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MONDAY, NOVEMBER 24, 1975

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

Title 1—General Provisions

CHAPTER III—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

PART 304—PUBLIC AVAILABILITY OF DOCUMENTS AND RECORDS

Privacy Act Implementation

On October 17, 1975, a document was published in the FEDERAL REGISTER (40 FR 48894) proposing to designate Public Availability of Documents and Records a Subpart A of Part 304 of Chapter III of Title 1 of the Code of Federal Regulations and to add to Part 304 a new Subpart B, Privacy Act Implementation. After further consideration, it has been determined that Part 304 should retain its current title, Public Availability of Documents and Records, and Subpart A thereof, §§ 304.1–304.6, should be designated Freedom of Information Act Implementation.

The new Subpart B, Privacy Act Implementation, §§ 304.20–304.25, contains procedures for determining whether or not an individual is the subject of a record in a system of records maintained by the Conference; sets forth requirements for access to and correction or amendment of records in a system of records; and provides procedures for appeal of denials of access to records.

Interested persons were given until November 17, 1975, to submit written suggestions or comments concerning the proposed rules. No comments were received; hence, the regulations are adopted without change, as set forth below.

Subpart B—Privacy Act Implementation

Sec.

Authority: 5 U.S.C. 552, 552a, 571–576.

Subpart B—Privacy Act Implementation

§ 304.20 Purpose and scope.

The purpose of this subpart is the implementation of the Privacy Act of 1974, 5 U.S.C. 552a, by establishing procedures whereby an individual can determine if a system of records maintained by the Administrative Conference contains a record pertaining to himself, and procedures for providing access to such a record for the purpose of review, amendment, or correction.

§ 304.21 Definitions.

As used in this subpart, the terms "individual", "maintain", "record", "system of records", and "routine use" shall have the meaning specified in 5 U.S.C. 552a(a).

§ 304.22 Procedures for requests pertaining to individual records in a system of records.

(a) An individual can determine if a particular system of records maintained by the Administrative Conference contains a record pertaining to himself by submitting a written request for such information to the Executive Secretary. The Executive Secretary shall respond to a written request under this subpart within a reasonable time by stating that a record on the individual either is or is not contained in the system.

(b) If an individual seeks access to a record pertaining to himself in a system of records, he shall submit a written request to the Executive Secretary. The Executive Secretary or his designee shall, within ten working days after its receipt, acknowledge the request and if possible decide if it should be granted. In any event, a decision shall be reached promptly and notification thereof provided to the individual seeking access. If the request is denied, the individual shall be informed of the reasons therefor and his right to seek judicial review.

(c) In cases where an individual has been granted access to his records, the Executive Secretary shall, prior to releasing such records, require reasonable identification to assure that such records are disclosed to the proper person. No verification of identity will be required of individuals seeking notification of or access to records which are otherwise available to a member of the public under the Freedom of Information Act, 5 U.S.C. 552, as amended.

§ 304.23 Request for amendment or correction of a record.

(a) An individual may file a request with the Executive Secretary for amendment or correction of a record pertaining to himself in a system of records. Such written request shall state the nature of the information in the record the individual believes to be inaccurate or incomplete, the amendment or correction desired and the reasons therefor. The individual should supply whatever information or documentation he can in support of his request for amendment or correction of a record.

(b) The Executive Secretary or his designee shall, within ten working days after its receipt, acknowledge a request for amendment or correction of a record. A decision shall be reached promptly and notification thereof provided to the individual seeking to amend or correct a record. The Executive Secretary may request such additional information or documentation as he may deem necessary to arrive at a decision upon the request.

(c) If the request is denied, the individual shall be informed of the reasons therefor and his right to appeal the denial to the Chairman of the Conference. An appeal shall be submitted in writing within twenty working days following receipt of the notice of denial. The Chairman shall render a decision on an appeal within thirty working days following the date on which the appeal is received. The individual shall be notified promptly of the Chairman's decision and, if the request is denied, the reasons therefor and the individual's right to seek judicial review.

(d) Requests for amendment or correction of a record must be accompanied by a signed notarized statement verifying the identity of the requesting party.

§ 304.24 Disclosure of a record to a person other than the individual to whom it pertains.

Except in accordance with 5 U.S.C. 552a(b), or as required by the Freedom of Information Act, 5 U.S.C. 552, as amended, or other applicable statute, the Conference shall not disclose a record to any individual other than the individual to whom the record pertains without the written consent of such individual.

§ 304.25 Schedule of fees.

Copies of records supplied to any individual at his request shall be provided for $.10 per copy per page. Copying fees of less than $2 per request are waived.

Effective date. These regulations became effective November 17, 1975.

RICHARD K. BERG,
Executive Secretary.

NOVEMBER 18, 1975.

[FR Doc.75-31532 Filed 11-21-75;8:45 am]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Defense

Section 213.3306 is amended to show that one position of Confidential Assistant to the Assistant Secretary of Defense (International Security Affairs) is excepted under Schedule C.

Effective on November 24, 1975, § 213.3306(a)(72) is added as set out below:

§ 213.3306 Department of Defense.

(a) *Office of the Secretary.* * * *

(72) One Confidential Assistant to the Assistant Secretary (International Security Affairs).

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.75-31648 Filed 11-21-75;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Justice

Section 213.3310 is amended to show that one position of Special Assistant to the Administrator, Law Enforcement Assistance Administration is excepted under Schedule C.

Effective November 24, 1975, § 213.3310(s)(3) is amended as set out below:

§ 213.3310 Department of Justice.

* * * * *

(s) *Law Enforcement Assistance Administration.* * * *

(3) Three Special Assistants to the Administrator.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.75-31651 Filed 11-21-75;8:45 am]

PART 213—EXCEPTED SERVICE

Federal Home Loan Bank Board

Section 213.3354 is amended to show that one position of Secretary to the Director, Office of the Federal Home Loan Banks, is excepted under Schedule C.

Effective on November 24, 1975, § 213.3354(k) is added as set out below:

§ 213.3354 Federal Home Loan Bank Board.

* * * * *

(k) One Secretary to the Director, Office of the Federal Home Loan Banks.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.75-31649 Filed 11-21-75;8:45 am]

PART 213—EXCEPTED SERVICE

General Services Administration

Section 213.3337 is amended to show that one position of Confidential Assistant to the Commissioner, Public Buildings Service is reestablished under Schedule C.

Effective November 24, 1975, § 213.3337(b)(2) is amended as set out below:

§ 213.3337 General Services Administration.

* * * * *

(b) *Public Buildings Service.* * * *

(2) Four Confidential Assistants to the Commissioner.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.75-31650 Filed 11-21-75;8:45 am]

Title 7—Agriculture

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

[Orange Reg. 74, Amdt. 2]
[Grapefruit Reg. 76, Amdt. 2]
[Tangerine Reg. 47, Amdt. 3]
[Tangelo Reg. 47, Amdt. 2]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

These amendments prescribe total limitation of shipment regulations for oranges, grapefruit, tangerines, and tangelos during the period beginning at 6:00 p.m., e.s.t., November 26, 1975, and ending at 12:01 a.m., e.s.t., November 30, 1975. The regulations are designed to avert the accumulation of excessive market supplies of the specified fruits during the Thanksgiving Holiday period in which, historically, there has been greatly reduced market demand.

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, grapefruit, tangerines, and tangelos, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) These amendments reflect the Department's appraisal of the potential marketing situation during the week in which Thanksgiving Day occurs and for the period immediately following. Historically, there has been heavy purchasing of fresh oranges, grapefruit, tangerines, and tangelos in the terminal markets prior to Thanksgiving Day followed by a period of slow movement immediately following the holiday. An accumulation of excessive quantities of fruit in the markets during and immediately following the Thanksgiving Day week contributes to unstable marketing conditions. Hence, the curtailment of such shipments, as hereinafter specified, would contribute to a better-managed supply situation and in turn to the establishment of orderly marketing.

(3) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of these amendments until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that the time intervening between the date when information upon which these amendments are based became available and the time when these amendments must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Domestic shipments of Florida oranges, grapefruit, tangerines, and tangelos are currently regulated pursuant to Orange Regulation 74 (40 FR 42318, 49785), Grapefruit Regulation 76 (40 FR 42317, 49785), Tangerine Regulation 47 (40 FR 42318, 49785, 51619) and Tangelo Regulation 47 (40 FR 42318, 49785) and, unless sooner terminated or modified will continue to be so regulated through September 26, 1976; determinations as to the need for, and extent of, regulation under § 905.52(a)(3) of the order must await the development of the crops and the availability of information about the demand for such fruits; the recommendation and supporting information for limiting the total quantity of fresh oranges, grapefruit, tangerines, and tangelos by prohibiting shipments thereof, pursuant to said section, during the period herein provided, were promptly submitted to the Department after an open meeting of members of the Growers Administrative Committee on November 11, 1975, held to consider recommendations for such regulations, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; necessary supplemental information was submitted to the Department on November 11, 1975; information regarding the provisions of the regulations recommended by the committees has been disseminated among shippers of such fruits grown in the production area, and these regulations, including the effective time thereof, are identical with the recommendations of the committees; and compliance with these regulations will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective time hereof.

Order. 1. In § 905.560 (Orange Regulation 74; 40 FR 42318, 49785) the provisions of paragraph (a) preceding subparagraph (1) thereof are revised, and a new paragraph (d) is added to read as follows:

§ 905.560 Orange Regulation 74.

(a) Except as otherwise provided in paragraph (d) of this section, during

the period October 27, 1975, through September 26, 1976, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

* * * * *

(d) During the period beginning at 6:00 p.m., e.s.t., November 26, 1975, and ending at 12:01 a.m., e.s.t., November 30, 1975, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any oranges grown in the production area.

2. In § 905.563 (Grapefruit Regulation 76; 40 FR 42317, 49785) the provisions of paragraph (a) preceding subparagraph (1) thereof are revised, and a new paragraph (d) is added to read as follows:

§ 905.563 Grapefruit Regulation 76.

(a) Except as otherwise provided in paragraph (d), during the period October 27, 1975, through September 26, 1976, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico.

* * * * *

(d) During the period beginning at 6:00 p.m., e.s.t., November 26, 1975, and ending at 12:01 a.m., e.s.t., November 30, 1975, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any grapefruit grown in the production area.

3. In § 905.561 (Tangerine Regulation 47; 40 FR 42318, 49785, 51619) the provisions of paragraph (a) preceding subparagraph (1) thereof are revised, and a new paragraph (d) is added to read as follows:

§ 905.561 Tangerine Regulation 47.

(a) Except as otherwise provided in paragraph (d), during the period October 27, 1975, through September 26, 1976, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

* * * * *

(d) During the period beginning at 6:00 p.m., e.s.t., November 26, 1975, and ending at 12:01 a.m., e.s.t., November 30, 1975, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any tangerines grown in the production area.

4. In § 905.562 (Tangelo Regulation 47; 40 FR 42318, 49785) the provisions of paragraph (a) preceding subparagraph (1) thereof are revised, and a new paragraph (d) is added to read as follows:

§ 905.562 Tangelo Regulation 47.

(a) Except as otherwise provided in paragraph (d), during the period October 27, 1975, through September 26, 1976, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

* * * * *

(d) During the period beginning at 6:00 p.m., e.s.t., November 26, 1975, and ending at 12:01 a.m., e.s.t., November 30, 1975, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any tangelos grown in the production area.

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

Dated: November 19, 1975.

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

[FR Doc.75-31635 Filed 11-21-75;8:45 am]

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

Expenses of the California Date Administrative Committee, and Rate of Assessment, for the 1975–76 Crop Year

Notice was published in the October 30, 1975, issue of the FEDERAL REGISTER (40 FR 48518) regarding proposed expenses of the California Date Administrative Committee for the 1975–76 crop year totaling $25,830, and a rate of assessment for that crop year of 7 cents per hundredweight on all assessable dates. The action hereinafter set forth authorizes the Committee to incur such expenses and fixes such assessment rate. The action is authorized pursuant to §§ 987.71 and 987.72 of the marketing agreement, as amended, and Order No. 987, as amended (7 CFR Part 987). The amended marketing agreement and order regulate the handling of domestic dates produced or packed in Riverside County, California, and are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The notice afforded interested persons an opportunity to submit written data, views, or arguments on the proposal. None were received.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the California Date Administrative Committee, and other available information, it is found that the expenses of the California Date Administrative Committee, and the rate of assessment, for the 1975–76 crop year (which began on October 1, 1975, and ends on September 30, 1976) shall be as hereinafter set forth.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular crop year shall be applicable to all dates certified during that crop year as meeting the requirements for marketable dates, including the eligible portion of certain filed-run dates; and (2) the current crop year began October 1, 1975, and the rate of assessment herein fixed will automatically apply to all such dates beginning with that date.

The expenses and assessment rate are as follows:

§ 987.320 Expenses of the California Date Administrative Committee and rate of assessment for the 1975–76 crop year.

(a) *Expenses.* Expenses in the amount of $25,830 are reasonable and likely to be incurred by the California Date Administrative Committee during the 1975–76 crop year beginning October 1, 1975, for its maintenance and functioning, and for such other purposes as the Secretary may, pursuant to the applicable provisions of this part, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for that crop year which each handler is required, pursuant to § 987.72, to pay to the California Date Administrative Committee as his pro rata share of the expenses is fixed at 7 cents per hundredweight on all assessable dates. Assessable dates are dates which the handler has certified during the crop year as meeting the requirements for marketable dates, including the eligible portion of any field-run dates certified and set aside or disposed of pursuant to § 987.45(f).

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

Dated: Nov. 19, 1975.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division.

[FR Doc.75-31667 Filed 11-21-75;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 444.5]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Rural Rental Housing Loan Policies, Procedures and Authorizations; Priority in Funding

On page 33222 of the FEDERAL REGISTER dated August 7, 1975, there was published a notice of proposed rulemaking to amend § 1822.88 of Subpart D of Part 1822, Title 7, Code of Federal Regulations (40 FR 4282), by adding a new paragraph (p).

Interested persons were given 30 days to submit written comments, suggestions, or objections regarding the proposed addition. Written comments have been received and reviewed and as a result the proposed addition in consideration of these comments is hereby adopted and set forth below:

Section 1822.88 (p) is added as follows:

§ 1822.88 Special conditions.

* * * * *

(p) *Priorities in use of funds.* When more than one application is being considered for approval within a State, preference should be given to applications

from nonprofit corporations and State and local public agencies and applicants who will utilize the HUD Section 8 Housing Assistance Payment program for new construction.

* * * * *

(42 U.S.C. 1480; delegation of authority by the Sec. of Agri., 7 CFR 2.23)

Effective Date. This revision shall become effective on November 24, 1975.

Dated: November 17, 1975.

It is hereby certified that the economic and inflationary effects of this proposal have been carefully evaluated in accordance with Executive Order No. 11821.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-31636 Filed 11-21-75;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Amendment to Crude Oil Supplier/Purchaser Rule

On April 22, 1975 the Federal Energy Administration issued a notice of proposed rulemaking and public hearing (40 FR 18182; April 255, 1975) providing basically for three amendments to the crude oil supplier/purchaser rule (the so-called "December 1 rule") set forth in 10 CFR 211.63. Written comments on the proposals were invited through May 21, 1975 and a public hearing was held on May 27, 1975. On October 16, 1975 (40 FR 49297, October 22, 1975) FEA adopted as proposed two of the amendments. One provided for the exemption of Federal royalty oil from the coverage of the rule and the other included within the coverage of the rule crude oil supplier/purchaser relationships established after December 1, 1973.

The third amendment proposed in the April 22, 1975 notice of proposed rulemaking would have allowed the substitution of new resellers of crude oil for present resellers, provided certain conditions designed to protect the ultimate refiner of the crude oil were met. FEA has now concluded its analysis of this proposed amendment and the comments submitted with respect thereto and has determined to adopt the amendment with certain modifications described below.

As pointed out in the notice of proposed rulemaking, the purpose of the proposed amendment was to allow for new entry into the business of marketing crude oil. The current freeze of December 1, 1973 supplier/purchaser relationships, while still serving the salutary purpose of assuring refiners' access to their historical sources of crude oil, has necessarily lessened the opportunity for competition in the marketing of crude oil and has effectively prevented new entrants from having significant access to price-controlled old oil. The proposed rule was intended to loosen some of the current restrictions on competition caused by the December 1 rule without seriously undermining its original purpose.

The rule as proposed provided that one reseller could replace another, notwithstanding the freeze of December 1, 1973 relationships, provided that the new reseller had the consent of both the supplier to and the purchaser from the displaced reseller, that the rights under § 211.63 of further purchasers of the crude oil in question would not be adversely affected, and that such further purchasers would not be required to purchase under "less favorable terms" as a result of the termination.

Comments from 24 interested parties were received in connection with this proposal. Four firms favored adoption of the rule as proposed, five firms favored adoption with certain modifications, four firms suggested modifications without expressing a view of the merits of the proposal, and eleven firms opposed adoption of the proposal. The FEA has carefully studied these comments and has concluded that adoption of the rule is in the public interest and is consistent with the objectives of the Emergency Petroleum Allocation Act of 1973 (the "EPAA"). The rule adopted herein contains certain relatively minor changes fro mthe rule as proposed, in order to take into account problems with the proposed rule that were pointed out in the comments.

The final rule adopted herein requires any producer or reseller of crude oil that desires to change its marketer of such crude oil to notify the current marketer at least forty-five days prior to the proposed date of the change of the identity of the proposed new marketer, the source and volume of the crude oil involved, the portion of that volume that is classified as old oil, and the proposed date of the change in marketers. The current marketer would then be required to determine which refiner or refiners were purchasing the crude oil involved, to provide a copy of the termination notice received from the producer to those refiners, and to notify the producer and the proposed new marketer as to the identity of those refiners. In order to purchase the production in question, the new marketer would then be required to obtain from the refiner or refiners purchasing that crude oil their consent to its substitution for the current marketer, under such terms and conditions as the parties would agree to, consistent with other provisions of the allocation and pricing regulations. The final rule adopted herein also provides that no marketer or transporter would be able to purchase crude oil under this amendment for resale to a refiner with which it is affiliated.

Several of those persons that opposed adoption of any amendment to the regulations argued that many refiners, particularly small and independent refiners, were dependent upon the freeze of December 1, 1973 supplier/purchaser relationships to retain their historical access to sources of domestic crude oil, and that any changes to the rules that would tend to jeopardize those relationships would defeat the original purpose of the rule and would not be offset by the benefits of increased competition. The FEA recognizes and reaffirms the purpose of the December 1 freeze and agrees that that purpose should not be undermined. Consistent with that view, the rule as adopted contains various provisions that should prevent any erosion of the protections of the December 1 rule. For example, the rule as adopted prevents any supplier substitution without the express consent of the refiner receiving the oil in question. That consent can be withheld for any reason.

On the other hand, some firms that favored the rule as proposed argued that it did not go far enough to facilitate new entry and increased competition in crude oil marketing. The principal objection was that the restriction in the proposed rule requiring the new reseller to obtain the consent of the purchaser from the displaced marketer would continue to be a substantial impediment to new entry because it was believed that such consent would be difficult to obtain, even if the same quantity of crude oil were offered to such refiner on terms more favorable than those received from the displaced marketer. It was argued that because small firms attempting to enter the market would ordinarily be able to obtain access to producers' supplies only on a relatively small scale and therefore might be offering to purchasers from the displaced marketer only a portion of their total crude oil supply, such purchasers might be unwilling to take on an additional supplier, even on more favorable price terms. This would be particularly true, it was argued, with respect to purchasers that had to continue to rely on the displaced marketer for the remainder of their supply. Even though such marketers would continue to be bound by the December 1 freeze with respect to such remaining supplies, it was argued that such displaced marketers were likely to threaten subtle retaliatory practices if consent were given.

The FEA has carefully reviewed these arguments and has considered the adoption of a rule which would require only that the new marketer *offer* to sell to the displaced marketer's purchaser the same quantity of crude oil at the same ratio of controlled to uncontrolled oil as it was receiving before and on terms no less favorable than those received from the displaced marketer. If the offer were rejected, the new marketer would then be free to sell the oil in question to any other purchaser.

The FEA has decided, however, that any such rule would tip the balance too far in favor of facilitating new entry and increased competition, at the expense of the other goals sought to be achieved by the original rule, and would be administratively unworkable. Upon receiving an offer from the new marketer, a refiner-purchaser would be faced with the difficult choice of either accepting the offer, in which case it would be forced to do business with an additional supplier that might, for a variety of reasons,

be less desirable from the refiner's standpoint notwithstanding its lower price, or rejecting the offer, which would result in the refiner losing the right of access to a historic supply source and defeating the purpose of the original rule. Moreover, it would be difficult if not impossible for the FEA to determine whether the offer was in each instance made in good faith and on terms that were in fact more favorable than those received from the existing supplier.

Nevertheless, to facilitate the obtaining of consent of the refiner-purchaser to the substitution of suppliers, the FEA has modified the proposed rule so as to require only that the new marketer obtain the consent of the refiner, but has deleted the provisions in the proposed rule that would require a particular percentage of old oil or otherwise would specify any particular terms in their agreement. Thus, the new reseller is given maximum flexibility in making an offer to the refiner-purchaser that will secure its consent. Moreover, the FEA has determined that retaliation on the part of a current marketer to prevent a refiner from giving its consent to a supplier substitution would be a violation of an existing regulation, 10 CFR 210.61, and would subject such marketer to civil or criminal penalties. This provision should provide an effective deterrent to retaliatory action on the part of existing marketers.

Certain other modifications were made in the proposed rule to clarify it and to facilitate its use. In most instances, independent marketers of crude oil purchase from a producer and sell to a refiner. In a few cases, however, there is more than one independent marketer involved in the supply chain between producer and refiner. If a new marketer replaced only the first of two or more marketers in a supply chain, a rule which required him to obtain the consent of only the next marketer in the chain and not the downstream refiner could frustrate the principal purpose of the December 1 rule, which was to protect supply sources of refiners, not independent marketers. That is so because a marketer-purchaser might agree to a supplier substitution on terms which, for example, might change the old-new oil mix or transportation charges and therefore result in less favorable terms to the refiner. The proposed rule attempted to deal with this situation by providing generally that the supplier substitution could not result in "less favorable terms" to "further purchasers." The FEA has concluded that the rule will be much easier to administer and will not be significantly narrowed if the new marketer is required simply to obtain the consent of the refiner, even if he will not sell directly to the refiner.

The proposed rule was silent as to how a current marketer that received a notice that its supply was being terminated pursuant to the proposed rule was to determine which of his customers' supplies would be curtailed and in what amounts. The FEA has determined that leaving the choice to the displaced marketer would provide too much opportunity for abuse. Therefore, the final rule clarifies this situation by providing in effect that where the displaced marketer can physically trace to a particular refiner or refiners the crude oil whose supply is being terminated, those refiners shall be the ones notified of a reduction in their supplies, and that any reduction resulting from a termination shall be on a proportional basis among refiners according to volumes purchased. Where the marketer has in the past commingled the terminated supply of crude oil into a larger inventory and has sold from that inventory to several refiners, each such refiner shall bear the effect of the termination by having its supply reduced on a proportional basis according to volumes purchased. The FEA intends that the amount of reduced supply to each refiner shall include a percentage of old oil equal to the percentage of old oil included in the total volume of crude oil involved in the termination.

Finally, the FEA has concluded that, in order to prevent this new rule from resulting in the displacement of independent crude oil marketers through vertical integration, a provision should be included that prevents the rule from being used by a new marketer for purposes of resale to an affiliated refiner.

The final rule makes it clear, as did the proposed rule, that nothing in the rule shall be construed as abrogating the rights any firm may have under private contracts, so long as such contracts are otherwise consistent with FEA allocation and price regulations. Thus, a seller of crude oil cannot, by virtue of the rule, breach a private contract he may have with another firm to supply it with crude oil.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended by Pub. L. 94-133; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185)

In consideration of the foregoing, Part 211, Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below, effective immediately.

Issued in Washington, D.C., November 18, 1975.

DAVID G. WILSON,
Acting General Counsel.

Section 211.63 is revised to read as follows:

§ 211.63 Supplier/purchaser relationships.

(a) All supplier/purchaser relationships in effect under contracts for sales, purchases and exchanges of domestic crude oil on December 1, 1973, shall remain in effect for the duration of this program, except purchases and sales made to comply with this program: *Provided, however,* That (1) any such supplier/purchaser relationship may be terminated by the mutual consent of both parties; (2) the provisions of this paragraph do not apply to the first sale of crude oil pursuant to § 210.32 of this chapter; (3) the provisions of this paragraph shall not apply to the seller of any new crude petroleum or released crude petroleum, if the present purchaser of such crude petroleum refuses, after notice by the seller, to meet any bona fide offer made by another purchaser to buy such crude oil at a lawful price above the price paid by the present purchaser; (4) the provisions of this paragraph shall not apply to the sale of any crude oil pursuant to Parts 225 and 225a, Chapter II of Title 30 of the Code of Federal Regulations; and (5) any such supplier/purchaser relationship may be terminated as set forth in paragraph (d) of this section.

(b) New crude petroleum and released crude petroleum produced and sold from a property from which new crude petroleum and released crude petroleum were not produced and sold in December 1973 may be sold in a first sale to any person.

(c) Once a first sale of new crude petroleum and released crude petroleum referred to in paragraph (b) of this section has been made or the sale of any crude oil that has at any time been the subject of a supplier/purchaser relationship under paragraph (a) of this section is made to a person that was not the purchaser thereof on December 1, 1973, the seller shall continue to sell that crude oil to the purchaser thereof as though a December 1, 1973 supplier/purchaser relationship were established under the provisions of paragraph (a) of this section.

(d) Any supplier/purchaser relationship for domestic crude oil established under paragraph (a) or (c) of this section, which involves the purchase of crude oil by a firm from a producer (as defined in Part 212) or reseller for purposes of resale to a refiner may be terminated by that producer or reseller as to the firm purchasing from it upon compliance with the following conditions:

(1) At least forty-five days in advance of any proposed termination under this paragraph (d), the producer or reseller shall give to the firm whose supplier/purchaser relationship is proposed to be terminated a written termination notice stating the proposed date of termination, the source and estimated volume of crude oil involved (including the portion of that volume that is classified as old oil under Part 212 of this chapter), and the name and address of the new purchaser to which such crude oil is proposed to be sold;

(2) Any firm that has received a termination notice from a producer or reseller as provided in paragraph (d)(1) of this section shall, within 10 days thereafter, provide a copy of that notice to any refiner to which deliveries of crude oil would be reduced by reason of such proposed termination and advise the proposed new purchaser from that producer or reseller as to the identity of the refiner or refiners to which copies of the termination notice were so provided;

(3) The refiners notified under paragraph (d)(2) of this section shall be those refiners that received, either directly or through exchanges, the crude oil involved in the proposed termination, and, if the crude oil involved in the proposed termination is commingled with other crude oil and cannot be traced

directly to a particular refiner, all refiners receiving crude oil from the commingled inventory shall be notified that their supplies will be reduced on a proportional basis according to volumes purchased if the termination is effected;

(4) The proposed new purchaser of that crude oil from that producer or reseller shall obtain from the refiner or refiners that received a copy of the termination notice their written consent to the proposed supplier substitution;

(5) Any consent of a refiner under paragraph (d)(iv) of this section may be upon such terms and conditions as shall be agreed upon between the parties, provided such terms and conditions are consistent with the provisions of Parts 211 and 212 of this chapter;

(6) The provisions of this paragraph (d) of this section shall not permit any refiner to terminate or consent to the termination of a crude oil supplier/purchaser relationship if the proposed termination would result in that refiner, or any affiliated entity, becoming the new purchaser of that crude oil; and

(7) Nothing in this paragraph (d) of this section shall be construed as authorizing any firm to terminate a supplier/purchaser relationship in breach of a contract or agreement it may have with another firm.*

[FR Doc.75-31617 Filed 11-19-75;11:09 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[REG. Z]

PART 226—TRUTH IN LENDING

Correction

In FR Doc. 75-24962 appearing at page 43200 of the issue for Friday, September 19, 1975, the following corrections should be made:

1. Section 226.6 is amended as follows:

§ 226.6 **General disclosure requirements.**

* * * * *

(b) *Inconsistent state requirements.*

* * * * *

(2)(i) A State law with respect to credit billing practices which is similar in nature, purpose, scope, intent, effect, or requisites to the provisions of sections 161 and 162, * * *

(ii) A State law which is similar in nature, purpose, scope, intent, effect, or requisites to a section of Chapter 4 * * *

2. Section 226.8 is amended as follows:

§ 226.8 **Credit other than open end—specific disclosures.**

* * * * *

(n) *Periodic statement.* (1) If a creditor transmits a periodic billing statement [2] other than a delinquency notice, payment coupon book, or payment passbook, or a statement, billing, or advice * * *

3. 12. To implement §§ 161, 162, and 169, § 226.14 is added as follows: * * *

Board of Governors of the Federal Reserve System, November 18, 1975.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.75-31656 Filed 11-21-75;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Amdt. No. 2]

PART 115—SURETY BOND GUARANTEE

Elimination of Reprint of Statute

In view of the amendment of the statute, and the possibility that the statute may again be amended, Part 115 is hereby amended by replacing the reprint of the statute in § 115.1 with the official citation to the U.S. Code.

Since no substantive change of the regulations is involved, no public participation is required.

Accordingly, § 115.1 is amended to read as follows:

§ 115.1 **Statutory provisions.**

The relevant statutory provisions will be found at 15 U.S.C. 694a et seq.

This amendment is effective November 24, 1975.

(Catalog of Federal Domestic Assistance Program No. 59.016 Surety Bond Guarantee)

Dated: November 11, 1975.

LOUIS F. LAUN,
Acting Administrator.

[FR Doc.75-31598 Filed 11-21-75;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 75-NE-23; Admt. 39-2432]

PART 39—AIRWORTHINESS DIRECTIVE

Sikorsky S-64E and S-64F Helicopters

Amendment 39-2217, AD 75-11-11, requires replacement of P/N 6435-20564-042 torquemeter engine to gearbox shaft and gear assemblies with 3000 or more hours total time in service on Sikorsky S-64E and S-64F model helicopters. Subsequent to issuing Amendment 39-2217, the manufacturer designed improved torquemeter engine to gearbox shaft and gear assemblies which are physically and functionally interchangeable with P/N 6435-20564-042 assemblies. Therefore, the AD is being amended to provide for replacement of the presently installed P/N 6435-20564-042 assemblies with the improved P/N 6435-20564-044 assemblies. The AD is being further amended to clarify the requirement for removal of the P/N 6435-20564-042 assemblies.

Since this amendment provides an alternative means of compliance, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 FR 13697) § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-2217, AD 75-11-11, is amended to read:

SIKORSKY AIRCRAFT. Applies to all Sikorsky Aircraft Model S-64E and Model S-64P helicopters. To prevent failure of the torquemeter engine to gearbox shaft and gear assembly and consequent secondary damage to the main rotor control system components, remove prior to further flight, torquemeter engine to gearbox shaft and gear assemblies, P/N 6435-20564-042, with 3000 or more hours total time in service. Replace those assemblies removed with P/N 6435-20564-042 assemblies which have less than 3000 hours total time in service, or with P/N 6435-20564-044 assemblies, or with an equivalent approved by the Chief, Engineering and Manufacturing Branch, FAA, New England Region. All replacement P/N 6435-20564-042 assemblies must be removed prior to the accumulation of 3000 hours time in service.

This amendment becomes effective Dec. 2, 1975.

This amendment is made under the authority of Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Burlington, Massachusetts, on November 11, 1975.

QUENTIN S. TAYLOR,
Director, New England Region.

[FR Doc.75-31609 Filed 11-21-75;8:45 am]

[Docket No. 74-NE-38; Amdt. 39-2439]

PART 39—AIRWORTHINESS DIRECTIVES

Sikorsky S-61L, S-61N, S-61NM, and S-61R Helicopters Certificated in All Categories

Amendment 39-1971 (39 FR 33791), AD 74-20-07 as amended by Amendment 39-1989 (39 FR 36856) and Amendment 39-2152 (40 FR 15384) established replacement times for modified and original main rotor blades to prevent operation with fatigue cracks in the spars of blades of S-61 series helicopters certificated in all categories, and provided for the extension of the service life limits for certain rotor blades which had been altered, inspected, and maintained in accordance with Sikorsky Service Bulletin No. 61B15-6H. After Amendment 39-2152 was issued, the manufacturer developed, and obtained approval of, a new series of main rotor blades, made some minor changes to their test procedures, and issued a revised Service Bulletin No. 61B15-6I to include these changes to Service Bulletin No. 61B15-6H.

The agency has determined that the latest revision of the Service Bulletin, No. 61B15-6I, incorporating these changes should be used rather than No. 61B15-6H if service lives are extended. Therefore, the AD is being revised to change the references from Sikorsky Service Bulletin No. 61B15-6H to Sikorsky Service Bulletin No. 61B15-6I.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation

Regulations, Amendment 39-1971 (39 FR 33791), AD 74-20-7, as amended by Amendment 39-1989 (39 FR 36856) and Amendment 39-2152 (40 FR 15384) is further amended as follows:

Wherever the AD refers to the Sikorsky Service Bulletin, delete "No. 61B15-6H" and insert in its place:

No. 61B15-6I, or later FAA-approved revisions.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Sikorsky Aircraft, Stratford, Connecticut 06602. These documents may also be examined at FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and at FAA Headquarters, 800 Independence Avenue, SW., Washington, D.C. A historical file on this AD which includes the incorporated material in full is maintained by the FAA at its headquarters in Washington, D.C., and at the FAA, New England Region Headquarters, Burlington, Massachusetts.

This amendment becomes effective December 23, 1975.

This amendment is made under the authority of Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Burlington, Massachusetts, on November 13, 1975.

QUENTIN S. TAYLOR,
Director, New England Region.

[FR Doc.75-31610 Filed 11-21-75;8:45 am]

[Airspace Docket No. 75-SO-104]

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

Extension of Federal Airway

On September 10, 1975, a Notice of Proposed Rule Making (NPRM) was published in the FEDERAL REGISTER (40 FR 42025) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would extend V-321 from Columbus, Ga.; to Albany, Ga.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. The only comment received was favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., January 29, 1976, as hereinafter set forth.

Section 71.123 (40 FR 307, 44310) is amended as follows:

In V-321 "From Columbus, Ga., via LaGrange, Ga.;" is deleted and "From Albany, Ga., via Columbus, Ga.; LaGrange, Ga.;" is substituted therefor.

This amendment is made under the authority of Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on November 18, 1975.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-31611 Filed 11-21-75;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release 34-11742]

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Registration of Municipal Securities Brokers and Dealers; Correction

In FR Doc. 75-28682 appearing at page 49772 in the FEDERAL REGISTER of October 24, 1975, the amendment of Part 249, Forms, Securities Exchange Act of 1934, in the first column on page 49777 is corrected by changing Subpart K to Subpart L and § 249.950 to § 249.1100. The designation (a) is removed from the first paragraph of the section and the designation (b) removed from the paragraph following the note which is part of the note.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 17, 1975.

[FR Doc.75-31586 Filed 11-21-75;8:45 am]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

PART 221—OPERATION AND MAINTENANCE CHARGES

Salt River Indian Irrigation Project, Arizona

On page 47139 of the FEDERAL REGISTER of October 8, 1975, there was published a notice of proposal to modify §§ 221.120, 221.121, and 221.123 of Title 25, Code of Federal Regulations, dealing with operation and maintenance assessments and excess water charges on the Salt River Indian Irrigation Project, Arizona.

Interested persons were given 30 days within which to submit written comments, suggestions, or objections with respect to the proposed amendments. No comments, suggestions, or objections were received, and the proposed revisions are hereby adopted without change, as set forth below.

The revised sections will read as follows:

§ 221.120 Basic assessment.

The basic operation and maintenance assessment against the lands under the Salt River Indian Irrigation Project in Arizona to which water can be delivered through the irrigation project works is hereby fixed at $13.20 per acre for the year 1976 and subsequent years until further notice. The payment of the per acre assessment shall entitle the land for which payment is made to receive 3 acre feet of water per annum, or such lesser amount as represents the proportionate share of the available water.

§ 221.121 Payment.

The annual basic charge fixed in Section 221.120 shall be due and payable on or before February 1 of each year unless changed by further notice. Charges not paid on the due date shall stand as a first lien against the lands until paid.

§ 221.123 Excess water.

Additional water in excess of the basic apportionment of three acre feet per acre per annum may be purchased when the water is available at the rate of $15.50 per acre foot or fraction thereof measured at the farm delivery point. Payment shall be made in advance of delivery. The energy crisis has caused unpredictable rapid increases in the cost of electrical energy. In order to provide funds to purchase the necessary electrical power to operate the well pumps, the cost per acre foot of excess water will be adjusted as the electrical enregy supplier adjusts the rate at which electrical energy is supplied to the Salt River Indian Irrigation Project. Adjustment up or down to be made on the first day of the month following notification of the change in rates.

JOHN ARTICHOKER, Jr.,
Area Director.

[FR Doc.75-31597 Filed 11-21-75;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

California Plan Supplement; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for the review of changes and progress in the development and implementation of State plans which have been approved under section 18(c) of the Act and Part 1902 of this Title. On May 1, 1973, a notice was published in the FEDERAL REGISTER (38 FR 10717) of the approval of the California plan and of the adoption of Subpart K of Part 1952 describing the plan. On September 11, 1974, the State submitted a supplement to its plan concerning the rules of procedure for the California Occupational Safety and Health Appeals Board. A notice of receipt of this supplement was published in the FEDERAL REGISTER on November 5, 1974 (39 FR 39045). Although no public comments were received on the supplement, our review found problems with the discovery provisions of section 141 and 142 of the rules of procedure (Title 8, ch. 1.5, sections 372 and 372.1, California Administrative Code). The discovery rules, as submitted,

appeared to be broader in providing for the disclosure of the identity of employee informants than is the practice under the Federal program. The rules of procedure for the Appeals Board were approved on September 2, 1975. However, approval of the discovery provisions of Rules 141 and 142 was withheld pending the rsolution of the apparent conflict between State and Federal practice (40 FR 40156).

By letter dated September 16, 1975, to Gabriel J. Gillotti, Assistant Regional Director, from Rose Elizabeth Bird, Secretary of the California Agriculture and Services Agency, the State submitted proposed modifications to the rules of procedure for the Appeals Board. The modifications provide for withholding the identity of witnesses who have requested confidentiality and withholding the identity of any person requesting confidentiality who submits or makes a statement regarding the subject matters of a Board proceeding. The State will support the confidentiality provisions of the Appeals Board Rules by implementing the following changes in its occupational safety and health program: (i) increased emphasis on the anti-discrimination program, (ii) development and distribution of a brochure describing the rights and protections afforded workers, including the right to request confidentiality (iii) revision of the State poster to include a statement notifying employees of their ability to request confidentiality and (iv) revision of inspection forms to document employee requests for confidentiality.

Although the California provisions concerning confidentiality are somewhat different from those under Federal practice, they appear to provide means protecting the confidentiality of employee informants which is necessary for an effective enforcement program. They appear to maintain a reasonable balance between the need for evidence or information necessary for the support of cases that are appealed to the Appeals Board or courts and the need for employee informant confidentiality, in implementing an employee protection program. Decisions of the Federal courts have consistently struck a balance between these interests in cases involving the disclosability of information at the discovery stage of a trial. See e.g. "Brennan v. Engineered Products", 506 F. 2d 299 (C.A. 8, 1975); "Wirtz v. Continental Finance & Loan Co.", 326 F. 2d 561 (C.A. 5, 1964). The major difference between the California practice and Federal practice concerning discovery is that under California practice the witness or employee must request confidentiality whereas under Federal practice such confidentiality is provided as a matter of course. The State appears to have taken sufficient precautions to inform employees of their right to request confidentiality and also to provide sufficient protection to employees against discrimination for the exercise of their rights to complain or make statements under the California Occupational Safety and Health Act. Evaluation of the application of the California discovery provisions will determine their adequacy in maintaining necessary employee informant confidentiality.

3. *Location of the plan and its supplement for inspection and copying.* A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room N-3608, 200 Constitution Ave., N.W., Washington, D.C. 20210; Office of the Assistant Regional Director, Occupational Safety and Health Administration, Room 9410, Federal Office Building, 450 Golden Gate Avenue, San Francisco, California 94102; California Occupational Safety and Health Administration, 1006 4th Street, Third Floor, Sacramento, California 95814; California Occupational Safety and Health Administration, 455 Golden Gate Avenue, Room 2152, San Francisco, California 94102; and Division of Industrial Safety, 3460 Wilshire Boulevard, Los Angeles, California 90010.

5. *Decision.* After careful consideration, the discovery rules of the California Appeals Board are hereby approved but will be subject to careful evaluations to determine their effectiveness in providing for appropriate employee informant protections. The decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

In accordance with this decision, Subpart K of 29 CFR Part 1952 is amended as set forth below.

Section 1952.174 is amended by adding a new paragraph (i) as follows:

§ 1952.174 Completed developmental steps.

* * * * *

(i) The Occupational Safety and Health Appeals Board began functioning in early 1974. The Rules of Procedure for the Board were approved by the Assistant Secretary on November 19, 1975.

(Secs. 8(g), 18, Pub. L. 91-596, 84 Stat. 1600, 1608 (29 U.S.C. 657(g), 667))

Signed at Washington D.C. this 19th day of November 1975.

JOHN T. DUNLOP,
Secretary of Labor.

[FR Doc.75-31678 Filed 11-21-75;8:45 am]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 75-8; Notice 2]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Lamps, Reflective Devices, and Associated Equipment

This notice amends 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, to remove the restriction that would disallow manufacture of vehicles with four-lamp rectangular headlamp systems on and after September 1, 1976.

The NHTSA proposed on April 30, 1975 (40 FR 18795) the termination of the amendment to Standard No. 108 adopted November 30, 1973 (38 FR 33084), that disallowed use of rectangular headlamp systems on motor vehicles manufactured on or after September 1, 1976. In allowing probationary use of the new headlamp system, this agency had concluded that the interests of safety required a period in which the systems could be evaluated as to on-road performance and availability of replacements. A final decision was scheduled for late in 1975 on whether to allow continued use of such systems, and if so, whether to retain the current dimensions or to propose modifications.

The NHTSA has decided to remove the termination date of September 1, 1976, thus allowing indefinite use of four-lamp rectangular headlamp systems, and to retain the current dimensions. In the period that rectangular systems have been in use no service or supply problems have come to this agency's attention. The lamps have been tested and approved by the American Association of Motor Vehicle Administrators. No comments to the notice of April 30, 1975, objected to the removal of the termination date, and all those who commented on the issue supported it. The dimensions specified in Standard No. 108 have been adopted by the Society of Automotive Engineers in SAE Standard J579c, "Sealed Beam Headlamp Units for Motor Vehicles," December 1975, and are now accepted by the motor vehicle and lighting industries. There has been occasional criticism that these systems increase vehicle weight and cost without a corresponding benefit in safety. Any weight increases are very minor, however. The purpose of the amendment was to remove a design restriction and to allow manufacturers and consumers the freedom to choose an alternative but equivalent headlighting system. The cost increase is not, therefore, mandated by the standard.

The Administrator also requested comments in the April 30, 1975, notice as to the advisability of proposing an amendment to Standard No. 108 that would allow a single two-lamp rectangular system. Commenters generally supported the concept of a two-lamp system, advising dimensions based upon SAE recommendations. The subject is now under consideration by the agency.

§ 571.108 [Amended]

In consideration of the foregoing, paragraph S4.1.1.21 of 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, is amended by deleting the phrase "manufactured between January 1, 1974 and September 1, 1976" and substituting the phrase "manufactured on or after January 1, 1974".

Effective date: November 24, 1975. Because the amendment relieves a restriction and creates no additional burden on

any person it is found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51)

Issued on November 17, 1975.

JAMES B. GREGORY,
Administrator.

[FR Doc.75-31630 Filed 11-21-75;8:45 am]

[Docket No. 75-15; Notice 2]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Lamps, Reflective Devices, and Associated Equipment

This notice amends 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, to modify requirements for clearance lamps on vehicles of special configuration.

Notice of the amendment was published on June 5, 1975 (40 FR 24204), and an opportunity afforded for comment. The NHTSA proposed that the inboard visibility angle of 45 degrees for clearance lamps need not be met on a vehicle where it is necessary to mount the lamps on surfaces other than the extreme front or rear to indicate the overall width or for protection from damage during normal operation of the vehicle. Restricted inboard visibility angles of clearance lamps are encountered on many types of vehicles other than boat trailers and horse trailers. Examples are (1) front clearance lamps that are mounted on a truck body behind the cab and below the top of the cab, and (2) front and rear clearance lamps mounted on the fenders of trucks and trailers such as liquid and bulk commodity vehicles and cement mixer carriers.

Eleven comments were submitted by manufacturers, trade associations, and the California Highway Patrol. Ten of these supported the amendment. The sole dissenter felt that there might be traffic situations where visibility at some inboard positions would be important. Trailmobile and Recreational Vehicle Industry Association requested modifications to Standard No. 108 that were beyond the scope of the proposal and thus were not considered.

In consideration of the foregoing, 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, is amended as follows:

§ 571.108 [Amended]

1. The first sentence of S4.3.1.1 is revised to read, "Except as provided in S4.3.1.1.1, each lamp and reflective device shall be located so that it meets the visibility requirements specified in any applicable SAE Standard or Recommended Practice."

2. A new paragraph S4.3.1.1.1 is added to read:

S4.3.1.1.1. Clearance lamps may be mounted at a location other than on the front and read if necessary to indicate the overall width of a vehicle, or for protection from damage during normal operation of the vehicle, and at such a location they need not be visible at 45 degrees inboard.

Effective date: November 24, 1975. Because the amendment relieves a restriction and creates no additional burden upon any person, it is found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51)

Issued on November 17, 1975.

JAMES B. GREGORY,
Administrator.

[FR Doc.75-31631 Filed 11-21-75;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Penalties and Procedures for Their Assessment

Section 112 of the Marine Mammal Protection Act, 16 U.S.C. 1361 et seq., (The Act) authorizes the Secretary of Commerce to prescribe regulations as are necessary and appropriate to carry out the purposes of the Act. The Secretary's functions under the Act have been transferred to the Director, National Marine Fisheries Service.

Section 105 of the Act, 16 U.S.C. 1365, authorizes the Director to assess civil and criminal penalties for violations of the Act, after providing notice and opportunity for a hearing. The regulations in Subpart F, 50 CFR 216.51-216.65, provide the mechanism for such hearing and assessment.

The Director is amending those regulations in a minor fashion, specifically §§ 216.53 through 216.60, by deleting the term "administrative law judge" and substituting in lieu thereof the term "presiding officer." The purpose of the amendment is: to simplify the procedures for hearings authorized by section 105 of the Act; to facilitate the holding of hearings in regional areas where administrative law judges are not readily available; and to provide those persons alleged to have violated the Act with a prompt public hearing with respect to such violations. Since the Act does not require the use of an administrative law judge, the regulatory changes will be in keeping with the Act's mandate.

There are currently a number of cases awaiting hearing. In view of the difficulty of obtaining an administrative law judge and keeping in mind the right of persons subject to section 105 of the Act to a speedy hearing, these amendments are made without notice and an opportunity for the public to comment, pursuant to 5 U.S.C. 553(b). Furthermore, under 5 U.S.C. 553(d), they are effective November 24, 1975.

