 21 is living, if such relative is eligible or would, except that the child is not regularly attending school or a course of vocational training, and except for need, be eligible to receive payments within the scope of Federal financial participation under title IV–A of the act; only one such parent or other caretaker relative, plus the spouse of such parent (who meets the conditions specified in section 406(b)(1) of the act (see § 237.50(b) (3) (4) of this chapter)), are within the scope of Federal financial participation under title IV–A of the act; or

(iii) 65 years of age or older; or

(iv) Blind; or

(v) 18 years of age or older and permanently and totally disabled; or

(vi) The spouse of a recipient of OAA, AB, APTD, or AABD who is considered "an essential person" (see § 248.11);

but excluding any such care or services provided to any individual who is an inmate of a public institution (except as a patient in a medical institution or a resident in an intermediate care facility), or who is under age 65 and a patient in an institution for tuberculosis or mental diseases (see exception in paragraph (d)(2)(i) of this section for individuals under age 22). See § 248.60.

* * * * *

3. Section 248.21 is amended, as set forth below, by revising paragraph (a); adding a new paragraph (b); and redesignating paragraph (b) as (c), adding thereto a new paragraph (c)(2), and redesignating paragraphs (c) (2) and (3) thereof as (3) and (4).

§ 248.21 Financial eligibility—medical assistance programs.

(a) *State plan requirements.*—A State plan under title XIX of the Social Security Act must:

(1) With respect to the categorically needy:

(i) Specify that the financial eligibility conditions of the pertinent financial assistance plan will apply;

(ii) Provide for the application of income first to maintenance costs.

(2) With respect to both the categorically needy and, if they are included in the plan, the medically needy:

(i) Provide that only such income and resources as are actually available will be considered and that income and resources will be reasonably evaluated;

(ii) Provide that financial responsibility of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse and of parents for children under age 21, or blind, or permanently and totally disabled;

(iii) Specify the extent to which the financial responsibility of any such relatives is taken into account.

(3) With respect to the medically needy, if they are included in the plan:

(i) Provide levels of income and resources for maintenance, in total dollar amounts, as a basis for establishing financial eligibility for medical assistance. Under this requirement:

(A) Such income levels must be comparable as among individuals and families of varying sizes;

(B) The income levels for maintenance must be, as a minimum, at the levels of the most liberal money payment standard used by the State, at any time on or after January 1, 1966, as a measure of financial eligibility in any categorical money payment program in the State, or at the level for which Federal financial participation is available pursuant to paragraph (b) of this section, whichever is less. Where a State imposes any deduction, cost sharing, enrollment fee, premium, or similar charge under the plan with respect to any medical assistance furnished to an individual thereunder, such charge may not be imposed to the extent that it would reduce the individual's income below the most liberal money payment standard referred to in the preceding sentence;

(C) A lower income level for maintenance must be used for individuals not living in their own homes but receiving care in nursing homes, institutions for tuberculosis or mental diseases or other medical or intermediate care facilities providing long-term care. This lower income level must be reasonable in amount for clothing and personal needs for such individuals. When such an individual's home is maintained for a spouse or other dependents, the appropriate income level for such dependents, plus the individual's income level for maintenance in a long-term care facility, is aplicable; and

(D) Resources which may be held must, as a minimum, be at the most liberal level used in any money payment program in the State on or after January 1, 1966, and the amount of liquid assets which may be held must increase with an increase in the number of individuals in the family. There must be separate levels established for resources.

(ii) Provide that there will be a flexible measurement of available income which will be applied in the following order of priority:

(A) First, for maintenance, so that any income in an amount at or below the established level will be protected for maintenance;

(B) Next, income in excess of that needed for maintenance will be applied to costs incurred for medical insurance premiums and for necessary medical or remedial care recognized under State law and not encompassed within the State plan for medical assistance. States may set reasonable limits on such medical services for which excess income may be applied; and

(C) All of the remaining excess income will be applied to costs of medical assistance included in the State plan.

(iii) Provide that all income and resources (after all State policies governing the disregard, or setting aside for future needs, of income and resources in the State's approved plans under titles I, IV–A, X, XIV, and XVI have been applied) will be considered in establishing eligibility, and in the flexible application of income to medical costs not in the State plan, and payment toward the medical assistance costs.

(iv) Provide that only such income and resources will be considered as will be "in hand" within a period, preferably of not more than 3 months, but not in excess of 6 months, ahead, including the month in which medical services were rendered, for which payment would be made under the plan.

(b) *Special situations.*—See § 248.10 (b) (3) and (4) of this chapter which provides that certain individuals receiving increased social security benefits pursuant to Public Law 92–336, and certain families with increased earnings, are covered to the same extent and under the same conditions as the categorically needy.

(c) *Federal financial participation.*—(1) Federal financial participation is available in payments made in behalf of categorically needy individuals.