§§ 216.53, 216.54, 216.56, 216.57, 216.59, 216.60 [Amended]

In accordance with the above discussion, §§ 216.53, 216.54, 216.56, 216.57, 216.59, and 216.60 of title 50, Code of Federal Regulations, are hereby amended by deleting the term "administrative law judge" and substituting in lieu thereof the term "presiding officer."

ROBERT W. SCHOMING,
Director,
National Marine Fisheries Service.

NOVEMBER 19, 1975.

[FR Doc.75-31666 Filed 11-21-75;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

SHENANDOAH NATIONAL PARK

Camping Requirements

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 1 et seq.) and by the Act of May 22, 1926 (44 Stat. 616, as amended; 16 U.S.C. 403), and the Act of August 19, 1937 (50 Stat. 700, as amended; 16 U.S.C. 403c–1), 245 DM–1 (34 FR 13879) as amended; National Park Service Order No. 77 (38 FR 7478), as amended and Mid-Atlantic Region Order No. 1 (39 FR 3694), it is proposed to add § 7.15(g) to Title 36 of the Code of Federal Regulations, as set forth below.

The purpose of this addition is to introduce a new regulation for Shenandoah National Park. The result should be better safeguarding of foods from Wildlife in the Park, particularly from the American black bear.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections on this proposal to the Superintendent, Shenandoah National Park, Luray, Virginia 22835, on or before December 24, 1975.

Paragraph (g) of § 7.15 is added as follows:

§ 7.15 Shenandoah National Park.

* * * * *

(g) *Camping.* At all campsites, food or similar organic material must be either: (1) Completely sealed in a vehicle or camping unit that is constructed of solid, nonpliable material; or (2) suspended at least ten (10) feet above the ground and four (4) feet horizontally from any post, tree trunk or branch. This restriction does not apply to food that is in the process of being transported, being eaten, or being prepared for eating.

ROBERT R. JACOBSEN,
Superintendent,
Shenandoah National Park.

[FR Doc.75–31658 Filed 11–21–75;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 987]

DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

Proposed Marketing Percentages for the 1975–76 Crop Year

Notice is hereby given of a proposal to establish, for the 1975–76 crop year, free and restricted percentages and withholding factors of 100 percent, 0 percent, and 0 percent, respectively, for marketable Deglet Noor, Zahidi, Halaway, and Khadrawy dates. The crop year began October 1, 1975. The proposed percentages and withholding factors would be established in accordance with the provisions of the marketing agreement, as amended, and Order No. 987, as amended (7 CFR Part 987). The amended marketing agreement and order regulate the handling of domestic dates produced or packed in Riverside County, California, and are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The free percentages, restricted percentages, and withholding factors are pursuant to §§ 987.44 and 987.45. These percentages and factors are based on the California Date Administrative Committee's estimates for the current crop year of supply and trade demand adjusted for handler carryover and other available information. Trade demand means the aggregate quantity of whole or pitted dates which the trade will acquire from all handlers during the crop year for distribution in the continental United States, Canada, and such other countries as the Committee finds will acquire dates at prices reasonably comparable with prices received in the continental United States.

In determining the percentages for each of the four varieties, the Committee considered the following data, estimates and information for the crop year beginning October 1, 1975:

[In 1,000 lb.]

		Deglet Noor	Zahidi	Halawy	Khadrawy
1	Production of marketable dates (1975–76 crop)	35,985	1,926	208	544
2	Plus noncertified handler carryover as of Sept. 30, 1975, of marketable dates	7,454	441	130	240
3	Total marketable supply	43,439	2,367	338	784
4	Trade demand for free whole and pitted dates (continental United States and Canada)	15,000	1,800	100	350
5	Plus desirable handler carryover as of Sept. 30, 1976, to assure date supplies for early demand	13,000	455	130	241
6	Less certified handler carryover as of Sept. 30, 1975, of free dates	2,651	14	0	1
7	Adjusted trade demand	25,349	2,241	230	590

It is estimated that the amounts in excess of adjusted trade demands for these four varieties will be utilized in products and/or export markets. Hence, no volume regulation is proposed.

Consideration will be given to any written data, views, or arguments in connection with the aforesaid proposal which are received by the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than December 15, 1975. All written submissions made pursuant to this notice should be in quadruplicate and will be available for public inspection a. the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal is as follows:

§ 987.223 Free and restricted percentages and withholding factors.

The various free percentages, restricted percentages, and withholding factors applicable to marketable dates of each variety shall be, for the crop year beginning October 1, 1975, and ending September 30, 1976, as follows: (a) Deglet Noor variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent; (b) Zahidi variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent; (c) Halawy variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent; (d) Khadrawy variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent.

Dated: November 19, 1975.

CHARLES R. BRADER,
Deputy Director,
Fruit and Vegetable Division.

[FR Doc.75–31668 Filed 11–21–75;8:45 am]

Farmers Home Administration

[7 CFR Part 1801]

[FmHA Instruction 410.1]

RECEIVING AND PROCESSING APPLICATIONS

Safeguarding the Privacy of Personal Information of Individuals Identified in Farmers Home Administration Information Systems; Proposed Use of Social Security Numbers

Notice is hereby given that the Farmers Home Administration is considering promulgating an amendment to Subpart A of Part 1801, Title 7, Code of Federal Regulations (36 FR 15737; Redesignated at 38 FR 4772) by the addition of paragraphs (j), (k), and (l) to § 1801.2. This amendment will implement the provisions of Pub. L. 93-579 (88 Stat. 1897) of December 31, 1974, which amends title 5, United States Code, by adding after section 552 a new section 552a to regulate the collection, maintenance, use, and dissemination of personal information of individuals identified in information systems maintained by Federal agencies.

This amendment to § 1801.2 implements section 7, Pub. L. 93-579, which makes it unlawful with certain exceptions to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose a social security number. The Pub. L. also provides that any Federal agency which requests an individual to disclose a social security number shall inform that individual whether that disclosure is mandatroy or voluntary, by what statutory authority or other authority such number is solicited, and what uses will be made of it.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Chief, Directives Management Branch, Farmers Home Administration, Department of Agriculture, Room 6316, South Building, Washington, D.C. 20250 on or before December 24, 1975. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Chief, Directives Management Branch during regular business hours (8:45 a.m. to 4:45 p.m.).

As proposed § 1801.2 (j), (k), and (l) read as follows:

§ 1801.2 Receiving applications.

* * * * *

(j) FmHA will normally utilize the Social Security Number as a borrower identification number.

(k) No applicant will be denied any right, benefit, or privilege provided by law because of refusal to disclose a social security number.

(l) Any applicant requested to disclose a social security number in the completion of a loan application will be orally counseled or advised in writing that:

(1) Disclosure of the social security number is voluntary;

(2) The social security number is used in the identification of loan records and in the administration of payment transactions;

(3) Use of the Social Security Number is authorized by paragraph (j) of this section.

* * * * *

(7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 of Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO, 29 FR 14764, 33 FR 9850)

Dated: November 13, 1975.

FRANK W. NAYLOR, Jr.,
Acting Administrator,
Farmers Home Administration.

[FR Doc.75-31637 Filed 11-21-75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 610, 640]

[Docket No. 75-N-0316]

WHOLE BLOOD AND RED BLOOD CELLS

Label Statement to Distinguish Volunteer From Paid Blood Donors

In FR Doc. 75-30718, appearing at page 53040, in the issue for Friday, November 14, 1975, the following corrections should be made:

1. On page 53040, the last sentence of the first paragraph should read "Interested persons have until January 13, 1976, to comment on the proposal."

2. On page 53043, in the paragraph immediately following § 640.18(a), the comment date in the second line, which now reads "January 13, 1975", should read "January 13, 1976".

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 75-WE-28]

FEDERAL AIRWAYS

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would cap Federal Airways V-135, V-208 and V-442 at 10,000 feet MSL in the vicinity of Parker, Calif., to accommodate operations in a military operations area.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. All communications received on or before December 24, 1975, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would cap Federal Airways V-135, V-208 and V-442 at 10,000 feet MSL in the vicinity of Parker, Calif., to accommodate operations within a military area.

Little or no inconvenience to en route traffic is anticipated as a result of this action. The great majority of traffic utilizing these airways operate at or below 11,000 feet MSL. The airway cap of 10,000 feet MSL would permit the use of at least 8,000, 9,000 and 10,000 feet MSL as IFR assignable altitudes.

The FAA proposes to alter the following airway segments in § 71.123:

§ 71.123 [Amended]

a. V-135 would be amended by excluding the airspace above 10,000 feet MSL between Parker, Calif., and Needles, Calif.

b. V-208 would be amended by excluding the airspace above 10,000 feet MSL between Twentynine Palms, Calif., and Needles, Calif.

c. V-442 would be amended by excluding the airspace above 10,000 feet MSL between Parker, Calif., and Clipper INT, Calif.

This amendment is proposed under the authority of Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on November 18, 1975.

WILLIAM E. BROADWATER,
Chief, Airspace and Air
Traffic Rules Division.

[FR Doc.75-31612 Filed 11-21-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-RM-32]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations which would alter the transition area at Hugo, Colorado.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, Park Hill Station P.O. Box 7213, Denver, Colorado 80207. All communications received on or before December 24, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with

Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 10455 E. 25th Avenue, Aurora, Colorado 80010.

This additional controlled airspace is required to provide protection for military aircraft conducting IFR training operations.

In consideration of the foregoing, the FAA proposes the following airspace action:

In Federal Aviation Regulation § 71.-181 (40 FR 441) the description of the Hugo, Colorado transition area is amended to read:

HUGO, COLORADO

That airspace south and east of Hugo, Colo., VOR extending upward from 8500 feet MSL, bounded on the west by V-19, on the northwest by V-108 and V-169, on the north by V-4, on the northeast by V-17, on the southeast by V-216, and on the south by V-210, excluding the airspace within Federal airways, the Pueblo and Colorado Springs, Colo., transition areas and the State of Kansas.

This amendment is proposed under authority of Section 307(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)), and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Aurora, Colorado, November 12, 1975.

I. H. HOOVER,
Acting Director,
Rocky Mountain Region.

[FR Doc.75-31613 Filed 11-21-75;8:45 am]

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 180]

ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

On July 10, 1975, the Commodity Futures Trading Commission ("Commission") published an interpretive statement in the FEDERAL REGISTER which set forth the Commission's responses to six questions posed by exchanges, boards of trade, and other interested persons, concerning the requirements of section 5a (11) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 7a(11), which was added by section 209 of the Commodity Futures Trading Commission Act of 1974 ("CFTC Act"), Pub. L. No. 93-463, § 209 (October 23, 1974). *See* 40 FR 29121 (July 10, 1975). In order to assure to prompt compliance with the Commission's interpretive statement and the requirements of section 5a(11), the Commission determined to propose rules setting forth affirmative requirements for contract markets to follow in establishing arbitration or other dispute settlement procedures (herein referred to as the "prior proposed rule"). *See* 40 FR 34152 (August 14, 1975).

The Commission's announcement proposing the prior rules contained a general statement of the basis and purpose of the proposed prior rules and invited interested persons to participate in the rulemaking process by providing written submissions to the Commission. The Commission has considered all of the comments and suggestions received with respect to the proposed prior rules and prior interpretive statement and has determined to amend the prior proposed rules in the form set forth below and to seek additional comment from interested persons on the amended proposed rules prior to adoption.

The amended proposed rules have been redesignated as a new Part 180 of Title 17 of the *Code of Federal Regulations* and have been renumbered. If adopted, the amended proposed rules will not be made effective for a period of at least 90 days after adoption in order to provide an adequate opportunity for contract markets to amend and submit their own rules for approval by the Commission under section 5a(12) of the Act.

Set forth below is a discussion of specific comments received by the Commission and amendments made to the prior proposed rules as a result of those comments.

DISCUSSION

The Commission received several comments that generally criticized the "one-sidedness" or "pro-customer" nature of the Commission's proposals in expressly protecting the interests of customers, while containing few express or even comparable protections for members of contract markets. As was stated in the Commission's announcement originally proposing the prior rules, the Commission believes many of the protections implicitly apply to members. Nevertheless, the Commission, as set forth below, has determined to extend by express provision most of the protections set forth in the newly proposed rules, which are applicable to customers, to contract market members and their employees as well.

The Commission also received general comments suggesting that the Commission adopt rules only for such settlement procedures as are expressly required by section 5a(11). However, these comments overlook the breadth of the Commission's authority under section 8a of the Act, as well as significant aspects of the legislative history of the CFTC Act concerning alleged abuses in contract market arbitration proceedings. In order to prevent such alleged abuses from occurring in other circumstances, the Commission believes that it should exercise its authority to establish minimum procedural safeguards and standards for all aspects of arbitration or other settlement proceedings established by contract markets or utilized by customers.

The Commission also received one general comment criticizing the procedure of one contract market that conducts disciplinary proceedings jointly with its arbitration proceedings. The Commission believes that such a joint procedure is inappropriate and, accordingly, the Commission will not approve any such procedure under section 5a(12) of the Act.

It should be noted that the prior proposed rules gave, and the amended proposed rules give, wide latitude to the contract markets to establish their own procedures; the amended proposed rules constitute merely minimum procedural safeguards required under the Act. Within those minimums, the contract markets are free to adopt such procedures as most adequately suit their specific needs.

The Commission requests comment on whether cash market transactions effected on or subject to the rules of the contract market which provides the forum for settlement procedures should be included within §§ 180.1–180.4 of these rules (provisions relating to settlement procedures for claims under $15,000). If excluded, should the Commission go further and also exclude cash market transactions from the provisions of § 180.5 (provisions relating to settlement procedures for claims over $15,000) and/or § 180.6 (provisions with respect to member - to - member settlement procedures)?

1. Prior proposed rule § 200.1, which has been redesignated as § 180.1(b), defines the terms "customer" and "customers." The definition contained in the prior proposed rule described a "customer" or "customers" as persons engaging in a transaction through the facilities of a contract market other in the capacity of a futures commission merchant or a floor broker. As a result of comments by contract markets and others, the Commision has determined to clarify this definition by defining the nature of the "claim or grievance" that a customer or customers may submit to the procedure required by section 5a(11). This definition is designed to make clear that the terms "customer" and "customers" do not include persons having a claim or grievance solely against a person other than a member or employee of a contract market, even if the claim arose from a transaction executed through the facilities of a contract market. In that connection, the definition of the term "claim or grievance" states that a "claim or grievance" is a dispute with a contract market member or employee thereof which arises out of any transaction effected through such a member or employee and which is executed on or subject to the rules of the contract market. The prior proposed Rule has also been amended to clarify that a claim or grievance includes a claim or grievance arising from a transaction that was proposed or attempted to be effected as well as completed transactions.

Commentators also urged that the Commission exclude from the definition of "customer" or "customers" all disputes between contract market members of their employees even if such persons were acting as a customer with respect to a particular transaction. But the Commis-

sion believes that if such persons are not acting in the role of a contract market member or employee thereof, they should be entitled to the same protection as any other customer under section 5a(11) without disqualification by their role in other transactions. This is particularly true where, for example, a floor broker on one contract market executes a transaction on another contract market where the floor broker is not a member, and a claim or grievance arises from that transaction.

2. Prior proposed rule § 200.2, which has been redesignated as § 180.2, sets forth procedural requirements that must be contained in the rules of a contract market to establish the "fair and equitable procedure" required by section 5a (11) for settlement of customers' claims and grievances. Particularly, the amended proposed rule establishes procedural requirements for notice and hearing, including the right to a hearing, a right to be represented by counsel, a right to examine witnesses and other safeguards.

The prior proposed rule stated that customers must be provided an impartial arbitration panel or other decision-making body ("panel"). In that connection, the prior proposed rule stated that, while such a panel may be composed entirely of contract market members, customers must be given an election to submit the claim or grievance to a panel composed of at least a majority of persons not associated with any member of the contract market or employee thereof and not otherwise associated with the contract market ("mixed panel"). The Commission received a large number of adverse comments on this proposal. Those commentators stated, among other things, that it would be difficult and expensive to obtain qualified experts to serve on mixed panels and that, without the benefit of such experts, at little or no cost, much of the value of the contract market dispute settlement procedure would be lost. In light of those comments, the Commission has determined to amend the prior proposed rule regarding the choice by a customer of a mixed panel to require that instead of a majority, at least one third of the members of a mixed panel be persons who are not associated with any member of the contract market or employee thereof and not otherwise associated with the contract market. The Commission believes that this proposal will assure a meaningful measure of objectivity while at the same time retaining the necessary expertise of such panels. However, the Commission requests additional comment on whether mixed panels should have a greater percentage of non-associated persons.

The Commission has also determined, as a result of comments, to amend certain provisions of the prior proposed rule to clarify the timing of an election of a mixed panel. The prior proposed rule was amended to provide that contract market rules may require an election of a mixed panel to be made at the time of the submission of the claim or grievance to the contract market's procedure established pursuant to section 5a(11). As noted, concern was also expressed as to the assessment of the costs of the mixed panel. If a mixed panel is elected, the amended proposed rule provides that contract market rules may authorize a mixed panel to assess the increased costs, if any, attendant to obtaining such a mixed panel against the losing party, provided that the contingency of the assessment of such costs against the losing party are disclosed to both parties prior to the time of election.

One contract market also commented that it was not clear what type of association would disqualify a person from serving on a mixed panel, as the term "associated" is generally construed very broadly. The Commission, of course, recognizes the breadth of this term. Nevertheless, the Commission believes that such a term is necessary to prevent any direct or indirect relationships that may preclude objectivity or which may give rise to any appearance that strict objectivity or fairness is lacking. Accordingly, the Commission has retained the term in the amended proposed rule. However, the Commission does not believe that the term "associated," as used in the amended proposed rule, is so broad as to apply to such relationships as customers of contract market members, if a customer relationship with a member is limited to an account which is not a major or substantial component of the accounts of the member or the resources of the customer. Nor would association with another contract market alone preclude a person from serving on a mixed panel. The Commission also notes that contract market members or employees thereof, or non-associated persons serving on a panel (mixed or non-mixed), must not have an association with a member or employee thereof against whom the customer claim or grievance is made, or with the customer submitting the claim or grievance, that would preclude the panel member from being totally objective or which would give an appearance of lack of objectivity. The prior proposed rule has also been amended to prohibit *ex parte* contacts.

The Commission also received comment on the prior proposed rule which urged the Commission to extend the right to elect a mixed panel to members of a contract market or their employees. The Commission does not believe that the proposed rule as originally announced, or as amended, would preclude contract market rules from permitting such an election, provided that the contract market rules does not have the effect of discouraging customer claims or grievances from being submitted to the procedure required by section 5a(11).

The amended proposed rule also prohibits a contract market from requiring a transcript to be kept of hearings, unless agreed to by the customer or unless the customer is not assessed with the expense of the transcript. This requirement is designed to assure that customers with claims under $15,000 are not discouraged from using the settlement procedure required to be established by section 5a(11), because of possibly expensive transcript costs. One commentator suggested that transcripts should be required and that the expense should be borne by the contract markets. While the Commission would not object to a contract market assuming such costs, the Commission does not believe that this should be required, since transcripts of arbitration proceedings are often unnecessary, especially in minor cases, and may result in undue expense. Another commentator urged that this provision be extended to contract market members or employees thereof. However, the Commission believes that such an amendment is not necessary since a member or employee thereof may be authorized by a specific contract market provision to request a transcript where the customer does not make such an election. In such cases, if the contract market so desires, the member need not be assessed with the cost of a transcript.

The amended proposed rule also provides that there should be no right of appeal to any entity within the contract market which can overturn the settlement procedure decision, such as an appeal to the board of governors of the contract market; the only right of appeal being as provided under applicable law. One contract market commented that there should be a right of contract market related appeal to correct obvious cases of injustice, as where there is fraud or misconduct by members of the arbitration or other panel, and in instances of material miscalculation, or misdescription or other imperfections in form. The Commission believes, however, that the rights of appeal under applicable law are adequate to provide sufficient protection against such misconduct or error.

The amended proposed rule assures the parties the right to be represented by counsel, if they so chose, in any aspect of the procedure established by a contract market pursuant to section 5a(11). One contract market commented that the right to counsel should not be applied to prohibit the staff of a contract market from communicating with a customer concerning a complaint made to the contract market. The Commission does not believe that the amended proposed rule would encompass such a prohibition. Also, in authorizing representation by counsel, the Commission does not intend that counsel be allowed to inject unnecessary formalities or objections into the proceedings.

The prior proposed rule stated that contract market rules could allow customers to waive the right of personal appearance in hearings required by the prior proposed rule through a submission on the basis of written documents. The prior proposed rule stated that such a waiver must be voluntary and could be made only after the claim or grievance arose. Several objections were made to this provision. One contract market noted that it has rules for simplified arbitration procedures in which neither party has a right personally to appear if the claim or grievance does not exceed

a specified amount.[1] That contract market stated that such provisions were adopted because out-of-state customers may not generally want to incur the expense of appearing at a hearing. The contract market also stated that the Commission's proposal was "contrary" to the procedure established by section 106 of the CFTC Act for customer reparations.

The Commission does not believe that the reparations procedure provisions of the Act control the contract market procedures required by section 5a(11) since the reparations procedure is being administered by a federal agency with full rights of review in the courts. Nevertheless, the Commission is convinced from the comments received that it would not be inappropriate for a contract market to establish a procedure whereby claims of less than $2,500 could be required to be submitted to an arbitration panel or other decisionmaking body without opportunity for either party to appear personally at a hearing, as this may reduce expense and delay in contract market settlement proceedings. The Commission has substituted that procedure for its prior proposal. Such a procedure must be administered fairly and the contract market must establish that the customer voluntarily consented to such a procedure. Also, the customer must be given the election of a mixed panel and must be given a specific warning that all procedural safeguards may not be available in the procedure. The panel hearing the claim must treat the claim in a manner conforming to proceedings where the parties are present and, as in all proceedings under the amended proposed rules, *ex parte* contacts are specifically prohibited. The Commission will review contract market rules adopting such a procedure to assure that such rules are not unfair and do not prevent customers from having access to a fair and equitable settlement procedure.

The prior proposed rule also required adequate notice of the amount and nature of any fees or costs which may be assessed against customers utilizing the procedure required by section 5a(11), and stated that any such costs must be reasonable in relation to the claim or grievance. The Commission's announcement of the prior proposed rule requested comment on the manner in which costs could be allocated and how costs for small claims or grievances could be dealt with. One contract market commented that this provision should take into consideration the complexity of the claim, rather than the dollar amount of the claim or grievance. In amending the proposed rule, the Commission has modified this provision to make clear that the limitation on excessive costs is generally to be related to both the complexity and amount of the claim or grievance. A contract market also suggested that the Commission establish standards for the allocation of costs. However, the Commission believes that this may more appropriately be left to the panel hearing the case or to a reasonable fee schedule established by a contract market.

The prior proposed rule also stated that a contract market procedure for the settlement of customer claims or grievances under section 5a(11) cannot impose restrictions on the jurisdiction or venue of any court to enforce an award rendered in such a procedure. One contract market expressed the concern that this proposal could be construed to abrogate the jurisdiction or venue of courts under applicable state laws. The Commission does not intend for the amended proposed rule to limit the scope of applicable laws. Rather, the Commission's proposal recognizes that there may be more than one applicable law and that the rules of the contract market should not attempt to restrict the application of any such law. Of course, a customer, after or at the time of the submission of a claim or grievance, could agree to a choice-of-law provision if the customer's agreement is voluntary and if the choice-of-law provision is not a condition for submission of the claim or grievance to the procedure.

As noted above, the Commission also received several comments urging that the protections for customers set forth in the prior proposed rules be extended to contract market members and employees. After considering the comments received, the Commission believes that certain protections should be made explicit for all participants in a proceeding under section 5a(11). Accordingly, the proposed rule has been amended to extend explicitly protections to other participants, including the right to counsel, adequate notice and opportunity for prompt hearing and adequate opportunity to prepare for hearings. Protections for contract market members or employees thereof should not, however, be applied in a manner that will unnecessarily or unfairly impair the interests of customers.

Finally, the Commission substituted the word "examine" for "cross-examine" in granting parties the right to question all witnesses appearing at the hearing. This is to reflect only that technical rules of evidence or procedure do not apply; however, this amendment does not limit the right of a party to question a witness.

3. Prior proposed rule § 200.3, which has been amended and redesignated as § 180.3, states that the use by a customer of the procedure established by a contract market pursuant to section 5a(11) for settlement of customers' claims and grievances against any member or employee thereof, shall be voluntary. The prior proposed rule provided that a procedure for settlement of customer claims or grievances established by a contract market pursuant to section 5a(11) must prohibit any agreement or understanding pursuant to which customers agree to submit a claim or grievance for settlement prior to the time when the claim or grievance arose.

The Commission received comments criticizing this provision. Particularly, one commentator stated that the Commission is not justified in finding that a customer voluntarily executing a standard customer's agreement is not aware of the nature and consequences of such an agreement. However, the Commission is convinced that this provision is necessary and appropriate in light of the affirmative requirement in section 5a(11) that the use of the procedure established under that section "by a customer shall be voluntary." The Commission does not believe that a waiver of this right should be allowed through customer account agreements signed at the time an account is opened. Such agreements may be contracts of adhesion and the customer's waiver may not be an informed decision, since the claim or grievance will not generally arise until some time in the future.

The prior proposed rule also prohibited futures commission merchants, floor brokers, associated persons or other persons registered with the Commission from entering into any agreement or understanding with a customer in which the customer agrees to submit claims or grievances pertaining to any matters or transactions subject to the jurisdiction of the Commission to any settlement procedure prior to the time the claim or grievance arose. The Commission received several comments strongly criticizing this provision. The principal criticisms expressed in those comments were that the Commission had incorrectly relied on an unrelated Supreme Court case, *Wilko v. Swan*, 346 U.S. 427 (1953), an action under the federal securities laws; that the Commission is not empowered to adopt such a requirement under section 5a(11); that the Federal Arbitration Act, 9 U.S.C. Sections 1–14 (1970), precludes such a requirement; and that such a provision would interfere with existing contractual rights. The Commission's action, in the first instance, was not premised on *Wilko v. Swan*. The second of these objections overlooks the fact that the Commission's prior proposed rules were not adopted solely pursuant to section 5a(11). The Commission's announcement stated that those prior rules were being proposed pursuant to section 8a of the Commodity Exchange Act, as amended, 7 U.S.C. 12a, as well as under section 5a(11).

Section 8a of the Commodity Exchange Act, as amended, states in part, that the Commission is authorized to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of the Act or to accomplish any of the purposes of the Act. Section 8a also grants the Commission broad authority over all aspects of customer transactions. As already noted, one factor leading to passage of the CFTC Act was allegations made in court cases and newspaper

[1] The arbitration committee of the contract market may allow personal appearances where the committee deems it necessary. Where a personal appearance is not permitted the arbitration committee would base its decision upon written documents and would accept affidavits and depositions on matters relating to the settlement of the claim or grievance.

articles that the arbitration procedures of contracts markets had been unfairly applied. The Commission believes that the procedural protections contained in the amended proposed rules will prevent the possibility of abuses such as those alleged in the congressional hearings. The voluntary nature of procedures established by contract markets is a central part of this protection. A contract of adhesion, or an uninformed waiver of rights, is not a voluntary agreement, as customers may not be fully cognizant of the effects of an agreement to arbitrate until the claim or grievance arises. The amended proposed rule, therefore, provides that the parties' agreement to submit the claim or grievance to the procedure must have been made after the claim or grievance arose.

In light of the legislative history of the CFTC Act, the Commission believes that policies which may be reflected in the Federal Arbitration Act do not restrict the Commission from regulating agreements that concern transactions on a contract market. Rather, the Commission's authority is sufficiently broad to assure that customers are not precluded from utilizing, or are not forced to utilize, a procedure for settlement of claims or grievances established pursuant to section 5a(11) by agreements with registered persons entered into prior to the time when a claim or grievance arose. Additionally, since the procedure is not compulsory, the parties may choose to present the claim or grievance to any other forum for settlement, such as the American Arbitration Association, any time after the claim or grievance arises.

The Commission is amending the prior proposed rule to make clear that the proposed rule does not apply to claims or grievances which may arise before adoption of the proposed rule. However, existing contracts would be null and void one year after the effective date of the proposed rule, except as to claims and grievances arising before and during the one year period. The amended proposed rule would also expressly prohibit new agreements with such provisions after the effective date of the proposed rule.

The prior proposed rule authorizes a settlement procedure established by a contract market under section 5a(11) to require customers utilizing such a procedure to agree, under applicable state law, submission agreement or otherwise, to be bound by an award rendered in the procedure before such award is rendered. The prior proposed rule has been amended to make clear that all parties submitting to the procedure could be bound by the award. Any award so rendered shall be enforceable in accordance with applicable law.

One commentator urged that awards rendered in procedures permitted by the prior proposed rules be limited to monetary amounts. While the Commission believes that awards normally will be monetary in nature only and that a claim or grievance should be primarily related to monetary damages, there may be limited instances where a non-monetary award is appropriate in connection with a monetary award. For example, there may be a need for tangential relief flowing from a monetary award, such as requiring the transfer or liquidation of an account. However, the Commission believes that any such non-monetary awards should be limited to those matters involving monetary amounts and does not believe that a contract market procedure established pursuant to section 5a(11) should provide for any advisory opinions.

The prior proposed rule also states that the procedure for the settlement of customers' claims and grievances established by a contract market pursuant to section 5a(11) of the Act shall not establish any unreasonably short limitation period foreclosing submission of customers' claims or grievances to the procedure. In proposing the prior rule, the Commission stated that a limitation foreclosing customers' claims or grievances from submission to the procedure unless submitted within 90 days after the claim or grievance arose, is not, in the Commission's view, reasonable. On the other hand, the Commission stated that a limitation period of two years from the time the claim or grievance arose would appear reasonable.

One contract market and other commentators said that a limitation period of two years was too long and urged that the Commission endorse a shorter period of time. However, the Commission's earlier statement does not preclude a limitation period shorter than two years. Rather, the Commission believes that the contract markets should, in the first instance, determine whether a shorter limitation period is appropriate. The Commission will review limitation provisions pursuant to section 5a(12) of the Act and will determine at that time whether shorter limitation periods are justified. Accordingly, the Commission does not believe it is necessary to amend its earlier statement at this time.

One contract market also suggested that the Commission extend the prohibition against unreasonably short limitation periods to counterclaims of members. The Commission believes that such a provision is appropriate and accordingly has amended the prior proposed rule to effect this change.

4. Prior proposed rule § 200.4, which has been redesignated as § 180.4, sets forth the circumstances under which a counterclaim by a member of a contract market or employee thereof may be made against a customer under a settlement procedure established pursuant to section 5a(11). The prior proposed rule permitted a contract market member or employee thereof to make a counterclaim to a customer's claim or grievance where the counterclaim arose out of the same transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of third parties over whom the contract market does not have jurisdiction. Also, such counterclaims may not be for an amount in excess of $15,000. The Commission's announcement of this proposal requested comment on whether the consent of customers should be required for counterclaims that do not arise out of the same transaction or occurrence as the customers' claim or grievance; the prior proposed rule permitted such other counterclaims only if the customer agrees to the submission of the counterclaim after the counterclaim has arisen, and if the counterclaim is less than $15,000.

The Commission received both favorable and critical comments on this proposal. Most of those comments urged that the Commission broaden the prior proposed rule by expanding the concept of compulsory counterclaims or grievances, including allowing counterclaims in excess of $15,000.[3] After carefully reviewing these comments and the requirements of section 5a(11), the Commission has concluded that on balance it should not amend the prior proposed rule at this time. Section 5a(11) was adopted by the Congress as a means to provide customers with a procedure for settling disputes that would not result in a compulsory payment except as agreed upon between the parties. The Commission is concerned that this aspect of section 5a(11) will be impaired if counterclaims are allowed which do not arise out of the transaction or occurrence that is the subject of the customer's claim or grievance and which the customer does not agree to submit to the procedure. This is especially true since the amended proposed rule allows contract markets to provide for mandatory awards after submission of a dispute to the procedure. Thus, under the amended proposed rule a customer is submitting a claim or grievance for adjudication and can expect to be subject to a counterclaim arising from the same transaction or occurrence. The customer need not, however, necessarily expect that an unrelated counterclaim will be made. Allowing other counterclaims without the explicit permission of customers could discourage use of the procedure required by section 5a(11). In addition, section 5a(11) by its terms precludes a procedure whereby any claim in excess of $15,000 is adjudicated, whether by direct claim or by counterclaim; however, such claims or counterclaims could be submitted to a separate contract market settlement procedure established pursuant to proposed rule § 180.5, discussed below.

The Commission was also asked to clarify the types of counterclaims that would be subject to the provisions of the

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[3] For example, one contract market urged that the Commission amend the description of the counterclaims that may be made by a member or employee thereof without the permission of the customer, to permit counterclaims arising out of a "transaction or occurrence on the contract market involving the same account or relationship between the two parties as that upon which the customer's claim or grievance is based."

prior proposed rule. However, the Commission believes that the standards set forth in proposed rule §180.4 are sufficiently clear to determine what counterclaims are covered. More specific standards would not be exhaustive and may create confusion in unusual cases. The Commission, however, construes the term counterclaim to include setoffs and other such claims.

5. Prior proposed rule § 200.5, which has been redesignated as § 180.5, permits a contract market to establish a procedure for settlement of customers' claims and grievances which are not covered by section 5a(11) (*e.g.*, claims for amounts involving more than $15,000). Such a procedure is required by the amended proposed rule to be independent of and may not interfere with or delay the resolution of customers' claims or grievances submitted under the procedure required by section 5a(11). Also, the amended proposed rule states that the procedure must be fair, equitbale, and voluntary.

The prior proposed rule provided that where a customer claim or grievance—which includes counterclaims of a contract market member or employee—exceeded $15,000, the customer must be warned in writing in advance of submission to the procedure that all the procedural safeguards applicable in a court of law may not be available. The prior proposed rule also provided that the contract market must be able to establish that, notwithstanding such formal warning, the customer voluntarily submitted the dispute to theprocedure. Commentators noted, however, that such warning would be difficult to prepare and may not be comprehensible to most customers. Accordingly, the Commission has amended this provision to require only a general warning that all safeguards available in a court of law may not be available in the procedure and an acknowledgement of such warning. The required warning is set forth in the text of the amended proposed rule.

The Commission received comments which suggested that the Commission did not have authority to authorize a contract market to establish procedures for the settlement of claims or grievances in matters not covered by section 5a(11); some of those comments made reference to legislative history of the CFTC Act which indicates that members of Congress were concerned that claims larger than $15,000 could delay or impair settlement of smaller claims. However, the Commission's amended proposed rule does not require the establishment of such a procedure by a contract market—the establishment of any such procedure being entirely within the discretion of the contract market. Furthermore, the Commission's amended proposed rule states that a settlement procedure for claims in excess of $15,000 shall be independent of and shall not interfere with, or delay the resolution of, customers' claims or grievances submitted under the procedure required by section 5a(11). The Commission believes that this requirement will conform to the congressional purpose behind the $15,000 limitation contained in section 5a(11) and will allow contract markets desiring arbitration procedures adequate time to process larger claims—without delaying settlement of scetion 5a(11) claims—to do so.

The Commission also received comments with respect to the prior proposed rule which contended that the Commission should not require separate procedures for claims submitted pursuant to section 5a(11) and other claims. However, the Commission believes that such separate procedures are necessary in order to meet the congressional purpose of preventing claims submitted pursuant to section 5a(11) from being delayed. Accordingly, the Commission has not amended the prior proposed rule in that regard.

6. Prior proposed rule § 200.6, which has been amended and redesigned as § 180.6, permits a contract market to establish a dispute resolution procedure for claims in which a customer is not involved (*e.g.*, the resolution of a dispute involving only futures commission merchants or floor brokers who are members of a contract market). The amended proposed rule provides that this procedure must be independent of and must not interfere with or delay the resolution of customers' claims or grievances submitted under the procedure required by section 5a(11). Also, the procedure must establish procedural safeguards which include, at a minimum, fair and equitable procedures as defined by proposed rules § 180.2 and § 180.3 of this Part, except that the election of panel members contained in proposed rule § 180.2(a) need not be required.

The prior proposed rule originally provided that submission of such claims to such a procedure must be accompanied by a written warning, in advance of the submission, that all formal legal safeguards would be unavailable. The prior proposed rule also stated that after receiving such warning, the parties may voluntarily agree to go forward. Several contract markets objected to this aspect of the prior proposed rule, as they believed that arbitration between members should be mandatory. After considering these comments, the Commission has determined that contract markets should be permitted to establish mandatory arbitration or other settlement procedures for claims between members of the contract market. This will assure that member disputes are quickly and efficiently resolved. The Commission believes prompt and efficient resolution of members' disputes is important for the reason, among others, that this will offer greater assurance of the financial integrity of the clearing corporations of contract markets which act as guarantors of all trades. Accordingly, the prior proposed rule was amended to permit the contract markets to establish a compulsory arbitration or other settlement procedure for claims or grievances which do not involve customers. The previously proposed warning requirement was also deleted. But, as noted above, such compulsory arbitration must always be fair and equitable.

In consideration of the foregoing, the Commission hereby proposes to amend Chapter I of Title 17 of the *Code of Federal Regulations* by adding a new Part 180, as follows:

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

Sec.

AUTHORITY: Secs. 5a(11) and 8a, Commodity Exchange Act, as amended, ("Act") 7 U.S.C. § 7a(11), 12a.

§ 180.1 Definitions.

(a) The term "claim or grievance" as used in this Part shall mean any dispute which arises out of any transaction on or subject to the rules of the particular contract market which is the forum for the settlement procedure, executed by or effected through, or proposed to be, or attempted to be executed by, or effected through, a member of that contract market or employee thereof, which claim or grievance does not require for adjudication the presence of essential witnesses or third parties over whom the contract market does not have jurisdiction and who are not otherwise available.

(b) The terms "customer" and "customers" as used in this Part shall mean any person with a claim or grievance against a member of the particular contract market which is the forum for the settlement procedure, or employee thereof. The terms "customer" and "customers" do not include a futures commission merchant or floor broker, as defined in the Act, unless such persons were acting in a capacity other than that of a floor broker or futures commission merchant in connection with a claim or grievance they seek to submit to the settlement procedure of the contract market.

§ 180.2 Fair and equitable procedure.

Within ninety days of the effective date of this Part, every contract market shall, in conformance with the Act, adopt rules which provide for a fair and equitable procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof which arose on or after April 21, 1975 and was not submitted for arbitration prior to the effective date of this Part. The procedure shall not be applicable to any claim or grievance in excess of $15,000. The rules of the contract market shall include at least the following as *minimum* requirements for a fair and equitable procedure:

(a) The procedure shall be objective and impartial. Customers must be pro-

vided with the choice of a panel or other decision-making body having at least one-third of the persons serving thereon who are not members or associated with any member of the contract market, or employee thereof, and who are not otherwise associated with the contract market. The rules of a contract market may, with proper notice, require the customer to request such a panel or other such decision-making body at the time of submission of the claim or grievance to the procedure, and, if such an election is made, to notify the customer at such time that the panel or other such decision-making body may, in its discretion, assess the losing party with the increased costs, if any, attendant to having such a panel or decision-making body. *Ex parte* contacts by any of the parties with members of any panel shall not be permitted.

(b) The procedure shall grant each of the parties the right, if desired, to be represented by counsel, at his own expense, in any aspect of the procedure.

(c) The procedure shall provide for the prompt settlement of claims or grievances and counterclaims, if any (permitted by § 180.4 of this Part). Unnecessary or unreasonable delay by any of the parties shall not be permitted.

(d) The procedure shall require adequate notice to the parties and opportunity for a prompt hearing as follows:

(1) Each of the parties shall be entitled personally to appear at such hearing, unless the contract market shall have adopted a procedure for the written submission of claims or grievances (and any counterclaims applicable thereto) which are in the aggregate under $2,500. If the claim or grievance (and any counterclaim applicable thereto) is in the aggregate under $2,500, then provision may be made for the claim or grievance of a customer to be resolved without a hearing through a submission on the basis of written documents: *Provided*, Customers are given, and acknowledge receipt of, the following warning: "All procedural safeguards available in other arbitration procedures conducted under the auspices of [insert name of contract market] are not available in this procedure which provides for written submissions only. This procedure is voluntary and you need not submit your claim or grievance to this procedure."

(2) The formal rules of evidence need not apply at the hearing. Nevertheless, the procedures established may not be so informal as to deny due process. Each party must be given adequate opportunity to prepare and present all relevant facts in support of the claims and grievances, defenses, or counterclaims (permitted by § 180.4 of this Part), and to present rebuttal evidence to such claims or grievances, defenses or counterclaims made by the other parties.

(3) Each party shall be entitled to examine other parties and any witnesses appearing at the hearing and to examine all relevant documents presented in connection with a claim or grievance, defense or a counterclaim (permitted by § 180.4 of this Part).

(4) A transcript shall not be required, unless the customer making the claim or grievance so agrees or unless the customer is not assessed with the cost of the transcript.

(e) The procedure shall provide adequate notice to the parties in advance of a submission of a claim or grievance, or counterclaim (permitted by § 180.4 of this Part), of the amount of any fees or costs and the nature of any costs which may be assessed against customers utilizing the procedure. Fees or costs shall be reasonable, particularly in relation to the complexity and amount of the claim or grievance or counterclaim presented. Costs may be apportioned among the parties or may be assessed against the losing party as the panel or other decision-making body in its discretion sees fit.

(f) The procedure shall provide that the settlement award shall be rendered promptly in writing and be final. There shall be no right of appeal to any entity within the contract market which can overturn the settlement procedure decision; the only right of appeal being as provided under applicable law.

(g) The procedure shall not impose any restrictions on the jurisdiction or venue of any court to enforce an award so rendered.

§ 180.3 Voluntary procedure and compulsory payments.

(a) The use by customers of the procedure established by a contract market pursuant to the Act shall be voluntary. In that connection the procedure established shall prohibit any agreement or understanding pursuant to which customers agree to submit claims or grievances for settlement under the procedure so established prior to the time when the claim or grievance arose.

(b) No futures commission merchant, floor broker, associated person or any other person registered with the Commission under the Act shall enter into any agreement or understanding with a customer in which the customer agrees to submit a claim or grievance pertaining to any matter or transaction subject to the jurisdiction of the Commission to any settlement procedure prior to the time such claim or grievance arose: *Provided*, however, That this subparagraph shall not apply to claims or grievances arising out of transactions occurring prior to the date of the adoption of this Part and for a period of one year thereafter if and only if such transactions were subject to agreements actually entered into prior to the date of the adoption of this Part.

(c) The procedure established by a contract market pursuant to section 5a (11) of the Act may require parties utilizing such procedure to agree under applicable state law, submission agreement or otherwise to be bound by an award rendered in the procedure, so long as the agreement to submit the claim or grievance to the procedure was made after the claim or grievance arose. Any award so rendered shall be enforceable in accordance with applicable law.

(d) The procedure established by a contract market pursuant to the Act shall not establish any unreasonably short limitation period foreclosing submission of customers' claims or grievances or counterclaims of contract market members or employees (permitted by § 180.4 of this Part).

§ 180.4 Counterclaims.

A procedure established by a contract market under the Act for the settlement of customers' claims or grievances against a member or employee thereof may permit the submission of a counterclaim in the procedure by a person against whom a claim or grievance is brought. The contract market may permit such a counterclaim where the counterclaim arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties or third parties over whom the contract market does not have jurisdiction. Such a counterclaim may not be for an amount in excess of $15,000. Other counterclaims are permissible only if the customer agrees to the submission after the counterclaim has arisen, and if the aggregate monetary value of the counterclaim is capable of calculation and is not in excess of $15,000.

§ 180.5 Other customer claims and grievances or disputes.

A contract market may establish a procedure for settlement of customers' claims and grievances or disputes against any member or employee thereof, which are not covered by §§ 180.1 through 180.4 of this Part. The procedure shall be independent of, and shall not interfere with or delay the resolution of, customers' claims or grievances submitted for resolution under the procedure of a contract market established pursuant to the Act. The customer must be given the following warning in writing, in advance of the submission of the claim or grievance or dispute to the procedure: "All formal legal safeguards provided in a court of law may not be available in this procedure. This procedure is voluntary and you need not submit to this procedure." Receipt of the warning shall be acknowledged in writing by the customer prior to or at the time of the submission of the claim or grievance or dispute to the procedure. If, after the receipt and acknowledgement of such warning, the customer voluntarily agrees to submit the claim or grievance or dispute to the procedure, the procedure may go forward; but the procedure must be shown to be voluntary, and must be fair and equitable as defined by § 180.2 and § 180.3 of this Part.

§ 180.6 Member-to-member settlement procedures.

A contract market may establish a procedure for compulsory settlement of claims and grievances or disputes which do not involve customers. If adopted, the procedure shall be independent of, and shall not interfere with or delay the reso-

lution of, customers' claims or grievances submitted for resolution under the procedure established pursant to the Act. Such a procedure shall provide procedural safeguards which must include, at a minimum, fair and equitable procedures conforming to those set forth in § 180.2 of this Part, except that the election of panel members contained in § 180.2(a) of this Part need not be required.

* * * * *

Interested persons may participate in this proposed rulemaking proceeding by submitting comments in written form to the Commodity Futures Trading Commission, 1120 Connecticut Avenue NW., Washington, D.C. 20036: Attention: CCU. All comments received on or before December 22, 1975, will be considered before the Commission takes final action on the proposal. Copies of all comments received respecting the proposal will be available for inspection at the Commission's office in Washington, D.C.

Issued in Washington, D.C. on November 13, 1975.

For the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.75-31628 Filed 11-21-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 459-5]

DISTRICT OF COLUMBIA

Proposed Revision to Implementation Plan

On July 17, 1975, the District of Columbia submitted to the Regional Administrator a proposal requesting that Sections 2 and 3 of Bill No. 1-32, which amends Sections 8-2:709 and 8-2:724 of the District's Air Quality Control Regulations, be approved as revisions to the District of Columbia Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards.

As amended, Section 8-2:709 reads that Solid Waste Reduction Center #1 would be operated so as not to discharge into the atmosphere particulate matter in excess of .08 grains per standard dry cubic foot (gr/scf) of exhaust gas (maximum two hour average) corrected to 12% carbon dioxide. Section 8-2:724 is amended to allow for the continued operation of Solid Waste Reduction Center #1 beyond May 31, 1975.

The District of Columbia has justified this request for the following reasons:

1. Operation of S.W.R.C. #1, with particulate emissions of less than 0.08 gr/scf will not preclude the city from attaining and maintaining the National Ambient Air Quality Standard for suspended particulates.

2. There is no evidence that continued operation of S.W.R.C. #1 would endanger the health of the residents of the District of Columbia.

3. Closing S.W.R.C. #1 without a "realistic alternative" could precipitate a crisis, creating health problems and an additional cost burden to the District.

The District of Columbia submitted proof that a public hearing, with adequate pubic notice, was held on April 15, 1975, to consider public comment on the proposed revision, pursuant to 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

This notice is to advise the public of receipt of this proposal, and to request public comment. Only those comments received on or before December 24, 1975 will be considered.

The Administrator's decision to approve or disapprove this proposed revision will be based on whether or not it meets the requirements of Section 110(a)(2)(A)-(H) of the Clean Air Act and the requirements of 40 CFR Part 51.

Copies of these amendments, and the analysis on which they are based, are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Second Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

Bureau of Air and Water Quality Control, Department of Environmental Services, 614 H Street, N.W., Room LL3, Washington, D.C. 20001.

Freedom of Information Center, Room 2922, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

All comments should be submitted to:

Mr. Howard R. Heim, Chief, Air Planning Branch (3AH10), U.S. Environmental Protection Agency, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, ATT: AH004DC

(42 U.S.C. 1857-5)

A. R. MORRIS,
Acting Regional Administrator.

Dated: October 28, 1975.

[FR Doc.75-31688 Filed 11-21-75;8:45 am]

[40 CFR Part 52]

[FRL 460-4]

STAGE II GASOLINE VAPOR RECOVERY

Extension of Comment Period and Correction

Extension of comment period. This notice extends the period for comments to the notice, published October 9, 1975, announcing the Administrator's proposed decision on gasoline station vapor recovery for eight air quality control regions (40 FR 47668).

Requests for an extension of time were submitted by several persons having an interest in commenting. They argued that additional time is needed to analyze recently acquired data and to prepare meaningful comments.

In view of the requests, the Environmental Protection Agency has determined it is in the public interest that the period for comments on the proposed revisions be extended until December 29, 1975.

Technical correction. In the list of subparts and sections to be amended by this proposal the regulation was correctly sited but the listing of the New Jersey portion of the Metropolitan Philadelphia Air Quality Control Region was omission and requests comments on the proposed revision of this paragraph. This will now read:

8. Subpart FF—§ 52.1599 Control of Evaporative losses from the filling of vehicular tanks. (New Jersey portion of the New Jersey-New York-Connecticut Air Quality Control Region and New Jersey portion of the Metropolitan Philadelphia Air Quality Control Region.)

(Sections 110(c) and 301 of the Clean Air Act, 42 U.S.C. 1857c-5(c) and 1857(g))

Dated: November 20, 1975.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

[FR Doc.75-31834 Filed 11-21-75;9:06 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR—Parts 0 and 1]

[Docket No. 20626; FCC 75-1250]

ADJUDICATORY RE-REGULATION

Proposed Rulemaking

1. Notice of proposed rulemaking is hereby given in the above-captioned matter.

2. *Introduction.* This Notice seeks public comments on a set of proposed rulechanges which were formulated during a comprehensive review of the Commission's adjudicatory processes. This review was begun on July 5, 1974, with the creation of the Chairman's Task Force on Adjudicatory Reregulation. The Task Force studied existing procedures at the FCC, the procedures of other agencies, and consulted with FCC staff as well as American Bar Association and Federal Communications Bar Association committees. The impetus for the establishment of the Task Force was concern that some of the Commission's adjudicatory processes unnecessarily delay decisions.

3. The question of "delay" in performance of the Commission's function is not a new concern. Procedural reforms have been the objective of Congressional action,[1] as well as of other high-level re-

[1] Act of July 16, 1952, ch. 879, 66 Stat. 711, 82d Cong. 2d Sess. (Communications Act Amendments, 1952); Act of August 31, 1961, Pub. L. 87-192, 75 Stat. 420. In addition, the Commission, among other agencies, was the target of the *Final Report of the Attorney General's Committee on Administrative Procedure* (1941) out of which grew the Administrative Procedure Act, 5 U.S.C. 551 et seq., which was intended not only to establish procedural due process in the agencies but also to reach problems of delay. The Administrative Conference of the United States is engaged in a continuing study of administrative procedures. The question of delay is a popular subject in the literature on administrative agencies.

ports and plans which were not adopted.[3] Congress and the President are currently concerned with the question of delay in the regulatory agencies.[4] Indeed, the Commission itself has, over the years, adopted new or revised procedures with the purpose of making its procedures more efficient.[5] The Task Force's mandate was—consistent with Commission's on going re-regulation program—to identify possible procedural improvements in the conduct and disposition of hearings.

4. On July 18, 1975, the Task Force on Adjudicatory Reregulation filed its Report to the Chairman setting forth proposals for changes in Commission hearing procedures which might eliminate or reduce delays in adjudicatory proceedings. Based on its exhaustive studies and consultations, the Task Force outlined ten basic areas of possible reforms:

I. Consent procedures.
II. Processing of radio applications.
III. Framing of hearing issues.
IV. Predesignation procedures for mutually exclusive applications.
V. Petitions to enlarge, modify or delete hearing issues.
VI. Written procedures.
VII. Reliance on and support of the Administrative Law Judges.
VIII. Certiorari: discretionary review of initial decisions.
IX. Exceptions to initial decisions.
X. Applications for review.

Within these ten areas the Task Force offered numerous proposals and/or options for Commission actions which might expedite the hearing process.[6]

[3] *E.g.*, Reorganization Plan No. 2 of 1961, H. Doc. No. 147, 87th Cong., 1st Sess. (1961); The Commission on Organization of the Executive Branch of the Government, *Committee on Independent Regulatory Commissions: A Report with Recommendations* [Hoover Report] (1949); and The President's Advisory Council on Executive Organization, *A New Regulatory Framework—Report on Selected Independent Regulatory Agencies* [Ash Report] (1971).

[4] *See, e.g.*, H.R. 8014 [Macdonald Bill], 91st Cong., 1st Sess. (1975); S. 796 [Kennedy-Mathias Bill], 91st Cong., 1st Sess. (1975). Note also President Ford's commitment to reform of regulatory agencies.

[5] *See, e.g.*, 11 FR 177a-393 (1946) [general revision of rules of practice and procedure]; 13 FR 6926 (1948) [delegated authority to staff, created "Motions Commissioner"]; 14 FR 3202 (1949) [revised procedures relating to motions, initial and proposed decisions]; 18 FR 938 (1953) [adopted "points of reliance"] 19 FR 4443 (1954) [eliminated points of reliance, adopted requirement for exchange of written affirmative cases in comparative cases]; 22 FR 10981 (1957) [general revision of rules of practice and procedure]; 26 FR 3799 (1961) [delegation of authority to Chief Hearing Examiner to add issues pertaining to legal or financial qualifications and transmitter site availability]; 27 FR 5671 (1962) [creation of Review Board]; 33 FR 460 (1968) [discovery rules]; and 37 FR 7507 (1972) [created summary decision procedure].

[6] The major concern of the Task Force was delay in the adjudications involving radio applications, especially broadcast applications. However, the Task Force considered two specific proposals—adoption of consent procedures and reliance on Administrative Law Judges to prepare Initial and/or Recommended Decisions in common carrier ratemaking cases—which may prove particularly advantageous in nonbroadcast services. A separate study with respect to common carrier procedures will be initiated in the immediate future.

5. Following submission of the Report by Task Force Director Louise Florencourt, a special committee appointed by Chairman Wiley was formed to evaluate the proposals with the objective of developing specific proposals for Commission consideration. This Notice, and the proposals set forth and discussed herein, represent the product of these combined efforts.

6. First, we shall address the proposed procedural changes, and then examine the rule changes which implement the proposals. A section-by-section guide to proposed rule changes is found below followed by the text of the specific language for the proposed rules.

Synopsis of Proposed Procedural Changes

Section I: Consent Procedures

Provide by rule a mechanism for disposition of hearing issues by consent procedures and delegate to the bureaus the authority to negotiate consent agreements which would bind the Commission in the absence of appeal or review on the Commission's own motion. The consent agreement would take the form of a consent order entered simultaneously with a designation order.

(1) *Consent Order.* The Chief Administrative Law Judge or the Presiding Judge (where one has been assigned) would be delegated authority to enter a consent order at any time subsequent to designation and prior to the start of the hearing.

(2) *Terms of the Order.* The order would not require an admission of past unlawful conduct. It would state that the consenting party had agreed to its entry and had pledged not to engage in similar conduct in the future. The order would state what practices were to be ceased and/or what affirmative action is agreed to be undertaken. The order must encompass all issues specified in the designation order.

(3) *Delegation of Authority.* The Bureaus would be delegated authority to accept the terms of the settlement for the Commission subject to review as noted below. Issuance of the order is contingent on full acceptance of its terms by the Bureau.

(4) *Commission Review.* Review would be limited to an appeal by a (third-party) complainant or on the Commission's own motion. An application for review of the consent order must be filed within 30 days after public notice of the entry of the order is given.

8. At present there are no formal consent procedures available under the Commission's rules. However, the Administrative Procedure Act, section 554 (c), contemplates the use of such a procedure in certain instances and consent orders are used effectively by other agencies in adjudicative contexts, especially by the Federal Trade Commission. We believe that consent procedures might offer an opportunity to avoid formal adjudication and allow the Commission to put greater stress on the resolution of certain kinds of cases by consent rather than through the formal hearing process. Although certain safety and special radio services cases and broadcast cases may be resolved acceptably by consent, these procedures hold forth the most promise in cable and common carrier cases. In cable, for example, consent procedures should serve to reduce the number of show cause proceedings which now progress to formal hearing. In such cases, the Commission would be able to secure results consonant with the public interest without requiring any finding or admission of illegality. These procedures are designed to provide faster resolution of cases in which future compliance with the law is the paramount objective and there is no unresolved question about a licensee's basic fitness to remain a Commission licensee. These procedures are not intended to interfere with (summary) forfeiture proceedings; to affect current summary decisions procedures; or to inhibit informal negotiation subject to section 208 of the Communications Act.

9. We have recommended only the use of post-designation consent procedures for Broadcast proceedings. The concept of pre-designation consent procedures was rejected since we believe that the Commission must weigh the seriousness of the allegations in those cases at the time of designation. In this regard, it must be emphasized that cases involving serious questions of a licensee's fitness to hold a license will be prosecuted through the hearing process and cannot be settled by the Broadcast Bureau before these issues are resolved in a hearing. However, both the Cable Television Bureau and Safety & Special Bureau believe that pre-designation consent procedures may prove of value in their particular regulatory concerns. To this limited extent, we are inviting comments on use of pre-designation consent procedures. Furthermore, while our proposed rules prohibit consent agreements after the start of the hearing, several of the operating Bureaus urged that such procedures remain available during the hearing as well. Accordingly, although we invite comments on whether and to what extent consent procedures should be available during the course of the hearing itself.

Section II: Processing of Broadcast Radio Applications

A. *Data Collection:* Collect data to show at the minimum the number of applications and the percentage acted on within given periods of time as well as the average and mean times for action.

10. Data collection of this type may serve to isolate processing bottlenecks and serve as an indicator of where to concentrate manpower. The Broadcast Bureau will provide at least some of this information by use of the Broadcast Application Processing System (BAPS). The initial stage report on the BAPS system is scheduled for the end of January 1976. It is expected that much of the data desired will be provided by the BAPS system.

11. The Task Force experienced considerable difficulty in obtaining meaningful data on the processing time for broadcast applications. No data was available from which to determine an average or median time for processing or the number and percentage of applications acted on within given periods of time from their filing dates. The monthly "McFarland Report" required by the 1952 Amendment to the Communications Act, ch. 879, 66 Stat. 711 (1952), does not show the number or percentage of applications acted on within four months of receipt (the reporting period used); nor does it include data on the number and percent of applications acted on within a longer period. In short, the Task Force concluded that the "McFarland Reports" are concerned with backlog only and do not provide the Commission (or Congress) with the type of information needed to adequately monitor the application processing function. No rule changes are required to implement this data collection policy.

B. PROCESSING

Adopt a two-letter policy with rigid time limits on responses.

(1) *Resolution of Questions.* The applicant would receive a maximum of two letters from the processing staff. An engineering letter would be issued to resolve engineering questions. A response must be obtained before processing is continued. A second (and final) letter, if necessary, would follow the remainder of the processing.

(2) *Time Constraints.* The Applicant would be allowed 30 days to provide the needed information in response to the staff letter(s). Extensions of time would be allowed only in exceptional cases. This would be followed by a grant if all questions are satisfied. The applicant would be dismissed or designated for hearing in the event the applicant fails to provide the needed information or the information provided is insufficient to satisfy the questions concerning the application.

12. Currently, the Broadcast Bureau processes applications in the sequence in which they are filed. As the application progresses, the processing staff communicates with the applicant upon discovery of any deficiency which would preclude a grant without a hearing. This entails sending a separate letter to the applicant at each stage of processing in which a problem is found (i.e., engineering, financial, accounting, etc.). We believe this "piecemeal" approach is inefficient to the extent that each letter and each response by the applicant interrupts the flow of work on the processing line and entails considerable delay.

13. The proposal described above does not represent a major departure from existing procedures on the processing line. The Commission's staff believes that engineering problems must be resolved initially before further processing. If time is to be saved, this will be accomplished through stricter adherence to the 30-day period for responses to staff inquiries and prompt dismissal or designation in the absence of an adequate response. With respect to proposals that the Commission abandon its policy of assisting applicants to perfect their applications, we believe there is no good reason to depart from our current practice.

SECTION III: FRAMING OF ISSUES

A. *Compliance with the Specificity Requirements of Section 309(e):* The Commission should attempt to draft issues as narrowly as possible in all appropriate areas of commission inquiry.

14. The Task Force thinks that broadly drawn issues in designation orders are impermissible under section 309(e). Moreover, the Task Force believes that amendment of the act removing the specificity requirement for designation orders would be required before the Commission could adopt a notice or fact pleading system. In addition, if the present statutory mandate were carefully observed, the Task Force says there would be fewer problems with respect to the scope of hearing on broadcast applications. We agree. As the Task Force Report recognizes, the Commission has recently begun limiting the scope of financial and Suburban issues when it designates for hearing. This practice would be continued and hopefully expanded to the specification of other issues.

B. *Exclusion of Matters Not Specified:* No changes contemplated.

15. The Task Force perceives that problems have arisen when one of the bureaus, usually the Broadcast Bureau, upon study of the material on which a designation order is based, sees a new issue and seeks to enlarge, whether timely or untimely. The Task Force believes that the Commission should be able to assume that all material bearing on a case has been thoroughly analyzed prior to designation and, as a result, all issues warranting inclusions have in fact been included. Thus, it concluded that every designation order should state that any issues not included are specifically excluded unless enlargement is sought (by the bureau) on the grounds that the matter on which an issue is sought occurred subsequent to designation or could not reasonably have been known prior to designation.

16. However, a compilation of the number and nature of enlargements sought by the Broadcast Bureau's Hearing Division during the past year reveals the following: The Hearing Division filed 18 petitions to enlarge during the period from January 1974 to the latter part of August 1975. (There are in excess of 130 cases on the current broadcast hearing calendar). Issues sought include 7 petitions re misrepresentations; 5 petitions re Rule 1.65; 4 petitions concerning convictions of crimes and violations of the Communications Act; 2 petitions involving other character issues and one each of miscellaneous issues such as section 307(b) technical, site availability, EEO, and air hazard.

17. Thus, we believe that the extent of Bureau enlargement may have been overestimated by the Task Force. Most importantly, we believe that the Commission, through its Bureau, simply cannot ignore serious public interest questions that may arise concerning a licensee or applicant whenever and however these serious questions are brought to light. The empirical evidence indicates enlargement was not sought neither for trivial matters; nor to obtain a cumulative effect. In sum, it appears that enlargement by the Bureau has only been sought in instances where the public interest mandated the Bureau to seek enlargement.

SECTION IV: PRE-DESIGNATION PROCEDURES FOR MUTUALLY-EXCLUSIVE APPLICATIONS

a. Mutually exclusive applicants must perfect their applications within a specified period after the cut-off date for the filing of mutually exclusive applications. b. Mutually exclusive applicants would participate in the framing of issues against each other prior to designation.

(1) *Procedures.* Mutually exclusive applicants, including renewal applicants against which competing applications are filed, would be allowed 30 days after cut-off of the last filed mutually exclusive or competing application to perfect their application, including their comparative positions. Thereafter, the respective positions of the parties would be frozen and each party would be allowed 30 days[4] to file pleadings specifying issues against their opponent(s). The proposed issues must be accompanied by specific allegations of fact and supported by affidavits of persons with personal knowledge of these facts. Opposition pleadings would be due 20 days[5] thereafter. No reply pleadings would be allowed. (Infra, for treatment of petitions to enlarge, modify, or delete issues.)

(2) *Designation.* The processing line attorney would analyze the aforementioned pleadings and, combined with his own analysis, draw up a designation order which would be issued under delegated authority. All issues not included in the designation order would be specifically excluded.

(3) *Review.* Rule 1.115 would be amended to preclude review of a designation order issued under delegated authority. Remaining matters could be raised on exceptions to the Initial Decision.

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[4] and [5] These time periods could be lengthened by appropriate request to 45 days where there are more than two competing applicants.

(4) *Post-designation Amendments.* The parties would be allowed 15 days after designation to file amendments to meet specified issues. No further amendments would be allowed.

(5) *Discovery.* Discovery must be initiated prior to the pre-hearing conference which would be scheduled 30 days after designation.

18. The Commission currently has a cut-off date for filing of mutually-exclusive applications in all three broadcast services. See Report and Order in Docket No. 20205, 53 FCC 2d 1089 (1975). It has a similar cut-off date for mutually exclusive applications in the domestic public land mobile radio services. These procedures would clearly place a greater burden on the processing line staff with attendant manpower implications. However, it is felt that greater emphasis on pre-designation procedures will result in substantial time savings during the hearing process. Moreover, early preparation of their own cases and analysis of their opponent's case should result in greatly increased numbers of buy-outs and mergers. This early analysis of the strengths and weaknesses of cases can be expected to encourage early settlement with accompanying savings in time and money expended during a hearing. Furthermore, it is thought that these modifications in processing procedures are necessary in light of the recommended shift of petitions to enlarge to the Administrative Law Judges. These procedures would not be applicable to the Safety and Special Radio Services.

SECTION V: PETITIONS TO ENLARGE, MODIFY OR DELETE HEARING ISSUES

A. *Authority to Act on Petitions:* Shift responsibility for handling petitions to enlarge, modify or delete from the review board to the Administrative Law Judges.

(1) *Delegate Authority.* Delegate authority to act on petitions to enlarge to ALJs under section 5 of the Communications Act.

(2) *Future Staffing Changes.* The reallocation of responsibility for petitions to enlarge has obvious manpower implications for both the Board and ALJs which will be reviewed at a future date.

(3) *Oral Rulings.* ALJs will be expressly authorized to issue oral rulings on interlocutory motions. Statements of reasons for the ruling will be discretionary and may be issued subsequently as either a separate ruling or part of the Initial Decision. This avoids the problem of ALJs having to delay hearings in order to draft decisions disposing of interlocutory matters.

(4) *All Interlocutory Appeals Go to Commision Under New Standard.* All interlocutory appeals from the ALJs rulings will go directly to the Commission instead of the Board. Interlocutory rulings presently appealable as a matter of right, 1.301(a), would otherwise remain unchanged. These types of rulings include (a) those terminating a party's participation; (b) testimony or production of documents required over claims of privilege; (c) grants of inspection of documents not routinely available for inspection; and (d) dismissal agreements granted which do not terminate the proceeding. No other interlocutory appeals could be filed with the Commission unless the ALJ certifies that the "appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception." Thus, the present standard for ALJ certification of such appeals to the Commission would be tightened up from the existing standard of "an important question of law or policy as to which there is substantial ground for difference of opinion . . ." to "new or novel questions of law or policy." Petitions to enlarge would be treated as existing interlocutory rulings which are not appealable as a matter of right.

(5) *Appeals Not Certified or Appealable as a Right Deferred Until Exceptions.* All interlocutory rulings which are neither appealable as a right nor certified to the Commission under the new standard by the ALJ would be reviewed at the time of exceptions.

(6) *Reduction in Page Limits.* Page limits for appeals from interlocutory rulings would be cut from 10 pages to 5 pages. This page reduction will compel the parties to succinctly state their positions and permit faster staff review. Filing of replies will not be permitted, unless requested by the Commission, by the Chief, Opinions and Review.

19. The purpose of these proposed rule changes is to allow for timely, expeditious resolution of interlocutory hearing matters by the ALJ, who is not only responsible for the conduct of the proceeding, but is familiar with the record. Furthermore, except in those circumstances where prompt Commission review is required, all appeals from the ALJs' rulings would be deferred until the time for filing exceptions to the Initial Decision. The assumption underlying this approach is that many interlocutory matters are either rendered moot by the Initial Decision or can be adequately resolved in the final decision following exceptions. While inconsistencies could develop among rulings by the various ALJs, many of these problems can be resolved by the Review Board or Commission in their final decisions. The risk of cases arising in which remand will be required is, of course, present. However, this risk is far outweighed by the time savings in the vast majority of proceedings where such action is not necessary. While the Review Board would no longer screen the Commission from ultimate disposition of interlocutory appeals, as it does now, the requirement of ALJ certification should prove an adequate substitute with the added advantage of eliminating an intermediate tier of review.

B. REASSESSMENT OF THE EDGEFIELD-SALUDA DOCTRINE PROPOSAL

The Commission will restrict grant of untimely petitions to enlarge issues to matters that are in and of themselves disqualifying.

20. The Task Force believes it would be appropriate for the Commission to consider whether the public interest requires addition of every issue, however untimely, that might affect the outcome of a proceeding. The Task Force suggests that the Commission re-evaluate the *Edgefield-Saluda*[8] doctrine, and provide that untimely filed petitions to enlarge issues would be granted only if the subject matter of the petition raises serious public interest questions and there is a likelihood that the requested issue will be proved. This doctrine has had the effect of permitting parties to be less than diligent in raising these issues in the time provided for in the rules. According to the Task Force, as long as the *Edgefield-Saluda* doctrine takes precedence over the need for expeditious and orderly preparation for and conduct of a hearing, there is no way to avoid delay and prolongation of the hearing by *seriatum* introduction of additional issues during the course of the hearing.

21. As the Task Force recognizes, there are serious questions as to whether the Commission could absolutely bar all untimely petitions that go to an applicant's basic qualifications and thus refuse to consider well-supported allegations against an applicant.[9] Therefore, untimely petitions to enlarge will be limited to matters concerning an applicant's basic qualifications. We believe that modifications to the Commission's pre-designation procedures will afford all parties ample opportunity to address the comparative aspects of the opponent's case.

SECTION VI: WRITTEN PROCEDURES

Written procedures authorized in ALJ's discretion in all cases involving initial broadcast applications. Comments invited on proposal to make written procedures *mandatory* for comparaitve facet of comparative hearings involving applications for new facilities.

22. The Task Force Report advocates the expanded use of written procedures in lieu of oral testimony. Currently, in broadcast cases, written procedures may be used where the parties agree to this procedure in advance of hearing (Rule 1.248(d)). Additionally, as the Task Force points out, Rule 1.321 limits the use of dispositions at hearings in substitution for oral testimony.

23. This recommendation is limited to broadcast cases only.[10] We will amend Rule 1.248(d) to specify that written procedures be used in cases for new facilities or major changes to existing facilities at the discretion of the presiding judge. The present language of the rule encouraging the use of written cases would be retained but the provision requiring consent of the parties to the use of written procedures would be elimi-

[8] *The Edgefield-Saluda Radio Co.*, 5 FCC 2d 148 (1966).

[9] See *TV 9, Inc. v. FCC*, 495 F. 2d 929, 28 RR 2d 1115 (1974).

[10] It is anticipated that written procedures for other types of cases will be developed separately.

nated. Oral testimony would be allowed at the discretion of the presiding judge upon good cause shown and where necessary to compile a full and complete record. In addition, Rule 1.321(d)(3) would be amended to provide for the use of depositions at the hearing where the presiding judge has directed that written procedures be employed.

24. It is felt that the Administrative Law Judge is in the best position to decide whether a particular case lends itself well to a written presentation. However, all parties will clearly have an opportunity to show that oral testimony is necessary to make a full and complete record.

25. The recommendation is restricted to new and major change situations because, as the Task Force proposal indicated, the judge should observe the witnesses where character questions are involved, as is almost always the case in revocation or renewal proceedings. In the alternative, we request comments on a rule that would make written cases mandatory for the comparative part of new facilities cases.

SECTION VII: RELIANCE ON AND SUPPORT OF THE ADMINISTRATIVE LAW JUDGES

A. *Preparation of Ratemaking Cases:* Adopt a rule providing that, generally, ALJs are to prepare recommended decisions in ratemaking cases.

26. The Commission currently makes an ad hoc decision whether the ALJ will prepare an Initial Decision in ratemaking cases, or whether the ALJ will serve as a proctor of evidence with the Common Carrier Bureau staff preparing the Initial or Recommended Decision. The Task Force believes that use of ALJs as only a proctor of evidence results in delays and duplications of efforts since the Common Carrier Bureau staff will require time and effort to familiarize itself with the record compiled by the ALJ.

27. The use of ALJs in ratemaking cases would appear to eliminate duplicative efforts and possible delays caused by the requirement that the Bureau staff familiarize itself with the record. However, some agency flexibility is needed given the extremely complex nature of this regulatory field. In this respect, the recommended rule change would be patterned after a recent ABA resolution that "while there should be some flexibility" in the FCC declining to use ALJs to prepare ratemaking cases, "the presumption of general rule should be to make use of the Administrative Law Judges in this manner."

SECTION VIII: DISCRETIONARY REVIEW OF INITIAL DECISIONS

The Commission should structure its processes to foster issue oriented briefs and advocacy.

28. At present the Commission and Review Board engage in *de novo* review of Initial Decisions. The time from Initial Decision to Board decision averaged 350 days in that year. The Task Force conto Commission decision averaged 382 days in that year. The Task Force considered the possibility of discretionary review of Initial Decisions by the Commission and Board as a means of reducing delays.

29. Rather than effect changes in the form of review, the Commission believes that a restructuring of the pleading rules will produce time savings on review of Initial Decisions, both at the Commission and Review Board levels. Thus, we propose amendment of § 0.276 to encourage issue oriented pleadings and advocacy on appeals from initial decisions. We will require each brief to contain: (a) a subject index of the contents of the brief; (b) a table of citations; (c) a concise statement of the case; (d) a specification of the questions intended to be urged; and, (e) the argument, presenting clearly the points of fact and law relied upon in support of the position taken, with specific page references to the record and the legal or other material relied upon. Similar to our proposal with regard to the filing of exceptions to decisions, we believe this pleading requirement will narrow the issues in dispute and permit prompter action by the Commission and the Review Board. It is hoped that procedural changes recommended in this notice would produce such results without the necessity for legislation which would effect changes in the form of Commission review.

SECTION IX: EXCEPTIONS

a. Consolidate exceptions and brief in support of exceptions into a single document. b. Establish issue-oriented requirements for the contents of that single documents. c. Discontinue present board and opinions and review practice of ruling on each individual exception.

(1) *Contents of Exceptions.* We will require each brief to contain: (a) A subject index of the contents of the brief; (b) a table of citations; (c) a concise statement of the case; (d) a specification of the questions intended to be urged; and, (e) the argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and the legal or other material relied upon.

(2) *Length of Pleading.* The consolidated brief in support of exceptions and exceptions will be limited to 50 pages in length (this is the present limit for briefs in support of exceptions, while no limit is presently placed upon exceptions); replies would be limited to 25 pages. By compressing factual and legal arguments of parties to a single 50-page document, it is hoped that pleadings will become issue-oriented in a manner similar to briefs filed in the court of appeals.

(3) *Rulings on Exceptions.* Exceptions which are of decisional significance will be discussed and dealt with in the body of the decision. Irrelevant exceptions of non-decisional significance will be denied in a "boiler plate" section of the decision's ordering clause. There will no longer be an appendix to Commission or Board decisions disposing of exceptions.

(4) *These Rule Changes Apply to Exceptions Filed With Both the Review Board and the Commission.*

30. At present the Commission's rules provide that parties appealing from an Initial Decision shall file a non-argumentative statement of exceptions to any errors in the Initial Decision accompanied by a brief in support of exceptions which contains argumentative material pertaining to the alleged factual or legal errors by the ALJ. There is no limit to the number or length of exceptions. The Review Board and Opinions and Review presently rule on each individual exception in an Appendix to the Board or Commission decisions.

31. As a result of the existing rules, parties frequently resubmit as their exceptions, in revised form, their original proposed findings and conclusions. As virtually any finding or conclusion provides a potential basis for exception, there can be rather lengthy pleadings, requiring tremendous amounts of staff time to review—especially since every exception is ruled upon. In the *Chronicle Broadcasting* case, for example, the party petitioning to deny KRON's license renewal application filed over 600 exceptions, while the licensee filed over 100 exceptions to the Initial Decision. Reviewing such pleadings results in significant delays in Board and Commission decision-making.

32. These rule changes are proposed to require parties to make issue-oriented advocacy of their cases before the Commission and Board, rather than the blunderbuss pleadings encouraged by the present system. The decision not to rule on each individual exception, while simple to implement, will result in significant savings in staff time because of the inordinate familiarity with the record required under existing practices.

SECTION X: APPLICATIONS FOR REVIEW

A certiorari procedure will be implemented for applications for review of final Board decisions.

33. Currently, parties seeking review of a final decision may file a 25-page application for review which can address virtually any alleged error by the Board. As a result of this *de novo* review of the Board's *de novo* review of an Initial Decision, the time span from Board decision to Commission action on the application for review averaged 248 days in 1973, although in 26 of 31 cases review was denied without a statement of reasons. The Task Force believed that the Commission should reduce the scope of review of Board decisions, and require a *prima facie* case for reversal of the Board before full blown review of the Board decision. We agree the Review Board serves no logical function in the adjudicatory proc-

ess hierarchy if the Commission engages in *de novo* review of Board decisions. Accordingly, a discretionary review system analogous to a certiorari system is proposed which contemplates an initial application for review limited to 10 pages in length (oppositions of 10 pages, replies of 5 pages, but only if requested by the Commission) setting forth the following grounds for granting review: (1) The Board's findings are ont supported by substantial evidence; (2) the Board's decision involves prejudicial errors of law; (3) the Board's decision is arbitrary or capricious; (4) the Board's decision conflicts with Commission policy; and, (5) the Board's decision involves novel or important issues of law. These are essentially the types of showing necessary to secure judicial reversal of a Commission decision. Such standards would eliminate the present provision allowing applications for review based on "an erroneous finding as to an important or material question of fact." (This latter standard would open the door to Commission *de novo* review following Review Board *de novo* review of an Initial Decision.) Under our proposed new standard, if the applicant fails to make the requisite showing for full blown review, the application will be summarily denied. If review is granted, a full briefing with 25 pages for applications and oppositions would be permitted. Filing of replies will not be permitted, unless requested by the Commission, by the Chief, Opinions and Review.

34. In conclusion, we believe this package of proposed rule changes represents an important step in the process of making effective reforms in our adjudicatory procedures, and one that will produce a significant reduction in delays, while insuring due process to parties and the public. The number of proposals, and the consequent number of rule changes necessitated by them, is large. Inevitably, there will be different opinions and reactions to these proposals, just as there has not been unanimity as to the causes of delay. We are hopeful that those commenting on the proposed rule changes will discuss the feasibility of the proposed changes, their expected impact on workload, as well as ambiguities in the rules which may themselves produce confusion, uncertainty and . . . delay. Contribution by the public and the bar associations will be carefully considered prior to final action in this matter.

35. Authority for the adoption of the amendments proposed (and set forth below) is contained in sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended.

36. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before December 22, 1975. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

37. In accordance with the provisions of § 1.419 of the rules, an original and 11 copies of all documents, reply comments, pleadings, or briefs, and other documents shall be furnished the Commission.

38. Comments will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Rooms at its headquarters in Washington, D.C.

Adopted: November 11, 1975.

Released: November 14, 1975.

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

SUMMARY OF PROPOSED CHANGES

I. Consent procedures.

Sections amended	*Effect of amendment*
0.71(l)	Delegation of authority to Chief, Broadcast Bureau, to negotiate Consent Orders.
0.288(w)	Delegation to Chief, CATV Bureau, to negotiate Consent Orders.
0.292(c)	Delegation of authority to Chief, Common Carrier Bureau, to negotiate Consent Orders.
0.331(d)	Delegation to Chief, Safety and Special Radio Services Bureau, to negotiate Consent Orders.
1.93–1.95	Consent Order Procedures: Review of Consent Orders.
1.248(c)(7), 1.702	Cross-reference to Consent Order procedures in prehearing conference and Common Carrier Bureau enforcement procedures.

II. *Processing of radio applications.* No rule changes necessary. A statement of Commission instructions to staff and a Public Notice of the issuance of such instructions should suffice.

III. *Framing of issues.*

Sections amended	*Effect of amendment*
1.248(a), 1.248(b)(1)	Sets initial discussion of issues for prehearing conference.

IV. *Presdesignation procedures for mutually exclusive applications.*

Sections amended	*Effect of amendment*
1.223 (b), (c), (d)	Conforms the petition to intervene requirements to meet the pleading of predesignation issues; limits introduction of petitions to enlarge, etc. through the intervention route.
1.522	Amends the requirements for amending mutually exclusive applications—setting forth predesignation and post-designation amendment rules.
1.583–1.584	Post-application, predesignation pleadings. Moves the Informal Objections Section (§ 1.587) to new § 1.583; new § 1.584 sets forth presdesignation pleading rules to specify issues for hearing.

V. *Petitions to enlarge, modify or delete hearing issues.*

Sections amended	*Effect of amendment*
0.161, 0.201(a)(2), 0.341(a), 0.341(b), 0.361(a), 0.365(b), 0.365(c), 1.115(c)(1).	Delegates to the ALJs authority to rule on interlocutory motions, including motions to enlarge, modify or delete hearing issues; specifies that this authority is delegated under section 5(d); removes original jurisdiction from Review Board for interlocutory rulings on such motions; provides direct Commission review only if the issue is certified to it by the ALJ under the new or novel issue standard.
1.229, 1.243(i), 1.291	Codifies revision of *Edgefield-Saluda* doctrine. Modified general provisions as to interlocutory motions to conform to the delegation of authority to ALJs and withdrawal of authority from Review Board.
1.298(b), 1.301(b), 1.301(c).	Permits oral rulings by ALJs on interlocutory matters. Conforms applications for review procedures with respect to interlocutory rulings of the ALJ.

VI. *Written procedures.*

Sections amended	*Effect of amendment*
1.248(d)	Gives presiding ALJ discretion to require written submissions in broadcast cases.
1.321(c)	Provide use of written depositions in lieu of oral testimony where the presiding ALJ has required it § 1.248(d).

VII. *Reliance on and support of ALJ's in preparation of decisions in ratemaking cases.*

Sections amended	*Effect of amendment*
1.267, 1.274(a)–(d)	Reflects policy to place greater reliance on ALJs for preparation of Recommended and Initial Decisions.

VIII. *Discretionary review of initial decisions.*

Sections amended	*Effect of amendment*
1.276(c)	Sets issue-oriented form for pleadings on review.

SUMMARY OF PROPOSED CHANGES—Continued

IX. *Exceptions to decisions, interlocutory rulings.*

Sections amended	Effect of amendment
1.276, 1.277, 1.282(b)(2)	Amends requirements for filing of exceptions; form of exceptions, etc.

X. *Applications for review.*

Sections amended	Effect of amendment
0.371(h)	Delegates authority to Chief, Opinion and Review, to request further pleadings as appropriate.
1.104(a), 1.115(b), 1.115(f)	Limits applications for review of interlocutory rulings; conforms the new or novel issue standard set forth in ALJ delegation authority.

XI. *Miscellaneous.*

Sections amended	Effect of amendment
1.46	Clarifies Commission policy re extensions of time for filing pleadings.
1.48	Clarifies Commission policy re requests for permission to file in excess of prescribed page limits.

It is proposed to amend parts 0 and 1 as follows:

I. CONSENT ORDERS

1. In § 0.71, paragraph (l) is added to read as follows:

§ 0.71 Functions of the Bureau.

* * * * *

(l) The Chief, Broadcast Bureau, may after designation for hearing, negotiate Consent Orders with parties concerning future compliance with statutes and regulations with respect to any matter which does not affect the party's statutory qualifications to hold a license.

2. In § 0.288, paragraph (w) is added to read as follows:

§ 0.288 Authority delegated.

* * * * *

(w) To negotiate Consent Orders with parties after designation for hearing concerning compliance with statutes and regulations with respect to any matter which does not affect the party's qualifications to hold a license or certificate of compliance.

3. In § 0.292, paragraph (c) is added to read as follows:

§ 0.292 Additional authority concerning radio matters.

* * * * *

(c) The Chief, Common Carrier Bureau, may after designation for hearing, negotiate Consent Orders with parties concerning future compliance with statutes and regulations with respect to any matter which does not affect the party's statutory qualifications to hold a license.

4. In § 0.331, paragraph (d) is added to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) The Chief, Safety and Special Radio Services Bureau, may after designation for hearing, negotiate Consent Orders with parties concerning future compliance with statutes and regulations with respect to any matter which does not affect the party's statutory qualifications to hold a license.

5. Sections 1.93–1.95 are added to read as follows:

§ 1.93 Consent orders.

(a) *Definitions.* As used in this subpart, a "consent order" is a formal decree, accepting an agreement between a party and the operating Bureau with regard to the party's future compliance with statutes, rules and policies of the Commission for which the party has been designated for hearing concerning such alleged violations, which is entered by the operating Bureau with the Chief Administrative Law Judge or the presiding Administrative Law Judge, if one has been assigned. A consent order shall be entered subsequent in time and in conjunction with the hearing designation order alleging specifically the violations of statute, rules or policies for which such designation order was issued.

(b) Where the interests of timely enforcement or compliance, the nature of the proceeding, and the public interest permit, the Commission, by its operating Bureaus, may negotiate a consent order with a party to secure future compliance with the law in exchange for prompt disposition of a matter subject to administrative adjudicative proceedings. Consent orders may not be negotiated with respect to matters which involve a party's basic statutory qualifications to hold a license. (47 U.S.C. §§ 308, 309). Procedure for adoption of and review of consent agreements is set forth in §§ 1.94–1.95 of this chapter. Violation of a consent order may subject the party to any sanctions agreed upon in the consent order, pursuant to § 1.95.

§ 1.94 Consent order procedures.

(a) To initiate a consent order agreement, the operating Bureau must have instituted a formal proceeding against a party by designating the party for hearing on its application. The request to initiate negotiations leading to a consent order agreement may be initiated by the operating Bureau or by the party which has been designated for hearing. The consent procedure will remain available to the operating Bureau after designation and up to the start of the hearing. However, the party which has been designated for hearing must be able to state whether or not it will agree to negotiations for a consent order at the time of the initial pre-hearing conference. If the party declines to negotiate for a consent agreement, the hearing order shall be prosecuted forthwith. If the party agrees to negotiate such agreement, the party will be offered an opportunity to reach an appropriate agreement for consideration by the operating Bureau and the presiding Administrative Law Judge, and may negotiate with the Bureau for the purpose of reaching an agreement with respect to matters raised in the designation order. The party may appear personally or he may be represented by counsel. (See also § 1.248(c)(7).)

(b) *Agreement.* Every agreement shall contain, in addition to an appropriate order, an admission of all jurisdictional facts and express waivers of further procedural steps of the requirement that the Commission's consent order contain a statement of findings of fact and conclusions of law, and of all rights to seek judicial review or otherwise to challenge or contest the validity of the order. The agreement shall also contain provisions that the designation may be used in construing the terms of the consent order; that the agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the operating Bureau, and the time for review has lapsed; and that the Commission may withdraw its acceptance of the agreement if, upon review on the merits, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate. Finally, the order must encompass all issues specified in the designation order. In addition, the agreement may contain a settlement that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the complaint. (See 18 U.S.C. 6002.)

(c) This rule will not preclude the settlement of the case by summary adjudicative procedure or by informal settlement pursuant to 47 U.S.C. § 208.

(d) Notices of consent orders shall be included in the public records of the Commission and shall be the subject of releases advising the public of the opportunity to seek review through the Commission's Office of Public Information. All negotiations and communications under § 1.94 will constitute a part of the confidential records of the Commission, except to the extent otherwise specifically provided therein.

§ 1.94 Review of consent orders.

Applications for review of consent orders by the Commission may be sought by any person or party, except the consenting party, in the same manner as applications for review of other actions taken pursuant to delegated authority under § 1.115.

§ 1.95 Violation of consent orders.

Violation of a consent order shall subject the consenting party to any administrative or judicial sanction, or the issuance of a cease and desist order without hearing. (See §§ 1.80, 1.92.) The burden of proof of violation of a consent order shall be upon the Commission.

6. In § 1.248, paragraph (c)(7) is added as follows:

§ 1.248 Prehearing conferences; hearing conferences.

* * * * *

(c) * * *

(7) The party designated for hearing should be prepared to state at the time of the initial prehearing conference whether it intends to negotiate a consent order agreement with the operating Bureau with respect to the matters designated for hearing. (See also §§ 1.93–1.94.)

* * * * *

7. Section 1.702 is added as follows:

§ 1.702 Consent orders.

The procedure for obtaining a Consent Order in §§ 1.93–1.96 shall be available to the Common Carrier Bureau, in addition to the complaint and hearing procedures set forth in this chapter.

II. Processing of Radio Applications

No rule changes necessary.

III Framing of Issues

8. In § 1.248, paragraphs (a) and (b)(1) are revised as follows:

§ 1.248 Prehearing conferences; hearing conferences.

(a) The Commission, on its own initiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to a hearing, or to submit suggestions in writing, for the purpose of considering, among other things, the matters set forth in paragraph (c) of this section. The initial prehearing conference shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date.

(b)(1) The presiding officer (or the Commission or a panel of commissioners in a case over which it presides), on his own intiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to or during the course of a hearing, or to submit suggestions in writing, for the purpose of considering any of the matters set forth in paragraph (c) of this section. The initial prehearing conference shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date.

* * * * *

IV. Predesignation Procedures for Mutually Exclusive Applications

9. In § 1.223, paragraphs (b) and (d) are revised as follows:

§ 1.223 Petitions to intervene.

* * * * *

(b) Any other person desiring to participate as a party in any hearing may file a petition for leave to intervene not later than 30 days after the publication in the Federal Register of the hearing issues or any substantial amendment thereto. The petition must set forth the interest of petitioner in the proceedings, must show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must be accompanied by the affidavit of a person with knowledge as to the facts set forth in the petition. The presiding officer, in his discretion, may grant or deny such petition or may permit intervention by such persons limited to particular stage of the proceeding.

* * * * *

(d) Any person desiring to file a petition for leave to intervene later than 30 days after the publication in the Federal Register of the hearing issues or any substantial amendment thereto shall set forth the interest of petitioner in the proceedings, show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must set forth reasons why it was not possible to file a petition within the time prescribed by paragraphs (a) and (b) of this section. Such petition shall be accompanied by the affidavit of a person with knowledge of the facts set forth in the petition, and where petitioner claims that a grant of the application would cause objectionable interference under applicable provisions of this chapter, the petition to intervene must be accompanied by the affidavit of a qualified radio engineer showing the extent of such alleged interference according to the methods prescribed in paragraph (a) of the section. If, in the opinion of the presiding officer, good cause is shown for the delay in filing, he may in his discretion grant such petition or may permit intervention limited to particular issues or to a particular stage of the proceeding.

* * * * *

10. In § 1.522 paragraphs (a) and (b) are revised and (c) is removed:

§ 1.522 Amendment of applications.

(a) *Predesignation amendments.* (1) Subject to the provisions of §§ 1.525, 1.571, 1.573, and 1.580 any application, except mutually exclusive applications or applications for renewal of license of a broadcast station against which a competing application has been filed, may be amended as a matter of right prior to the adoption date of an order designating such application for hearing, merely by filing the appropriate number of copies of the amendments in question duly executed in accordance with § 1.513. If a petition to deny (or to designate for hearing) has been filed, the amendment shall be served on the petitioner.

(2) Mutually exclusive applications or applications for renewal of license of a broadcast station against which a competing application has been filed may be amended as a matter of right up to 30 days after the "cut-off" date for the filing of the last-filed mutually-exclusive or competing applications (see §§ 1.525, 1.571(j), 1.572(b), 1.573(b) and 1.580) in order to perfect such applications with respect to any matter, including their comparative positions. Thereafter, no amendment will be permitted with respect to issues that affect comparative standing.

(b) *Postdesignation amendments.* Subsequent to designation for hearing, any application may be amended to meet non-comparative issues specified in the designation order within 15 days after the issuance of the designation order. Requests to amend the engineering proposal in standard broadcast applications (other than to make changes with respect to the type of equipment specified) will be accepted only for good cause shown. Good cause will be considered to have been shown only if, in addition to the usual good cause considerations, it is demonstrated that (1) the amendment is necessitated by events which the applicant could not reasonably have foreseen (e.g., notification of a new foreign station or loss of transmitter site by condemnation); (2) the amendment could not reasonably have been made prior to designation for hearing; and (3) the amendment does not require an enlargement of issues or the addition of new parties to the proceeding.

11. Section 1.587 is redesignated as § 1.583 and § 1.584 is added as set forth below:

§ 1.583 Procedure for filing informal objections.

Before Commission action on any application for an instrument of authorization, other than a license pursuant to a construction permit, any person may file informal objections to the grant. Such objections may be submitted in letter form (without extra copies) and shall be signed by the objector. The limitation on pleadings and time for filing pleadings provided for in § 1.45 shall not be applicable to any objections duly filed under this section.

PREDESIGNATION PROCEDURES

§ 1.584 Pleadings to specify issues.

Subject to the provisions of §§ 1.522 (a), 1.578, 1.580, mutually exclusive applicants, and an applicant for renewal of a broadcast station license against which a competing application has been filed, may submit pleadings to specify issues for hearing against other mutually exclusive or competing applications. Such pleadings shall be filed within 30 days after perfecting amendments to the applications are due (see § 1.522(b)). Pleadings shall contain specific allegations of fact and shall be supported by affidavit of a person or persons with personal knowledge thereof. Pleadings in opposition to such pleadings to specify issues may be filed within 20 days after the initial predesignation pleadings are due. If there are more than two competing or mutually exclusive applicants,

the period for filing pleadings specifying issues shall be 45 days, and the period for filing oppositions thereto shall be 30 days. No reply pleadings may be filed.

V. PETITIONS TO ENLARGE, MODIFY OR DELETE HEARING ISSUES

12. In § 0.161 is revised to read as follows:

REVIEW BOARD

§ 0.161 Functions of the Board.

The Review Board is a permanent body with continuing functions, composed of three or more Commission employees designated by the Commission. The Board reviews initial decisions and other hearing matters referred to it by the Commission, and performs such additional duties not inconsistent with these functions as may be assigned to it by the Commission.

13. In § 0.201, paragraph (a)(2) and the Note are revised to read as follows:

§ 0.201 General provisions.

(a) * * *

(2) *Delegations to rule on interlocutory matters in hearing proceedings.* Delegations in this category are made to the presiding Administrative Law Judge and the Chief Administrative Law Judge. See §§ 0.341, 0.351.

NOTE: Interlocutory matters are delegated to the Administrative Law Judge under section 5(d) of the Communications Act, in addition to those matters inherent in the authority vested in Administrative Law Judges under section 7 of the Administrative Procedure Act and section 409 of the Communications.

14. In § 0.341, paragraphs (b) and (c) are redesignated (c) and (d) respectively, paragraph (a) is revised, and new paragraph (b) is added to read as follows:

ADMINISTRATIVE LAW JUDGES

§ 0.341 General authority.

(a) After an Administrative Law Judge has been designated to preside at a hearing and until he has issued an initial decision or certified the record to the Commission for decision, or the proceeding has been transferred to another Administrative Law Judge, all motions, petitions and other pleadings shall be acted upon by such Administrative Law Judge, except the following: (1) Those which are to be acted upon by the Commission. See § 1.291(a)(1) of this chapter. (2) Those which are to be acted upon by the Chief Administrative Law Judge under § 0.351.