(2) Federal financial participation is available in payments made in behalf of the individuals and families described in § 248.10(b) (3) and (4) of this ter.

(3) Payments in behalf of medically needy individuals are subject to Federal financial participation only to the extent that they are made for a member of a family the annual income of which is within the income levels established in the following:

(i) In the case of any State, the applicable income levels with respect to periods after December 31, 1969, are 133⅓ percent of the amounts specified in paragraph (c)(3)(ii). Any total yearly income levels established by applying the above percentage which are not multiples of $100 shall be rounded to the next higher multiple of $100. Federal financial participation is available for a person whose annual income exceeds this level to the extent that medical expenses exceed the income excess (see paragraph (c)(3)(ii)(C)).

(ii) The amounts to be applied in calculating the income levels referred to in paragraph (c)(3)(i) are the highest amounts which would ordinarily be paid to a family of the same size without any income or resources in the form of money payments, under the approved AFDC plan of the State, subject to the following modifications:

(A) In the case of a single individual the amount of the income level shall be reasonably related to the amounts payable under such plan to families consisting of two or more individuals who are without income or resources.

(B) If the amounts established under such plan are subject to a maximum family limit, the income level for families which exceed such limit will be determined by adding an amount for each member of the family to such limit. The amounts to be added shall be reasonably related to those established under the plan for families which are within the maximum family limit.

(C) In computing a family's or individual's income for purposes of subdivisions (i) and (ii) of this subparagraph, there shall be excluded any costs (whether in the form of insurance premiums or otherwise) incurred by such family or individual for medical care or for any other type of remedial care recognized under State law.

(4) If a State furnishes medical assistance on the basis of income levels which are higher than those specified in this section, the State agency must submit to the Department of Health, Education, and Welfare for its approval income levels which are calculated on the basis provided in this section, and must establish procedures to assure that claims for Federal financial participation are limited accordingly.

4. Section 248.30(b)(1) is revised as set forth below:

§ 248.30 Age.

* * * * *

(b) *Federal financial participation.*—(1) Federal financial participation is available in medical assistance provided to otherwise eligible persons who were, for any portion of the month in which they received medical care or services, under 21 years of age (or under 22 years of age and receiving inpatient psychiatric hospital services pursuant to § 249.10(b)(16) of this chapter), or 65 years of age or over, or 18 years of age or over and permanently and totally disabled. There is no Federal requirement as to age for blind persons.

5. Section 248.60(a) (1), (2), and (3) (iv) is revised as set forth below:

§ 248.60 Institutional status.

(a) *Federal financial participation.*—(1) Federal financial participation under title XIX of the Social Security Act is not available in medical assistance for any individual who is an inmate of a public institution except as a patient in a medical institution or as a resident in an intermediate care facility.

(2) Federal financial participation under title XIX of the Social Security Act is not available in medical assistance for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases, except for an individual under age 22 who is receiving inpatient psychiatric hospital services pursuant to § 249.10(b)(16) of this chapter.

(3) For purposes of this paragraph:

* * * * *

(iv) An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in such institution except that such an individual under age 22 who was previously receiving inpatient psychiatric hospital services pursuant to § 249.10(b)(16) of this chapter may be considered to be a patient in such institution until he is unconditionally released or, if earlier, the date such individual attains age 22.

* * * * *

PART 249—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

6. Section 249.81 is revised as follows:

§ 249.81 Time limitations for Federal financial participation in medical assistance payments.

Vendor payments for medical care and services are eligible for Federal financial participation for the month in which they are paid, regardless of the eligibility status of the individual in the month of payment, provided:

(a) He was found eligible for medical assistance for the month during which the medical care and services were rendered;

(b) He received such medical care and services in or after the third month before the month in which application was made; and

(c) Not more than 24 months have elapsed since the month of the latest services for which the particular payment is being made with respect to the individual, except that:

(1) This time limitation does not apply with respect to retroactive adjustment payments;

(2) Where a claim for payment for services has been filed timely for title XVIII purposes with the Social Security Administration, an intermediary or a carrier, Federal financial participation is available in payments for such services made by the title XIX agency after the 24-month period provided they are made within 6 months after the month in which the title XIX agency or the vendor receives notice regarding the claim. However, for a claim filed after March 1968, Federal financial participation will be available, notwithstanding the preceding sentence, if actual payment is made no later than 3 months following the publication of this regulation.

(Section 1102, 49 Stat. 647 (42 U.S.C. 1302))

Effective date. Except as otherwise specified, these regulations shall become effective on December 3, 1973.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: October 30, 1973.

JAMES S. DWIGHT, Jr.,
Administrator, Social and Rehabilitation Service.

Approved: November 23, 1973.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc.73-25341 Filed 11-30-73;8:45 am]