(b) *Delegated authority.* (1) The presiding Administrative Law Judge shall act upon all petitions to enlarge, modify, or delete issues. See § 1.229. He shall certify to the Commission action on interlocutory applications for review of such rulings only if the application presents a new or novel question of law or policy and the ruling is such that error would be likely to require remand should the application be deferred and raised as an exception to the initial decision. (2) The Administrative Law Judge may be authorized by the Commission to prepare initial or recommended decisions in ratemaking cases set forth hearing under the provisions of 47 USC 205. See § 1.267 of this chapter.

15. In § 0.361, paragraph (a) is revised to read as follows:

REVIEW BOARD

§ 0.361 General authority.

(a) The Review Board is a permanent body with continuing functions. The main function of the Board is to review matters referred to it by the Commission in hearing proceedings. The hearing matters referred to the Board on a regular basis are listed in § 0.365. Other hearing matters may be referred to the Board for review on a case by case basis, either at the time of designation for hearing or upon consideration of exceptions. The Commission may, from time to time, assign the Board additional duties not inconsistent with these functions.

* * * * *

§ 0.365 [Amended]

16. In § 0.365, paragraphs (b) and (c) are deleted.

* * * * *

16. The center heading preceding § 1.243 is amended to read as follows:

PRESIDING OFFICER (1.241 ET SEQ.)

AUTHORITY: §§ 1.241, 1.243, and 1.245 issued under 5 USC 556 and 47 USC 155(d).

* * * * *

17. In § 1.243, paragraph (i) is revised to read as follows:

§ 1.243 Authority of presiding officer.

* * * * *

(i) Rule on motions to enlarge, modify, or delete issues, dispose of procedural requests or similar matters, as provided for in § 0.341 of this chapter.

* * * * *

18. In § 1.115, paragraph (e)(1) is revised to read as follows and the note following paragraph (e)(2) is removed:

§ 1.115 Application for review of action taken pursuant to delegated authority.

* * * * *

(e)(1) Rulings by the presiding Administrative Law Judge or the Chief Administrative Law Judge on interlocutory matters which are neither appealable as a matter of right nor are certified to the Commission by the presiding Administrative Law Judge under the provisions of sections 0.341(d) and 1.301(b) will be reviewed only upon the filing of exceptions to the initial decision. Applications for review of the Chief, Administrative Law Judge or the presiding Administrative Law Judge shall be filed within 5 days after the order is released or the ruling is made.

* * * * *

19. In § 1.229, paragraph (c) is redesignated (d) and a new (c) is added to read as follows:

§ 1.229 Motions to enlarge, change, or delete issues.

* * * * *

(c) A motion to enlarge, modify, or delete issues filed pursuant to paragraph (b) must be limited to issues related to the basic statutory qualifications of the applicant. The motion must also demonstrate that the allegations are likely to be proved.

* * * * *

20. In § 1.291, paragraphs (a)(2) is revised and (c)(4) is added to read as follows:

INTERLOCUTORY ACTIONS IN HEARING PROCEDURES

§ 1.291 General provisions.

(a) * * *

(2) The presiding Administrative Law Judge acts on petitions to enlarge, modify, or delete issues in cases of adjudication, in addition to all other interlocutory matters in hearing proceedings. See §§ 0.218 and 0.341 of this chapter.

* * * * *

(c) * * *

(4) The Review Board acts on those interlocutory matters listed in §§ 0.351-0.365 of this chapter.

* * * * *

21. In § 1.298, paragraphs (b) is revised and (c) is removed:

§ 1.298 Rulings; time for action.

* * * * *

(b) Interlocutory rulings may be made orally at hearing, in the discretion of the presiding Administrative Law Judge. Issuance of written statement of reasons for the oral ruling shall also be in the discretion of the presiding judge, whether such statement is issued separately or in the text of the initial decision in the matter.

22. In § 1.301, paragraphs (b) and (c)(1), (5), (6), and (7) are revised to read as follows:

APPEAL AND RECONSIDERATION OF PRESIDING OFFICER'S RULING

§ 1.301 Appeal from presiding officer's interlocutory ruling; effective date of ruling.

(b) *Other interlocutory rulings.* Except as provided in paragraph (a) of this section, appeals from interlocutory rulings of the presiding officer shall be filed only if allowed by the presiding officer. Any party desiring to file an appeal shall first file a request for permission to file appeal. The request shall be filed within 5 days after the order is released or (if no written order) after the ruling is made. Pleadings responsive to the request shall be filed only if they are requested by the presiding officer. The request shall contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception. The presiding officer shall determine whether the showing is such as to justify an interlocutory appeal and, in accordance with his determination, will

either allow or disallow the appeal or modify the ruling. If the presiding officer allows or disallows the appeal, his ruling is final: Provided, however, that the Review Board or the Commission may, on its own motion, dismiss an appeal allowed by the presiding officer on the ground that objection to the ruling should be deferred and raised as an exception. In the discretion of the presiding officer, the request for permission to file appeal may be made orally, on the record of the proceeding, and if made orally, may be disposed of orally.

(1) If an appeal is not allowed, or is dismissed by the Commission, or if permission to file appeal is not requested, objection to the ruling may be raised in exceptions to the initial decision on review.

(2) If an appeal is allowed and is considered on its merits, the disposition on appeal is final. Objection to the ruling or to the action on appeal may not be raised on review of the initial decision.

(3) If the presiding officer modified the ruling, any party adversely affected by the modified ruling may file a request for permission to file appeal, pursuant to the provisions of this paragraph.

(c) *Procedures, effective date.* (1) Unless the presiding officer orders otherwise, rulings made by him shall be effective when the order is released or (if no written order) when the ruling is made. The Commission may stay the effect of any ruling which comes before it for consideration on appeal.

* * * * *

(5) The appeal shall not exceed 5 double-spaced typewritten pages.

(6) If a commissioner or panel of commissioners is presiding at the hearing, the appeal will be acted on by the Commission. The Commission also acts on appeals fror : the rulings of an Administrative L..w Judge in proceedings which involve rulemaking matters exclusively.

(7) Oppositions and replies shall be served and filed in the same manner as appeals and shall be served on appellant if he is not a party to the proceeding. Oppositions shall be filed within 5 days after the appeal is filed. Replies shall not be permitted, unless the Commission specifically requests them. Oppositions shall not exceed 5 double-spaced typewritten pages. Replies shall not exceed 5 double-spaced typewritten pages.

VI. WRITTEN PROCEDURES

23. In § 1.248, paragraph (d) is revised to read as follows:

§ 1.248 Prehearing conferences; hearing conferences.

* * * * *

(d) At the prehearing conferences prescribed by this section, the parties in any new facilities or major change proceeding shall be prepared to discuss the advisability of reducing any or all phases of their affirmative direct cases to written form. Where it appears that it will contribute significantly to the disposition of the proceedings for the parties to submit any portion of their cases in writing, the presiding Administrative Law Judge may require them to do so. [Where adoption of the written submission procedure may affect questions such as the admissibility of evidence (i.e., whether material ruled out as incompetent may be restored by competent oral testimony), agreement of the parties is required.]

* * * * *

24. In § 1.321, paragraph (d) (3) is revised as follows:

§ 1.321 Use of depositions at the hearing.

* * * * *

(d) * * *

(3) The adoption of any witness, whether or not a party, may be used in any broadcast new facilities or major change proceeding if the presiding Administrative Law Judge has required presentation in written form, as permitted by § 1.248(d) of this chapter. In all other cases, the deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds: (i) that the witness is dead; or (ii) that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the disposition; or (iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (iv) upon application and notice, that such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the disposition to be used.

* * * * *

VII. RELIANCE ON AND SUPPORT OF THE ADMINISTRATIVE LAW JUDGE

25. In § 1.267, paragraph (a) is revised to read as follows:

§ 1.267 Initial and recommended decisions.

(a) Except as provided in §§ 1.251 and 1.274, or where the proceeding is terminated on motion (see § 1.302), unless the Commission shall order otherwise, the presiding Administrative Law Judge shall prepare an initial (or recommended) decision, which shall be transmitted to the Secretary of the Commission. In the case of ratemaking proceedings subject to section 205 of the Act, the presumption shall be that the presiding Administrative Law Judge shall prepare in Initial or Recommended Decision unless the Commission orders otherwise. The Secretary will make the decision public immediately and file it in the docket of the case.

* * * * *

26. In § 1.274, paragraph (c) (2) is revised to read as follows:

§ 1.274 Certification of the record to the Commission for initial or final decision.

* * * * *

(c) * * *

(2) Except in the case of decisions prescribed by section 205 of the Act, in which the presumption is that the presiding Administration Law Judge shall prepare an initial decision unless the Commission shall order otherwise, the officer continuing the hearing may prepare an initial decision only if all the parties expressly consent.

VIII. DISCRETIONARY REVIEW OF INITIAL DECISIONS

27. In § 1.276, paragraph (c) (6) is added to read as follows:

§ 1.276 Appeal and review of initial decision.

* * * * *

(c) * * *

(6) If the filing of brief is required, purusant to sub-paragraph (2), the form of the brief shall contain: (i) a subject index of the contents of the brief; (ii) a table of citations; (iii) a concise statement of the case; (iv) a statement of specific questions of law and the argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific reference to the record and all legal or other material.

* * * * *

IX. EXCEPTIONS

28. In § 1.276, paragraph (a) is revised to read as follows:

§ 1.276 Appeal and review of initial decision.

(a) Within 30 days after the date on which public release of the full text of an initial decision is made, or such other time as the Commission may specify, any of the parties may appeal to the Commission by filing exceptions to the initial decision; and such decision shall not become effective and shall then be reviewed by the Commission, whether or not such exceptions may thereafter be withdrawn. It is the Commission's policy that extensions of time for filing exceptions shall not be routinely granted. However, the time for filing such exceptions may be extended for good cause shown.

* * * * *

29. In § 1.277, paragraphs (a), (b) and (c) are revised to read as follows:

§ 1.277 Exceptions; oral arguments.

(a) The pleading of exceptions to an initial decision, including rulings upon motions or objections, shall point out with particularity alleged material errors in the decision or ruling and shall contain specific references to the page or pages of the transcript of hearing, exhibit, or order if any on which the exception is based. Any objection not saved by exception filed pursuant to this section is waived. Within the period of time allowed in § 1.276(a) for the filing of exceptions, any party may file a statement in support of an initial decision, in whole or in part, which shall be similar in form to a statement of exceptions.

(b) Exceptions should be consolidated with arguments in a brief on the exceptions. The form of the pleadings should contain: (1) A subject index of the contents of the brief; (2) a table of citations; (3) a concise statement of the

case; (4) a statement of specific questions of law and the argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific reference to the record and all legal or other material.

(c) Except by special permission, such pleadings will not be accepted if it exceeds 50 double spaced typewritten pages in length. Within 10 days, or such other time as the Commission may specify, after the time for filing exceptions has expired, any other party may file a reply brief to which the same limitation in length applies. If exceptions have been filed, any party may request oral argument not later than five days after the time for filing replies to the exceptions has expired. The Commission in its discretion will, by order, grant or deny the request for oral argument. Within five days after release of the Commission's order designating an initial decision for oral argument, as provided in paragraph (d) of this section any party who wishes to participate in oral argument shall file written notice of intention to appear and participate in oral argument; and failure to file written notice shall constitute a waiver of the opportunity to participate.

* * * * *

30. In § 1.282, paragraph (b) (2) is revised to read as follows:

§ 1.282 Final decision of the Commission.

* * * * *

(b) * * *

(2) Ruling on each relevant and material exception filed; the Commission will deny irrelevant exceptions or those which are not of decisional significance without a specific statement of reasons prescribed by (b) (1) of this section.

* * * * *

X. APPLICATIONS FOR REVIEW

31. In § 0.371, paragraph (h) is added to read as follows:

CHIEF, OPINIONS AND REVIEW

§ 0.371 Authority delegated.

* * * * *

(h) To issue orders, as appropriate, requesting the filing of further pleadings.

32. In § 1.104, paragraph (a) is revised to read as follows:

§ 1.104 Preserving the right of review; deferred consideration of application for review.

(a) The provisions of this section apply to all final actions taken pursuant to delegated authority, including final decisions of the Review Board following review of an initial decision and final actions taken by members of the Commission's staff on non-hearing matters. They do not apply to interlocutory actions of the Chief Administrative Law Judge or the presiding Administrative Law Judge in hearing proceedings, or to hearing designation orders issued under delegated authority. See §§ 0.341(b), 1.115(e).

* * * * *

33. In § 1.115, paragraphs (b) (3), (4) and note and (f) are revised to read as follows:

§ 1.115 Application for review of action taken pursuant to delegated authority.

* * * * *

(b) * * *

(3) The application for review of a decision of the Review Board shall concisely and plainly state the questions presented for review with reference, where appropriate, to the findings of fact or conclusions of law. The application for review shall specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented: (i) the board's findings are not supported by substantial evidence in the record as a whole; (ii) the Board's decision involves prejudicial errors of substantive or procedural law; (iii) the Board's decision is arbitrary or capricious; (iv) the Board's decision conflicts with the Commission's policy; (v) the Board's decision raises a novel or important issue of law or policy which warrants Commission review.

(4) The application for review shall state with particularity the respects in which the action taken by the designated authority should be changed, and shall state the form of relief sought and, subject to this requirement, may contain alternative requests.

NOTE: If the Commission grants an application for review of a final decision of the Review Board, it will generally permit the parties to file briefs and present oral argument. Thus, the application for review should be prepared with the understanding that its purpose is not to obtain a Commission decision on the merits of the issues but rather to convince the Commission to review those issues.

* * * * *

(f) Applications for review and oppositions shall conform to the requirements of §§ 1.49, 1.51, and 1.52, and shall be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554. The application for review shall be served upon the parties to the proceeding. Oppositions to the application for review shall be served on the person seeking review and parties to the proceeding. Applications for review, oppositions and replies shall not exceed 10 double spaced typewritten pages and, in the case of interlocutory matters, shall not exceed 5 double spaced typewritten pages. If review is granted by the Commission or Review Board, the parties' briefs shall not exceed 25 double-spaced typewritten pages for pleadings and oppositions. No replies may be filed unless requested by the Commission or the Review Board.

* * * * *

XI. MISCELLANEOUS RULE CHANGES NOT SUBSUMED UNDER THE ABOVE HEADINGS

34. Section 1.46 is revised to read as follows:

§ 1.46 Motions for extension of time.

It is the policy of the Commission that extensions of time shall not be routinely granted. However, extensions of time for filing any pleadings, brief, or other paper may be granted upon motion for good cause shown (e.g., illness, counsel being unavoidably out of town on business, etc.) unless the time for filing is limited by statute.

35. In § 1.48, paragraph (b) is revised to read as follows:

§ 1.48 Length of pleadings.

* * * * *

(b) It is the policy of the Commission that requests for permission to file pleadings in excess of prescribed lengths will not ordinarily be granted. However, timely requests by a party for permission to file pleadings in excess of the length prescribed by the provisions of this chapter may be granted only upon showing of extraordinary cause. Furthermore, pleadings filed which are in excess of prescribed page lengths due to incorporation of material by reference, attached appendices, supplemental arguments and the like will be returned. Where the filing period is 10 days or less, the request shall be made within 2 business days after the period begins to run. Where the filing period is more than 10 days, the request shall be filed at least 10 days before the filing date. (See § 1.4.) If a timely request is made, the pleading need not be filed earlier than 2 business days after the Commission acts upon the request.

[FR Doc.75-31525 Filed 11-20-75;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 THE TREASURY

Customs Service

CAST IRON SOIL PIPE AND FITTINGS FROM INDIA

Final Countervailing Duty Determination

On July 3, 1975, a "Notice of Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (40 F.R. 28103). The notice stated that on the basis of an investigation conducted pursuant to section 159.47(c), Customs Regulations (19 CFR 159.47(c)), a preliminary determination was made that no bounties or grants are being paid or bestowed, directly or indirectly, within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) upon the manufacture, production, or exportation of cast iron soil pipe and fittings from India.

The notice stated further that before a final determination would be made in this proceeding, consideration would be given to any relevant data, views, or arguments submitted in writing within 30 days from the date of the notice with respect to the preliminary determination. The 30-day period for the submission of views was extended to 60 days by notice published in the FEDERAL REGISTER of August 15, 1975 (40 F.R. 34423).

No written submissions having been received, it is hereby determined for the reasons stated in the preliminary determination, that no bounties or grants are being paid or bestowed, directly or indirectly, within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), upon the manufacture, production, or exportation of cast iron soil pipe and fittings from India.

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

VERNON D. ACREE,
Commissioner of Customs.

Approved: November 17, 1975.

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.75-31416 Filed 11-21-75;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

FHER CORP., LTD.

Manufacture of Controlled Substances Notice of Registration

By Notice dated September 22, 1975, and published in the Federal Register on September 29, 1975; (40 FR 44588-89), Fher Corporation Ltd., Carretera 132, KM 25.3, P.O. Box 4108, Ponce, Puerto Rico 00731, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of phenmetrazine, a basic class controlled substance listed in schedule II.

No comments or objections having been received, and pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and 21 CFR 1301.54(e), the Acting Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of phenmetrazine is granted.

Dated: November 11, 1975.

HENRY S. DOGIN,
Acting Administrator,
Drug Enforcement Administration.

[FR Doc.75-31689 Filed 11-21-75;8:45 am]

CONTROLLED SUBSTANCES IN SCHEDULES I AND II

Final 1975 Revised Aggregate Production Quota for Thebaine for Conversion

Section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On September 23, 1975, a notice of the proposed revised aggregate production quota for 1975 for Thebaine For Conversion was published in the FEDERAL REGISTER (40 FR 43745). All interested parties were invited to comment or object to the proposed aggregate production quota on or before October 29, 1975. No comments or objections were received.

Therefore, under the authority vested in the Attorney General by Section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations and further, having been duly designated as Acting Administrator by Order No. 607-75 of the Attorney General, dated May 30, 1975, in accordance with the authority stated therein, and pursuant to the authority delegated to the Acting Administrator by § 0.132(d) of Title 28 of the Code of Federal Regulations, the Acting Administrator of the Drug Enforcement Administration hereby orders that the aggregate production quota for the controlled substance listed below, expressed in grams in terms of anhydrous base, be established as follows:

SCHEDULE II

Basic class:	*Granted—1975*
Thebaine for conversion	1,881,000

This order is effective upon date of its issuance.

Dated: November 11, 1975.

HENRY S. DOGIN,
Acting Administrator,
Drug Enforcement Administration.

[FR Doc.75-31691 Filed 11-21-75;8:45 am]

CONTROLLED SUBSTANCES IN SCHEDULES I AND II

Final 1975 Aggregate Production Quota for Difenoxin

Section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotes for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On August 19, 1975, a notice of the proposed aggregate production quota for 1975 for Difenoxin was published in the FEDERAL REGISTER (40 FR 36152). All interested parties were invited to comment or object to the proposed aggregate production quota on or before September 26, 1975. No comments or objections were received.

Therefore, under the authority vested in the Attorney General by Section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the Drug Enforcement Administration by §0.100 of Title 28 of the Code of Federal Regulations and further, having been duly designated as Acting Administrator by Order No. 607-75 of the Attorney General, dated May 30, 1975, in accordance with the authority stated therein, and pursuant to the authority delegated to the Acting Administrator by § 0.132(d) of Title 28 of the Code of Federal Regulations, and based upon consideration of the factors set forth in 40 FR 22851, the Acting Administrator of the Drug Enforcement Administration hereby orders that the aggregate production quota for the controlled substance listed below, expressed in grams

in terms of anhydrous base, be established as follows:

SCHEDULE I

Basis class:	*Granted—1975*
Difenoxin	65,000

This order is effective November 24, 1975.

Dated: October 29, 1975.

HENRY S. DOGIN,
Acting Administrator,
Drug Enforcement Administration.

[FR Doc.75-31690 Filed 11-21-75;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Notice of Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (P.L. 93-205).

Applicant: Mr. Henry J. Markley, Jr., 1915 Beal Road, Mansfield, Ohio 44903.

OMB NO. 43-R1698

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☑ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
To be able to buy White Eared Pheasants and Brown Eared Pheasants and to be able to buy and sell Edwards pheasants (All endangered species) To be able to propagate all of the above in order to insure their survival.

3. APPLICANT: (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
HENRY J. MARKLEY JR.
1915 BEAL Rd.
MANSFIELD, Ohio 44903
Ph. 419-589-5829

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☑ MR. ☐ MRS. ☐ MISS ☐ MS.

HEIGHT	WEIGHT
5'10"	170

DATE OF BIRTH	COLOR HAIR	COLOR EYES
December 29, 1946	Red	Blue

PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER
419-522-4111	271-44-Ec43

OCCUPATION: Asst. Scheduling Manager Tire & Rubber, Mansfield

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT
Does Not Apply

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
Does Not Apply

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
Does Not Apply

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED
Does Not Apply

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
a) Breeding Endangered species of pheasants at my Bird Farm. 1915 Beal Rd Mansfield, Ohio.
b) Buying and selling Endangered pheasants inter-state. Primarily from New York to Cleveland.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☑ NO
(If yes, list license or permit number)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☑ YES ☐ NO
(If yes, list jurisdictions and type of documents)
I Hold A Comaercial Propagating license. Issued by the State of Ohio

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE	11. DURATION NEEDED
Oct. 15, 1975	5 YRS. (or As Long As possible)

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 C.F.R. 13.12(a)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 CFR Part 17.22 Permits for Scientific purposes, or for the enhancement of propagation or survival

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) Henry J. Markley Jr. DATE Sept. 2, 1975

3-200
REVISED
Henry J. Markley, Jr.,

(1) *PHEASANTS:* Edward's (*Lophura edwardsi*) 1 male, 1 female; Brown-eared (*Crossoptilon mantchuricum*) 1 male, 1 female; White-eared (*Crossoptilon crossoptilon*) would like to purchase one pair. Would like to be able to buy and sell the above for propagation purposes, and to get new blood to keep the stock strong.

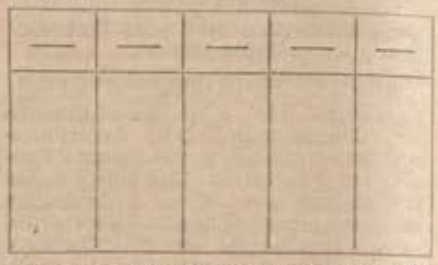
(2) (iii) Wildlife—born in captivity.

(3) By purchasing the above pheasants that were raised in captivity, from breeders in the States. By having the above shipped or sent in padded crates to avoid any chance of injury.

(4) The White-eared pheasants I would like to purchase were raised in captivity by Mr. Charles Sivelle, Long Island, New York. The other birds were raised at my place in Mansfield, Ohio.

(5) The birds are and will be kept at my place. The aviaries are 12' x 24' by 6' high, and planted with trees and shrubs to insure contentment of the birds. I'm in the process of constructing a tall fence around the whole property to give the birds more seclusion at 1915 Beal Road, Mansfield, Ohio 44903.

(6) (i)



Pens are 13' x 24' x 6' high. The smaller pens are 10' x 16' by 6' high. Each pen is covered with 1" mesh netting and boarded up 2 ft. on the bottom. The back of the pens are solid and covered by a roof extended from 4 to 8 ft. The pens are located on a 1½ acre lot with plenty of trees for shade.

(ii) I've been raising different species of pheasant for ten years. I have raised young from species such as Tragopans, Imperials, Edward's, Silver, Golden, Mikado, Blue-eared, Brown-eared, Grey junglefowl, etc.

(iii) I would be more than willing to cooperate in a breeding program and keep accurate records as I believe the only reason some species exist today is from the dedicated people who raised them in captivity.

(iv) The containers used for shipping are 1 ft. wide, 18 inches high, and 2 ft. long, made of Masonite, and the top is lined with 1 inch foam rubber. Feed and water are placed in each box; the duration the birds would be in a box would be not over 36 hours.

(v) I've been very fortunate that I have lost very few birds. I lost some young one year when the electricity was off due to an electrical storm and they chilled to death. I've lost some of the more flighty species from flying up and hitting their heads. I now wing-clip all of the flighty birds and new arrivals. I have never lost an Edward's or Brown-eared. I clean the pens every month and disinfect the pens twice a year. I give the birds medicated water every month.

(7) There are no contracts or agreements. As stated before, if I get the permit I do plan to purchase a pair of White-eared pheasants from Mr. Charles Sivelle, Long Island, New York.

(8) (i) I plan on keeping, breeding, buying and selling for propagation only, Edward's, Brown-eared, and White-eared pheasants.

(ii) and (iii) I will supply adequate pens, housing, feed and care to insure the birds contentment in captivity, in order that they will breed—to keep the species going, so that when I speak of

White-eared pheasants my grandchildren will know what I'm talking about because they saw them alive. With the growing world population the only way any of these birds will be saved is by captive propagation.

(iv) If I should decide to quit raising birds I would sell them to other breeders whom I felt were capable of raising them. However, since my love for raising pheasants is great I feel that this is a very remote possibility.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, N.W, Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. All relevant comments received on or before December 24, 1975 will be considered.

Dated: November 17, 1975.

C. R. BAVIN,
Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service.

[FR Doc.75-31558 Filed 11-21-75;8:45 am]

Bureau of Indian Affairs

COLVILLE RESERVATION, WASH.

Hunting and Fishing Ordinance

OCTOBER 30, 1975.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

Notice is hereby given that the Colville Business Council of the Confederated Tribes of the Colville Reservation, Washington, duly enacted the North Half Colville Hunting and Fishing Ordinance on March 4, 1974 under authority contained in Article V, sec. 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation which was ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938. The North Half Colville Hunting and Fishing Ordinance reads as follows:

CHAPTER 1. GENERAL PROVISIONS

1.1 Title.

This ordinance shall be known as the North Half Colville Hunting and Fishing Ordinance.

1.2 Policies.

1.2.1 Hunting and Fishing rights of the Colville people on the "North Half" have existed since before the coming of the white man. These rights were further secured by the establishment of a Reservation by the Executive Order of July 2, 1872, and were reserved in the Cession Agreement of May 9, 1891.

1.2.2 It is the policy of the Colville Tribes to preserve, protect and perpetuate wildlife resources of the North Half. To the extent that such resources are to be hunted, such shall be primarily for the purpose of providing food for Indian families and only secondarily for the sport and recreation of non-Indians.

1.2.3. Many Colville families have inadequate income and below-average living standards. Hunting and fishing for wildlife on the North Half are essential to these families for maintenance of an adequate diet.

1.3 Jurisdiction.

1.3.1 This ordinance shall be applicable to all enrolled members of the Colville Tribes and reciprocating tribes.

1.3.2 Sepecial regulations may be promulgated from time to time establishing special areas, seasons, gear and limits applicable to members of the Colville Tribes and members of reciprocating tribes.

1.3.3 No act prohibited by this ordinance or by any other tribal ordinance may be committed, even though such act would be lawful under laws of the State of Washington.

1.4 Definittons.

1.4.1 "Animals, birds, and fish", as used herein, shall mean any animals, birds or fish which are not domesticated.

1.4.2 "Bag limit" means the maximum number of animals, birds or fish which may be taken, caught, killed, or possessed by any person, specified and fixed by regulation of the Council for any particular period of time, or so specified and fixed as to size, sex, or species.

1.4.3 "Closed area" means any place on the North Half described or designated by regulation of the Council wherein it shall be unlawful to hunt or trap for animals or birds.

1.4.4 "Closed season" means all of the time during the entire year excepting the "open season" as specified by regulation of the Council.

1.4.5 "Closed waters" means any lake, river, stream, body of water, or any part thereof within the North Half described or designated by regulation of the Council wherein it shall be unlawful to fish.

1.4.6 "Council" means the Colville Business Council of Confederated Tribes of the Colville Reservation.

1.4.7 "Colville, Colvilles, Colville people" shall refer to enrolled members of the tribes.

1.4.8 "Fish" and its derivatives, "fishing", "fished", etc., means any effort made to kill, injure, disturb, capture, or catch fish in waters on the North Half.

1.4.9 "Hunt" and its derivatives "hunting", "hunted", etc., and "trap" and its derivatives, "trapping", "trapped", etc., means any effort to kill, injure, capture, or disturb a wild animal or wild bird.

1.4.10 "Member" shall mean any person whose name appears on the records of the Colville Confederated Tribes as an enrolled member of the Tribes.

1.4.11 "Member of reciprocating tribes" means any person who is a member of any other Indian tribe which grants reciprocal hunting and fishing privileges to members of the Colville Confederated Tribes as determined by the Colville Business Council and who secures from the Colville Tribal Office and has in his possession any appropriate identification as to his status which shall be provided by the Colville Confederated Tribes.

1.4.12 "North Half" means that portion of the original Colville Indian Reservation of 1872, described as follows:

Beginning at a point on the Eastern boundary line of the Colville Indian Reservation where the township line between township 34 and 35 North of Range 37 East of the Willamette Meridian if extended West would intersect the same said point being in the middle of the Channel of the Columbia River, and running thence West parallel with the forty ninth (49th) parallel of latitude to the Western boundary line of the said Colville Indian Reservation in the Okanogan River, thence North following the said Western boundary line to the said forty ninth (49th) parallel of latitude to the Northeast corner of the said Colville Indian Reservation, thence South following the Eastern boundary of said Reservation to the place of beginning containing by estimation one million five hundred thousand acres, the same being a portion of the Colville Indian Reservation created by Executive Order dated April 9, 1872.

1.4.13 "Open season" means the time specified by rule and regulation of the Council when it shall be lawful to hunt, trap, or fish for any animals, birds or fish. Each period of time specified as an open season shall include the first and last days thereof.

1.4.14 "Regulation" means any rule, regulation, resolution or ordinance promulgated by the Colville Business Council.

1.4.15 "Reservation" shall mean the Colville Indian Reservation.

1.4.16 "Tribes" means Confederated Tribes of the Colville Indian Reservation.

1.4.17 "Game Protector" means any person holding a commission as such from the Council.

1.4.18 "Law Enforcement Officers" means any person holding a commission as such from the Council.

CHAPTER 2. TRIBAL REGULATION

2.1 Council Empowered to Regulate.

The Council shall promulgate such regulations as it deems proper and necessary to carry out the policy of the Colville Tribes with respect to hunting and fishing on the North Half. Such regulations may establish closed and open areas, closed and open seasons, bag limit, gear restrictions, and any other provisions which the Council deems necessary to carry out the policies and provisions of this ordinance.

2.2 Notice of Regulations.

All regulations promulgated by the Council with respect to hunting and fishing shall be communicated to the public as widely as possible, including providing information with respect to such regulations to newspapers, magazines and any other publications which are likely to bring such news to the attention of members of the general public; posting notices as to such regulations wherever possible on the Reservation and in adjoining communities; and making copies of such regulations available to all persons.

CHAPTER 3. PERMITS

3.1 Permit Required.

It shall be unlawful for any member to hunt, trap or fish on the North Half without first having procured and having in force and in his personal possession and on his person while hunting, trapping or fishing, a permit so to do issued to him by the Council. The Council may issue appropriate permits to members of the Colville Tribes and members of other tribes granting reciprocal privileges to members of the Colville Tribes.

3.2 Permit Nontransferable.

Identification to Permit Holder. Any permits issued by the Council shall be nontransferable. Any member hunting, trapping or fishing, shall, upon the demand of any game protector, or other tribal law enforcement officer, exhibit his permit and tribal identification card to such officer, and write his name for the purpose of comparison with the signature on the permit or tribal identification card and his failure or refusal to exhibit his permit or tribal identification card and write his name upon demand shall

be prima facie evidence that such member has no permit or tribal identification card or is not the person named in the permit or tribal identification card in his possession.

CHAPTER 4. PROHIBITED ACTS

4.1 *Hunting and Fishing Unlawful: When.*

It shall be unlawful for any member to hunt, trap, or fish during the respective closed seasons therefor. It shall also be unlawful for any person to kill, take, or catch any species of birds, animals, or fish in excess of the number fixed as the bag limit. It shall also be unlawful for any person to hunt or trap for any birds or animals within the boundaries of any closed area. It shall be unlawful for any person to fish within any closed waters.

4.2 *Closed Season.*

It shall be unlawful for any member to have in his possession or under his control any bird, animal or fish during the closed season or in excess of the bag limit.

4.3 *Hunting While Intoxicated.*

It shall be unlawful for any person to hunt with firearms while under the influence of intoxicating liquor.

4.4 *Wasting Wildlife.*

It shall be unlawful for any person to permit any animal, bird or fish needlessly to go to waste after killing the same.

4.5 *Obstructing Law Enforcement Officers.*

It shall be unlawful for any member to resist or obstruct any game protector or other duly authorized tribal law enforcement officer or other peace officer in the discharge of his duty while enforcing the provisions of this ordinance or other tribal regulations pertaining to hunting and fishing.

4.6 *Interference with Game Control Signs.*

It shall be unlawful for any person to destroy, tear down, shoot at, deface or erase any printed matter or signs placed or posted by or under the instructions of the Council to assist in the enforcement of tribal hunting and fishing regulations.

4.7 *Shooting Person or Livestock.*

It shall be unlawful to shoot any other person or any domestic livestock while hunting. Violation of this section shall subject the violator to revocation of the tribal hunting permit in addition to any other penalties imposed by the Colville Law and Order Code.

4.8. *Violation of Other Regulations.*

It shall be unlawful and it shall constitute a violation of this ordinance for any person to violate any regulation or resolution of the Council now in effect or hereafter promulgated pertaining to hunting and fishing.

CHAPTER 5. ENFORCEMENT

5.1 *General Powers of Officers.*

It shall be the duty of every tribal game protector or other law enforcement officer to enforce this ordinance and all regulations adopted by the Council governing hunting and fishing on the North Half, and such officer may issue citations and/or make arrests of any person violating this ordinance or any regulations of the Council pertaining to hunting and fishing.

5.2 *Arrest Without Warrant.*

Any game protector or tribal law enforcement officer may, without warrant, arrest any person found violating this ordinance or any regulation of the Council pertaining to hunting and fishing pursuant to section 2.2.04 (Criminal Actions) of the Colville Law and Order Code.

5.3 *Search Without Warrant.*

Any tribal game protector or other tribal law enforcement officer may search without warrant any conveyance, vehicle, game bag, game basket, game coat or other receptacle for game animals, birds or fish, or any package, box, tent, camp or other similar place which he has reason to believe contains evidence of violations of this ordinance or regulations of the Council pertaining to hunting and fishing.

5.4 *Search Warrants.*

The Tribal Court may also issue a search warrant and direct a search to be made in any place wherein it is alleged that any bird, animals or fish taken or in possession contrary to this ordinance or regulations of the Colville Tribes is concealed or illegally kept. Such warrant shall issue pursuant to the provisions of Section 2.2.05 of the Colville Law and Order Code.

5.5 *Seizure.*

Any game protector or other tribal law enforcement officer may seize without warrant all birds, animals, fish or parts thereof taken, killed, transported, or possessed contrary to this ordinance or any regulation of the Council pertaining to hunting and fishing, and any dog, gun, trap, net seine, decoy, bait, boat, light, fishing tackle, motor vehicle, or other device unlawfully used in hunting, fishing or trapping, or held with intent to use unlawfully in hunting, fishing or trapping.

5.6 *Forfeiture-Procedures.*

Any contraband game or fish seized shall be subject to forfeiture at the order of the Tribal Court of the Colville Confederated Tribes after notice and opportunity for hearing or trial as hereafter set forth. In case it appears upon the sworn complaint of the officer making the seizures that any articles seized were not in the possession of any person and that the owner thereof is not known, the court shall have power and jurisdiction to forfeit such articles so seized upon a hearing duly had after service of summons on the unknown owner by publishing such summons in any newspaper of general circulation in Ferry or Okanogan County, or the Colville Tribal Tribune for a period of 4 successive issues. The summons shall describe the articles seized and shall give the owner 15 days from the date of last publication to appear before the Tribal Court and contest the forfeiture.

5.7 *Forfeiture-Disposition of Property.*

In the event the Tribal Court orders forfeiture of any articles seized, such articles shall be turned over to the Council for the use and benefit of the Colville Tribes. If any articles are not declared forfeited by order of the Tribal Court, they shall be returned to the person from whom seized, after the completion of the case and the fines, if any, have been paid.

CHAPTER 6. ARRESTS: CITATIONS: TRIALS: PENALTIES

6.1 *Arrests: Citations and Trials: Generally.*

Arrest may be made and citations issued for violations of this ordinance pursuant to the provisions of Title 2 of the Colville Law and Order Code. Hearings and trials for violations shall be held pursuant to the provisions of Titles 1, 2 and 4 of that Code.

6.2 *Penalties.*

In the event a defendant pleads guilty or is found guilty, the court may impose all or any of the following penalties:

6.2.1 A fine of not less than $10 nor more than $250.

6.2.2 A jail term of not less than 1 day nor more than 30 days.

6.2.3 Forfeiture of any articles seized by reason of use of illegal activities.

6.2.4 Suspension or revocation of tribal hunting and fishing license or permit.

CHAPTER 7. MISCELLANEOUS PROVISIONS

7.1 *Permits—Standards—Revocation.*

In issuing permits the Council shall seek to meet the needs of Colville people for food consistent with conservation of the resource, including lotteries, drawings, and the like. Nothing herein shall bar suspension or revocation of outstanding permits for any reason.

7.2 *Severability.*

If any provisions of this ordinance or the application thereof to any person or circumstance is held invalid, this ordinance can be given effect without the invalid provision or application; and to this end the provisions of this ordinance are declared to be severable.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

[FR Doc.75-31595 Filed 11-21-75;8:45 am]

INDIAN TRIBES PERFORMING LAW ENFORCEMENT FUNCTIONS

Notice of Determination; Amendment

NOVEMBER 17, 1975.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM2.

Section 601(d), Title 1 of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, places responsibility on the Secretary of the Interior to determine those Indian Tribes which perform law enforcement functions. The listing published beginning on page 13758 of the May 25, 1973, FEDERAL REGISTER (38 FR 13758) identified all eligible Indian tribes and the specific law enforcement functions they have responsibility to exercise. Determinations and certifications concerning Indian tribes not listed are made on an individual basis upon application by such tribes under the provisions of the Law Enforcement Assistance Administration Act, Department of Justice Pub. L. 93-451 (88 Stat. 1109) 42 U.S.C. 3701. The Secretary's authority to make such determinations was delegated to the Commissioner of Indian Affairs by 230 DM1.

It has been determined by the Commissioner of Indian Affairs that the Menominee Tribe of Indians in Wisconsin has responsibility to perform the six functions listed below.

Therefore, the listing published beginning on page 13758 of the May 25, 1973, FEDERAL REGISTER (38 FR 13758) and last amended at page 43932 of the September 24, 1975, FEDERAL REGISTER (40 FR 43932) is further amended by adding the entry for the Menominee Tribe of Indians in the State of Wisconsin to read as follows:

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile deliquency	To undertake adult and juvenile rehabilitation programs
Wisconsin: Menominee....	×	×	×	×	×	×

MORRIS THOMPSON,
Commissioner of Indian Affairs.

[FR Doc.75-31596 Filed 11-21-75;8:45 am]

National Park Service

SOUTHEAST REGIONAL ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Southeast Regional Advisory Committee will be held at 9:00 a.m., e.s.t., on December 12, 1975, at the Southeast Regional Office, National Park Service, 1895 Boulevard, Atlanta, Georgia.

The purpose of the Southeast Regional Advisory Committee is to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems and programs pertinent to the Southeast Region of the National Park Service.

The members of the Advisory Committee are as follows:

Mrs. Ann Smith Bedsole (Chairman), Mobile, Alabama, Mr. Tutt S. Bradford, Maryville, Tennessee, Dr. Arthur W. Cooper, Raleigh, North Carolina, Mr. Robert Gable, Frankfort, Kentucky, The Very Reverend Monsignor Michael V. Gannon, Gainesville, Florida, Mr. Alfredo Heres Gonzalez, Santurce, Puerto Rico, Dr. John King, Jackson, Mississippi, Mr. Charles Edward Lee, Columbia, South Carolina, Mrs. Jane Hurt Yarn, Atlanta, Georgia.

The matters to be discussed at this meeting include: (1) Planning of Cumberland Island National Seashore, (2) Old Ninety Six and Star Fort, South Carolina, (3) The Proposed Chattahoochee National Recreation Area, and (4) The Big South Fork National River and Recreation Area.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and it is expected that not more than 25 persons will be able to attend. Any member of the public may file with the committee a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting or who wish to submit written statements, may contact Paul C. Swartz, Chief, Cooperative Activities Division, Southeast Regional Office, at FTS 404/289-9253 or local 404/996-2520 Extension 253. Minutes of the meeting will be available for public inspection approximately 4 weeks after the meeting at the Southeast Regional Office.

Dated: November 4, 1975.

PAUL C. SWARTZ,
Chief, Cooperative Activities Division, Southeast Region, National Park Service.

[FR Doc.75-31584 Filed 11-21-75;8:45 am]

Office of the Secretary

[INT FES 75-92]

MATTAMUSKEET - SWANQUARTER - CEDAR ISLAND-PEA ISLAND WILDERNESS AREA, N.C.

Availability of Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the Department of the Interior has prepared a final environmental statement for the Proposed Mattamuskeet-Swanquarter-Cedar Island-Pea Island Wilderness Area, North Carolina.

The proposal recommends 590 acres of Mattamuskeet National Wildlife Refuge, Hyde County; 9,000 acres of Swanquarter National Wildlife Refuge, Hyde County; 180 acres of Cedar Island National Wildlife Refuge, Carteret County; Wildlife Refuge, Dare County, North Carolina, be designated as wilderness within the National Wilderness Preservation System.

Copies of the final statement are available for inspection at the following locations:

Regional Director, United States Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329
Refuge Manager, Mattamuskeet National Wildlife Refuge, New Holland, North Carolina 27885
U.S. Fish and Wildlife Service, Division of Wildlife Refuges, Room 2280, 18th & C Streets, NW., Washington, D.C. 20240

Single copies may be obtained by writing the Environmental Impact Statement Coordinator, Division of Wildlife Refuges, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Dated: November 18, 1975.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.75-31588 Filed 11-21-75;8:45 am]

[INT DES 75-57]

OPERATION OF THE NATIONAL WILDLIFE REFUGE SYSTEM

Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the Department of the Interior has prepared a draft environmental statement for the operation of the National Wildlife Refuge System, and invites written comments within 45 days of this notice.

The statement examines the operation of the National Wildlife Refuge System at the present level of activity, the impact of these actions, and six alternative program levels.

Copies of the draft statement are available for inspection at the following locations:

U.S. Fish and Wildlife Service, Acting Chief, Division of Wildlife Refuges, Room 2343, 18th & C Streets NW., Washington, D.C. 20240.
Regional Director, U.S. Fish and Wildlife Service, 1500 Plaza Building, 1500 NE Irving Street, P.O. Box 3737, Portland, Oregon 97208.
Regional Director, U.S. Fish and Wildlife Service, Box 1306, Room 9018, 500 Gold Avenue SW., Albuquerque, New Mexico 87103.
Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.
Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive NE., Atlanta, Georgia 30329.
Regional Director, U.S. Fish and Wildlife Service, John W. McCormack, P.O. and Courthouse, Boston, Massachusetts 02109.
Regional Director, U.S. Fish and Wildlife Service, 10597 West Sixth Avenue, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80215.
Area Director, U.S. Fish and Wildlife Service, 813 "D" Street, Anchorage, Alaska 99501.

A limited number of single copies are available and may be obtained by writing the Acting Chief, Division of Wildlife Refuges, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Dated: November 18, 1975.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.75-31594 Filed 11-21-75;8:45 am]

[INT FES 75-9]

PROPOSED NOXUBEE WILDERNESS AREA

Availability of Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the Department of the Interior has prepared a final environmental statement for the Proposed Noxubee Wilderness Area, Oktibbeha County, Mississippi.

The proposal recommends that 1,200 acres of the Noxubee National Wildlife

Refuge located in Oktibbeha County, Mississippi, be designated as wilderness within the National Wilderness Preservation System.

Copies of the final statement are available for inspection at the following locations:

Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329
Refuge Manager, Noxubee National Wildlife Refuge, Route 1, Brooksville, Mississippi 39739
U.S. Fish and Wildlife Service, Division of Wildlife Refuges, Room 2280, 18th and C Streets, NW., Washington, D.C. 20240

Single copies may be obtained by writing the Environmental Impact Statement Coordinator, Division of Wildlife Refuges, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Dated: November 18, 1975.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.75-31587 Filed 11-21-75;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Marketing Order No. 905]

SHIPPERS ADVISORY COMMITTEE

Notice of Public Meeting

Pursuant to the provisions of § 10(a)(2) of the Federal Advisory Committee Act (86 Stat. 770), notice is hereby given of a meeting of the Shippers Advisory Committee established under Marketing Order No. 905 (7 CFR Part 905). This order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The committee will meet in the A. B. Michael Auditorium of the Florida Citrus Mutual Building, 302 South Massachusetts Avenue, Lakeland, Florida, at 10:30 a.m., on December 9, 1975.

The meeting will be open to the public and a brief period will be set aside for public comments and questions. The agenda of the committee includes analysis of current information concerning market supply and demand factors, and consideration of recommendations for regulation of shipments of the named fruits.

The names of committee members, agenda, summary of the meeting and other information pertaining to the meeting may be obtained from Frank D. Trovillion, Manager, Growers Administrative Committee, P.O. Box R, Lakeland, Florida 33802; telephone 813-682-3103.

Dated: November 20, 1975.

WILLIAM H. WALKER, III,
Acting Administrator.

[FR Doc.75-31826 Filed 11-21-75;8:45 am]

[Marketing Order No. 905]

SHIPPERS ADVISORY COMMITTEE

Cancellation of Public Meeting

The November 25, 1975, meeting of the Shippers Advisory Committee, announced in the November 3, 1975, issue of the FEDERAL REGISTER (40 F.R. 51072), is canceled. The Committee is established under Marketing Order No. 905 (7 CFR Part 905), which regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This regulatory program is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.SC. 601-674). At its meeting of November 18, 1975, the Committee recommended regulations it deemed appropriate to the current supply situation, and requested that the meeting scheduled for November 25 be canceled.

Dated: November 20, 1975.

WILLIAM H. WALKER, III,
Acting Administrator.

[FR Doc.75-31827 Filed 11-21-75;8:45 am]

Food and Nutrition Service

SCHOOL BREAKFAST PROGRAM

Program of Information for the School Breakfast Program

Public Law 89-642, enacted in October, 1966, authorized the School Breakfast Program as a two year pilot program. First consideration for participation was given to "schools drawing attendance from areas in which poor economic conditions exist and to those schools to which a substantial proportion of the children enrolled must travel long distances daily." Public Law 92-433, enacted in September, 1972, expanded the program to all public and nonprofit private schools. Public Law 94-105, enacted October 7, 1975 gave permanent authorizations to the School Breakfast Program.

Section 3 of Public Law 94-105 states: "As a national nutrition and health policy, it is the purpose and intent of the Congress that the School Breakfast Program be made available in all schools where it is needed to provide adequate nutrition for children in attendance."

The Secretary is, therefore, directed to carry out a program of information in furtherance of this policy in cooperation with State educational agencies. Within 4 months the Secretary shall report to the Congress his plans and those of the State agencies to bring about the needed expansion in the School Breakfast Program.

Consistent with this intent the Department requests each State agency to submit a plan outlining its objectives and the actions it will take to make the School Breakfast Program available in all schools where it is needed to provide adequate nutrition for children in attendance. The State agency shall give the Governor, or his delegated agency, the opportunity to comment on the State's plan of information to expand the School Breakfast Program. A period of 45 days from the date of receipt of the Plan shall be afforded to make such comments.

Such a plan shall include, as a minimum, the following: 1. The precise objectives it has set to fulfill this Congressional mandate. The objectives should consider available and anticipated financial and manpower resources.

2. The detailed action plan including priorities, methods, procedures, and dates for informing schools and the public of the availability and benefits of this program.

3. A description of all organizations within the State which will be asked to cooperate in this effort.

4. A description of the materials and media which will be developed and used to inform schools of the Program.

5. A description of the efforts which will be made to publicize already existing School Breakfast Programs.

6. A description of any systems that may be used to recognize schools electing Program participation.

Such plans should be submitted by January 15 to the appropriate Food and Nutrition Service Regional Office which will forward such plans to the Director, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture.

As State agencies formulate their objectives and develop their plans to bring about the needed expansion of the program, the Department will offer ideas and assistance, as requested, and, in support of the effort, will develop and distribute program materials and publications of a technical and general nature to each State agency, as needs are identified.

In order to ensure consideration of all persons and opinions the Department also invites comments from other interested agencies, organizations, and the general public.

To ensure proper consideration in the report to the Congress all such comments should be submitted to Mr. William G. Boling, Director, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 500 12th Street SW., Washington, D.C. 20250 by January 15, 1976.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Dated: November 19, 1975.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.75-31665 Filed 11-21-75;8:45 am]

Forest Service

BASKET BAY #2 TIMBER SALE

Notice of 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 Basket Bay #2 Timber Sale, USDA–FS–FES (Adm) R10–75–06.

The environmental statement concerns a proposed timber sale to salvage blow-down timber.

The final environmental statement was filed with CEQ.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Building, Room 3231, 12th St. & Independence Ave., SW., Washington, D.C. 20250.
USDA, Forest Service, Alaska Region, Federal Building, Juneau, Alaska 99802.
Forest Supervisor, Chatham Area, Tongass National Forest, Federal Building, Sitka, Alaska 99835.
Forest Supervisor, Stikine Area, Tongass National Forest, Federal Building, Petersburg, Alaska 99833.
Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Room 313, Ketchikan, Alaska 99901.

A limited number of single copies are available upon request to Richard Wilson, Forest Supervisor, Chatham Area, Tongass National Forest, Box 757, Sitka, Alaska 99835.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

C. A. YATES,
Regional Forester,
Alaska Region.

NOVEMBER 17, 1975.

[FR Doc.75-31647 Filed 11-21-75;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

[File No. 34(75)-1 Case No. 488 (CP-37A)]

HIGHWAY PIPELINE CO.

Order Imposing a Civil Penalty, Period of Denial, and Period of Probation

By a letter dated May 20, 1975, the Compliance Division, with the approval of the Office of General Counsel, charged the respondent, Highway Pipeline Company, ¼ Mile North Jackson Road P.O. Box 5247, Station 2 McAllen, Texas, 78501, with having violated the Export Administration Regulations, (hereinafter, the export regulations), by having knowingly exported liquified petroleum gas (a commodity under short supply controls) without the required authorization and, therefore, in violation of § 387.6 of the export regulations.

The respondent's answer, dated June 19, 1975, denied that it had violated the export regulations by the number of shipments and amounts of liquified petroleum gas contained therein and the values thereof, alleged in the aforementioned charging letter. Schedules of shipments, amounts and values, appended to the answer showed, however, that numerous violations had, in fact, occurred. The answer stated that the overshipments were not intentional and were largely attributable to "a failure and lack of communications" between the respondent company and the Office of Export Administration. Examination of the company records, which were voluntarily made available, reflect that the violations were in large measure caused by inadequate records controls. Shipments were made against expired licenses and again licenses which were expected to be issued.

By a memorandum dated August 7, 1975, the Office of General Counsel, with the concurrence of the Compliance Division, transmitted to the Hearing Commissioner, and recommended for his approval, a consent proposal, submitted by the respondent. The consent proposal offered agreement of the respondent to issuance of an order imposing upon it a civil penalty in the amount of $14,000. (A certified check payable to the Treasurer of the United States in that amount was enclosed.) A denial period of six months was also to be imposed with conditional restoration of probationary status three months after the effective date of the order imposing the sanctions. The proposal provided, further, that the respondent, for the purpose of this proceeding only, admitted jurisdiction of the forum, did not contest the charges contained in the charging letter dated May 20, 1975, and waived all rights to a hearing before the Hearing Commissioner, all rights to administrative appeal from and judicial review of, the order and all rights to request refund of any civil penalty imposed pursuant to the consent proposal.

Notwithstanding the terms of the consent agreement and the allegations of the answer to the contrary, the record reflects that the violations were intentional. Moreover, the charges are admitted to the extent indicated in the respondent's answer. As regards the discrepancy between the magnitude of the violations alleged in the charging letter and that indicated in the schedule to the respondent's answer, it is observed that the figures appearing in the charging letter are the more reliable. The extent of the discrepancies reflects the magnitude of the respondent's inadequate record keeping.

Based upon the entire record, including the Hearing Commissioner's Report and Recommendation, I find that: The respondent, during 1974, exported or caused to be exported from the United States to Mexico liquified petroleum gas against validated export licenses in excess of the amounts authorized thereby and against invalid license numbers. The respondent made or caused to be made a portion of these shipments and other shipments from the United States to Mexico prior to issuance, or after the expiration of relevant licenses. The respondent knew or should have known that all of the above-described shipments were without the required authorization of the Office of Export Administration.

Based upon the foregoing, I have concluded that the respondent violated § 387.6 of the export regulations in the manner charged and as set forth above and in the Hearing Commissioner's findings of fact. Based upon the Report and Recommendation of the Hearing Commissioner, I have accepted the consent proposal as fair and reasonable and necessary for the effective administration of the export program. With respect to the sanction, a number of observations should be made. This case does not involve injury to the national security. There is, however, the element of intentional disregard of the export regulations. That the respondent claims the intent was motivated by a glut of liquified petroleum gas on the domestic American market, by the need of customers for the commodity, by the economic injury to the respondent and by the anticipation of hardship relief (which never materialized), cannot be regarded as totally mitigating factors. Nevertheless, the extent of the sanctions is mitigated by the circumstances recounted above including the cooperation of the respondent in the investigation and its suspension of exports during 1975. It is particularly significant to note that the amount of product for which quotas and licenses might otherwise have been obtained during 1975, but which was not licensed was approximately the same as that involved in the violations. The number and magnitude of the shipments violative of the export regulations indicate the serious nature of the violations. The impact upon this country's energy program cannot be lightly regarded. Periods of denial and probation in addition to a civil penalty are most appropriate under the circumstances of this case.

It is therefore, Ordered

I. Pursuant to § 388.1 of the export regulations, a civil penalty of fourteen thousand dollars ($14,000) is imposed on the respondent. Said sum is to be paid to the Treasurer of the United States.

II. All outstanding validated export licenses concerned with or affecting any transaction in which the respondent has any interest, direct or indirect, are hereby revoked and are ordered to be returned forthwith to the Office of Export Administration.

III. The respondent, its successors or assigns, partners, representatives, agents, and employees are hereby denied for six months, commencing October 1, 1975, the privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States, in whole or in part, or to be exported, or which are otherwise subject to the export regulations. Without limitation of the generality of such denial of export privileges, participation prohibited in any such transaction, either in the United States or abroad, shall include participation

directly or indirectly, in any manner or capacity:

A. As a party or as a representative of a party to any validated export license application;

B. In the preparation or filing of any export license application or reexport authorization, or any document to be submitted therewith;

C. In the obtaining or using of any validated or general export license or other export control document;

D. In the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data in whole or in part exported or to be exported from the United States;

E. In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

IV. Such denial of export privileges, shall extend not only to the respondent but also to its agents and employees and to any successor, and to any persons, firm, corporation, partnership, or other business organization with which the respondent now or hereafter may be related by ownership, control, position of responsibility, affiliation, or other connection, in the conduct of trade or related services.

V. Except as provided in VI below, no person, firm, corporation, partnership or other business organization, without prior disclosure to, and specific authorization from the Bureau of East-West Trade, shall do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of, or in any association with, the respondent or any related party, or whereby the respondent or any related party may obtain any benefit therefrom, or have any interest or participation therein, directly or indirectly:

A. Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document, relating to any exportation, reexportation, transshipment, or diversion of any commodity, or technical data exported or to be exported, from the United States, to or for the respondent or any related party;

B. Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in, any transaction which may involve the respondents or any related party in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VI. On January 1, 1976, the export privileges of the respondent shall be restored conditionally and the respondent shall be on probation for the remainder of the denial period. The conditions of probation are that the respondent shall fully comply with all of the requirements of the Export Administration Act of 1969, as amended, and all regulations, licenses and orders issued thereunder.

VII. Upon a finding by the Director, Office of Export Administration, or such other official as may be exercising the duties now exercised by him, that the respondent has knowingly failed to comply with the requirements and conditions of the order or with any of the conditions of probation, said official, without notice when national security or foreign policy considerations are involved, or with notice if such considerations are not involved, by supplemental order may revoke the probation of the respondent, revoke all outstanding validated export licenses to which said respondent may be a party and deny to said respondent all export privileges for the period of the order. Such supplemental order shall not preclude the Bureau of East-West Trade from taking such further action for any violations as it shall deem warranted. On the entry of a supplemental order revoking the respondent's probation without notice, he may file objections and request an oral hearing as provided in Section 388.16 of the United States Export Administration Regulations, but pending such further proceedings, the denial order shall remain in effect.

VIII. A copy of this order shall be served upon the respondent.

Dated: November 13, 1975.

LAWRENCE J. BRADY,
Assistant Director,
Office of Export Administration.

[FR Doc.75-31589 Filed 11-24-75;8:45 am]

Maritime Administration

[Docket No. S-476]

AMERICAN TRADING TRANSPORTATION CO., INC.

Notice of Application

Notice is hereby given that American Trading Transportation Company, Inc. (Operator), 555 Fifth Street, New York, N.Y. 10017, has filed an application dated October 30, 1975, to amend its Operating-Differential Subsidy Agreement, Contract No. MA/MSB-221 (the Agreement) by adding the tanker SS WASHINGTON TRADER. The Operator engages in the carriage of export bulk raw and processed agricultural commodities from the United States (U.S.) to the Union of Soviet Socialist Republics (U.S.S.R.). Liquid and dry bulk cargoes may be carried from the U.S.S.R. and other foreign ports, inbound, to U.S. ports during voyages subsidized for the carriage of export bulk raw and processed agricultural commodities to the U.S.S.R.

Full details concerning the U.S.-U.S.S.R. export bulk raw and processed agricultural commodities subsidy program, including terms, conditions and restrictions upon both the subsidized operators and vessels, appear in Title 46 of the Code of Federal Regulations, Part 294.

The Agreement was approved by the Maritime Subsidy Board (Board) on December 14, 1972 and presently includes the tankers SS MARYLAND TRADER and SS VIRGINIA TRADER. The Agreement will expire on December 31, 1975, unless further extended. Each voyage under the Agreement must be approved for subsidy before commencement of the voyage. The Board will act on each request for a subsidized voyage as an administrative matter under the terms of the Agreement, for which there is no requirement for further notices under section 605(c) of the Act.

Any person having an interest in the granting of the application and who would contest a finding of the Board that the service now provided by vessels of U.S. registry for the carriage of cargoes as previously specified is inadequate, must on or before December 2, 1975, notify the Board's Secretary, in writing, of his interest and of his position, and file a petition for leave to intervene in accordance with the Board's rules of practice and procedure (46 C.F.R. Part 201). Each statement of interest and petition to intervene shall state whether a hearing is requested under section 605 (c) of the Act and ,with as much specificity as possible, the facts that the intervenor would undertake to prove at such hearing.

In the event a hearing under section 605(c) of the Act is ordered to be held with respect to the subject application, the purpose of such hearing will be to receive evidence relevant to (1) whether the application herein above described, with respect to the vessels to be operated in an essential service and served by citizens of the U.S., would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of U.S. registry is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for a hearing and petition for leave to intervene is received within the specified time, or if the Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Board will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

By Order of the Maritime Subsidy Board, Maritime Administration.

Dated: November 18, 1975.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.75-31674 Filed 11-21-75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

Notice of Meeting

Notice is hereby given, pursuant to Section 10(a)(2) of the Federal Advi-

sory Committee Act (Pub. L. 92-463), that the next meeting of the Executive Committee of the National Advisory Council on Indian Education will be held December 13, 1975 at the Federal Building, Conference Room first floor, 1961 Stout Street, Denver, Colorado.

The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act (Pub. L. 92-318, Title IV, 20 U.S.C. 1221g). The Council, among other things, is directed to:

(1) Advise the Commissioner of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including sections 241aa to 241ff and 887c of this title and with respect to adequate funding thereof;

(2) Review applications for assistance under sections 241aa to 241ff, 887c, and 1211a of this title, and make recommendations to the Commissioner with respect to their approval;

(3) Evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

(4) Provide technical assistance to local educational agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;

(5) Assist the Commissioner in developing criteria and regulations for the administration and evaluation of grants made under section 241bb(b) of this title; and

(6) To submit to the Congress not later than March 31 of each year a report on its activities, which shall include any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate, or from which they can benefit, which report shall include statement of the National Council's recommendations to the Commissioner with respect to the funding of any such programs.

The meeting on December 13, 1975 will be open to the public beginning at 9:00 a.m. to 6:00 p.m. This meeting will be held at the Federal Building in Denver, Colorado.

The proposed agenda includes:

(1) Develop NACIE's Budget for FY '77

(2) Discuss future plans and activities of NACIE

(3) Regular Committee Business.

Records shall be kept of all Council proceedings (and shall be available for public inspection) at the office of the National Advisory Council on Indian Education located at 425 13th Street, N.W., Suite 326, Washington, D.C. 20004.

Signed at Washington, D.C. on November 11, 1975.

ROSE M. HUBBARD,
Acting Executive Director, NACIE.

[FR Doc.75-31644 Filed 11-21-75;8:45 am]

Food and Drug Administration

[NADA'S 39-715, 39-716, 39-717, 39-718V]

FEED PRODUCTS, INC.

Withdrawal of Approval of New Animal Drug Applications

The Commissioner of Food and Drugs is withdrawing approval of new animal drug applications for diethylstilbestrol alone and in combination with oxytetracycline, chlortetracycline, and zinc bacitracin in beef cattle premixes, effective November 24, 1975.

Under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360(e))) and under authority delegated to the Commissioner (21 CFR 2.120), the following notice is issued:

Feed Products, Inc., 1000 West 47th Ave., Denver, CO 80211, holder of approved new animal drug applications NADA's 39-715, 39-716, 39-717, 39-718V) for diethylstilbestrol and oxytetracycline, diethylstibestrol, diethylstilbestrol and chlortetracycline, and diethylstilbestrol and zinc bacitracin premxies has requested by letter dated August 11, 1975, that approval of the NADA's be withdrawn and has waived its opportunity for hearing. The NADA's provide for the use of the drugs as cattle feed supplements.

The firm had been requested to submit information concerning experience with use of the drugs. In reply, the firm stated they had not sold the products for a number of years, requested that approval of the NADA's be withdrawn, and waived an opportunity for a hearing.

Therefore, under § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115) notice is hereby given that approval of NADA's 39-715, 39-716, 39-717 and 39-718V and all supplements and amendments thereto for diethylstibestrol alone and in the combinations noted above is hereby withdrawn, effective November 24, 1975.

Dated: November 17, 1975.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.75-31625 Filed 11-21-75;8:45 am]

[Docket No. 75N-0338]

ALCOHOLIC BEVERAGES

Labeling

The Commissioner of Food and Drugs is announcing plans to enforce compliance by alcoholic beverage manufacturers with the requirements of, and regulations promulgated under, the Federal Food, Drug, and Cosmetic Act which requires, inter alia, that the labels of all foods, including alcoholic beverages, bear a statement of ingredients. Only those foods for which a standard of identity has been promulgated under section 401 of the act are exempted from this requirement.

The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) establishes certain requirements for "food," which is defined as "articles used for food or drink for man or other animals" (21 U.S.C. 321(f)(1)). It has long been established that "food" includes alcoholic beverages. See, e.g., *United States v. 1,800.2625 Wine Gallons of Distilled Spirits*, 121 F. Supp. 735 (W.D. Mo. 1954); *United States v. Sweet Valley Wine Co.*, 208 F. 85 (N.D. Ohio 1913).

Food and Drug Administration (FDA) Trade Correspondence No. 224, dated April 11, 1940, stated that while alcoholic beverages were subject to the Federal Food, Drug, and Cosmetic Act, FDA would defer to the agency administering the Federal Alcohol Administration Act to avoid duplicating the work of that agency with respect to the labeling of these products. The provisions of the Federal Food, Drug, and Cosmetic Act remained fully applicable to alcoholic beverages, and manufacturers have been obligated to comply both with that act and with the more specific requirements imposed under the Federal Alcohol Administration Act. In its Alcohol and Tobacco Tax Division Industry Circular 62-33, dated October 26, 1962, the Internal Revenue Service formally notified manufacturers that the possession of certificates of label approval pursuant to the Federal Alcohol Administration Act did not excuse them from complying with the laws and regulations administered by FDA.

FDA's policy of deferring to the Bureau of Alcohol, Tobacco and Firearms for enforcement of labeling requirements was embodied in a memorandum of untent with the food labeling requirements derstanding between the two agencies that was published in the FEDERAL REGISTER of October 8, 1974 (39 FR 36127). That memorandum noted that regulations issued by the Bureau of Alcohol, Tobacco and Firearms must be consistent with the food labeling requirements of the Federal Food, Drug, and Cosmetic Act and regulations promulgated thereunder. The Bureau of Alcohol, Tobacco and Firearms announced in the FEDERAL REGISTER of November 11, 1975 (40 FR 52613) its decision not to require ingredient labeling under its regulations, although an alcoholic beverage must bear a declaration of ingredients to comply with section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(i)(2)). Because of that decision, the memorandum of understanding has been terminated by FDA.

This notice advises manufacturers and other affected persons that FDA will take regulatory action to enforce the food labeling requirements of the Federal Food, Drug, and Cosmetic Act, and regulations promulgated thereunder, in respect to alcoholic beverages shipped in interstate commerce after January 1, 1977. Because of the wide-spread lack of compliance with the act, the Commissioner has determined that a reasonable length of time should be provided for alcoholic beverages to be brought into compliance.

The Commissioner advises that his enforcement policy applies not only to the requirement for declaration of ingredients, but also to all other labeling requirements imposed under the act and in the regulations. The pertinent regulations are contained in 21 CFR Chapter I, except that the regulations identified in

§ 1.1(c) (21 CFR 1.1 (c)) as having been issued solely under the Fair Packaging and Labeling Act are not applicable to alcoholic beverages, since section 10 of the Fair Packaging and Labeling Act (15 U.S.C. 1459) exempts alcoholic beverages from the coverage of that act.

Where appropriate, existing regulations establish special provisions for labeling particular foods. Upon petition, the Commissioner may publish a proposal for special provisions dealing with alcoholic beverages. Any such petition shall include an adequate factual basis to support the provisions sought and shall be in the form set forth in 21 CFR Part 2. The filing of a petition does not operate to stay the requirement to comply with the act and regulations.

After January 1, 1977, the Food and Drug Administration is prepared to invoke regulatory sanctions provided under law against alcoholic beverages not complying with the act and the regulations promulgated thereunder, and against their manufacturers and distributors.

Dated: November 18, 1975.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.75-31626 Filed 11-21-75;8:45 am]

LABELING OF ALCOHOLIC BEVERAGES

Termination of Memorandum of Understanding With the Bureau of Alcohol, Tobacco and Firearms

The Commissioner of Food and Drugs announces that the memorandum of understanding between the Bureau of Alcohol, Tobacco and Firearms and the Food and Drug Administration, which was published in the FEDERAL REGISTER of October 8, 1974 (39 FR 36127), has been terminated by the Food and Drug Administration, effective December 19, 1975. In addition, the Commissioner hereby revokes Food and Drug Administration Trade Correspondence No. 224, dated April 11, 1940, which announced that enforcement of requirements for labeling alcoholic beverages was to be left to the Federal Alcohol Administration, the predecessor of the Bureau of Alcohol, Tobacco and Firearms.

Dated: November 18, 1975.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.75-31627 Filed 11-21-75;8:45 am]

[NADA No. 65-223V]

E. R. SQUIBB & SONS, INC.

Pendistrin Ointment; Withdrawal of Approval of New Animal Drug Application

The Commissioner of Food and Drugs is withdrawing approval of the new animal drug application for Pendistrin Ointment, effective November 24, 1975.

Under provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner (21 CFR 2.120), the following notice is issued:

E. R. Squibb & Sons, Inc., P.O. Box 4000, Princeton, NJ 08540, is the holder of an approved new animal drug application for Pendistrin Ointment, a penicillin-dihydrostreptomycin ointment containing mineral oil for use in the treatment of bovine mastitis. The company has stated that the product is no longer produced or distributed and that it has not been marketed for several years. The firm requested in its letter of April 21, 1975, that approval for the new animal drug application be withdrawn and has waived an opportunity for a hearing.

Therefore, in accordance with § 514.-115 *Withdrawal of approval of applications* (21 CFR 514.115) notice is given that approval of NADA No. 65-223V and all supplements and amendments thereto for Pendistrin Ointment is hereby withdrawn, effective November 24, 1975.

Dated: November 17, 1975.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.75-31623 Filed 11-21-75;8:45 am]

[NADA 40-299V]

SYNTEX AGRIBUSINESS, INC.

Nova-3 Premix Medicated; Withdrawal of Approval of New Animal Drug Application

The Commissioner of Food and Drugs is withdrawing approval of the new animal drug application for Nova-3 Premix Medicated, effective November 24, 1975.

Under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner (21 CFR 2.120), the following notice is issued:

Syntex Agribusiness, Inc., Nutrition and Chemical Div., P.O. Box 1246 S.S.S., Springfield, MO 65805, holder of approved new animal drug application (NADA) 40-299V for Nova-3 Premix Medicated has requested by letter dated May 16, 1975 that approval of the NADA be withdrawn. The NADA provides for the use of a medicated premix containing aklomide, sulfanitran, and roxarsone in growing broiler chickens.

Since the firm has never manufactured or marketed the drug, it has requested that approval of the NADA be withdrawn.

Therefore, in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 40-299V, and all supplements and amendments thereto, is hereby withdrawn, effective November 24, 1975.

Dated: November 17, 1975.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.75-31624 Filed 11-21-75;8:45 am]

National Institutes of Health

NATIONAL EYE INSTITUTE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors of the National Eye Institute on December 11-12, 1975. This meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on December 11, 1975 for general remarks by the Institute Director on matters concerning the intramural program of the Laboratory of Vision Research, a budget discussion, and legislative developments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552(b)(6), Title 5, U.S. Code and Section 10(d) of P.L. 92-463, the meeting will be closed to the public from 9:00 a.m. to adjournment on December 12, 1975 for review, discussion, and evaluation of individual projects conducted by the National Eye Institute in the Section on Neurophysiology of the Laboratory of Vision Research. This evaluation will include consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Julian Morris, Program Planning Officer, National Eye Institute, Building 31, Room 6A-27, telephone (301) 496-5248, will furnish summaries of the meeting and rosters of committee members.

Substantive program information may also be obtained from Dr. Carl Kupfer, Director, National Eye Institute, Building 31, Room 6A-03, telephone (301) 496-2234, National Institutes of Health, Bethesda, Maryland 20014.

Dated: November 20, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75-31778 Filed 11-21-75;8:45 am]

Office of the Secretary

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

Part 4 of the Statement of Organization, Functions and Delegations of Authority for the Department of Health, Education, and Welfare contains the Statement of Organization, Functions, and Delegations of Authority for the Social Security Administration (SSA). Sections 4-03-00 through 4-03-20 of the SSA Statement (40 FR 4475-76, dated January 30, 1975) describe the Mission, Organization, Order of Succession, and Functions for SSA's Office of Program Policy and Planning (OPPP). Sections 4-03-10 E. and 4-03-20 E. of the OPPP Statement are hereby modified and expanded to reflect the creation of five divisions within OPPP's Office of Policy and Regulations. This additional material reads as follows:

Sec. 4-03-10 *Office of Program Policy and Planning*—(Organization).

E. Office of Policy and Regulations.

1. Division of General Policy.

2. Division of Retirement and Survivors Policy.

3. Division of Disability Policy.

4. Division of Supplemental Security Policy.

5. Division of Regulations.

Sec. 4-03-20 *Office of Program Policy and Planning*—(Functions).

E. The Office of Policy and Regulations (OPR) provides leadership and direction to, and exercises overall responsibility for, SSA-wide program policy development and coordination, and for promulgation of program regulations. It conducts and directs the development, interpretation and evaluation of general program policies, as well as program and claims policies and substantive program requirements for the retirement, survivors and disability insurance programs; the supplemental security income program; and the "Black Lung" benefits program, including detailed program and claims policy specifications for the use of the Office of Program Operations in developing implementing manual instructions. OPR ensures that interrelated policy areas are meshed into well-coordinated overall policies; represents SSA on overall policy matters; and acts as SSA's overall policy consultant. The Office coordinates its policy development and evaluation activities with the activities of the Office of Program Operations and with various Federal and State agencies. It provides overall policy for coverage of State and local government employees, in coordination with the Office of Program Operations and the Office of External Affairs. OPR develops, recommends the issuance of, and promulgates program regulations and rulings. It evaluates the effectiveness of program policies in meeting goals and objectives established to fulfill SSA's mission; and participates in legislative planning. The Office includes the following components and functions:

1. *Division of General Policy* (DGP):

a. Develops philosophy, principles, methods, procedures and techniques for SSA policy development and conceptual evaluation; formulates and applies concepts and standards for SSA policy development; and participates in legislative and administrative planning.

b. Develops, evaluates, interprets and maintains program policies and substantive procedures concerning:

(1) Matters of general, overall SSA concern, such as due process requirements, freedom of information, confidentiality of information, enumeration, and representative payment;

(2) Matters affecting the public trust in the execution of SSA's mission, such as disposition of overpayments, representation of claimants, attorney fees, fraud, and the integrity of benefit rolls; and

(3) Matters falling within multiple policy jurisdictions.

c. Leads, or assists in coordinating, the study and resolution of broad policy and program planning issues which cut across jurisdictional lines.

d. In coordination with the Office of Research and Statistics, plans and directs the evaluation, development and implementation of major social research projects and policy evaluation studies.

2. *Division of Retirement and Survivors Policy* (DRSP):

a. Plans, develops, evaluates, interprets and maintains policies and substantive procedures applicable to cash benefit coverage under the retirement and survivors insurance (RSI) program, as well as other program and claims policies and substantive procedures common to that program and other SSA-administered programs, including:

(1) Insured status;

(2) Computations;

(3) Technical coordination and integration of social security programs with Civil Service retirement, military service and railroad retirement;

(4) Proofs for such factors of entitlement as age, relationship and support;

(5) Provisions for reconsideration and appeal;

(6) Retirement provisions concerning eligibility to receive payments;

(7) Withholding of benefits in domestic and certain foreign cases;

(8) Underpayments;

(9) Problems concerning benefit checks; and

(10) School attendance provisions.

b. Reviews proposed RSI procedures and instructions for conformance with established program policies.

c. Participates in legislative planning and in negotiations and coordination within DHEW, and, in cooperation with the Office of External Affairs, with other interested governmental and private organizations.

3. *Division of Disability Policy* (DDP):

a. Plans, develops, evaluates, interprets and maintains policies, substantive procedures, nonmedical standards and other material applicable to the disability insurance (DI) program, the disability and blindness provisions of the supplemental security income program, and the black lung program.

b. Adapts SSA-wide policies for authorizing and paying claims to the special needs of the DI program.

c. Contributes to the development of, and reviews, guides and instructions developed for claims personnel in the Bureau of Disability Insurance, district and branch offices, SSA regional offices, other SSA components and State agencies involved in processing disability and blindness claims.

d. Participates in legislative planning and in interprogram coordination with public and private organizations concerned with disability and blindness.

4. *Division of Supplemental Security Policy* (DSSP):

a. Plans, develops, evaluates, interprets and maintains policies, substantive procedures and other materials unique to the supplemental security income (SSI) program, including:

(1) Eligibility;

(2) Amount of benefits;

(3) Period for determination of benefits;

(4) Special limits on gross income;

(5) Limitations on eligibility of certain individuals;

(6) Determinations as to whether certain individuals meet SSI resource and income tests;

(7) Exclusions from income and resources;

(8) Optional and mandatory State supplementation, and minimum income level maintenance; and

(9) Income/resources of individuals other than eligible spouses.

b. Coordinates the development and maintenance of SSI program policies within OPR, with the Bureau of Supplemental Security Income, the Office of External Affairs, and other SSA components.

c. Reviews substantive SSI procedures and instructions for conformance with established program policies.

d. Assures that SSI program requirements are reflected in common SSA program policies; and participates in legislative planning.

5. *Division of Regulations* (DR):

a. Plans, directs and coordinates the development and recommendation of SSA program regulations, and promulgates such regulations.

b. Develops and applies SSA-wide standards for the issuance of program-related manuals, policy interpretations, directives and substantive instructions.

c. Plans and develops rulings to provide legal guidelines and interpretations for the administration of the Social Security Act; develops and publishes general and special compilations of the Social Security Laws, various technical issuances and program handbooks; exercises overall SSA responsibility for the substantive policy review of program claims forms; monitors the formulation and issuance of operating manuals, interpretations, directives and instructions; and participates in legislative planning.

d. Coordinates internal policy review and clearance of proposed substantive instructions for the claims and payment processes of the retirement, survivors and disability insurance programs; the supplemental security income program; and the "Black Lung" benefits program, and provides technical, consultative and advisory services within OPR and to the Office of Program Operations in the development and conformation of program and operating instructions.

e. Is responsible for ongoing coordination with DHEW's Office of the General Counsel regarding the issuance of regulations and rulings, and the legal aspects of materials contained in program manuals, policy interpretations and directives, and other substantive instructions.

f. Negotiates with DHEW and the Office of the Federal Register concerning regulations matters and other areas of concern to DR and, in coordination with the Office of External Affairs, also negotiates with other Federal and non-Federal agencies, organizations and institutions concerning areas of DR responsibility.

Dated: November 13, 1975.

JOHN OTTINA,
Assistant Secretary for Administration and Management.

[FR Doc.75-31629 Filed 11-21-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

YOUTH HIGHWAY SAFETY ADVISORY COMMITTEE

Notice of Public Meeting

On December 13-14, 1975, the Youth Highway Safety Advisory Committee will hold an open meeting at the New Orleans Marriott Hotel, Canal and Chartres Streets, New Orleans, Louisiana. The Committee is composed of persons appointed by the National Highway Traffic Safety Administrator to consult with and advise him concerning programs and activities to attract and sustain the participation of young people in the national effort to combat highway deaths and injuries.

The meeting will be in session from 9:00 a.m. to 5:00 p.m. on December 13, 1975 and from 9:00 a.m. to 12:00 noon on December 14, 1975. The agenda is as follows:

Presentation on New Orleans ASAP.
Presentation by MACOY (Mayor's Action Council on Youth.)

Briefing on Southern States Youth Activities.
Meeting with Louisiana's Governor's Representative for Highway Safety.
Discussion on Bylaws for the Youth Committee.

For further information, contact Executive Secretariat, Room 5215, 400 Seventh Street, SW, Washington, D.C., telephone 202-426-2872.

This notice is given pursuant to Section 10(a)(2) of Public Law 92-463, Federal Advisory Committee Act (FACA) effective January 5, 1973.

Issued on November 18, 1975.

WM. H. MARSH,
Executive Secretary.

[FR Doc.75-31632 Filed 11-21-75;8:45 am]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

PRIVACY ACT OF 1974

Notice of System of Records

Pursuant to the Privacy Act of 1974, Pub. L. No. 93-579 (88 Stat. 1896), the Administrative Conference of the United States published for public comment a notice of system of records on October 17, 1975, 40 FR 48895.

Interested persons were given until November 17, 1975, to submit written comments or suggestions concerning the systems of records identified in the notice. No comments having been received, the systems of records are adopted as proposed.

RICHARD K. BERG,
Executive Secretary.

NOVEMBER 18, 1975.

[FR Doc.75-31531 Filed 11-21-75;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 28262]

AIR MIDWEST CERTIFICATION PROCEEDING

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on December 18, 1975, at 9:30 a.m. (local time), in Room 1003, Hearing Room D, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before Administrative Law Judge Burton S. Kolko.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and four copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before December 8, 1975, and the other parties on or before December 15, 1975. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., November 18, 1975.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.75-31661 Filed 11-21-75;8:45 am]

[Docket 28378; Order 75-11-67]

KODIAK-WESTERN ALASKA AIRLINES, INC.

Order Fixing Final Service Mail Rates

Issued under delegated authority November 19, 1975.

In the matter of the petition of Kodiak-Western Alaska Airlines, Inc. for fuel surcharge applicable to the carriage of intra-Alaska mail.

By Order 75-11-15, November 5, 1975, all interested persons, and particularly Kodiak-Western Alaska Airlines, Inc. and the Postmaster General, were directed to show cause why the Board should not amend Order 73-2-6, February 1, 1973, so as to provide for a surcharge to cover increased costs of fuel, subject to the terms and conditions set forth in Order 73-2-6.

The time designated for filing notice of objection has elapsed and no notice of objection or answer to the order has been filed by any person. All persons have therefore waived the right to a hearing and all other procedural steps short of fixing a final rate.

Upon consideration of the record, the findings and conclusions set forth in said order are reaffirmed and adopted.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, the Board's Procedural Regulations, 14 CFR Part 302, and the authority delegated by the Board in its Organizational Regulations, 14 CFR 385.16(g),

It is ordered, That: 1. The fair and reasonable final rates of compensation to be paid to Kodiak-Western Alaska Airlines, Inc., by the Postmaster General, pursuant to the provisions of section 406 of the Federal Aviation Act of 1958, for the transportation of mail by aircraft over its entire system, the facilities used and useful therefor, and the services connected therewith, on and after October 17, 1975, is a service mail rate consisting of the following:

(a) *Terminal charges* of 7.5 cents per pound for the first 400,000 originating mail pounds per year, of 5 cents per pound for the second 400,000 originating mail pounds per year, and of 2.5 cents per pound for any mail pounds in excess of 800,000 pounds originating during the year .

(b) *Line-haul charges* of $4.18 per ton-mile for the first 20,000 mail ton-miles per year, and of $2.18 per ton-mile for the additional mail ton-miles in excess of 20,000 ton-miles per year.

(c) The foregoing charges would make payable to Kodiak-Western Alaska by 28-day postal accounting periods in accordance with the following formula:

PAYMENT FORMULA
PER 28-DAY POSTAL ACCOUNTING PERIOD

	Unit rate
Terminal charges:	
1st 30,800 lbs. originated...cents...	7.5
2nd 30,800 lbs. originated...do....	5.0
All other pounds originated...do...	2.5
Line-haul charges:	
1st 1,540 ton-miles.....	$4.18
All other ton-miles.....	$2.18

2. The mail ton-miles used in computing the service mail payments at the foregoing rates shall be based upon the great-circle airport-to-airport mileage between points served for the carriage of mail;

3. The final service mail rate here fixed and determined is to be paid in its entirety by the Postmaster General; and

4. This order shall be served on the Postmaster General and Kodiak-Western Alaska Airlines, Inc.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50 may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

FRANK R. CHABOT,
Chief, Government Rates Division, Bureau of Economics.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-31662 Filed 11-21-75;8:45 am]

[Docket 28365; Order 75-11-60]

WARDAIR CANADA (1975), LTD.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 18th day of November, 1975.

On October 2, 1975, Wardair Canada (1975), Ltd., filed in Docket 28365 an application for approval of the transfer to it of the foreign air carrier permits held by Wardair Canada, Ltd., and a motion for an order to show cause why the application should not be granted without a hearing.

No answers to the application and motion have been received.

BACKGROUND

Wardair Canada, Ltd., is the holder of foreign air carrier permits issued pursuant to Orders 75-1-88,[1] effective

[1] The permit issued pursuant to Order 75-1-88 authorizes charter foreign air transportation of persons and property between any point or points in Canada and any point or points in the United States.

January 22, 1975, and 75-3-65[2] effective March 18, 1975. In June of 1975, in accordance with a proposed corporate reorganization, Wardair Canada, Ltd., incorporated a wholly owned subsidiary, Wardair Canada (1975), Ltd., which will assume all the foreign air services previously performed by the parent.

The Air Transport Committee of the Canadian Transport Commission has approved the transfer of commercial air services licenses from Wardair Canada, Ltd., to Wardair Canada (1975), Ltd.[3]

OWNERSHIP AND CONTROL

Under the reorganization plan, the applicant, Wardair Canada (1975), Ltd., is a wholly owned subsidiary of the present permit holder, Wardair Canada, Ltd. All of the stock of Wardair Canada (1975), Ltd., is held by the parent, Wardair Canada, Ltd. The parent is a Canadian corporation, incorporated in Alberta. At least eighty percent of the voting shares of Wardair Canada, Ltd., is held by Canadian nationals.

Wardair Canada (1975), Ltd., was incorporated on June 25, 1975, in the Province of Alberta, Canada.[4] Wardair Canada, Ltd., has transferred to Wardair Canada (1975), Ltd., the applicable air operating licenses and authorities in order to separate the economics, operations, and management of the air carrier from certain broader diversification projects to be undertaken by other subsidiaries of the parent.

In addition to ownership, the management of the parent is in the control of Canadian citizens. The Board of Directors and the principal officers of the corporation are Canadian. In addition, the Officers, Directors, and management of Wardair Canada (1975), Ltd., are the same as those of Wardair Canada, Ltd. Therefore, it is concluded that effective control over both day-to-day operations and policy decisions is vested in Canadian citizens.[5]

FINANCIAL AND OPERATIONAL FITNESS

Wardair Canada (1975), Ltd., possesses, in all material respects, the attributes of Wardair Canada, Ltd., which has operated as a foreign air charter carrier under permits issued by the Board since December 16, 1967.[6]

Furthermore, by requesting this transfer, the applicant is voluntarily accepting the limits of passenger liability and the terms governing such limits as are set forth in CAB Agreement 18900, approved by the Board in Order E-23680, May 13, 1966. Thus, it is concluded that all of the fitness requirements of section 402 of the Act are met by the applicant.

PUBLIC INTEREST

By Orders 75-1-88 and 75-3-65, the Board found that it was in the public interest to issue the permits held by Wardair Canada, Ltd.[7] Transfer of the permits to its subsidiary company to perform the identical foreign air transportation is supported by the same consideration. As noted above, the Government of Canada has licensed Wardair Canada (1975) in lieu of the present permit holder. Therefore, it is tentatively concluded that grant of the relief requested is in the public interest.

On the basis of the foregoing, it is tentatively found and concluded that:

(a) Wardair Canada (1975), Ltd., is fit, willing and able properly to perform the air transportation proposed in its application and to conform to the provisions of the Act and the rules, regulations and requirements of the Board.

(b) Wardair Canada (1975), Ltd., is a wholly owned subsidiary of Wardair Canada, Ltd., a corporation owned and controlled by Canadian citizens.

(c) Wardair Canada (1975), Ltd., should be subject to all the terms, conditions, and limitations set forth in the specimen foreign air carrier permits attached to this order.

(d) A hearing on the application of Wardair Canada 1975), Ltd., is not required in the public interest.

(e) The transfer of the permits from Wardair Canada, Ltd., to Wardair Canada (1975), Ltd., is in the public interest.

Accordingly, after consideration of the facts and the pleadings, we have decided to grant the applicant's motion and issue an order directing interested persons to show cause why the Board should not approve the transfer of Wardair Canada, Ltd.'s permits to Wardair Canada (1975), Ltd.

All interested persons will be given 30 days following the adoption of this order to show cause why the tentative findings and conclusions set forth herein should not be made final. We expect such persons to direct their objections, if any, to specific issues, and to support such objections with detailed analyses. If an evidentiary hearing is requested, the objector should name the specific markets or other issues with respect to which a hearing is requested and should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a hearing. Vague, general or unsupported objections will not be entertained.[8]

Accordingly, it is ordered that: 1. All interested persons are directed to show cause why the Board should not make final the tentative findings and conclusions herein and why an order should not be issued, subject to approval by the President pursuant to section 801 of the Act, transferring and reissuing the permits issued by Orders 75-1-88 and 75-3-65 to Wardair Canada (1975), Ltd;

2. Any interested persons having objections to the issuance of an order making final the tentative findings and conclusions herein and transferring the said permits shall, within 30 days after adoption of this order, file with the Board and serve on the persons named in paragraph 6 a statement of objections specifying the part or parts of the tentative findings or conclusions objected to, together with a summary of testimony, statistical data and such evidence expected to be relied upon to support the statement of objections;

3. If timely and properly supported objections hereto are filed, full consideration will be accorded the matters or issues raised therein before further action is taken by the Board: *Provided*, That the Board may proceed to enter an order in accordance with the tentative findings and conclusions herein if it determines that there are no factual

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[2] The permit issued pursuant to Order 75-3-65 authorizes: a. Circle tour charter flights (including inclusive tour charters) with respect to persons and their accompanying baggage which originate and terminate at a point or points in Canada and serve a point or points in the United States and a point or points in any country other than Canada and the United States.

b. Charter flights (including inclusive tour charters) with respect to persons and their accompanying baggage between a point or points in Austria, Belgium, Cyprus, Denmark, Finland, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and any point or points in the United States, limited to charter flights which originate in a named European country.

c. Circle tour charter flights (including inclusive tour charters) with respect to persons and their accompanying baggage which originate and terminate at the same point or points in Austria, Belgium, Cyprus, Denmark, Finland, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and serve a point or points in the United States and a point or points in any country other than a named European country and the United States.

[3] The Canadian Government has advised the Board that the transfer of these licenses will be effective on January 1, 1976. On that date, Wardair Canada (1975), Ltd., will be designated in place of Wardair Canada, Ltd. under the Canadian-U.S. bilateral agreement for nonscheduled air services signed at Ottawa on May 8, 1974.

[4] Exhibit No. 2.

[5] Exhibit Nos. 12 and 13.

[6] Exhibit Nos. 6, 6a, and 7.

[7] The foreign air carrier permit issued pursuant to Order 75-3-65 expired by its own terms on July 31, 1975. Wardair Canada, Ltd., has filed timely application for renewal and amendment of this permit and has invoked the automatic extension provisions of the Administrative Procedure Act, 5 USC, Section 558(c). We will transfer the permit though dated to expire on July 31, 1975, and will confer upon Wardair Canada (1975), Ltd., the same authority to operate under the automatic extension provisions of Section 558(c) as is enjoyed by the present permit holder. The renewal application will be processed in accord with normal Board procedures in Docket 27817.

[8] The applicant has moved for a waiver pursuant to sec. 312.6 from the requirements of sec. 312.12 which direct the filing of an environmental evaluation. The Board action sought by the applicant will not effect a change in the kind or quantity of air service provided. Thus, the transfer of the foreign air carrier permits from Wardair Canada, Ltd., to Wardair Canada (1975), Ltd., will not result in a major federal action significantly affecting the environment. Accordingly, we will grant the requested waiver.

issues presented that warrant the holding of an evidentiary hearing; *

4. In the event no objections are filed to this order, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions herein;

5. The requirements of § 312.12 be and they hereby are waived as to this application, in accordance with the terms of § 312.6; and

6. This order shall be served upon Wardair Canada (1975), Ltd., and the Ambassador of Canada.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

SPECIMEN

PERMIT TO FOREIGN AIR CARRIER (AS REISSUED)

WARDAIR CANADA (1975), LTD. is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in charter foreign air transportation as follows:

1. Circle tour charter flights (including inclusive tour charters) with respect to persons and their accompanying baggage which originate and terminate at a point or points in Canada and serve a point or points in the United States and a point or points in any country other than Canada and the United States.

2. Charter flights (including inclusive tour charters) with respect to persons and their accompanying baggage between a point or points in Austria, Belgium, Cyprus, Denmark, Finland, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portuga , Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and any point or points in the United States, limited to charter flights which originate in a named European country.

3. Circle tour charter flights (including inclusive tour charters) with respect to persons and their accompanying baggage which originate and terminate at the same point or points in Austria, Belgium, Cyprus, Denmark, Finland, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and serve a point or points in the United States and a point or points in any country other than a named European country and the United States.

This permit shall be subject to the following terms, conditions, and limitations:

(1) With respect to the authorization contained in paragraph 1 above, the holder shall not engage in foreign air transportation between the United States and any point or points, other than a point or points in Canada, or transport any person whose journey, by any means of transportation, includes a prior, subsequent, or intervening movement to or from a point not in the United States or Canada: *Provided*, That this condition shall not prevent the holder, under the authorization contained in paragraph 1 above, from serving a point or points in any foreign country between the point of origin and point of termination of the charter flight in Canada, or prevent the holder from carrying between a point or points in Canada and a point or points in the United States charters originating in one of the European points named in paragraph 3 above.

(2) The authority of the holder to perform circle inclusive tour charters originating in Canada shall be subject to the terms, conditions, and limitations contained in licenses to be issued by the Air Transport Committee of the Canadian Transport Commission authorizing the performance of such charters. The authority of the holder to perform inclusive tour charters originating in a named European country or point shall be subject to the following conditions:

(a) Each tour shall provide overnight hotel accommodations at a minimum of three places other than the point of origin, such places to be no less than 50 air miles from each other.

(b) If more than one group is carrier, each of the groups shall consist of 40 or more tour participants.

(c) The Board, by order or regulation and without hearing, may waive conditions (a) and (b) in whole or in part.

(3) The holder shall not commence any service under the authorizations contained in paragraphs 2 and 3, except pursuant to an initial tariff setting forth rates, fares, and charges no lower than rates, fares, or charges that are then in effect for any U.S. supplemental air carrier in the same foreign air transportation.

(4) The Board, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the holder pursuant to the authority granted by this permit, if it finds such action to be required in the public interest.

(5) The exercise of the privileges granted by this permit, except with respect to inclusive tour charters, shall be subject to the provisions of Part 214 of the Board's Economic Regulations, and all amendments and revisions thereof as the Board, by order or regulation and without hearing, may adopt.

(6) The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Canada for Canadian international air service.

(7) This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Canada shall be parties.

(8) This permit shall be subject to the condition that the holder shall keep on deposit with the Board a signed counterpart of C.A.B. Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

(9) The holder (a) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (b) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

(10) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on ----------, and shall terminate on July 31, 1975: *Provided, however*, That if in the aforesaid period during which this permit shall be effective, the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and Canada are or shall become parties, then and in that event, this permit is continued in effect during the period provided in such treaty, convention, or agreement.

In Witness Whereof, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the ----------

Secretary.

SPECIMEN

PERMIT TO FOREIGN AIR CARRIER

(as reissued)

WARDAIR CANADA (1975), LTD. is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958 and the orders, rules, and regulations issued thereunder, to engage in charter foreign air transportation as follows:

Charter flights with respect to persons and their accompanied baggage, and planeload charter flights with respect to property, between any point or points in Canada and any point or points in the United States.

The holder shall be authorized to perform those types of charters originating in Canada and in the United States, as are now, or may hereafter be, prescribed in Annex B of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, including any amendments, supplements, reservations, or supersessions to that Agreement.[1]

* Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

[1] Annex B(II) (B) and (III) (B) presently authorize the following types of large and small aircraft charters originating in Canada: Single Entity Passenger, Single Entity Property, Pro Rata Common Purpose, Advance Booking, and Inclusive Tour; and split passenger charters of the types set forth, subject to Canadian Transport Commission Regulations which presently do not permit Advance Booking Charters for small aircraft. Annex B(II)(A) presently authorizes the following types of large aircraft charters originating in the United States: Single Entity Passenger, Single Entity Property, Pro Rata Affinity, Mixed (Entity/Pro-Rata), Inclusive Tour, Study Groups, Overseas Military Personnel, and Travel Group; and split passenger charters of the types set forth. United States originating small aircraft charters are governed by the definition set forth in condition (1), (Annex B, (III) (A), (I) (C).)

This permit shall be subject to the following terms, conditions, and limitations:

(1) The authority of the holder to perform United States originating large aircraft charter flights shall be subject to the provisions of Part 214 of the Board's Economic Regulations and Part 378 of the Board's Special Regulations. The authority of the holder to perform United States-originating small aircraft charter flights shall be limited to commercial air transportation of passengers and their accompanied baggage, and property, on a time, mileage or trip basis, where the entire planeload capacity of one or more aircraft has been engaged by a person for his own use or by a person for the transportation of a group of persons and/or their property, as agent or representative of such group. The authority of the holder to perform Canadian-originating charter flights shall be subject to the Air Carrier Regulations of the Canadian Transport Commission. The holder shall, nevertheless, not be authorized to provide charters of a type other than as authorized by Annex B of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, including any amendments, supplements, reservations or supressions to that Agreement.

(2) The holder shall not engage in foreign air transportation between the United States and any point or points, other than a point or points in Canada, or transport any property or persons whose journey includes a prior, subsequent, or intervening movement by air (except for the movement of passengers independently of any group) to or from a point not in the United States or Canada: *Provided*, That the Board may, upon application by the holder, or by regulation, authorize the performance of charters where such movements are involved.

(3) The holder shall not perform United States-originating charter flights which at the end of any calendar quarter would result in the aggregate number of all United States-originating charter flights performed by the holder on or after May 8, 1974, exceeding by more than one-third the aggregate number of all Canadian-originating charter flights performed by the holder on or after May 8, 1974: *Provided*, That the Board may authorize the performance of charter flights not meeting the requirements set forth. For the purpose of making such computation the following shall apply:

(a) A charter shall be considered to originate in the United States (or Canada) if the passengers or property are first taken on Board in that country, and shall be considered as one flight whether the charter be one-way, round-trip, circle tour, or open jaw, even if a separate contract is entered into for a return portion of the charter trip from Canada (or the United States).

(b) The computation shall be made separately for (i) "large aircraft" flights of persons; (ii) "Large aircraft" flights of property; (iii) "small aircraft" flights of persons; and (iv) "small aircraft" flights of property.[1]

(c) In the case of a lease of aircraft with crew for the performance of a charter flight on behalf and under the authority of another carrier, the flight shall be included in the computation if the holder is the lessee, and shall not be included if the holder is the lessor.

(d) There shall be excluded from the computation: (i) flights utilizing aircraft having a maximum authorized takeoff weight of wheels (as determined by Canadian Transport Commission Regulations) not greater than 18,000 pounds; and

(ii) flights originating at a United States terminal point of a route authorized pursuant to the Air Transport Services Agreement between the United States and Canada, signed January 17, 1966, as amended, or any agreement which may supersede it, or any supplementary agreement thereto which establishes obligations or privileges thereunder (if, pursuant to any such agreement, the holder also holds a foreign air carrier permit authorizing individually ticketed or individually waybilled service over such route, and provides some scheduled service on any route pursuant to any such agreement), when such flights serve either (a) a Canadian terminal point on such route, or (b) any Canadian intermediate point authorized for service on such route by such foreign air carrier permit.

(4) The holder may grant stopover privileges at any point or points in the United States only to passengers and their accompanied baggage moving (a) on a Canadian-originating large aircraft flight operating under a contract for charter transportation to be provided solely by the holder (even if a different aircraft is used), or (b) on a Canadian-originating small aircraft flight operating under a contract for round-trip charter transportation to be provided solely by the holder and as to which the same aircraft stays with the passengers throughout the journey. *Provided*, That the Board may authorize the performance of charters not meeting the requirements set forth.

(5) The Board, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the holder pursuant to the authority granted by this permit, if it finds such action to be required in the public interest.

(6) The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Canada for Canadian international air service.

(7) This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Canada shall be parties.

(8) This permit shall be subject to the condition that the holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

(9) The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

(10) By accepting the permit, the holder waivers any right it may possess to assert any defense of sovereign innunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall become effective on ----------. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the charter foreign air transportation hereby authorized from the transportation which may be operated by carriers designated by the Government of Canada (or in the event of the elimination of part of the charter foreign air transportation hereby authorized, the authority granted herein shall terminate to the extent of such elimination), or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Canada in lieu of the holder hereof, or (3) upon the termination or expiration of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974: *Provided, however*, That clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and Canada are or shall become parties.

IN Witness Whereof, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the ----------.

Secretary.

[FR Doc.75-31663 Filed 11-21-75;8:45 am]

[1] Annex A(I)(A) of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, defines a "large aircraft" as an aircraft having both: (1) a maximum passenger capacity (as determined by CAB Regulations) of more than 30 seats or a maximum payload capacity (as determined by CAB Regulations) of more than 7,500 pounds; and (2) a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) greater than 35,000 pounds. A "small aircraft" is defined as an aircraft which is not a "large aircraft."

COMMISSION ON CIVIL RIGHTS

NEW YORK ADVISORY COMMITTEE TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New York Advisory Committee (SAC) to this Commission will convene at 4:00 p.m. on December 10, 1975, Phelps Stokes Fund—10 East 87th Street, New York, New York 10028.

Persons wishing to attend this meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, Room 1639, 26 Federal Plaza, New York, New York 10007.

The purpose of this meeting is to discuss further plans for public employment subcommittee projects and school desegregation surveys.

This meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 20, 1975.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.75-31820 Filed 11-21-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 456-6]

MISSOURI

Marine Sanitation Device Standard

On May 15, 1975, notice was given that the State of Missouri had petitioned the Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels within the State of Missouri are reasonably available for the waters of the State, with the exception of those boats engaged in interstate commerce on the Missouri and Mississippi Rivers. The action was requested pursuant to section 312(f)(3) of Pub. L. 92-500 (40 FR 21064, May 15, 1975).

Petitions signed by 2,992 individuals were received in support of the State of Missouri's application; petitions signed by 2,864 individuals were received in opposition to the State of Missouri's petition. Additional comments were received from the Lake of the Ozarks Yachting Association, the Boat Owners Association of the United States, Great Lakes Cruising Club, the Lauderdale Marina, Inc. of Fort Lauderdale, Florida, and a private citizen.

Section 312(f)(3) of the Act states, "[A]fter the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such waters to which such prohibition would apply."

Following an examination of the petition and the supporting information, and a consideration of all comments received pursuant to the May 15 FEDERAL REGISTER notice, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the State of Missouri with the exception of the western portion of Bull Shoals Lake north from the Corps of Engineers location marker number 34, which is located near the Arkansas-Missouri State line, and the Missouri and Mississippi Rivers. This determination is made pursuant to section 312(f)(3) of Pub. L. 92-500.

The information submitted to me indicates that for the Lake of the Ozarks there are 10 pump-out facilities and that most of the cruiser traffic on the Lake is between Bagnal Dam and the 30-mile mark because navigation on the upper end of the Lake has the hazard of going aground on mudflats. It is reasonable to assume that pump-out facilities designed to service the general boating public are not available in waters too hazardous for normal boating purposes. Thus, I have determined that pump-out facilities for the Lake of the Ozarks are reasonably available. Further, such information indicates that in Pomme de Terre Lake, the farthest distance one could operate a cruiser from a pump-out station would be approximately five miles. This lake has three such facilities. Stockton Lake has two pump-out stations; Tablerock has five pump-out stations and the information indicates that vessels with marine sanitation devices would be within 10 miles from such facilities on either lake. Norfolk and Clearwater Lakes have no pump-out facilities but support no cruiser traffic. In Lake Wappapello there are no pump-out facilities, but there are three boats equipped with portable potties that use on-shore toilet facilities for disposal.

The information that I have received indicates that the Missouri River has no pump-out facilities. Alton Pool, on the Mississippi River, has seven pump-out facilities, however, we have determined that the draught adjacent to the pump-out facility precludes commercial vessels from using those available. Since section 312(f)(3) of Pub. L. 92-500 mandates a determination that adequate facilities are available for all vessels to which any no-discharge prohibition would apply, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage are not reasonably available for the Missouri and Mississippi Rivers.

There appears to be eight vessels equipped with marine sanitation devices moored in the Missouri portion of Bull Shoals Lake, whereas all pump-out facilities are located across the State boundary in the State of Arkansas. Two such vessels are moored a distance of six miles from the nearest pump-out facility; two of the vessels are moored a distance of 12 miles from the nearest pump-out facility; and four of the vessels are moored a distance of 20 miles from the nearest pump-out facility. In my judgment, a pump-out facility located 20 miles from the mooring place of 50 percent of the vessels with marine sanitation devices for any lake does not represent reasonable availability of such facilities. Obviously, a definition of "reasonably available" could vary from one waterway to another and certainly it would be influenced momentarily through climatic and other factors. A Corps of Engineers 1973 map indicates marker number 34 as a logical place to determine the boundaries within which adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Bull Shoals Lake; the marker is within 10 miles of a pump-out station and separates an additional 10 miles of an arm of Bull Shoals Lake beyond this point. Vessels with marine sanitation devices using this arm may be as far as 20 miles from the nearest pump-out facility. Thus, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Bull Shoals Lake, with the exception of the western portion of said Lake, north from the Corps of Engineers location marker number 34, which is located near the Arkansas-Missouri State line.

Dated: November 18, 1975.

JOHN QUARLES,
Acting Administrator.

[FR Doc.75-31886 Filed 11-21-75;8:45 am]

[FRL 459-4]

NEW YORK

Notice of Approval of Program for Control of Discharges of Pollutants to Navigable Waters

Notice is given hereby that the U.S. Environmental Protection Agency (EPA) has granted the State of New York's request for approval of its program for controlling discharges of pollutants to navigable waters in accordance with the National Pollutant Discharge Elimination System (NPDES), pursuant to section 402(b) of the Federal Water Pollution Control Act, as amended (Pub. L. 92-500, 86 Stat. 816, 33 U.S.C. 1251; the Act).

Section 402 of the Act established the NPDES program, under which the Administrator of EPA may issue permits for the discharge of a pollutant upon the condition that the discharge meets applicable requirements of the Act. Section 402(b) provides that any State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit its proposed program to the Administrator. If the Administrator determines that the State has adequate authority to carry out the Act's requirements, he shall approve the submission and suspend the issuance of permits as to those navigable waters subject to the program. Guidelines specifying procedural and other elements for State NPDES programs appear at 40 CFR Part 124 (as amended by 38 FR 18000, July 5, 1973, and 38 FR 19894, July 24, 1973).

On April 8, 1974, New York submitted a program for carrying out its proposed NPDES program. Because of certain

legislative defects, appropriate legislative amendments were enacted. Thereafter, on April 16, 1975, New York resubmitted its proposed NPDES program. On June 4, 1975, EPA held a public hearing on the proposed approval in Albany, New York. Subsequently, the State sought and was granted extension so that the State could promulgate appropriate implementing regulations and prepare to undertake administration of its NPDES program. The State's NPDES regulations became effective on August 29, 1975.

After a review of New York's proposed NPDES program, the accompanying legal certification, and all comments submitted by the public during and after the public hearing, the Administrator determined that the State's authority was adequate to carry out the requirements of the Act, and so informed Governor Hugh L. Carey, in a letter dated October 28, 1975.

As of October 29, 1975, the New York NPDES permit program is being administered by the New York Department of Environmental Conservation (DEC), 50 Wolf Road, Albany, New York 12233 (telephone (518) 457-3446). Mr. Ogden Reid is Commissioner of the DEC. The New York program is being administered in accordance with New York statutes and regulations and two Memoranda of Agreement, one between the DEC and EPA's Region II office, 26 Federal Plaza, New York, New York 10007 (telephone (212) 264-2525), and the other between Region II and the New York Board on Electric Generation Siting and the Environment.

All pertinent documents are available for inspection at the DEC, at EPA's New York Regional Office and at EPA's Headquarters in Room 3201, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

STANLEY W. LEGRO,
Assistant Administrator for Enforcement.

NOVEMBER 19, 1975.

[FR Doc.75-31687 Filed 11-21-75;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 779]

COMMON CARRIER SERVICES INFORMATION [1]

Applications Accepted for Filing [2]

NOVEMBER 10, 1975.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (see § 309(c) of the Communications Act of 1934) or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning any of these applications within 30 days of the date of this notice.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which his subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. [See § 1.227(b)(3) and 21.30(b) of the Commission's Rules.]

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20754-CD-AL-76, KWIK KALL Communications Co. Consent to Assignment of License from Andrew Hawkins d.b.a. KWIK KALL Communications Co., Assignor, to Hawkins Communications, Inc., Assignee. (KUD-232—Washington, D.C.)

20755-CD-P-(2)-76, RAM Broadcasting of Washington, Inc. (KTR996), C.P. for additional facilities to operate 454.025 MHz at new Loc. No. 2: Capital Park, 525-1 th Ave. E., Seattle, Washington, and for additional facilities to operate on 454.125 MHz at new Loc. No. 3: Beacon Towers, 1311 S. Massachusetts, Seattle, Washington.

20756-CD-P-76, ACE Commercial Services, Inc. (KQZ741); C.P. to change antenna location operating on 152.06 MHz to East of Ridge Road North, Columbus, Mississippi.

20757-CD-P-76, Radio Telephone, Inc. (KRM948), C.P. to relocate facilities operating on 158.70 MHz to Peachtree Plaza Hotel, Atlanta, Georgia.

20758-CD-P-76, Radio Telephone, Inc. (KTS269), C.P. to relocate facilities operating on 43.22 MHz to Peachtree Plaza Hotel, Atlanta, Georgia (1-way-signaling).

20759-CD-P-(3)-76, Central Telephone Company (KOH273), C.P. for additional facilities to operate on 152.54, 152.57, 152.78 MHz to be located at 5th and Carson Streets, Las land, Missouri (1-way-signaling).

20760-CD-P-76, Norman County Telephone Company, Inc. (New), C.P. for a new station to operate on 152.57 MHz to be located on U.S. Hwy. 59, ½ mile South of Westbury, Minn.

20761-CD-P-76, Certified Communications, Inc. (KRS635), C.P. for additional facilities to operate on existing frequency 152.24 MHz located at 9910 Page Boulevard, Overland, Missouri (1-way-signaling).

20762-CD-P-76, Canaveral Communications, Inc. (KUO561), C.P. for additional facilities to operate on 152.24 MHz. at new Loc. No. 2: 2.8 miles South Southeast of Sebastian, Indian River, Florida (1-way-signaling).

20763-CD-AP-76, Empire Paging Corporation, Consent to Assignment of Permit from Empire Paging Corporation, Assignor, to Mobile Telephone Company of New Jersey, Assignee. Station KWT995, Neptune, New Jersey (formerly granted under Call Sign KEJ886). For Particulars, PN No. 748-A, dated April 8, 1975 (File No.: 7428-C2-P-70).

20764-CD-P-(8)-76, Southwestern Bell Telephone Company (New), C.P. for a new 1-way station to operate on 158.10 MHz at Loc. No. 1: 1010 Pine Street, St. Louis, Mo.; and at Loc. No. 2: 707 St. Joseph St., Florissant, Mo.; at Loc. No. 3: 402 North 3rd St., St. Charles, Mo.; at Loc. No. 4: Wild Horse Creek and Wilson Roads, Chesterfield, Mo.; at Loc. No. 5: 200 Manchester Road, Manchester, Mo.; at Loc. No. 6: South of county road PP, High Ridge, Mo.; at Loc. No. 7: 1679 Big Bill Road, Maxville, Mo.; at Loc. No. 8: 6214 Delmar, St. Louis, Missouri.

20765-CD-P-(3)-76, Caprock Radio Dispatch (KKO353), C.P. for additional Developmental facilities to operate on 152.195 MHz (Base) and 459.125 MHz (Repeater) at new Loc. No. 9: 7 miles NW of Maljamar, New Mexico; also for additional Developmental facilities to operate on 454.125 MHz (Control) at existing Loc. No. 7: 601 North Grimes Street, Hobbs, New Mexico.

20766-CD-P-76, Harbor Communications, Inc. (New), C.P. for a new station to operate on 152.18 MHz to be located at 511 Fort Street, Port Huron, Michigan.

20767-CD-P-76, Southwestern Bell Telephone Company (KAA690), C.P. to relocate facilities operating on 152.66 MHz to be located 0.25 mile East of St. Joseph, Missouri.

20769-CD-P-(2)-76, Telephone Answering Bureau, Inc. (New), C.P. for a new station to be operated on 152.09 MHz and 152.15 MHz (Base) to be located at Pleasant Mtn., 1.25 miles SW of Granite-ville, near Williamstown, Vermont.

20770-CD-P-76, The Ohio Bell Telephone Company (KPJ891), C.P. to relocate facilities operating on 152.84 MHz (Base) to be located at 66 Norton Road, New Rome, Ohio (1-way-signaling).

20771-CD-P-(3)-76, Collins Radio Communications Corporation (New), C.P. for a new station to operate on 152.03 MHz (Base) and 459.075 MHz (Repeater) at Loc. No. 1: 2 miles SE of Route 59, 5 Miles NE of Douglas, Wyoming; also to be operated on 454.075 MHz (Control) at Loc. No. 2: 212 N. 2nd Street, Douglas, Wyoming.

Informative:

It appears that the following applications may be mutually exclusive and subject to the Commission's Rules regarding ex parte presentations, by reasons of potential electrical interference.

FN: 20601-CD-P-(3)-76, Empire Mobilcomm Systems, Inc. (KOK419) Salem, Oregon.

FN: 20369-CD-P-(3)-76, RAM Broadcasting of Oregon, Inc. (KUC874) Portland, Oregon.

Frequencies: 454.150, 454.250, 454.300 MHz.

1. By Commission action of September 23, 1974, the First Report and Order in Docket 20490 was adopted.

[1] All applications listed below are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's Rules, regulations and other requirements.

[2] The above alternative cut-off rules apply to those applications listed below as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio and Local Television Transmission Services (Part 21 of the Rules).

2. Effective December 1, 1975, a new Section 21.11 of the rules will require all licensees, permittees and applicants in the Domestic Public Land Mobile Radio Service to file FCC Form 430 ("Common Carrier Radio Licensee Qualification Report").

3. The criteria for filing, pursuant to Section 21.11 is: (1) as required by other application forms; and (2) annually no later than January 31, for the preceeding year, if service was provided to the public.

4. Since the present FCC Form 401 does not require the filing of FCC Form 430, new applicants can either attach a completed FCC Form 430 or answer items Nos. 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 on the present FCC Form 401.

5. Once FCC Form 430 has been filed and until such time as FCC Form 401 is revised to eliminate the duplicative information contained in these two forms, FCC Form 430 should be referenced in lieu of responding to the above listed items of the present FCC Form 401.

6. Copies of FCC Form 430 can be obtained by writing to:

Federal Communications Commission, Room B-10, 1019 M Street, NW., Washington, D.C. 20554.

Specifically request FCC Form 430 in your letter.

7. FCC Form 430 is not applicable to individual mobile subscribers or rural radio subscribers who have filed for their own license.

RURAL RADIO SERVICE

60206-CR-ML-76, The Mountain Sts. Tel. & Tel. Co. (WSM52), Mod. Lic. of Central Office-Fixed station operating on 157.77 MHz to delete the following points of communication: WBB829, 5.8 miles WNW of Granger, Wyo.; WSN52, 45.5 miles SE of Rock Springs, Wyoming; WAP813, 26.0 miles SSE of Point of Rocks, Wyoming; WAQ588, 20.6 miles ESE of Point of Rocks, Wyoming; also to add the following points of communication: WBB836, 32.1 miles S of Bitter Creek, Wyoming; WBB848, 9.6 miles ESE of Bitter Creek, Wyoming. Station WSM52 is located 11.5 miles SSE of Rock Springs, Wyoming.

60312-CR-P-76, Cedric Lee Layden D.M.D. (New), C.P. for a new Rural Subscriber-Fixed station to operate on 157.92 MHz to be located 14 miles E. of Fall Creek, Oregon.

POINT-TO-POINT MICROWAVE RADIO SERVICE

1205-CF-P-76, Northwestern Bell Telephone Company (KAK53), 409 1st Avenue North, Fargo, North Dakota. Lat. 46°52'39" N., Long. 96°47'05" W. C.P. to change transmitter and increase power on frequencies 6197.2V 10955V MHz toward Leonard R, North Dakota on azimuth 235.2°.

1206-CF-P-76, Same (KTG62), Leonard R, 3 Miles North of Leonard, North Dakota. Lat. 46°39'28" N., Long. 97°14'31" W. C.P. to replace transmitters and increase power on frequencies 5974.8V 11405V MHz toward Fargo, North Dakota on azimuth 54.9°.

1207-CF-MP-76, Southern Bell Telephone & Telegraph Company (KIY59), 1645 Hampston Street, Columbia, South Carolina. Lat. 34°00'29" N., Long. 81°01'42" W. Modification of C.P. to change polarization from Horizontal to Vertical on frequencies 3710, 3790, 3870, 3950, 4030, and from Vertical to Horizontal on 3770, 3850, 3930, 4010, 4090, 4170 MHz toward Swansea, South Carolina on azimuth 188.2°.

1208-CF-MP-76, Same (KJC87), 1.7 Miles East of Swansea, South Carolina. Lat. 33°-44'42" N., Long. 81°04'25" W. Modification of C.P. to change polarization from Vertical to Horizontal on frequencies 3730, 3810, 3890, 3970, 4050 MHz toward Columbia, South Carolina on azimuth 8.2°.

1213-CF-P-76, Utah-Wyoming Telephone Company (New), Randolph, Utah. Lat. 41°-40'01" N., Long. 111°11'05" W. C.P. for a new station on frequencies 11365H MHz toward Cokeville, Wyoming via Passive Repeater at Rex Peak, Utah, and 11245V MHz toward Mud Flat, Utah via Passive Repeater.

1214-CF-P-76, Cokeville Telephone Company, Inc. (New), Cokeville, Wyoming. Lat. 42°-05'10" N., Long. 110°57'24" W. C.P. for a new station on frequency 10915H MHz toward Rex Peak 1, Utah on azimuth 194.2°.

1215-CF-P-76, The Mountain States Telephone & Telegraph Company (WPX90), Ioka, 8.9 Miles West of Roosevelt, Utah. Lat. 40°19'29" N., Long. 110°09'19" W. C.P. to add point of communication on frequencies 10775V 11095V MHz toward Flattop Butte, Utah on azimuth 159.18°.

2162-CF-TC-(11)-76, Central Telephone Company, Inc., Application for consent to Transfer of Control from Stockholders of Mid-Texas Communications Systems, Inc., Transferor, to Central Telephone and Utilities Corp., Transferee, for stations KRR53, Alvord, TX.; KRR54, Boyd, TX.; KRR55, Chico, TX.; KRR56, Decatur, TX.; KRR57, Krum, TX.; KRR58, Sanger, TX.; KRR59, Slidell, TX.; WQR77, St. Jo. TX.; WQR78, Sunset, TX.; WOE41, Boonsville, TX.; WQR76, Montagne, TX.

404-C1-P-74, Frank K Spain, d.b.a. Microwave Service Company (KNK45), Edom Hill, 4.0 Miles NW of Thousand Palms, California. Lat 33°51'58" N., Long. 116°26'03" W. C.P. to change frequency to 10875H MHz toward Palm Springs (KMIR-TV Studio), California, on azimuth 252°35'.

1143-CF-P-76, Western Tele-Communications, Inc. (New), Chidlaw Bldg., Barnes & East Bijou Streets, Colorado Springs, Colorado. Lat. 38°50'05" N., Long. 104°47' 12" W. C.P. for a new station on 2178.OH towards Cheyenne Mountain, Colorado on azimuth 205°57'.

1144-CF-P-76, Same (New), Cheyenne Mountain, 7.0 Miles SSW of Colorado Springs, Colorado. Lat. 38°44'35" N., Long. 104°50' 37" W. C.P. for a new station on 2128.OH towards Chidlaw Bldg., Colorado on azimuth 25°55' and 2112.0V towards Peterson Field, Colorado on azimuth 54°10'.

1145-CF-P-76, Same (New), Peterson Field, 6.1 Miles East of Colorado Springs, Colorado. Lat. 38°49'29" N., Long. 104°41' 56" W. C.P. for a new station on 2162.OV towards Cheyenne Mountain, Colorado on azimuth 234°15'.

1194-CF-P/L-76, Southern Pacific Communications Company (New), Any Territory of Grantee. C.P. and License to operate 6 Units within area of Grantee. Frequency bands 3700-4200 MHz; 5925-6425; and 10700-11700. NOTE.—Southern Pacific Communications Company request Special Temporary Authority.

1198-CF-P-76, Eastern Microwave, Inc. (KTG28), 3.5 Miles East of Frewsburg, New York. Lat. 42°02'48" N., Long. 79°05'26" W. C.P. to add 6390.OH MHz, via power split, toward Stockton, New York.

1201-CF-MP-76, Microwave Transmission Corporation (WPF96), Monument Peak, 4.5 Miles North of Milpitas, California. Lat. 37° 29'07" N., Long. 121°51'57" W. C.P. to add 11405 MHz, via power split, toward Milpitas HE and Stockton, both in California.

1202-CF-P-76, Same (WQR44), Escrito, 9.0 Miles West of Saledad, Calif. Lat. 36°24' 22" N., Long. 121°29'26" W. C.P. to add 10855H MHz and 10935H MHz toward Williams Hill, California.

Correction

The following entry was inadvertently omitted on Public Notice dated November 3, 1975.

1151-CF-P-76, RCA Global Communications, Inc. (WAH589), Valley Forge, King of Prussia, Pennsylvania. Lat. 40°05'24" N., Long. 75°24'07" W. C.P. to add 11345.OV MHz toward Wyndmoor, Pennsylvania, on azimuth 18.8 degrees.

Major amendments

7944-C1-P-73, Frank K. Spain, d.b.a. Microwave Service Company (KNK45), Edom Hill, 4.0 Miles NW of Thousand Palms, California. Lat. 33°51'58" N., Long. 116°26' 03" W. Application amended to change frequency to 10955V MHz toward Palm Springs (KPLM-TV), California, on azimuth 229°52'.

4048-CF-P-75, American Television & Communications Corporation (New), 4.3 SW of Efland, North Carolina. Lat. 36°02'26" N., Long. 79°13'17" W. Application amended to add 6241.7H MHz, 6301.0H MHz, and 6360.3H MHz via power split, toward proposed new point of communication at Hillsborough, North Carolina. Lat. 36°03'05" N., Long. 79°06'16" W.

[FR Doc.75-31528 Filed 11-21-75;8:45 am]

TELEPHONE COMPANY INTERCONNECTION MEETINGS

Revised Schedule

The Commission's Common Carrier Bureau has cancelled meetings previously scheduled for Thursday, November 20, and Friday, November 21, concerning interconnection between the wireline telephone companies and the Radio Common Carriers (RCCs), which furnish two-way radiotelephone and one-way signaling service to the public. The meetings were cancelled with the concurrence of representatives of the Bell System and the National Association of Radiotelephone Systems, to which many of the RCCs belong, so that the participants could devote additional time to preparing for discussion of topics at later meetings. All other meetings announced in the FCC's October 31, 1975, Public Notice will be held. The schedule of meetings is now as follows:

Monday, November 24, Tuesday, November 25, Tuesday, December 9, Wednesday, December 10, Thursday, December 11, Thursday, December 18, Friday, December 19.

All meetings will be held in Room 8210, 2025 M Street, NW., Washington, D.C. The November 24 meeting will begin at 9:30 a.m. The starting time for each of the other meetings will be determined at the close of the preceding meeting.

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

[FR Doc.75-31761 Filed 11-21-75;8:45 am]

1979 WARC CONFERENCE WORKING GROUP

Meetings

Pursuant to Section 10 of the Federal Advisory Committee Act, 5 U.S.C. App. I § 10 (Supp. III, 1973), notice is hereby given of the meeting of the 1979 World Administrative Radio Conference (WARC) Cable Television Satellite Dis-

tribution and Radio and Relay Working Group on December 9, 1975, at 2025 M Street, NW., Washington, D.C., Room 6331. The meeting is scheduled to commence at 10 a.m.

The agenda is as follows:

(1) Review Bibliographies.

(2) Review comments identifying existing and potential services, areas of spectral interest and impacts.

(3) Determine issues, positions, and allocation of work.

(4) Adjournment.

Numerous service-oriented working groups have been formed by the Commission to investigate the spectrum needs of the United States to the year 2000. The outputs of the various groups will be channeled to one or more of four functional committes which will examine spectrum requirements and give recommendations based on these requirements to the FCC Steering Committee. The Steering Committee, composed of representatives of each of the Commission's Bureaus and Offices, will be responsible for formulating the Commission's basic spectrum recommendations for use at the 1979 Conference.

Any member of the public may attend or file a written statement with the Group either before or after the meeting. Inquiries may be directed to A. M. Rutkowski, Room 6216, FCC, Washington, D.C., 20554; telephone 202-632-9797.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.75-31645 Filed 11-21-75;8:45 am]

FEDERAL ENERGY ADMINISTRATION

PROPOSED NATURAL GAS EMERGENCY STANDBY ACT OF 1975

Draft Environmental Impact Statement; Availability and Request for Comments

On November 21, 1975, the Federal Energy Administration (FEA) issued a draft Environmental Impact Statement on the proposed Natural Gas Emergency Standby Act of 1975. The purpose of this proposed legislation is to minimize the economic and social hardships expected to result from projected natural gas shortages.

Copies of the draft statement are available for inspection in Room 3120, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., between 8:30 a.m. and 4:30 p.m., e.s.t., Monday through Friday. Copies may also be obtained by writing to:

Press Room, Office of Communications, Public Affairs, Room 3136, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461

Interested persons are invited to submit written data, views, or arguments with respect to the draft statement to Executive Communications, Room 3309, Federal Energy Administration, Box EZ, the Federal Building, Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to the Federal Energy Administration with the designation "Natural Gas Act—Draft EIS." Fifteen (15) copies should be submitted. All comments received by 4:30 p.m., January 10, 1976, will be considered by the Federal Energy Administration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Issued in Washington, D.C., November 18, 1975.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.75-31593 Filed 11-19-75;8:45 am]

OLD OIL ALLOCATION PROGRAM

Entitlement Notice for September 1975

In accordance with the provisions of 10 CFR 211.67 relating to FEA's old oil allocation program, the monthly notice specified in § 211.67(l) is hereby published.

Based on reports submitted to FEA by refiners as to crude oil receipts and crude oil runs to stills for September 1975 and an application of the entitlement adjustment for small refiners provided in 10 CFR 211.67(e), the adjusted national old oil supply ratio for September 1975 is calculated to be .35496.

The issuance of entitlements for the month of September 1975 to refiners and to one other firm (pursuant to a Decision and Order issued by FEA's Office of Exceptions and Appeals) is set forth in the Appendix to this notice. The Appendix lists the name of each refiner and other firm to which entitlements have been issued, the number of entitlements issued to each such refiner or other firm, and the number of barrels of old oil included in each such refiner's adjusted crude oil receipts.

Pursuant to 10 CFR 211.67(l)(4), FEA hereby fixes the price at which entitlements shall be sold and purchased for the month of September 1975 at $8.31, which is the exact differential as reported for the month of September between the weighted average costs to refiners of old oil and of new, released, stripper well and imported crude oil.

In accordance with 10 CFR 211.67(b), each refiner that has been issued fewer entitlements for the month of September 1975 than the number of barrels of old oil included in its adjusted crude oil receipts is required to purchase a number of entitlements for the month of September 1975 equal to the difference between the number of barrels of old oil included in those receipts and the number of entitlements issued to and retained by that refiner. Refiners which have been issued a number of entitlements for the month of September 1975 in excess of the number of barrels of old oil included in their adjusted crude oil receipts for September 1975 and other firms issued entitlements shall sell such entitlements to refiners required to purchase entitlements. No corrections for reporting errors for months prior to September 1975 are reflected in the listing as FEA intends to effect these corrections through modifications to the program to be issued in the near future. The program as so modified would provide for a more accurate system of correcting these errors than is the case at present.

The listing of refiners' old oil receipts contained in the Appendix reflects any adjustments made by FEA pursuant to § 211.67(h).

The listing of entitlement issuances contained in the Appendix also reflects relief granted by FEA's Office of Exceptions and Appeals. The following refiners are not shown in the listing due to their having been exempted from the entitlement purchase requirements of the program under exception decisions or stays: Good Hope, J&W, Laketon, Midland, Navajo, OKC, West Coast and Young. The aggregate volume of old oil receipts for these firms for September 1975 was 1,951,652 barrels, which was not taken into account for purposes of making the calculations in the listing.

The listing specifies a negative entitlement issuance as to one refiner due to corrective adjustments made pursuant to an exception decision to that refiner's volume of crude oil runs to stills. The total number of entitlements required to be purchased by that refiner under the listing is equal to the number of barrels of old oil shown as its old oil adjusted receipts plus the negative entitlement issuance shown in the "issued" column.

The total number of entitlements required to be purchased and sold under this notice is 19,677,959.

Payment for entitlements required to be purchased under 10 CFR 211.67(b) for September 1975 must be made by November 30, 1975. On or prior to December 10, 1975, each firm which is required to purchase or sell entitlements for the month of September shall file with FEA the monthly transaction report specified in 10 CFR 211.66(l) certifying its purchases and sales of entitlements for the month of September. FEA will mail monthly transaction report forms for the month of September to reporting firms in November 1975. FEA requests that firms which have been unable to locate other firms for required entitlement transactions by November 30, 1975 contact FEA at 202-634-7615 to expedite consummation of these transactions. For firms that have failed to consummate required entitlement transactions on or prior to November 30, 1975, FEA may direct sales and purchases of entitlements pursuant to the provisions of 10 CFR 211.67(j).

This notice is issued pursuant to Subpart G of FEA's regulations governing its administrative procedures and sanctions, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with FEA's Office of Exceptions and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before December.

Issued in Washington, D.C. on November 17, 1975.

DAVID G. WILSON,
Acting General Counsel.

APPENDIX.—*Entitlements for allocation of old oil*

Reporting firm short name	Old oil adjusted receipts	Entitlement position		
		Issued	Required to buy	Required to sell
A-Johnson	0	98,755	0	98,755
Allied	45,027	68,688	0	23,661
Amer-Petrofina	1,657,559	1,804,407	0	146,848
Amerada-Hess	2,271,177	5,885,203	0	3,614,026
Amoco	11,540,275	10,691,839	848,436	0
Apco	364,862	585,787	0	220,925
Arco	5,655,886	7,661,477	0	2,005,591
Arizona	39,679	18,997	20,682	0
Asamera	5,247	17,461	0	12,214
Ashland	1,828,502	3,726,923	0	1,898,301
Bayou	39,681	42,187	0	2,506
Beacon	250,573	161,938	88,635	0
Calumet	0	29,994	0	29,994
Canal	68,299	56,070	12,229	0
Caribou	93,179	79,283	15,896	0
Champlin	2,002,219	1,550,702	451,517	0
Charter	1,038,531	906,920	131,611	0
Citgo	4,035,578	2,785,143	1,250,435	0
Claiborne	11,517	3,002	8,515	0
Clark	539,998	1,173,687	0	633,689
Coastal	754,705	1,227,414	0	472,709
Conoco	4,516,236	3,596,762	920,474	0
Coreo	0	817,413	0	817,413
Cra-Farmland	549,134	600,441	0	51,307
Cross	8,265	44,289	0	36,024
Crown	486,415	809,870	0	323,455
Crystal-Oil	171,081	167,774	3,307	0
Crystal-Ref	3,701	22,570	0	18,869
Delta	635,978	454,163	181,815	0
Diamond	556,819	570,789	0	13,970
Dorchester	6,562	9,306	0	2,744
Dow	13,185	110,149	0	96,964
Eddy	39,569	38,745	824	0
Edgington-Oil	396,868	471,455	0	74,587
Edgington-Oxn	13,274	23,487	0	10,213
Evangeline	38,630	24,638	13,992	0
Exxon	13,425,503	11,165,267	2,260,236	0
Famariss	284,503	333,192	0	48,689
Farmers-UN	285,527	394,281	0	108,754
Fletcher	0	79,064	0	79,064
Flint	10,307	9,119	1,188	0
Gary	1,689	80,614	0	78,925
Getty	702,417	924,527	0	222,110
Giant	25,979	31,276	0	5,297
Gladieux	166,379	167,536	0	11,157
Golden-Eagle	7,448	118,027	0	110,579
Good-Hope	0	151,632	0	151,632
Guam	0	343,473	0	343,473
Gulf	10,564,400	8,900,392	1,664,008	0
Gulf-Sts	12,343	14,906	0	2,563
Hiri	0	550,300	0	550,300
Howell	827,821	373,229	503,602	0
Hunt	529,934	291,825	238,109	0
Husky	610,133	558,959	51,174	0
Indiana-Farm	135,794	233,168	0	97,374
Kentucky	1,471	6,082	0	4,611
Kerr-McGee	1,892,809	1,601,604	141,205	0
Koch	608,299	1,352,813	0	744,514
Laglorla	468,068	293,566	174,502	0
Lakeside	7,105	18,844	0	11,739
Little-Amer	211,900	256,246	0	44,346
MacMillan	84,466	184,808	0	100,342
Marathon	4,267,770	3,275,098	992,672	0
Marion	62,752	183,304	0	120,550
Mid-Amer	0	40,018	0	40,012
Mobil	9,008,983	7,825,041	1,183,942	8
Mohawk	497,248	523,132	0	25,884
Monsanto	441,341	356,150	85,191	0
Morrison	5,710	4,805	905	0
Mountaineer	3,640	3,969	0	329
Murphy	1,090,199	970,019	120,180	0
N-Amer-Petro	183,619	135,908	47,711	0
Natl-Coop	408,432	203,616	204,816	0
New-Engl-Petro	0	335,961	0	335,961
Newhall	137,826	113,968	23,858	0
Oil-Shale	1,182,139	1,024,956	157,183	0
Pasco	868,514	805,624	62,890	0
Pennzoil	493,980	513,794	0	19,814
Phillips	3,843,306	3,865,997	0	22,691
Pioneer	9,685	28,912	0	19,227
Placid	355,986	305,754	50,232	0
Plateau	126,911	98,935	27,976	0
Powerine	423,657	456,307	0	32,650
Pride	184,239	301,515	0	117,276
Quaker-St	9,232	217,386	0	208,154
Road-Oil	0	3,988	0	3,988
Rock-Island	474,902	376,779	98,023	0
Saber-Tex	35,984	82,683	0	46,699
Sabre-Cal	1,542	17,902	0	16,360
Sage-Creek	540	3,989	0	3,449
San-Joaquin	189,538	125,981	63,557	0
Seminole	0	36,152	0	36,152
Shell	13,503,617	10,065,111	3,438,506	0
Sigmor	5,828	0	5,828	0
Skelly	917,908	855,363	62,545	0
So-Hampton	69,721	85,587	0	15,866
Socal	8,363,000	10,037,223	0	1,674,223
Sohio	1,851,083	4,202,025	0	2,350,942

APPENDIX.—*Entitlements for allocation of old oil*—Continued

Reporting firm short name	Old oil adjusted receipts	Entitlement position		
		Issued	Required to buy	Required to sell
Somerset	918	39,530	0	38,611
Sound	0	94,651	0	94,650
Southland	358,684	248,977	109,707	0
Southwestern	289	144	145	3
Sunland	74,734	91,697	0	16,960
Sunoco	5,973,901	5,418,769	555,132	6
Tenneco	1,112,095	1,148,981	0	36,890
Tesoro	1,322,416	790,864	531,552	0
Texaco	12,903,066	12,232,205	670,861	0
Texas-Asph	1,492	25,756*	27,248	0
Texas-City	1,028,414	732,163	296,251	0
Thagard	12,041	43,735	0	31,694
The-Refinery	83,351	170,623	0	87,272
Thriftway	33,147	46,088	0	12,946
Thunderbird	113,386	161,274	0	47,888
Tonkawa	23,976	62,301	0	38,325
Total-Leonard	153,301	410,978	0	257,587
Union-Oil	6,436,810	4,560,405	1,876,405	0
Union-Texas	108,910	120,153	0	11,243
Unid-Ind	279	0	279	0
Unid-Ref	120,151	440,302	0	320,151
US-Oil	44,311	63,505	0	19,194
Vickers	363,527	338,706	0	25,179
Valero	0	21,399	0	21,399
Warrior	40,915	45,230	0	4,315
West-Coast	0	14,801	0	14,801
Western	13,536	23,158	0	9,622
Wickett	35,495	33,053	2,442	0
Winston	19,465	130,422	0	110,957
Wireback	0	1,555	0	1,555
Wilco	120,065	195,052	0	74,987
Yetter	0	1,263	0	1,263
Total	150,010,618	150,010,618	19,677,959	19,677,959

[1] Reflects a correction to this refiner's prior crude oil runs to still volumes, resulting in a negative entitlement issuance. In addition, the purchase obligation shown is subject to pending litigation between this refiner and the FEA.

[FR Doc.75-31411 Filed 11-18-75;9:28 am]

FEDERAL POWER COMMISSION

[Docket No. RI76-56, et al.]

AMOCO PRODUCTION COMPANY, ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

NOVEMBER 13, 1972.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

[1] Does not consolidate for hearing or dispose of the several matters herein.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders: (A) Under the Natural Gas Act, particularly Sections 4 and 15, the Regulations pertaining thereto [18 CFR, Chapter I], and the Commission's Rules of Practice and Procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Each Respondent shall comply with the refunding procedure required by the Natural Gas Act and Section 154.102 of the Regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf [2]		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI76-56	Amoco Production Co	195	45	El Paso Natural Gas Co. (New Mexico, Rocky Mountain).	$8,240	10-14-75		6-1-76	[3] 29.823	[3] 30.235	RI75-81
	do			do	11,920	10-14-75	1-1-76	(4)	60.84	62.032	
	do	406	12	do	1,944	10-14-75		6-1-76	[3] 35.246	[3] 35.732	RI75-81
	do			do	29,589	10-14-75	1-1-76	(4)	[5] 72.902	[5] 74.311	
	do	469	16	do	803	10-14-75		6-1-76	[3] 29.7	[3] 30.235	RI75-81
	do			do	(5)	10-14-75	1-1-76	(4)	60.8	62.032	
	do	627	14	Northwest Pipeline Corp. (New Mexico, Rocky Mountain).	54	10-14-75		6-1-76	29.7 [3]	[3] 30.235	RI75-81
	do			do	(5)	10-14-75	1-1-76	(4)	60.8	62.032	
RI76-75	Phillips Petroleum Co	305	18	El Paso Natural Gas Co. (Utah, Rocky Mountain).	933	10-15-75		4-19-76	[5] 25	[3] 26.36	RI75-48
RI76-58	Chevron Oil Co	3	14	Mountain Fuel Supply Co. (Wyoming, Rocky Mountain).	22,295	10-15-75		6-1-76	[3] 27.5702	[3] 28.8394	RI75-131
RI76-59	Amoco Production Co	467	15	Southern Union Gathering Co. (New Mexico, Rocky Mountain).	803	10 16-75		6-1-76	[3] 29.7	[3] 30.235	RI75-81
	do			do	(5)		1-1-76	(4)	60.8	62.032	
	do	468	10	do	1,766	10-16-75		6-1-76	[3] 29.7	[3] 30.235	RI75-81
	do			do	(5)		1-1-76	(4)	60.8	62.032	
	do	484	14	El Paso Natural Gas Co. (New Mexico, Rocky Mountain).	64	10-16-75		6-1-76	[3] 29.7	[3] 30.235	RI75-81
	do			do	(5)		1-1-76	(4)	60.8	62.032	
	do	485	15	do	64	10-16-75		6-1-76	[3] 29.7	[3] 30.235	RI75-81
	do			do	(5)		1-1-76	(4)	60.8	62.032	
	do	498	32	do	80	10-16-75		6-1-76	[3] 29.7	[3] 30.235	RI75-81
	do			do	(5)		1 1-76	(4)	60.8	62.032	
	do	499	24	do	214	10-16-75		6 1-76	[3] 29.7	[3] 30.235	RI75-81
	do			do	(5)		1-1-76	(4)	60.8	62.032	
	do	500	21	do	214	10-16-75		6-1-76	[3] 29.7	[3] 30.235	RI75-81
	do			do	(5)		1-1-76	(4)	60.8	62.032	

Docket No.	Respondent	Rate sched. No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf* Rate in effect	Cents per Mcf* Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI76-69	do	320	13	do	32	10-17-75			6-1-76	[2] 29.7	[2] 30.235	RI75-81
	do			do	(3)		1-1-76		(4)	60.8	62.032	
	do	397	19	do	1,070	10-17-75			6-1-76	[2] 29.7	[2] 30.235	RI75-81
	do			do	(3)		1-1-76		(4)	60.8	62.032	
	do	427	27	do	54	10-17-75			6-1-76	[2] 29.7	[2] 30.235	RI75-81
	do			do	(3)		1-1-76		(4)	60.8	62.032	
	do	566	12	Southern Union Gathering Co. (New Mexico, Rocky Mountain).	431	10-17-75			6-1-76	[2] 29.7	[2] 30.235	RI75-81
					161		1-1-76		(4)	60.8	62.032	

* Unless otherwise stated, the pressure base is 14.73 lb/in²a.
[1] Unless otherwise stated, the rate shown is the total rate, inclusive of any applicable British thermal unit adjustment and tax.
[2] Pressure base is 15.025 lb/in²a.
[3] No volumes at present.
[4] Accepted effective as of the date shown in the "effective date unless suspended" column.
[5] Subject to British thermal unit adjustment.
[6] Includes 1¢ gathering allowance.

The proposed increases which do not exceed the applicable national ceiling rate prescribed in Opinion No. 699, as amended, effective as of January 1, 1976, are accepted as of that date. The proposed increases which exceed the applicable area ceiling established in Opinion No. 658 are suspended for five months from the proposed effective date.

[FR Doc.75-31441 Filed 11-21-75;8:45 am]

[Docket No. G-10115, et al.]

AMOCO PRODUCTION COMPANY AND OTHER APPLICANTS LISTED HEREIN

Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

NOVEMBER 13, 1975.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 10, 1975, 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 the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-10115 C 9-25-75 10-10-75 [2]	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	Texas Eastern Transmission Corp., Greenwood Waskom Field, Caddo Parish, La.	20.8886 [3] 59.6116	15.025
G-16367 D 10-14-75	Mobil Oil Corp., 3 Greenway Plaza East, Suite 800, Houston, Tex. 77046.	Transwestern Pipeline Co., Feldman Field, Hemphill County, Tex.	(3)	
CI74-528 C 10-16-75	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	El Paso Natural Gas Co., Sand Hills Field, Crane County, Tex.	[4] 61.25	14.65
CI76-209 A 10-7-75	Burmah Oil Development, Inc., Golden Center 1, 2800 North Loop, West Houston, Tex.	Natural Gas Pipeline Co. of America, Blocks 322 and 323, East Cameron Area, offshore Louisiana.	[4] [5] $1.44	15.025
CI76-210 A 10-8-75	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas P/L Corp., Block 41 Field, West Cameron Area, offshore Louisiana.	[5] 53.115641	15.025
CI76-213 A 10-10-75	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	Natural Gas Pipeline Co. of America, Cemetary (Morrow) Field, Eddy County, N. Mex.	[4] [5] $1.00	14.65
CI76-215 A 10-14-75	Kewanee Oil Co., a division of Kewanee Industries, Inc., P.O. Box 2239, Tulsa, Okla.	Northern Natural Gas Co., Mocane Field, Beaver County, Okla.	[4] 90.95	14.65
CI76-217 A 10-6-75	American Natural Gas Production Co., 1 Woodward Ave., Detroit, Mich. 48226.	Michigan Wisconsin P/L Co., acreage in Beckham County, Okla.	[4] [5] 75.0	14.65
CI76-218 A 10-14-75	Phillips Petroleum Co., Bartlesvill, Okla. 74004.	Columbia Gas Transmission Corp., Block 54, West Cameron Area, offshore Louisiana.	[5] $1.05	15.025
CI76-219 A 10-15-75	Arkla Exploration Co., P.O. Box 1734, Shreveport, La. 71151.	Arkansas Louisiana Gas Co., Britt Ranch Area, Wheeler County, Tex.	[5] 54.83	14.65
CI76-220 A 10-16-75	Cities Service Oil Co., P.O. Box 300, Tulsa, Okla. 74102.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Block 45, Grand Isle Area, offshore Louisiana.	[4] [5] 80.0	15.025
CI76-221 A 10-16-75	Texas Pacific Oil Co., Inc., 1700 One Main Pl., Dallas, Tex. 75250.	El Paso Natural Gas Co., Phantom Draw Unit No. 1 Well, Eddy County, N. Mex.	[4] [5] $1.10	14.73
CI76-222 F 10-16-75	Gulf Oil Corp., successor to Paul De Cleva (Operator) et al., P.O. Box 1589, Tulsa, Okla. 74102.	Northern Natural Gas Co., North Hansford Field, Hansford County, Tex.	[5] 18.50	14.65
CI76-223 A 10-16-75	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79105.	Natural Gas Pipeline Co. of America, East Cameron Blocks 322 and 323, offshore Louisiana.	[4] [5] $1.44	15.025
CI76-224 A 10-16-75	Gulf Oil Corp., P.O. Box 1589, Tulsa, Okla. 74102.	Transwestern Pipeline Co., Various Fields, Eddy County, N. Mex.	[4] [5] 80.0	14.73

[1] Being renoticed to reflect the price for acreage not previously dedicated, per letter of Oct. 10, 1975.
[2] Subject to downward British thermal unit adjustment; includes 0.5902¢/M ft³ upward British thermal unit adjustment.
[3] Acreage assigned to Lon Star Producing Co.
[4] Applicant is willing to accept a certificate in accordance with sec. 2.56a of the Commission's general policy and interpretations.
[5] Subject to upward and downward British thermal unit adjustment.
[6] Includes 0.634260¢/M ft³ upward British thermal unit adjustment.

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

[FR Doc.75-31442 Filed 11-21-75;8:45 am]

[Docket No. CS76-203, et al.]

APACHE OIL & GAS CO., INC., AND OTHER APPLICANTS LISTED HEREIN

Notice of Applications for "Small Producer" Certificates[1]

NOVEMBER 13, 1975.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 28, 1975, 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 the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No.	Date filed	Applicant
CS76-202	Oct. 16, 1975	Apache Oil & Gas Co., Inc., P.O. Box 1712, Mobile, Ala. 36601.
CS76-204	Oct. 20, 1975	M. J. Cross, 4925 Greenville Ave., Suite 612, Dallas, Tex. 75206.
CS76-205	do	Frank R. Day, P.O. Box 219, Jackson, Miss. 39205.
CS76-206	do	Bennett R. Highfill and Irene Highfill, 522 South 2d, Mooreland, Okla. 73852.
CS76-207	do	Duane Henderson and Ollie Henderson, Mooreland, Okla. 73852.
CS76-208	do	Lena M. Sparks and Lela Marie Crookshank, P.O. Box 156, Elk City, Okla. 73644.
CS76-209	do	Walter C. Blevins and Edna Blevins, Freedom, Okla. 73842.
CS76-210	do	Jacob S. Brankel, P.O. Box 672, Cache, Okla. 73527.
CS76-211	do	John M. Penick, Jr., R.F.D., Armstrong, Mo. 65230.
CS76-212	do	Hugh W. Robinson and Nannie E. Robinson, 1402 24th St., Woodward, Okla. 73801.
CS76-213	do	Carl W. Lehr and Opal Lehr, Freedom, Okla. 73842.
CS76-214	do	Sallie Smith, Hugh W. Robinson, Jr., and Juanita Robinson, 1402 24th St., Woodward, Okla. 73801.
CS76-215	do	M. M. McFeeters and Grace McFeeters, Freedom, Okla. 73852.
CS76-216	do	Ray D. Brogan and Florence H. Brogan, Mooreland, Okla. 73852.
CS76-217	do	Daisy B. Scott and Elmer J. Scott, Route 1, Mooreland, Okla. 73852.
CS76-218	do	John A. Reed and Geneva Reed, Freedom, Okla. 73842.
CS76-219	do	Ronald K. Stout and J. Alan Stout, Trustees of Thomas P. Stout Trust, Mooreland, Okla. 73852.
CS76-220	do	TransAmerica Oil Corp. P.O. Box 518, Hutchinson, Kans. 67501.
CS76-221	do	American Pacific International, Inc., 811 West 7th St., Los Angeles, Calif. St., Los Angles, Calif. 90017.
CS76-222	Oct. 21, 1975	Texakota Oil Co., 6315 Gulfton, Suite 3, Houston, Tex. 77036.
CS76-223	Oct. 20, 1975	M. W. Smith and Kathleen Miller d.b.a. Miller & Smith Petroleum Account, P.O. Box 2308, South Purdre Island, Tex. 78578.
CS76-224	do	The Eastland Oil Co., 701 Western United Life Bldg., Midland, Tex 79701.
CS76-225	do	Kersey & Co., P.O. Box 316, Artesia, N. Mex. 88210.
CS76-226	Oct. 22, 1975	H. B. McGrady, 1611 South Lea Ave., Roswell, N. Mex. 33201.
CS76-227	do	Calpetco-KMI-1975 A, 750 West Hampden Ave., Englewood, Colo. 80110.
CS76-228	do	Calpetco-KMI-1975 B, 750 West Hampden Ave., Englewood, Colo. 80110.
CS76-229	Oct. 23, 1975	Anthony Victor Ditta, P.O. Box 4024, Monroe, La. 71201.
CS76-230	do	Clemen John Ditta, P.O. Box 4024, Monroe, La. 71201.
CS76-231	do	Joey Van Ditta, P.O. Box 4024, Monroe, La. 71201.
CS76-232	do	Vincent David Ditta, P.O. Box 4024, Monroe, La. 71201.
CS76-233	Oct. 22, 1975	Barber Oil Exploration, Inc., 2627 Tenneco Bldg., Houston, Tex. 77002.
CS76-234	Oct. 23, 1975	A. J. Losee, P.O. Drawer 239, Artesia, N. Mex. 88210
CS76-235	do	CIGOL Petroleum, Inc., 640 8th Ave. SW., Calgary, Alberta, T2P, 1G9, Canada.
CS76-236	Oct. 24, 1975	Max E. Banks, P.O. Box 9178, Amarillo Tex. 79105.
CS76-237	do	National Bulk Carriers, Inc., Room 3305, 1345 Avenue of the Americas, New York, N.Y. 10019.
CS76-238	do	Arthur O. Wilkonson, 1900 Leyden, Denver, Colo. 80220.
CS76-239	Oct. 23, 1975	Oklahoma Gas Program 1975, 3120 Security Life Bldg., Denver, Colo. 80202.
CS76-240	Oct. 28, 1975	Donald Brown, P.O. Box 776, Roswell, N. Mex. 88201.
CS76-241	do	E. Buddrus and Cornelia J. Buddrus, Rural Route No. 1, Grain Valley, Mo. 64029.
CS76-242	do	A. E. Sheridan, Box 1362, Cut Bank, Mont. 59427.
CS76-243	do	The Norwegian Oil Corp. (DNO-U.S.), Suite 700-2200, South Post Oak Rd., Houston, Tex. 77027.
CS76-244	do	Horace H. Alvord IV, P.O. Box 5597, Shreveport, La. 71105.
CS76-245	Oct. 29, 1975	Belle Run Natural Gas Co., 403 Hamilton St., New Bethlehem, Pa. 16242.
CS76-246	Oct. 21, 1975	E. G. Cole, 35 Park View Ave., Bronxville, N.Y. 10708.
CS76-247	Oct. 28, 1975	Estate of A. F. Chisbom, P.O. Box 2766, Laurel, Miss. 39440.
CS76-248	Oct. 30, 1975	M & V Oil, Inc., 1809 Audubon Pl., Shreveport, La. 71105.
CS76-249	do	A. E. Perkins, 472 West 3d, Hoisington, Kans. 67544.
CS76-250	do	Roark & Hooker, P.O. Box 2708, Abilene, Tex. 79604.
CS76-251	do	Barbara Irene McConnell, 600 North Broadway, Hobart, Okla. 73651.
CS76-252	Oct. 29, 1975	Bjarne Rossebo, 1012 East 2d St., Alice, Tex. 78332.
CS76-253	Oct. 30, 1975	Tacklon, Inc., 3120 West 28th St., Amarillo, Tex. 79105.
CS76-254	do	S. H. Hewell for the Estate of LeVelle Howell, 1008 East 1st, Alice, Tex. 78332.
CS76-255	do	Continental Gas Trasamission Co., 409 Lincoln Tower, 1860 Lincoln, Denver, Colo. 80203.
CS76-256	Oct. 31, 1975	Alice National Bank, P.O. Box 1790, Alice, Tex. 78332.
CS76-257	do	Clyde Beymer, Jr., J. E. Beymer, and C. E. Beymer, Box 363, Lakin, Kans. 67860.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[FR Doc.75-31440 Filed 11-21-75;8:45 am]

[Project No. 2735-California]

PACIFIC GAS AND ELECTRIC CO.

Availability of Environmental Impact Statement for Inspection

Notice is hereby given that on or about November 24, 1975, as required by the Commission Rules and Regulations under Order 415-C, issued December 18, 1972, a final environmental impact statement prepared by the Commission's staff pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-100) was placed in the public files of the Federal Power Commission. This statement deals with the environmental impact of the proposed Helms Pumped Storage Project No. 2735. The project would include a tunnel connecting the existing Wishon and Courtright Reservoirs, an underground powerhouse with 1050 megawatts of generating capacity, about 60 miles of 230 kV transmission lines and appurtenant facilities. The project would be located in Fresno and Madera Counties, California and would occupy certain lands in Sierra National Forest. This statement is available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426, its San Francisco Regional Office located at 555 Battery Street, San

Francisco, California 94111, at the Fresno County Library, 2420 Mariposa Street, Fresno, California 93721 and at the Library of California State University at Fresno, North Maple and East Shaw Avenues, Fresno, California 93740. Copies may be ordered from the Commission's Office of Public Information, Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31639 Filed 11-21-75;8:45 am]

CANADIAN GAS SUPPLIES

Notice of Public Informal Conference

NOVEMBER 12, 1975.

The staff of the Federal Power Commission, as a result of reports issued by the Canadian National Energy Board[1] and other recent action in Canada, is concerned that natural gas imports from Canada to the United States may be subject to curtailments during the coming winter season.

In an effort to assess the impact of such curtailments and to discuss means to protect high priority requirements in areas of the United States dependent upon Canadian Gas supplies, you are requested to attend an informal conference to be held at the offices of the Federal Power Commission in Washington, D.C., at 10 a.m. on November 24, 1975, in Hearing Room "A".

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31710 Filed 11-21-75;8:45 am]

[Docket No. E-9541]

COMMONWEALTH EDISON CO. AND CENTRAL ILLINOIS LIGHT CO.

Notice of Application

NOVEMBER 17, 1975.

Take notice that on November 3, 1975, the Commonwealth Edison Company (Edison) and the Central Illinois Light Company (CILCO) filed a joint application with the Commission, pursuant to Section 203 of the Federal Power Act, seeking an order authorizing the sale by Edison and the purchase by CILCO of certain electric facilities providing an interconnection point between their systems along Edison's Powerton to Lockport 345,000 volt line, in Tazewell County, Illinois at an estimated cost of $105,000. There facilities establish a new interconnection between the companies systems.

Edison is incorporated under the laws of the State of Illinois, with its principal business office at Chicago, Illinois and is engaged in the production, purchase, transmission, distribution and sale of electricity in the northern part of Illinois.

CILCO is incorporated under the laws of the State of Illinois, with its principal business office at Peoria, Illinois and is engaged in the generation, transmission and distribution of electricity in the State of Illinois.

Any person desiring to be heard or to make any protest with reference to such application should on or before November 28, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Persons wishing to become parties to a proceeding or to participate as a party in any hearing must file a petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31702 Filed 11-21-75;8:45 am]

[Docket No. RP75-98]

MCCULLOCH INTERSTATE GAS CORP.

Further Extension of Procedural Dates

NOVEMBER 14, 1975.

On October 30, 1975, Mountain Fuel Supply Company filed a motion to extend the procedural dates fixed by order issued May 30, 1975, as most recently modified by notice issued October 24, 1975, in the above-designated matter.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Intervenor Testimony, November 14, 1975.
Service of Company Rebuttal, November 28, 1975.
Hearing, December 9, 1975, (10:00 a.m., EST).

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31702 Filed 11-21-75;8:45 am]

[Docket No. ER76-209]

METROPOLITAN EDISON CO.

Notice of Rate Change

NOVEMBER 14, 1975.

Take notice that on October 31, 1975, Metropolitan Edison Company ("Met-Ed") tendered for filing increased rates for all-requirements service to Hershey Electric Company and the Borough of Kutztown, Pennsylvania, served at transmission voltage under rate "RT", and to the Boroughs of Goldsboro, Lewisberry, and Royalton, Pennylvania, served at distribution voltage under rate "RP". Met-Ed also tendered for filing increased rates for partial requirements and wheeling service to Allegheny Electric Cooperative, Inc. ("Allegheny"). Met-Ed filed a revised fuel adjustment clause for its all-requirements service and its partial requirements service to Allegheny to conform with Order No. 517 issued November 13, 1974.

Met-Ed states that on the basis of the 12 months ended June 30, 1976 (Period II), the proposed rates would produce $3,255,197 in additional revenues from the all-requirements customers, or a 45.6 percent increase, and $1,289,569 in additional revenues from Allegheny, or a 72.2 percent increase.

Met-Ed states that the proposed rates are intended to recover sharp increases in cost since the 1972 test period underlying the present rates. In requesting a December 1, 1975 effective date, Met-Ed states that the increase is over-due and that without immediate rate relief it will not be able to meet coverage requirements to issue bonds by mid 1976.

Copies of the filing were served upon the affected jurisdictional customers and the Pennsylvania Public Utility Commission. 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, N.E., 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 28, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31204 Filed 11-21-75;8:45 am]

[Docket No. G-18313, etc.]

MIDWESTERN GAS TRANSMISSION CO.

Petition To Amend

NOVEMBER 14, 1975.

Take notice that on October 9, 1975, Midwestern Gas Transmission Company (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket Nos. G-18313, G-18314, CP66-119, CP66-120, CP66-121, CP70-24 and CP70-25, a petition to amend the orders of the Commission issued in said dockets on October 31, 1959 (22 FPC 775), June 20, 1967 (37 FPC 1070) and April 30, 1970 (43 FPC 635) to allow for the continued importation of natural gas from Canada from TransCanada PipeLines Limited (TransCanada) at a minimum pressure of 750 psia, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioner states that by the orders of October 31, 1959 and June 20, 1967 it was authorized *inter alia* to construct and operate looping pipelines and compressor facilities to raise the pressure of natural gas delivered from TransCanada at a point on the United States-Canada border near Emerson, Manitoba. The stated reason for the facilities was that Petitioner had to deliver to its customers at the higher pressures. Petitioner states that by order of the Commission of July 5, 1973 (unreported in Docket Nos. CP66-119 and CP70-24), Petitioner was denied its request for additional time to

[1] National Energy Board report: *Canadian National Gas Supply and Requirements*, issued April, 1975.

complete the authorized facilities, in recognition that in view of Petitioner's agreement with TransCanada for increased delivery pressures, that the facilities were unnecessary.

In the instant petition to amend, Petitioner requests Commission authorization to continue importing natural gas from TransCanada at a minimum of 750 psia. Petitioner alleges that the cost of compression per Mcf of natural gas that would result from construction and operation of its own facilities would be approximately 0.861 cent, and that Petitioner's cost of continuing in its agreement with TransCanada for compression would result in the cost of approximately 0.578 cent (Canadian) per Mcf of gas delivered. Petitioner requests authorization to continue the agreement with TransCanada for compression pursuant to their agreement of July 2, 1975, which contract is indicated to terminate on October 31, 1980.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 25, 1975, 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31705 Filed 11-21-75;8:45 am]

[Docket Nos. CP75-131, CP76-129, CP76-94]

MOUNTAIN FUEL SUPPLY CO. AND PHILLIPS PETROLEUM CO.

Order Consolidating Proceedings for Hearing

NOVEMBER 17, 1975.

On October 14, 1975, Mountain Fuel Supply Company (Mountain Fuel) filed in Docket No. CP76-129 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity seeking authorization to continue the operation of certain existing facilities on its interstate pipeline system, which have not been previously certificated by this Commission, all as more fully set forth in the application in this proceeding.

In Docket No. CP76-129 Mountain Fuel requests authorization to continue the operation of various lateral lines, approximately 75 mainline taps, and measuring and regulating facilities. The application states that this filing was the result of a review during the past year of the Company's operations. Mountain Fuel suggests that the existence of inadequate intra-company procedures may have been the cause of its failure to previously file with the Commission for appropriate authorization. Mountain Fuel further states that all of the sales made from the taps in question are orientated toward its distribution activities.

On September 22, 1975, the Commission directed that a formal hearing be held in Docket No. CP75-131, *et al.*, on certain issues involving actual and alleged violations of the Natural Gas Act by Mountain Fuel.[1] This hearing in Docket No. CP57-131, *et al.*, has also been directed to consider whether punitive measures, if any, should be taken against Mountain Fuel. We believe that the proceeding pending in Docket No. CP75-131, *et al.*, is an appropriate forum to clean up all alleged and actual violations of the Natural Gas Act by Mountain Fuel and to consider possible punitive measures against Mountain Fuel. We believe that since Mountain Fuel's application in Docket No. CP75-129 raises many of the same issues that are involved in Docket No. CP75-131, *et al.*, it therefore should be consolidated with it for hearing and disposition.[2]

No petitions to intervene, notices of intervention, or protests to the granting of the application in Docket No. CP75-129 have been filed.

The Commission finds:

There exist common questions of law and fact in Docket Nos. CP75-131 and CP76-129 which warrant their consolidation for hearing and disposition .

The Commission orders:

(A) The proceedings pending in Docket Nos. CP75-131, *et al.*, and CP76-129 are consolidated for hearing and disposition.

(B) Mountain Fuel shall file and serve on all parties of record including the Commission Staff its direct case related to Docket No. CP76-129 on or before November 26, 1975.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31706 Filed 11-21-75;8:45 am]

[Docket No. ER76-215]

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Filing of Agreement

NOVEMBER 14, 1975.

Take notice that Public Service Company of New Hampshire (PSNH) on November 3, 1975, tendered for filing as an initial rate schedule a Transmission Contract with Green Mountain Power Corporation (Green Mountain).

Under the Contract, PSNH will transmit through its system an entitlement of power which Green Mountain will be purchasing from The Hartford Electric Light Company.

PSNH requests that the Commission waive the normal 30-day notice requirement and permit the rate schedule to be effective as of October 1, 1975.

PSNH stated that a copy of the filing was served upon Green Mountain.

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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 24, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31707 Filed 11-21-75;8:45 am]

[Docket No. ER76-213]

PUBLIC SERVICE COMPANY OF OKLAHOMA

Cancellation of Letter Agreement

NOVEMBER 14, 1975.

Take notice that Public Service Company of Oklahoma (PSCO), on November 3, 1975, tendered for filing a Notice of Cancellation of the Letter Agreement dated October 30, 1974 between PSCO and Southwestern Electric Power Company, PSCO states that the subject Letter Agreement, which constitutes Supplement No. 25 to Rate Schedule FPC No. 118, will expire by its own terms on December 31, 1975.

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, N.E., 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 24, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31708 Filed 11-21-75;8:45 am]

[Docket No. RP76-37]

SOUTHWEST GAS CORP.

Filing of Tariff Sheet

NOVEMBER 17, 1975.

Take notice that on October 31, 1975, Southwest Gas Corporation (Southwest) tendered for filing Thirteenth Revised

[1] Phillips Petroleum Company is involved with one of the alleged violations in this proceeding and has been ordered to show cause why it is not, likewise, in violation of the Natural Gas Act.

[2] Hearings are scheduled to commence in Docket No. CP75-131 *et al.*, on December 3, 1975.

Sheet No. 3A, constituting Original PGA–1, First Revised Sheet No. 13D, Second Revised Sheet No. 13E, First Revised Sheet No. 13E–1, Original Sheet No. 13E–2, and Second Revised Sheet No. 13F, constituting a portion of the General Terms and Conditions, in its FPC Gas Tariff, Original Volume No. 1.

The purpose of this filing is to revise the PGA Clause to provide for the adjustment of the demand component of the gas purchased under Northwest Pipeline Corporation's (Northwest) Rate Schedule SGS–1 and to provide for adjustment for the cost of gas purchased by Southwest from Northwest under Rate Schedule LS–1.

Southwest states that the change in rates for which notice is given is an increase of .026 cents per therm in the currently effective rates and occasioned solely by, and will compensate Southwest only for the increase due to the additional purchase of gas under Northwest Rate Schedule LS–1.

Southwest also states that copies of the filing have been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company, and the California-Pacific Utilities Company.

Southwest has requested that the enclosed tariff sheet become effective December 1, 1975 or such other date that the Commission makes effective the service agreements between Northwest and Southwest for service under Rate Schedule LS–1 as filed in Docket No. RP74–46.

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, N.E., 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 28, 1975. 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.75-31709 Filed 11-21-75;8:45 am]

[Docket No. CP76-154]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

NOVEMBER 21, 1975.

Take notice that on November 6, 1975, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP76–154 an abbreviated application pursuant to Section 7 of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorzing the transportation of natural gas for Royal China Company (Royal), as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Columbia requests authorization to transport up to 740 Mcf per day for Royal, which volumes will be received from a point of delivery to be agreed upon in Muskingum County, Ohio and redelivered to an existing point of delivery with Columbia Gas of Ohio, Inc., a wholesale customer and affiliate of Columbia. Royal will purchase the gas so transported from Petroc Company for a 3-year period. The transportation by Columbia will be subject to the limits of its pipeline capacity and to its service obligations to its CD, WS, SGES, G and SGS customers and will be further limited to only those amounts required to offset curtailmnts of the high priority requirements of Royal. Columbia's transportation charge for this service will be its average system-wide unit storage and transmission costs exclusive of company-use and unaccounted-for gas, as reflected in its FPC rate filings. Columbia will retain for company-use and unaccounted-for gas 3.6% of the volumes received for the account of Royal.

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 1, 1975, 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, as amended, (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 the 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 Section 7 and 15 of the Natural Gas Act, as amended, 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 Columbia to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31852 Filed 11-21-75;10:43 am]

[Docket No. E-9267]

ELECTRIC ENERGY, INC.

Notice of Motion To Terminate Proceeding

NOVEMBER 19, 1975.

Take notice that on October 28, 1975, Electric Energy, Inc. ("EEI"), tendered a Motion to Terminate Section 206 Investigation.

On April 23, 1975, the Commission issued an Order accepting for filing Supplement No. 9 to EEI's Rate Schedule FPC No. 3 and Supplement No. 20 to EEI's Rate Schedule FPC No. 4. The proposed effective date was April 1, 1975. By the same Order the Commission instituted, pursuant to Section 206 of the Federal Power Act, an investigation of one aspect of EEI's Rate Schedule FPC No. 3, Supplement No. 9. That Rate Schedule is a power contract between EEI and the United States Energy Research and Development Administration ("ERDA"). The investigation concerned only a single provision regarding a surcharge which will be applicable to service supplied to ERDA beginning in 1980.

In support of its Motion EEI states that on October 14, 1975, the Commission's Staff filed a letter stating that "no issue exists which would warrant the service of Staff's testimony and, therefore, Staff will not serve evidence on November 7, 1975." EEI further states that the Staff and EEI are the only parties to this proceeding and that since the Staff will not present testimony, there is no possibility of evidence opposing EEI's Rate Schedule No. 3, Supplement No. 9. In addition, although ERDA is not a party to this proceeding, it has authorized EEI to submit a letter to the Commission stating ERDA's position as regards this docket.

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 N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 28, 1975. 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.75-31853 Filed 11-21-75;10:43 am]

FEDERAL RESERVE SYSTEM

NEVADA BRICK & TILE CO.

Acquisition of Bank

Nevada Brick & Tile Co., Nevada, Iowa, has amended its application for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)), notice of which was published in the Federal Register (40 F.R. 48551), Nevada Brick & Tile Co., Nevada, Iowa, has applied for the Board's approv-

al under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 19.9 per cent and to hold 11.8 per cent of the voting shares of Nevada National Bank, Nevada, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the Office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit 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 5, 1975.

Board of Governors of the Federal Reserve System, November 17, 1975.

[SEAL] GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.75-31652 Filed 11-21-75;8:45 a.m.]

SOUTHEAST BANKING CORP.

Order Approving Formation of Bank Holding Company and Acquisition of Nonbanking Companies

Southeast Banking Corporation, Miami, Florida ("Southeast"), a bank holding company within the meaning of the Bank Holding Company Act, and its wholly-owned subsidiary, Southeast Acquisition Company, Miami, Florida ("SAC"), have applied for the Board's approval under § 3 of the Bank Holding Company Act (12 U.S.C. 1842) to acquire all of the voting shares of Palmer Bank Corporation, Sarasota, Florida ("Palmer"), as well as 90 per cent or more of the voting shares of Southeast National Bank of Sarasota, a proposed new bank, into which will be merged Palmer First National Bank and Trust Company of Sarasota, Sarasota, Florida. At the same time, Southeast and SAC have also applied, pursuant to § 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, to acquire all of the voting shares of both Palmer Investment Advisory Company, Sarasota, Florida ("PIAC"), and Coastal Mortgage Company, Sarasota, Florida ("CMC"). PIAC will engage in the activities of acting as an investment or financial advisor and CMC will engage in mortgage banking, including making, acquiring, and servicing for its own account or for the account of others, loans and other extensions of credit. Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(1), (3) and (5)).

Notice of the receipt of these applications affording opportunity for interested persons to submit comments and views, has been given in accordance with §§ 3 and 4 of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received, including those of the Comptroller of the Currency, in light of the factors set forth in § 3(c) of the Act (12 U.S.C. 1842(c)), and the considerations specified in § 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)).[2]

Southeast controls 38 banks with aggregate deposits of $2.4 billion, representing 9.9 per cent of commercial bank deposits in Florida, and is the largest banking organization in the State. Palmer, the twentieth largest banking organization in Florida, controls eight banks with aggregate deposits of $262 million, representing 1.1 per cent of deposits in commercial banks in the State.[3] Upon consummation of the proposed acquisitions, Southeast's share of total commercial bank deposits would be approximately 11 per cent. The Board is of the view that approval of these acquisitions would not have significantly adverse effects upon the concentration of banking resources in Florida since, following consummation, Florida would continue to have eight banking organizations with deposits of over $1 billion, and five other banking organizations with deposits in excess of $500 million. Furthermore, there would remain 29 other multibank holding companies in Florida.

Southeast is represented in most of the principal banking markets in the State of Florida. It operates bank subsidiaries in two of the four banking markets in which Palmer has a banking subsidiary. Those two markets are the Naples banking market[5] and the Bradenton banking market.[6] The two other markets in which Palmer operates are the Ft. Myers banking market[7] and the Sarasota banking market.[8]

Addressing the issue of direct competition, Palmer operates one banking subsidiary (established in 1974) in the Naples banking market, which controls $8.1 million in deposits or 3.5 per cent of market deposits and is the smallest of eight banks in the market. Southeast operates the third largest bank in the market with deposits of $24 million, controlling 10.4 per cent of market deposits. The two banks are five miles apart. The largest banking organization in the market accounts for 44.4 per cent of deposits, while the second largest banking organization (which is also the second largest in the State) holds 36.5 per cent of market deposits. All of the banks in the market are affiliated with other bank holding companies or with a banking group. *De novo* entry is very unlikely as the population per banking office and personal income per bank office were considerably below State averages.[9] Consummation of the proposal would thus eliminate direct competition and increase concentration in the bank market.

Turning to the Bradenton banking market, Southeast is the third largest banking organization in the market (out of eight), controlling two bank subsidiaries, with approximately 20.8 per cent of market deposits. Palmer operates one bank in the market controlling 1.3 per cent of market deposits, and is the seventh largest banking organization in the market. Eleven of the twelve banks competing in the Bradenton market are affiliated with either a bank holding company organization or a banking group. Competing in the market, other than Southeast and Palmer, are three of the ten largest banking organizations in the State, including the State's second largest. The Bradenton market is marginally attractive with population per bank office and personal income per bank office just below Statewide averages. The three largest banking organizations competing in the market are approximately equivalent in size, controlling 25.0, 22.5 and 20.8 per cent of market deposits, respectively. Consummation of the proposal would increase Southeast's market share to 22 per cent and would eliminate a banking alternative.

With respect to the two banking markets in which no direct competition would be eliminated, the Sarasota and Ft. Myers banking markets, the Board, in its analysis of these applications, must consider whether consummation of the proposal would eliminate the possibility of competition developing between these two organizations in the future. In both the Sarasota and Ft. Myers markets, Southeast is a possible future competitor of Palmer. In the case of Sarasota, Palmer is the largest of seven banking organizations in that market with a market share of 41 per cent, and control over five banks in the market. In the Sarasota market, the two largest organizations hold 73 per cent of deposits and the three largest hold 87 per cent. The Sarasota market is moderately attractive for *de novo* entry, as it has experienced rapid population growth which is expected to continue. The Board notes that four banks have entered the market since 1971; however, the market appears to remain attractive to *de novo* entry. Thus, it is expected that approval would remove Southeast as a possible future competitor in the market.

In the Ft. Myers banking market, Palmer has one bank, with deposits of $7.3 million equal to 1.3 per cent of market deposits. Operating in the market are twelve other banking organizations controlling sixteen banks. Palmer is the eleventh largest of the thirteen banking organizations operating in the market. The market is characterized by rapid growth; however, both personal income and population per bank office ratios are below Statewide averages. Ac-

[2] The applications to acquire Southeast National Bank of Sarasota were received November 11, 1975. The Comptroller's comments were received November 13, 1975. No FEDERAL REGISTER notice was published as Southeast National Bank of Sarasota has no significance other than to serve as a vehicle to merge Palmer First National Bank as part of the overall transaction on which comments were solicited.

[3] Unless otherwise indicated, all banking data are as of December 31, 1974, and reflect bank holding company formations and acquisitions approved as of July 31, 1975.

[5] The Naples banking market is defined as Collier County minus the outlying town of Immokalee.

[6] The Bradenton banking market is approximated by Manatee County.

[7] The Ft. Myers banking market is defined as all of Lee County.

[8] The Sarasota banking market is defined as the northern portion of Sarasota County and the extreme southern portion of Manatee County.

[9] All population and personal income data per bank office are as of June 1973.

quisition of Palmer would amount to a foothold entry into the Ft. Myers market by Southeast.

The likelihood that Palmer would be a probable future entrant into markets served by Southeast is not great in view of the present financial and managerial capabilities of Palmer, which will be described more fully below. It is the Board's view that the competitive effects resulting from approval of these applications in the absence of the circumstances referred to below would have substantial adverse effects.

The financial condition, managerial resources, and future prospects of Southeast, its subsidiary banks and SAC are regarded as consistent with approval. With respcet to Palmer and its subsidiaries, it is the Board's judgment, based upon its own examination and analysis, as well as recommendations of the Comptroller of the Currency, that Palmer may be considered a "failing company." Palmer's difficulties arise primarily from asset and liquidity problems in its lead bank as well as serious problems in one of its nonbank subsidiaries, Coastal Mortgage Company. The problems in Palmer's lead bank stem, in part, from the purchase by that bank at face value of questionable assets of Coastal Mortgage Company, transactions which appear to have violated Section 23A of the Federal Reserve Act (*Interpretations* ¶4110). There are additional problems throughout the Palmer system and Palmer itself is undercapitalized with no apparent source of additional capital funds or liquidity. Absent this proposal, failure of Palmer appears probable. It further appears that there are no other organizations in Florida with the interest and resources necessary to take over Palmer and, under existing law, holding companies outside Florida are prohibited from acquiring Palmer.

Upon consummation, Southeast will have arranged for approxamtely $20 million in capital funds to be available if needed for Palmer.[6] At the same time, Palmer's severe managerial deficiencies will be addressed by Southeast through the addition of new officers and managers, and the retention of the more capable personnel in Palmer. Finally, Palmer's problem with its real estate loans will receive prompt and immediate attention by Southeast, which will seek to reduce the adverse effect these loans have upon Palmer's operations. It is the Board's view that, in light of the severe impact that the failure of Palmer would have on the communities its banking subsidiaries severe as well as the impact on the economy of Florida as a whole, that the convenience and needs benefits to be derived from the proposal clearly outweigh the adverse competitive considerations associated with it.

With respect to the acquisitions of PIAC and CMC, those two Palmer subsidiaries will be acquired by SAC directly and Southeast indirectly. PIAC provides investment advisory services primarily to Palmer's lead subsidiary bank, Palmer First National. Following consummation, Southeast proposes to liquidate PIAC.

CMC operates out of one office located in Sarasota, Florida, and services the Sarasota area. At one time both Southeast Mortgage Company, Southeast's mortgage banking subsidiary, and CMC originated construction loans and permanent loans on multi-family and single-family residential properties in three market areas coinciding with the Sarasota, Bradenton and Naples banking markets. CMC presently originates no mortgages and Palmer presently intends to dissolve CMC and to place its real estate lending operations back into its bank subsidiaries. Consummation of the proposal would eliminate a slight amount of existing competition. However, in view of the proposed curtailment of CMC's activities and the financial condition of Palmer, it is the Board's judgment that approval of the applications would have no substantially adverse effect in any relevant area.

There is no evidence in the record indicating that consummation of the proposal would result in any undue concentration of resources, unfair competition, conflicts of interests, unsound banking practices, or other adverse effects upon the public interest. Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider regarding the acquisitions of PIAC and CMC under § 4(c)(8) is favorable and the applications should be approved.

On the basis of the record, the applications to acquire Palmer, PIAC and CMC are approved for the reasons summarized above. The acquisiton of Palmer and its bank subsidiaries shall not be made before the thirtieth calendar day following the effective date of this Order; and, neither the acquisition of Palmer nor the acquisitions of PIAC or CMC shall be made later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Atlanta pursuant to delegated authority. The determination as to PIAC and CMC's activities is subject to the conditions set forth in § 225.4 (c) of Regulation Y and to the Board's authority to require reports by, and make examinations of, holding companies and their subsidiaries and to require such modification or termination of the activities of the holding companies or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and Orders issued thereunder, or to prevent evasion thereof.

[6] Included in this amount is a loan of up to $10 million which the FDIC, pursuant to 12 U.S.C. 1823(e), has agreed to lend to SAC on or before November 30, 1978. Five million dollars will be loaned to SAC upon the effective date of the merger.

By order of the Board of Governors,[9] effective November 17, 1975.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.75-31654 Filed 11-21-75;8:45 am]

SECURITY BANCSHARES OF MONTANA, INC.

Order Approving Acquisition of Banks

Security BancShares of Montana, Inc. ("Applicant"), 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 100% (less directors' qualifying shares) of the voting shares of Big Horn County State Bank, Hardin, Montana ("Hardin Bank"), and 100% (less directors' qualifying shares) of the voting shares of Security Bank of Colstrip, Colstrip, Montana ("Colstrip Bank").

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act (40 FR 47540, October 9, 1975). The time for filing comments and views has expired, and all received have been considered. The Federal Reserve Bank of Minneapolis has considered the applications in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the third largest banking organization in Montana, controls one bank, the Security Bank, N.A., Billings, Montana ("Billings Bank"), with aggregate deposits of $147.6 million, representing 5.6% of total commercial bank deposits in the State.[2] Acquisition of Hardin Bank with deposits of $20.4 million and Colstrip Bank, a new bank with deposits of $0.4 million,[3] would increase Applicant's share of State deposits to 6.4% ($168 million) but Applicant would remain as the State's third largest banking organization. Thus, acquisition of the two banks will not have any appreciable effect on the concentration of banking resources in the State.

Hardin Bank, the largest of two banking organizations in its relevant market,[4] controls approximately 67.5% of total market deposits. It is located approximateyl 44 road miles from the Billings Bank and 79 road miles from the Colstrip Bank. The Colstrip Bank is newly organized and as such is the smallest of three banking organizations in its rele-

[9] Voting for this action: Vice Chairman Mitchell and Governors Bucher, Holland, Wallich and Coldwell. Absent and not voting: Chairman Burns and Governor Jackson.

[1] All banking data, unless otherwise stated, are as of December 1974.

[2] Deposits as of June 30, 1975. Colstrip Bank was opened for business on May 15, 1975.

[4] The Hardin market has been approximated by all but the extreme western portions of Big Horn County.

vant market.[4] It is located approximately 125 road miles from the Billings Bank and, as previously indicated, 79 road miles from the Hardin Bank. Although the Billings[5] and Hardin markets and the Hardin and Colstrip markets are adjacent to one another, much of the intervening area is open range land and is sparsely settled. None of the three subject banks derive a significant amount of business from each other's market.

The proposals to acquire the Hardin Bank and the Colstrip Bank are essentially a reorganization of ownership interests whereby individuals who have controlled the proposed subsidiary banks directly in the past will now control these banks indirectly through Applicant. On the basis of the record therefore, it is concluded that consummation of the proposals will not have a significant adverse effect upon existing or potential competition in any relevant area and that competitive considerations are consistent with approval of the applications.

The financial and managerial resources and future prospects of Applicant, its subsidiary, and the two banks to be acquired are regarded as generally satisfactory, particularly since Applicant's assumption of debt in connection with the acquisition of Hardin Bank will be retired concurrently through the sale of stock to one of Applicant's Principals. Furthermore, Applicant's earnings and debt servicing capabilities will be improved significantly by this acquisition. Therefore, considerations relating to banking factors favor approval of the applications.

Although Applicant has indicated that the services to be offered by Hardin Bank and Colstrip Bank will remain basically unchanged, Applicant does propose to introduce a number of standardized operations into these banks which may enable them to deliver banking services to their respective communities more efficiently in the future. Therefore, considerations relating to the convenience and needs of the community to be serviced are consistent with approval of the applications. On the basis of the record, it is this Reserve Bank's judgment that the proposed acquisitions are in the public interest and should be approved.

For the reasons summarized above, the Federal Reserve Bank of Minneapolis hereby approves the applications. The transactions shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order, or (b) later than three months after the effective date of this order, unless such period is extended for good cause by the Board of Governors or by the Federal Reserve Bank of Minneapolis pursuant to delegated authority.

[4] The Colstrip market has been approximated by the northern two-thirds of Rosebud and Treasure Counties.

[5] The Billings market has been approximated by the western two-thirds of Yellowstone County and a small portion of western Big Horn County.

By order of the Federal Reserve Bank of Minneapolis, acting pursuant to delegated authority for the Board of Governors, effective November 12, 1975.

[SEAL] L. G. GABLE,
Vice President.

[FR Doc.75-31653 Filed 11-21-75;8:45 am]

TRANS TEXAS BANCORPORATION, INC.

Acquisition of Bank

Trans Texas Bancorporation, Inc., El Paso, Texas, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent (less directors' qualifying shares) of the voting shares of Chamizal National Bank, El Paso, Texas, a proposed new bank. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit 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 17, 1975.

Board of Governors of the Federal Reserve System, November 17, 1975.

[SEAL] GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.75-31655 Filed 11-21-75;8:45 am]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

INDIAN HEAD MINING CO. INC.

Application for Renewal Permit for Noncompliance With the Electric Face Equipment Standard; Opportunity for Public Hearing

Application for a Renewal Permit for Noncompliance with the Electric Face Equipment Standard prescribed by the Federal Coal Mine Health and Safety Act of 1969 has been received for the item of equipment in underground coal mine as follows:

ICP DOCKET NO. 4291-000, INDIAN HEAD MINING COMPANY, INC., Indian Head Mine No. 3, Mine ID No. 15 02378 0 Hazard, Kentucky, ICP Permit No. 4291-003—R-5 (Porter End Dump Battery Buggy, I.D. No. B-3).

In accordance with the provisions of § 504.7(b) of Title 30, Code of Federal Regulations, notice is hereby given that requests for public hearing as to an application for a renewal permit may be filed on or before December 9, 1975. 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 upon request.

A copy of each 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. HORNBACK,
Chairman, Interim Compliance Panel.

NOVEMBER 17, 1975.

[FR Doc.75-31619 Filed 11-21-75;8:45 am]

INTERNATIONAL TRADE COMMISSION

[Docket No. 337-TA-13]

LIQUID PROPANE HEATERS

Notice of Rescheduling of Prehearing Conference

Notice is hereby given that the United States International Trade Commission has rescheduled the prehearing conference to be held in connection with investigation No. 337-TA-13, Liquid Propane Heaters, from November 21, 1975, to Monday, December 15, 1975, at 10:00 a.m., EST, in the Hearing Room of the United States International Trade Commission Building, 701 E Street, Northwest, Washington, D.C.

In connection therewith it is requested that each participant, on or before December 5, 1975, serve upon the Administrative Law Judge and all known parties the documents listed in the Notice of Prehearing Conference published in the FEDERAL REGISTER on October 31, 1975 (40 FR 50752).

Issued: November 19, 1975.

MYRON R. RENICK,
Administrative Law Judge.

[FR Doc.75-31664 Filed 11-21-75;8:45 am]

NATIONAL ENDOWMENT FOR THE HUMANITIES

ADVISORY COMMITTEE FELLOWSHIPS PANEL

Notice of Meeting

NOVEMBER 11, 1975.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463) notice is hereby given that a meeting of the Fellowships Panel will be held in Washington, D.C., on December 11 and 12, 1975, from 9:00 a.m. to 5:30 p.m.

The purpose of the meeting is to review Fellowships in Residence for College Teachers applications submitted to the National Endowment for the Humanities for 1976-1977 fellowship grants.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of in-

ternal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information get in touch with the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street, N.W., Washington, D.C. 20506, or call area code 202-382-2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.75-31657 Filed 11-21-75;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL ON PHYSICS

Notice of Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Physics. Date: December 11, 12, and 13, 1975. Time: 9 a.m. each day. Place: Rm. 338, National Science Foundation, 1800 G Street, NW., Washington, D.C. Type of meeting: Part Open—Open 12/11 from 9 a.m. to 3 p.m. Closed 12/11 from 3 to 5 p.m. Open on 12/12 and 12/13.

Contact person: Dr. Marcel Bardon, Deputy Division Director for Physics, Rm. 348, National Science Foundation, Washington, D.C. 20550, telephone 202/632-4310.

Summary minutes: (Open Portion) May be obtained from the Committee Management Coordination Staff, Management Analysis Office, Rm. 248, National Science Foundation, Washington, D.C. 20550.

Purpose of advisory panel: To provide general advice and recommendations on the impact of the NSF support of Physics, and to review and evaluate specific proposals.

Agenda:

DECEMBER 11 (9 A.M. TO 3 P.M.)

OPEN

Review of nuclear physics suported by the National Science Foundation, with consideration of the national perspective in this area. This review will include research in nuclear physics supported by the Nuclear, Intermediate Energy, and Theoretical Physics Programs.

DECEMBER 12 (3 TO 5 P.M.)

CLOSED

Review and evaluate research proposals that have been assigned to the Physics Division.

DECEMBER 12

OPEN

Continuation of topics discussed during the open portion on December 11, and remarks and presentations by NSF staff on the FY 76 budget, NSF reorganization, and other topics of interest to the Panel.

DECEMBER 13

OPEN

Continuation of topics discused on December 12.

Reason for closing: The proposals being reviewed contain information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within the exemptions of 5 U.S.C. 552(b), (4), (5), and (6).

Authority to close meeting: The determination made on February 21, 1975, by the Director of the National Science Foundation pursuant to provisions of Section 10(d) of Public Law 92-463.

GAIL A. MCHENRY,
Acting Committee Management Officer.

NOVEMBER 19, 1975.

[FR Doc.75-31643 Filed 11-21-75;8:45 am]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-551]

GENERAL ELECTRIC CO.

Application for Export License

Please take notice that General Electric Company, San Jose, California has submitted to the Nuclear Regulatory Commission an application for a license to authorize the export of two boiling water reactors each with a thermal power level of 2894 megawatts to Spain and that the issuance of such license is under consideration by the Nuclear Regulatory Commission.

No license authorizing the proposed reactors' export will be issued until the Nuclear Reguatory Commission determines that such export is within the scope of and consistent with the terms of an applicable agreement for cooperation arranged pursuant to Section 123 of the Atomic Energy Act of 1954, as amended (Act), nor until the Nuclear Regulatory Commission has found that:

(a) The application complies with the requirements of the Act, and the Commission's regulation set forth in 10 CFR, Chapter 1, and

(b) The reactors proposed to be exported are utilization facilities as defined in said Act and regulations.

In its review of applications solely to authorize the export of production or utilization facilities, the Nuclear Regulatory Commission does not evaluate the health and safety characteristics of the facilities to be exported. Consequently there are no safety analysis report or Advisory Committee on Reactor Safeguards report.

Unless on or before December 9, 1975, a request for a hearing is filed with the Nuclear Regulatory Commission by the applicant, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of the Office of Nuclear Material Safety and Safeguards may, upon the determinations and findings noted above, cause to be issued to General Electric Company a facility export license and may cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Nuclear Regulatory Commission will issue a notice of hearing or an appropriate order.

A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Maryland this 14th day of November, 1975.

For the Nuclear Regulatory Commission

G. WAYNE KERR,
Chief, Agreements and Exports Branch, Division of Fuel Cycle and Material Safety.

[FR Doc.75-31599 Filed 11-21-75;8:45 am]

[Docket No. 50-309]

MAINE YANKEE ATOMIC POWER CO.

Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 16 to Facility Operating License No. DPR-36 issued to Maine Yankee Atomic Power Company which revised Technical Specifications for operation of the Main Yankee Atomic Power Station, located in Lincoln County, Maine. The amendment is effective as of its date of issuance.

The amendment changes the heatup, cooldown and pressure-temperature limitations of Maine Yankee Technical Specification Sections 3.4 and 4.3.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment is not required since the amendment does not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment dated June 2, 1975, (2) Amendment No. 16 to License No. DPR-36, with Change No. 24 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Wiscasset Public Library Association, High Street, Wiscasset, Maine.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, this 13th day of November, 1975.

For the Nuclear Regulatory Commission.

VERNON L. ROONEY,
Acting Chief, Operating Reactors Branch 4, Division of Reactor Licensing.

[FR Doc.75-31603 Filed 11-21-75;8:45 am]

[Docket No. 50-309]

MAINE YANKEE ATOMIC POWER CO.

Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 14 to Facility Operating License No. DPR-36 issued to Maine Yankee Atomic Power Company for operation of the Maine Yankee Atomic Power Station, located in Lincoln County, Maine. The amendment is effective as of its date of issuance.

The amendment changes the license and the Technical Specifications to allow for a generalized provision for special nuclear, byproduct, and source material.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment is not required since the amendment does not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment dated February 11, 1975, as modified February 21, 1975, (2) Amendment No. 14 to License No. DPR-36, with Change No. 22 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Wiscasset Public Library Association, High Street, Wiscasset, Maine 04578.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, this 13th day of November, 1975.

For the Nuclear Regulatory Commission.

VERNON L. ROONEY,
Acting Chief, Operating Reactors Branch #4, Division of Reactor Licensing.

[FR Doc.75-31602 Filed 11-21-75;8:45 am]

[Docket No. 50-333]

POWER AUTHORITY OF THE STATE OF NEW YORK AND NIAGARA MOHAWK POWER CORP.

Proposed Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-59 issued to Power Authority of the State of New York and Niagara Mohawk Power Corporation (the co-licensees), for operation of the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

The amendment would revise the provisions in the Technical Specifications relating to temperature limits for the pressure suppression pool water.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations.

By December 24, 1975, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commissions' regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Arvin E. Upton, Esquire, LeBoeuf, Lamb, Leiby & MacRae, 1757 N Street, NW., Washington, D.C. 20036, the attorney for the licensee.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the letter from K. Goller to G. T. Berry dated July 15, 1975, and the letter from G. T. Berry to K. Goller dated July 30, 1975, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Oswego City Library, 120 E. Second Street, Oswego, New York 13126. The Safety Evaluation, may be inspected at the above locations and a copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, this 17th day of November 1975.

For the Nuclear Regulatory Commission.

VERNON L. ROONEY,
Acting Chief, Operating Reactors Branch #4, Division of Reactor Licensing.

[FR Doc.75-31601 Filed 11-21-75;8:45 am]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated acidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.106, "Thermal Overload Protection for Electric Motors on Motor-Operated Valves," describes a method acceptable to the NRC staff for complying with regulations with regard to thermal overload protection devices for electric motors on motor-operated valves controlled by motor starters. Proper application of these devices is necessary to ensure that they will not needlessly prevent the motor from performing its safety-related function.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed (listed below) or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 1.106 will, however, be particularly useful in evaluating the need for an early revision if received by January 22, 1976.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director, Office of Standards Development, U.S. Nuclear Regulatory

Commission, Washington, D.C. 20555. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted and Commission approval is not required to reproduce them.

Other Division 1 Regulatory Guides currently being developed include the following:

Fracture Toughness Class I Vessels Under Overstress Conditions
Protection Against Postulated Events and Accidents Outside of Containment
Fracture Toughness Requirements for Materials for Class 2 and 3 Components
Maintenance of Water Purity in PWR Secondary Systems
Criteria for Heatup and Cooldown Procedures
Surveillance Testing and Inservice Inspection of Thermal Barrier and Steam Generator Materials in High-Temperature Gas-Cooled Reactors
Surveillance and Postirradiation Examination of Fuel Rods in Lead Assemblies
Design Load Combinations for Component Supports
Interim Guide on Tornado Missiles
Criteria for Plugging Steam Generator Tubes
Structural Design Criteria for Fuel Assemblies in Light-Water-Cooled Reactors
Overhead Crane Handling Systems for Nuclear Power Plants
Recommended Procedure for Resintering Test to Monitor Densification Stability of Production Fuel
Qualifications for Cement Grouting for Prestressing Tendons in Containment Structure
Inservice Monitoring of Core and Core Support Structure Motion Via Neutron-Flux Measurement
Loose Parts Monitoring Program for the Primary System
Guidance for Content of Licensing Applications for Reload Fuel
Nuclear Safety-Related Concrete Structures
ASME Code Case Fiberglass Reinforced Plastic Pipeing
Protection Against Low Trajectory Turbine Missiles
Floor Design Response Spectra Development for Seismic Design of Floor-Supported Equipment or Components
Design Limits, Loading Combinations, and Supplementary Criteria for Class I Plate and Shell Type Component Supports
Design Limits, Loading Combinations, and Supplementary Criteria for Class I Linear Type Component Supports
Tornado Design Classification
Overpressure Protection of Low-Pressure Systems Connected to Reactor Coolant Pressure Boundary
Protective Coatings for Light-Water Reactor Containment Facilities
Quality Assurance Requirements for Installation, Inspection, and Testing of Mechanical Equipment and Systems
Fire Protection Criteria for Nuclear Power Plants
Requirements for Auditing of Quality Assurance Programs for Nuclear Power Plants
Quality Assurance Requirements for Control of Procurement of Equipment, Materials, and Services for Nuclear Power Plants
Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant Conditions During and Following an Accident
Quality Assurance Requirements for Lifting Equipment
Maintenance and Testing of Batteries
Qualification Test of Class IE Cables, Connections, and Field Splices for Nuclear Power Plants
Seismic Qualification of Class I Electric Equipment
Fuel Oil Systems for Standby Diesel Generators
Quality Assurance Requirements for the Manufacture of Class IE Instrumentation and Electric Equipment for Nuclear Power Plants
Assumptions Used for Evaluating the Potential Radiological Consequences of a Liquid Radioactive Waste System Accident
Containment Isolation Provisions
Initial Startup Testing Program for Facility Shutdown from Outside the Control Room
Periodic Testing of Diesel Generators
Qualification of Inspection, Examination, and Testing Personnel for Nuclear Facilities
Quality Assurance Program Requirements for Nuclear Power Plant Fuels
Testing of Nuclear Air Cleaning Systems
Preoperational and Initial Startup Testing of Feedwater Systems for BWRs
Identification of Materials, Parts, and Components for Nuclear Power Plants
Emergency Planning for Nuclear Power Plants
Control Room Manning
Hydrologic Design Criteria for Water Control Structures Constructed for Nuclear Power Plants
Spill Analysis—Dispersion and Dilution in Surface and Ground Water
Design Objectives for LWR Spent Fuel Facilities
Design Objectives for LWR Fuel Handling Systems
Preoperational Testing of Diesel Generator Units Used as Onsite Emergency Power Sources at Nuclear Power Plants
Periodic Testing of Class 1E Power and Protection Systems
Assumptions Used for Evaluating the Potential Radiological Consequences of a BWR Radioactive Offgas System Failure
Design, Testing, and Maintenance Criteria for Exhaust Filtration and Adsorption Units

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 17th day of November 1975.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc.75-31607 Filed 11-21-75;8:45 am]

[Docket Nos. 50-259; 50-260]

TENNESSEE VALLEY AUTHORITY

Issuance of Amendments to Facility Operating Licenses

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 17 to Facility Operating License No. DPR-33 and Amendment No. 14 to Facility Operating License No. DPR-52 issued to Tennessee Valley Authority for operation of the Browns Ferry Nuclear Plant, Units 1 and 2, located in Limestone County, Alabama. The amendments are effective as of the date of issuance.

The amendments authorize the plugging of the bypass flow holes in the lower core support plate. The amendments do not authorize operation of the plant which will be the subject of another licensing action.

The application for these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments is not required since the amendments do not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendments dated November 5, 1975, (2) Amendment No. 17 to License No. DPR-33 and Amendment No. 14 to License No. DPR-52, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Athens Public Library, South and Forrest, Athens, Alabama 35611.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, this 14th day of November 1975.

For the Nuclear Regulatory Commission.

ROBERT A. PURPLE,
Chief, Operating Reactors Branch #1, Division of Reactor Licensing.

[FR Doc.75-31605 Filed 11-21-75;8:45 am]

[Docket No. 50-57]

STATE UNIVERSITY OF NEW YORK AT BUFFALO

Proposed Issuance of Amendment to Facility Operating License

The Nuclear Regulator Commission (the Commission) is considering issuance of an amendment to Facility Operating No. R-77 issued to State University of New York which revised Technical Specifications for operation of the Nuclear Science and Technology Facility, located in Buffalo, New York.

The amendment would revise the provisions in the Technical Specifications relating to the reactor building exhaust duct effluent monitor sensitivity value and to airborne radioactive effluent release rate levels that require specific operator actions, in accordance with the licensee's application for amendment, dated July 30, 1975.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's rules and regulations.

By December 24, 1975, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the application for amendment dated July 30, 1975, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. The license amendment and the Safety Evaluation, when issued, may be inspected at the above locations and a copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland this 6th day of November 1975.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Reactor Licensing.

[FR Doc.75-31600 Filed 11-21-75;8:45 am]

[Docket Nos. STN 50-483, STN 50-486]

UNION ELECTRIC CO. (CALLAWAY PLANT, UNITS 1 AND 2)

Order Convening Session of Resumed Evidentiary Hearing

The Atomic Safety and Licensing Board has determined after a telephonic conference call that all parties are ready to proceed with further presentation of evidence in this proceeding on December 9, 1975.

Wherefore, *it is ordered*, In accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Nuclear Regulatory Commission that a resumed session of evidentiary hearings in this proceeding shall convene at 9:00 a.m. on Tuesday, December 9, 1975 in the County Council Chambers of St. Louis County, Administration Building Annex, Room B-117, 7900 Forsyth, Clayton, Missouri 63105.

It is further ordered, That all statements intended to be offered as evidence shall be prepared in written form and served on the parties on or before December 1, 1975.

Issued: November 18, 1975, Bethesda, Maryland.

ATOMIC SAFETY AND LICENSING BOARD,
SAMUEL W. JENSCH,
Chairman.

[FR Doc.75-31606 Filed 11-21-75;8:45 am]

[License No. 42-16741-01E]

MICRO DISPLAY SYSTEM, INC.

Issuance of Byproduct Material License

Please take notice that the U.S. Nuclear Regulatory Commission has, pursuant to § 32.22 of 10 CFR Part 32, issued License No. 42-16741-01E to Micro Display Systems, Inc., 11103 Dennis Road, Dallas, Texas 75229, which authorizes the distribution of MDSI Model No.'s 410 and 412 watches to persons exempt from the requirements for a license pursuant to § 30.19 of 10 CFR Part 30 or equivalent regulations of an Agreement State.

1. The tritium-filled tubes are designed to illuminate a liquid crystal display which displays time digitally, permitting reading of the time in low ambient light.

2. The byproduct material incorporated in the watches is tritium gas in sealed tubes manufactured by American Atomic Corp. (Model 60271-1). The nominal activity contained in each watch is 160 millicuries.

3. The metal back of each watch case will be stamped with the name of the manufacturer ("MDSI") and the byproduct material ("H") contained in the watch.

A copy of the license and license application containing additional information are available for public inspection at the Commission's Public Document Room at 1717 "H" Street N.W., Washington, D.C.

Dated at Bethesda, Maryland, November 18, 1975.

For the Nuclear Regulatory Commission.

LEO WADE, Jr.,
Acting Chief, Materials Branch, Division of Fuel Cycle and Material Safety.

[FR Doc.75-31604 Filed 11-21-75;8:45 am]

[Docket No. P-599-A]

TENNESSEE VALLEY AUTHORITY

Receipt of Partial Application for Construction Permits and Facility Licenses: Time for Submission of Views on Antitrust Matters

Tennessee Valley Authority (the applicant), pursuant to section 103 of the Atomic Energy Act of 1954, as amended, has filed one part of an application, dated September 2, 1975, in connection with their plans to construct and operate 2 pressurized water nuclear reactors on a site located near the boundary between the East Embayment Block of the Mississippi Embayment Province and the Nashville Dome Province. The portion of the application filed contains the information requested by the Attorney General for the purpose of an antitrust review of the application as set forth in 10 CFR Part 50, Appendix L.

The remaining portion of the application consisting of a Preliminary Safety Analysis Report accompanied by an Environmental Report pursuant to § 2.101 of Part 2, is expected to be filed during June, 1976. Upon receipt of the remaining portions of the application dealing with radiological health and safety and environmental matters, separate notices of receipt will be published by the Commission including an appropriate notice of hearing.

A copy of the partial application is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., 20555. Docket No. P-599-A has been assigned to the application and it should be referenced in any correspondence relating to it.

Any person who wishes to have his views on the antitrust matters of the application presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Office of Antitrust and Indemnity, Office of Nuclear Reactor Regulation, on or before January 19, 1976.

Dated at Bethesda, Maryland, this 11th day of November 1975.

For the Nuclear Regulatory Commission.

WALTER R. BUTLER,
Chief, Light Water Reactors Branch 1-2, Division of Reactor Licensing.

[FR Doc.75-30831 Filed 11-14-75;8:45 am]

[Docket No. 50-409]

DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR)

Determination With Respect to Request for Variance From the Interim Acceptance Criteria

By letter dated October 10, 1975 Dairyland Power Cooperative (the licensee) requested that the November 1, 1975 date for achieving compliance with the IAC for the facility be extended to March 1, 1976. A Notice of Request for Variance and request for public comment thereon was published in the FEDERAL REGISTER concurrently with a Determination (40 FR 51507, November 5, 1975) which extended the time until November 21, 1975, for the La Crosse Boiling Water Reactor (the facility) to achieve compliance with the Commission's Interim Acceptance Criteria (IAC) for Emergency Core Cooling Systems (ECCS) for Light-water Power Reactors set forth in the Commission's Interim Policy Statement (36 FR 12247, June 29, 1971).

This interim action was taken to permit the NRC staff to carefully review the request for variance and to allow sufficient time for public comment.

The Notice invited interested persons to submit their views and comments with respect to the request for variance to the Secretary of the NRC within fourteen days of publication in the FEDERAL REGISTER.

Because of delay between the time of issuance of the Notice by the Nuclear Regulatory Commission and publication in the FEDERAL REGISTER, the notice period terminates on November 19, 1975, two days prior to the date that the October 29, 1975, Determination expires. The NRC staff does not believe that two days provide sufficient time for the receipt and meaningful review of comments from members of the public. In view of this, the NRC staff has further evaluated the design of the licensee's facility and its attendant operating practices, and the NRC staff has determined there is reasonable assurance that the operation of this facility for an additional period of approximately two weeks will not adversely affect the health and safety of the public. Based on operating experience with the facility since promulgation of the IAC, primary reliance on the conservative design practices utilized by this facility will continue to afford suitable protection to the health and safety of the public. In addition, the augmented inservice inspection requirement of the IAC, which will continue in effect, will provide further assurance during this interim period, until December 5, 1975. The likelihood of a loss of coolant accident during this period of time, based on operating experience to date, is so small that it can be considered to be negligible. Accordingly, there is reasonable assurance that operation of the facility until December 5, 1975, will not adversely affect the health and safety of the public.

Based on the foregoing considerations, the NRC staff finds that cessation of operation of the licensee's facility on November 21, 1975 is not warranted, and the date by which operation of the facility must be brought into conformity with the IAC is hereby extended through December 5, 1975.

Dated at Bethesda, Maryland this November 18, 1975.

For the Nuclear Regulatory Commission.

EDSON G. CASE,
Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc.75-31850 Filed 11-21-75;9:50 am]

RENEGOTIATION BOARD

STATEMENT OF ORGANIZATION AND FUNCTIONS

The Statement of Organization published in the issue of June 6, 1957 (FR Doc. 67-6258; 32 FR 8104), as heretofore amended, is further amended by revising the last sentence of the 3rd paragraph of section 3 *Organization*.

* * * * * * * The major staff units are: Office of the Secretary, Office of Administration, Office of Planning and Analysis, Office of Accounting, Office of Review, and Office of General Counsel.

Dated: November 19, 1975.

R. C. HOLMQUIST,
Chairman.

[FR Doc.75-31659 Filed 11-21-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-11824; File No. SR-Amex-75-7]

AMERICAN STOCK EXCHANGE, INC.

Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), as amended by Pub. L. No. 94-29, § 16 (June 4, 1975), notice is hereby given that on November 13, 1975, the American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, New York 10006, a national securities exchange registered with the Commission pursuant to Section 6 of the Act, filed with the Commission copies of a proposed rule change. The proposed rule change would amend Amex Rule 859, which restates standard industry methods for calculating the number of elapsed days in determining accrued interest on bond contracts, to conform that rule with existing securities industry practices.

The purpose of the amendments to Rule 859 is to broaden the scope of the rule so that it properly reflects the technical differences which exist between the standard securities calculation methods for the computation of elapsed days on contracts in interest-bearing securities issued or guaranteed by the United States Government and contracts in other bonds traded, or to be traded, on the Amex, including securities of agencies of the United States Government. The proposed amendments to Rule 859 are based upon Section 6(b)(1) of the Act, as amended, which becomes effective on December 1, 1975. The proposed amendments to Rule 859 relate to the Amex's ability to carry out the purposes of the Act and to comply and to enforce compliance by its members and persons associated with its members, with the Act and the rules and regulations thereunder.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 within 30 days of this publication. Reference should be made to File No. SR-Amex-75-7.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular the requirements of Section 6 and the rules and regulations thereunder.

Further, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof.

The approval of the proposed rule change is necessary to avoid investor confusion as to the proper calculation methods for computing interest on contracts in bonds, particularly insofar as those methods apply to Federal agency issues in which the Amex expects to initiate odd-lot trading on November 14, 1975. Further, the proposed rule change does not formulate new methods of calculation, but merely amends the present Amex rule to reflect those existing methods of calculation which are commonly used in the securities industry but were not reflected in Amex Rule 859 when it was first adopted.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 13, 1975.

AMERICAN STOCK EXCHANGE, INC.

PROPOSED AMENDMENTS TO RULE 859

(Brackets indicate words to be deleted and italic is used to indicate words to be added.)

Rule 859 Computation of Elapsed Days

The amount of interest deemed to have accrued on contracts in accordance with Rule 858 shall be [,]:

(1) On bonds (except securities issued or guaranteed by the United States Government but including securities issued or guaranteed by agencies thereof), that portion of the interest on the bonds for a full year, computed for the number of days elapsed since the previous interest date on the basis of a 360-day-year. Each calendar month shall be considered to be 1/12 of 360 days, or 30 days, and each period from a date in one month to the same date in the following month shall be considered to be 30 days.

(2) On securities issued or guaranteed by the United States Government [, or agencies thereof] *(except U.S. Treasury bills)*, that portion of the interest on the securities for the current full interest period, computed for the actual number of days elapsed since the previous interest period, computed for the actual number of calendar days in the current full interest period. The actual elapsed days in each calendar month shall be used in determining the number of days in a period.

. . . . . Commentary.

1. Computation of elapsed days.—The following tables *are* [is] given to illustrate the method of computing the number of elapsed days in conformity with Rule 859 above:

On bonds (except securities issued or guaranteed by the United States Government but including securities issued or guaranteed by agencies thereof):

From 1st to 30th of the same month to be figured as 29 days.

From 1st to 31st of the same month to be figured as 30 days.

From 1st to 1st of the following month to be figured as 30 days.

Where interest is payable on 30th or 31st of the month:

From 30th or 31st to 1st of the following month to be figured as 1 day.

From 30th or 31st to 30th of the following month to be figured as 30 days.

From 30th or 31st to 31st of the following month to be figured as 30 days.

From 30th or 31st to 1st of second following month, figured as 1 month, 1 day.

On securities issued or guaranteed by the United States Government [, or agencies thereof] *(except U.S. Treasury bills)*:

From 15th of a 28-day month to the 15th of the following month is 28 days.

From 15th of a 30-day month to the 15th of the following month is 30 days.

From 15th of a 31-day month to the 15th of the following month is 31 days.

The six months' interest period ending:

January 15 is 184 days.
February 15 is 184 days.
March 15 is 181 [1] days.
April 15 is 182 [1] days.
May 15 is 181 [1] days.
June 15 is 182 [1] days.
July 15 is 181 [1] days.
August 15 is 181 [1] days.
September 15 is 184 days.
October 15 is 183 days.
November 15 is 184 days.
December 15 is 183 days.

2. *The methods of computing discount rates on U.S. Treasury bills are contained in the Department of the Treasury's "General Regulations Governing United States Securities", (Circular No. 300), Washington, D.C., Government Printing Office, March, 1973, (31 CFR Part 306, Subpart E, Appendix).*

[1] Leap Year adds 1 day to this period.

[FR Doc.75-31585 Filed 11-21-75;8:45 am]

[Rel. No. 19250; 70-5765]

EASTERN UTILITIES ASSOCIATES, ET AL.

Notice of Proposed Issue and Sale of Notes by Holding Company and Subsidiary Companies to Banks and Open Account Advances by Holding Company to One Subsidiary

NOVEMBER 18, 1975.

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 02865; BROCKTON EDISON COMPANY, 36 Main Street, Brockton, Massachusetts 02403; FALL RIVER ELECTRIC LIGHT COMPANY, 85 North Main Street, Fall River, Massachusetts 02722; MONTAUP ELECTRIC COMPANY, P.O. Box 391, Fall River, Massachusetts 02722.

Notice is hereby given that Eastern Utilities Associates ("EUA"), a registered holding company, and its four electric utility subsidiary companies, Blackstone Valley Electric Company ("Blackstone"), Brockton Edison Company ("Brockton"), Fall River Electric Light Company ("Fall River") and Montaup Electric Company ("Montaup") have filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 12(b), 12(c) and 12(f) of the Act and Rule 45(a) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

During the period ending December 28, 1976, EUA, Blackstone, Brockton, Fall River, and Montaup propose to issue and sell short-term, unsecured promissory notes to banks, and in the case of Fall River to also receive open account advances from EUA, in the maximum aggregate amounts to be outstanding at any one time as shown below:

[In thousands]

Company	From banks	From EUA	Aggregate from banks and EUA
EUA	$23,100	.....	$23,100
Blackstone	3,300	.....	3,300
Brockton	9,900	.....	9,900
Fall River	5,750	1,700	7,450
Montaup	35,400	.....	35,400

The notes to banks will be dated as of the date of issuance, will mature no later than December 28, 1976, and will be prepayable in whole or in part without penalty. It is represented that some of the lending banks will require compensating balances and that others will not. With respect to notes for which a 20% compensating balance is required, the notes will bear interest at not in excess of the prime or base rate in effect on the date of issuance plus ¼ of 1%; if the compensating balance is 15%, the notes will bear interest at up to the prime or base rate plus ¼ of 1% multiplied by 106¼%; if the compensating balance is 10%, the notes bear interest at up to the prime or base rate plus ¼ of 1% multiplied by 112½%. With respect to such notes for which no compensating balance is required, the notes will bear interest at varying rates up to a maximum effective rate derived from the prime or base rate plus ¼ of 1% together with an assumed compensating balance of 20%. Assuming a prime or base rate of 7½%, the maximum effective rate of interest would be 9.68%.

With respect to open account advances by EUA to Fall River, the advances will be made at not in excess of the prime or base rate at The First National Bank of Boston in effect on the date of the advance. A compensating balance of not in excess of 20% of such advance will be maintained at the bank by Fall River. Assuming a prime or base rate of 7½%, the maximum effective rate of interest on the advances to Fall River would be approximately 9.4%.

It is stated that the proceeds from the proposed notes and advances will be used to meet cash requirements for construction, to provide funds for investment in subsidiaries and for compensating balances with lending banks through December 28, 1976, and to pay outstanding short-term loans. On December 30, 1975, Blackstone, Brockton, Fall River and Montaup expect to have outstanding short-term loans of $2,200,000, $6,300,000, $7,200,000 and $20,000,000, respectively. EUA expects to have outstanding short-term notes of $20,000,000 on December 30, 1975.

It is proposed that Fall River may prepay an advance from EUA with the proceeds of notes issued to banks. If the interest rate on a note issued to a bank for the purpose of obtaining funds to repay an advance from EUA shall exceed the rate on the advance being repaid, EUA shall reimburse or credit Fall River for the added interest required for the term of the note so issued.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions are to be supplied by amendment.

Notice is further given that any interested person may, not later than December 15, 1975, 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 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 filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act or the Commission may grant exemption from rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.75-31640 Filed 11-21-75;8:45 am]

DEPARTMENT OF LABOR

Manpower Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Notice of Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924 (b), 1932, or 1942 (b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75, published January 29, 1975 (40 FR 4393). In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing on or before December 8, 1975 to: Deputy Assistant Secreteary for Manpower, 601 D Street, NW, Washington, D.C. 20213.

Signed at Washington, D.C. this 17th day of November, 1975.

BEN BURDETSKY,
Deputy Assistant Secretary for Manpower.

Applications received during the week ending Nov. 14, 1975

Name of applicant	Location of enterprise	Principal product or activity
CuBick Container Corp.	Minotola, N.J.	Waxed corrugated boxes.
Acorn Lake Campground, Inc.	Stillwater, N.J.	Recreation vehicle campsites.
Cantera HNOS. Aponte, Inc.	Arroyo, P.R.	Aggregates for the construction industry.
Drilltech, Inc.	Alachua, Fla.	Manufacture of rotary blast hole drills.
LSW Leasing Co.	McMinnville, Tenn.	Lease of industrial building.
Tri-City Building Components, Inc.	Middlesex and Forsythe Counties, N.C.	Manufacture building components, wood trusses.
Robert Brindley, d.b.a. Meadowbrook Nursing Home.	Giles County, Tenn.	Nursing home.
Rehabilitation Centers, Inc.	Magee, Miss.	Skilled nursing home.
Mainline Power Products Co., Inc. (tenant of Franklin County industrial park).	West Frankfort, Ill.	Cable splicing.
LSC Corp.	Huntington, Ind.	Manufacturer of steel chain for use on agricultural implements.
Custom Metal Fabrication, Inc. (tenant to city of Kingsford).	Kingsford, Mich.	Marine deck equipment, electric control panels.
Henry R. Detgen, Jr. (tenant to city of Harbor Beach industrial park).	Harbor Beach, Mich.	Trash collection.
Bayou Chateau Nursing Center, Inc.	Simmesport, La.	Nursing services.
Bratton Furniture Manufacturing Co.	Shirley, Ark.	Manufacture of furniture.
Dadoo Fashions, Inc (tenant of Coushatta).	Coushatta, La.	Children's shirts.
G. & W. True Value Hardware	Green River, Wyo.	Retail hardware supplies.
Broulim's Supermarket, Inc.	Roberts, Idaho	Grocery store.
CAMP, Incorporated	Island of Maui, Hawaii	Cable television service.

[FR Doc.75-31571 Filed 11-21-75;8:45 am]

Office of the Secretary

[TA-W-329]

FORD MOTOR CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 7, 1975, the Department of Labor received a petition filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Auto Workers on behalf of the workers and former workers of Buffalo Stamping Plant, Metal Stamping Division, Hamburg, New York of the Ford Motor Company, Dearborn, Michigan (TA-W-329).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with tools, dies, jigs and fixtures produced by Ford Motor Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number of or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Of-

fice of Trade Adjustment Assistance, at the address shown below, not later than December 4, 1975.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 7th day of November 1975.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.75-31682 Filed 11-21-75;8:45 am]

[TA-W-330]

FORD MOTOR CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 7, 1975, the Department of Labor received a petition filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Auto Workers on behalf of the workers and former workers of Woodhaven Stamping Plant, Metal Stamping Division, Woodhaven, Michigan of the Ford Motor Company, Dearborn, Michigan (TA-W-330).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with tools, dies, jigs and fixtures produced by Ford Motor Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 4, 1975.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 7th day of November 1975.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.75-31683 Filed 11-21-75;8:45 am]

[TA-W-331]

FORD MOTOR CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 7, 1975, the Department of Labor received a petition filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Auto Workers on behalf of the workers and former workers of Maumee Stamping Plant, Metal Stamping Division, Maumee, Ohio, of the Ford Motor Company, Dearborn, Michigan (TA-W-331).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with tools, dies, jigs and fixtures produced by Ford Motor Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 4, 1975.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 7th day of November 1975.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.75-31684 Filed 11-21-75;8:45 am]

[TA-W-326]

FORD MOTOR CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 7, 1975, the Department of Labor received a petition filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Auto Workers on behalf of the workers and former workers of Dearborn Tool and Die Plant, Metal Stamping Division, Dearborn, Michigan of the Ford Motor Company, Dearborn, Michigan (TA-W-326).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with tools, dies, jigs and fixtures produced by Ford Motor Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 4, 1975.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 7th day of November 1975.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.75-31679 Filed 11-21-75;8:45 am]

[TA-W-327]

FORD MOTOR CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 7, 1975, the Department of Labor received a petition filed under Section 221(a) of the Trade Act of 1974

("the Act") by the United Auto Workers on behalf of the workers and former workers of Cleveland Stamping Plant, Metal Stamping Division, Walton Hills, Ohio of the Ford Motor Company, Dearborn, Michigan (TA-W-327).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with tools, dies, jigs and fixtures produced by Ford Motor Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 4, 1975.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, DC. 20210.

Signed at Washington, D.C. this 7th day of November 1975.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.75-31680 Filed 11-21-75;8:45 am]

[TA-W-328]

FORD MOTOR CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 7, 1975, the Department of Labor received a petition filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Auto Workers on behalf of the workers and former workers of Chicago Stamping Plant, Metal Stamping Division, Chicago Heights, Illinois of the Ford Motor Company, Dearborn, Michigan (TA-W-328).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports or articles like or directly competitive with tools, dies, jigs and fixtures produced by Ford Motor Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 4, 1975.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 7th day of November 1975.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.75-31681 Filed 11-21-75;8:45 am]

[Order No. 15-75]

INFLATIONARY IMPACT OF MAJOR PROPOSALS

Policy and Criteria for Evaluation

1. *Purpose.* To establish the Department of Labor (DOL) policy and criteria for the evaluation of the inflationary impact of major legislative proposals, rules, or regulations in compliance with Executive Order (E.O.) 11821.

2. *Background.* On November 27, 1974, the President issued E.O. 11821 emphasizing his commitment to diminish the inflationary impact of the Executive Branch of Government. The Order provided that major proposals for legislation and for the promulgation of regulations or rules by Executive departments and establishments shall be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated. The Director of the Office of Managemnet and Budget (OMB) was designated to develop criteria and prescribe procedures for carrying out the Order. These responsibilities have been further delegated to Executive department and establishment heads by OMB Circular A-107.

3. *Policy.* It is the policy of the DOL to delegate authority and responsibility for the efficient and effective compliance with E.O. 11821 to the operating Agencies of the Department and that a uniform system for compliance be achieved throughout the Department by the involvement of the Office of the Solicitor (SOL) and the Office of the Assistant Secretary for Policy, Evaluation, and Research (ASPER).

The procedures to be followed in the preparation of Inflationary Impact Statements (IIS) and Statements of Certification are detailed in the Temporary Directive—Preparation of IIS.

In designing an economic analysis appropriate for each proposal that requires an IIS, the initiating Agency shall consider where practicable and appropriate:

a. The principal costs or other inflationary effects of the action on markets, consumers, businesses, etc., and where practicable, secondary cost and price effects.

b. A comparison of the benefits to be derived from the proposed action with the estimated costs and inflationary impacts. These benefits should be quantified to the extent practicable.

4. *Certification.* The term "Statement of Certification" or "certification" as used in this Order means:

a. A statement by the initiating Agency, concurred with by the SOL and ASPER, cetrifying that the propsoed actions, pursuant to the application of the identification criteria specified in Section 5 of this Order, do not warrant an inflationary impact evaluation; or

b. A statement by the initating Agency, concurred with by ASPER, that the proposed actions, subject to an inflationary impact evaluation, have been reviewed in accordance with the criteria specified in Section 5.

5. *Identification Criteria.* This Order applies to each major piece of legislation, rule, or regulation proposed by the Department where there is reason to believe there may be a significant inflationary impact.

a. *Proposed Legislation.* This Order covers legislation proposed by the Department. It excludes: (1) Legislation that is technical in nature which, for example, transfers functions from one agency to another and therefore does not add any new substantive requirements; (2) Requests for appropriations, either general or supplemental, which implement existing laws; and (3) Legislation initiated by other Executive dpartments or establishments or the Congress on which the Department comments, either in reports or testimony, before Congress or in reports to OMB.

b. *Proposed Rules and Regulations.* This Order covers rules and regulations proposed by the Department excluding the following actions:

(1) Wage determinations under the Davis-Bacon and related acts, Walsh-Healey Public Contracts Act and the Service Contract Act.

(2) Wage determinations for American Samoa, Puerto Rico, and the Virgin Islands where industry committees determine the applicable minimum wage rates.

(3) Issuance of Employment Standards Administration subminimum wage certificates.

(4) Determinations of automatic increases in worker's compensation payments which are required by law.

(5) Grants or contract awards.

(6) Variances under the Occupational Safety and Health Act.

(7) Assessment of civil penalties.

(8) Emergency (temporary) standards promulgated under Section 6(c) of the Occupational Safety and Health Act, 29 U.S.C. 655(c), provided that notice is given at the time of promulgation of the emergency (temporary) standard in the FEDERAL REGISTER of the requirement that any permanent standard promulgated as a result of a Section 6(c) proceeding shall be subject to inflation impact analysis prior to its final promulgation.

c. *Economic Identification Criteria* for the determination of "substantive" legislative and rulemaking proposals. Except for those types of legislative and rulemaking proposals specifically excluded by Section 5a and 5b of this Order, the following economic identification criteria are to be used in determining whether proposed legislation, rules, or regulations are "major," thereby requiring an inflationary impact analysis and certification. These criteria, where applicable, are to be applied to each new legislative proposal, rule, or regulation and an IIS must be prepared should any of the economic effects enumerated below prevail.

(1) *Cost Impact*—If the proposal is expected to produce a net increase in costs to consumers, businesses, or Federal, State, or local governments exceeding $100 million in any year, $180 million in a 2-year period for the national economy; or $50 million in any year, $75 million in a 2-year period for any industry (4 digit standard industrial classification code) or level of government (all dollar thresholds are in constant 1975 dollars).

(2) *Productivity*—In making the cost impact analysis discussed above, consideration should be given to the possible negative effects on productivity that may arise through any of the following:

—reduction or restriction of industry (output) capacity or capital investment.
—increase in labor person-hours per unit of output.
—increase in barriers to substitution of processed or raw material supplies.
—reduction or restriction in adaptation of new technologies, equipment processes, or skills.

(3) *Effect on Energy Supply/Demand*—If the proposal is likely to cause in any 1 year an increase in demand for or decrease in supply of petroleum or other forms of energy by 25,000 barrels per day or its equivalent.

(4) *Effect on Supplies of Critical Materials*—If the proposal would decrease the total national supply of critical materials by 3 percent or more. ASPER will define those materials that are deemed critical for the purposes of this Order.

(5) *Effect on Employment*—If the proposal is expected to decrease the demand for labor by more than 0.2 percent at the national level, or 10,000 workers at the industry, State, or local government level.

(6) *Effects on Market Structure*—If the proposal is expected to impose a substantial limitation on market entry, increase concentration substantially, or would substantially increase the potential for a monopoly in a line of commerce. This criterion is applicable only to markets, as defined by ASPER, where commerce exceeds $100 million per year.

6. *Responsibilities.*

a. *Assistant Secretary for Policy, Evaluation, and Research* is responsible for the overall guidance of the system and for ensuring that evaluations are made available to interested Agencies. It is incumbent upon ASPER to promptly review all quarterly reports, proposed Statements of Certification, and the IIS.

b. *Agency Heads* initiating regulations or legislative proposals within the scope of this Order, or lead Agencies with respect to such regulations or legislative proposals, are responsible for the preparation of certifications as defined by Section 4, except as such responsibility may be assigned to another Agency by ASPER. Agencies are also responsible for the preparation of quarterly reports to ASPER on all legislation, rules, and regulations that are expected to be proposed in the subsequent quarter. These reports shall contain a rationale as to the need or lack thereof for an IIS.

c. *The Solicitor* is responsible for rendering legal advice concerning the coverage and applicability of the requirements of this Order. Furthermore, before any major proposed regulations, requiring certification under this Order and implementing instructions are submitted by the SOL for clearance or approval, SOL shall ensure that a certification statement (as defined in Section 4) and a summary of the analysis accompany such regulations. Before any major legislative proposals to which this Order applies are submitted to the OMB for clearance, the SOL shall assure that a certification statement has been prepared as required by this Order. In any case where there is no such certification when it is required, the Solicitor shall promptly notify the appropriate Agency and ASPER.

7. *Effective and Expiration Dates.* This Order is effective immediately and will expire on December 31, 1976.

Signed at Washington, D.C. this 15th day of November, 1975.

JOHN T. DUNLOP,
Secretary of Labor.

[FR Doc.75-31677 Filed 11-21-75;8:45 am]

[Order No. 14-75]

MANPOWER AND THE MANPOWER ADMINISTRATION

Renaming the Office of the Assistant Secretary

1. *Purpose.* To change the name of the Office of the Assistant Secretary for Manpower and the Manpower Administration.

2. *Background.* In recent years, program responsibilities of the Federal Government in the employment and training area have substantially increased. The passage of the Manpower Development and Training Act of 1962, the Economic Opportunity Act of 1964, and the Emergency Employment Act of 1971 reflected the Nation's interest in this vital area. In 1973, the goals contained in these three statutes were coordinated and placed in a new statutory structure, the Comprehensive Employment and Training Act. Other major statutes in this area include the National Apprenticeship Act, the Wagner-Peyser Act, and the Federal Unemployment Tax Act.

As each of these statutes impact upon the employment or training of workers, the Administration within the Department which administers these statutes should reflect these generic concerns.

3. *Office of the Assistant Secretary for Manpower and the Manpower Administration.*

a. It is hereby ordered that the Office of the Assistant Secretary for Manpower be redesignated the Office of the Assistant Secretary for Employment and Training.

b. Further, it is hereby ordered that the Manpower Administration be redesignated the Employment and Training Administration.

c. All offices deriving their name in whole, or in part, from the redesignated Office of the Assistant Secretary for Employment and Training, or the redesignated Employment and Training Administration should accomplish an appropriate change of name pursuant to this Order.

d. All employees of the previously named Office of the Assistant Secretary for Manpower or the Manpower Administration are redesignated employees of the Office of the Assistant Secretary for Employment and Training or the Employment and Training Administration, respectively.

e. All programs, activities, functions, and responsibilities delegated to the previously named Office of the Assistant Secretary for Manpower or the Manpower Administration are redesignated programs, activities, functions, and responsibilities of the Office of the Assistant Secretary for Employment and

Training or the Employment and Training Administration, respectively.

4. *Other Agencies.* Other Agencies within the Department of Labor shall make any appropriate redesignation in conformity with the spirit and purposes of this Order.

5. *Effective Date.* This Order is effective immediately.

Signed at Washington, D.C. this 12th day of November, 1975.

JOHN T. DUNLOP,
Secretary of Labor.

[FR Doc.75-31676 Filed 11-21-75;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 919]

ASSIGNMENT OF HEARINGS

NOVEMBER 19, 1975.

Cases assigned for hearing, postponement, cancelation 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 cancelation or postponements of hearings in which they are interested.

MC 115524 (Sub-No. 27), Bursch Trucking, Co., DBA Roadrunner Trucking, Inc., now being assigned January 27, 1976, (1 day), at Phoenix, Ariz.; in a hearing room to be later designated. MC 140756 Fann R. McKelvey DBA McKelvey Trucking, now being assigned January 28, 1976 (3 days), at Phoenix, Ariz.; in a hearing room to be later designated.

MC-C-8248, Kahanic Trucking Co., Revocation of Certificate, now being assigned February 2, 1976 (1 day), at Los Angeles, Calif., in a hearing room to be later designated.

MC 19227 Sub 217, Leonard Bros. Trucking Co., now being assigned February 3, 1976 (1 day), at Los Angeles, Calif.; in a hearing room to be later designated.

MC 127042 Sub 154, Hagen, Inc., now being assigned February 4, 1976, (1 day), at Los Angeles, Calif.; in a hearing room to be later designated.

MC 119726 Sub 53, N.A.B. Trucking Co., Inc., MC 139495 Sub 46, National Carriers, Inc., and MC 140768, American Trans-Freight, Inc., now assigned December 2, 1975, at the Offices of the Interstate Commerce Commission, Washington, D.C., is postponed indefinitely.

MC-F-12313, Eells Cargo, Inc.—Purchase—Western Truck Lines and MC 43269, Wells Cargo, Inc., now being assigned February 9th, 1976, (1 week), at Los Angeles, Calif.; in a hearing room to be later designated.

MC 140053, TRK Transport, Inc., now assigned December 2, 1975, at Los Angeles, California, will be held in Room 1501, Federal Courthouse, 312 North Spring Street.

MC-F 12510, Imperial Van Lines, Inc.—Control—Martin Van Lines, Inc., now assigned December 8, 1975, at Los Angeles, California, will be held in Room 1501, Federal Courthouse, 312 North Spring St. MC 139134 Sub 2, Kennedy Motors, Inc., now assigned December 4, 1975, at Los Angeles, California, will be held in Room 1501, 312 North Spring Street.

MC 2366 Sub 4, William Corbitt, Inc., now being assigned January 21, 1976, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 138635 Sub 14, Carolina Western Express, Inc., now being assigned January 22, 1976, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 136343 Sub 42, Milton Transportation, Inc., now being assigned January 22, 1976, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-FC 75074, American Tank Transport, Inc., Curtis Bay, Maryland Transferee and Yale Transport Corp. F. Ralph Nogg, Successor Trustee, Secaucus, New Jersey Transferor, now being assigned January 26, 1976, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 61445 Sub 6, Contractors Transport Corp., now assigned November 24, 1975 at Washington, D.C., has been postponed indefinitely.

MC 130296, Century International Travel, Inc. d/b/a Centours, now assigned December 9, 1975, at Baton Rouge, Louisiana, will be held in the Auditorium, First Floor, State Library Building, 760 Riverside Mall.

MC 112801 Sub 171, Transport Service Co., now assigned December 9, 1975 at Chicago, Illinois, is cancelled and application dismissed. MC 128273 Sub 107, Midwestern Distribution, Inc., now assigned December 11, 1975 at Louisville, Ky., will be held in Room 183 Federal Bldg., 600 Federal Place.

MC 111422 Sub 7, O.D. Anderson, Inc., now assigned December 10, 1975, at Youngstown, Ohio, will be held in Room 214, Main Post Office Bldg., 9th West Front Street.

MC 8958 Sub 29, The Youngstown Cartage Co., now assigned December 15, 1975, at Columbus, Ohio, will be held in Room 235 Federal Office Bldg., 85 Marconi Blvd.

MC 116763 Sub 306, Carl Subler Trucking, Inc., now assigned December 16, 1975 at Columbus, Ohio, will be held in Room 235 Federal Office Bldg., 85 Marconi Blvd.

MC 119632 Sub 61, Reed Lines, Inc., and MC 123255 Sub 53, B & L Motor Freight, Inc., now assigned December 18, 1975 at Columbus, Ohio, will be held in Room 235 Federal Office Bldg., 85 Marconi Blvd.

MC 117557 Sub 21, Matson, Inc., now assigned December 5, 1975 at Chicago, Ill., will be held in Room 286, Everett McKinley Dirksen Bldg., 219 S. Dearborn Street.

AB 1 Sub 18, Chicago and North Western Transportation Company Abandoned Between Clutier And Buckingham, in Tama County, Iowa, now assigned December 2, 1975 at Traer, Iowa, will be held in City Hall.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-31671 Filed 11-21-75;8:45 am]

[Notice No. 133]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 19, 1975.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the I.C.C. Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 82492 (Sub-No. 128 TA), filed November 11, 1975. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, Mich. 49003. Applicant's representative: William C. Harris (same as address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from the plantsite and warehouse facilities of Jeno's, Inc., at or near Sodus, Mich., to points in Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota and Wisconsin, for 180 days. Supporting shipper: Jeno's, Inc., P.O. Box 6509, Duluth, Minn. 55806. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Bldg., Lansing, Mich. 48933.

No. MC 83217 (Sub-No. 68 TA), filed November 10, 1975. Applicant: DAKOTA EXPRESS, INC., 550 East Fifth St., South, South St. Paul, Minn. 55075. Applicant's representative: Bill White (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from the plantsite and warehouse facilities of Jeno's, Inc., at or near Sodus, Mich., to points in Iowa, Kansas, Missouri, Nebraska, Minnesota, North Dakota, and South Dakota. Restriction: Restricted to traffic originating at the plantsite and warehouse facilities of Jeno's, Inc., at or near Sodus, Mich., for 180 days. Supporting shipper: Jeno's, Inc., 525 Lake Ave., South, Duluth, Minn. 55082. Send protests to: A. N. Spath, District Supervisor, Bureau of Opera-

tions, Interstate Commerce Commission, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 107295 (Sub-No. 788 TA), filed November 11, 1975. Applicant: PRE-FAB TRANSIT CO., 100 South Main St., Farmer City, Ill. 61842. Applicant's representative: Duane Zehr (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wire and wire mesh*, from Williamsport, Md., to Pueblo, Colo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: W. Alexander Herbst, Traffic Manager, Maccaferri Gabions, Inc., One Lefrak City Plaza, Flushing, N.Y. 11368. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 110988 (Sub-No. 328 TA), filed November 10, 1975. Applicant: SCHNEIDER TANK LINES, INC., 200 West Cecil St., Neenah, Wis. 54956. Applicant's representative: Neil A. DuJardin, P.O. Box 2298, Green Bay, Wis. 54306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydrofluosilicic acid*, from the Chemtech Industries, Inc., railsiding at Milwaukee, Wis., to Moline, Peoria, Rockford, and Seward, Ill., and Davenport and Clinton, Iowa, restricted to traffic having a prior movement by rail, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chemtech Industries, Inc., 9909 Clayton Road, St. Louis, Mo. 63124. Send protests to: John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 111729 (Sub No. 585TA), filed November 11, 1975. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, N.Y. 11040. Applicant's representative: Elizabeth L. Henoch (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Critical truck replacement parts, power equipment parts, and supplies*, restricted against the transportation of packages or articles weighing in excess of 75 pounds in the aggregate from one consignor to one consignee on any one day, between Richmond, Va., on the one hand, and, on the other, Raleigh, Greensboro, Charlotte, Bethel, N.C.; and Salisbury, Md.; (2) *Business papers, records and audit and accounting media of all kinds;* (a) between Dubuque, Iowa, on the one hand, and, on the other, Evansville, Goshen and Indianapolis, Ind.; Anoka, Austin, Mankato, Red Wing, Rochester, and Willmar, Minn.; Black River Falls, Eau Claire, Janesville, La-Crosse, Madison, Monroe, Sheboygan and Verona, Wis.; Aurora, Champaign, Danville, Decatur, DeKalb, Freeport, Homewood, Olney, Quincy, and Rockford, Ill.; (b) between Detroit, Mich., on the one hand, and, on the other, Alpena, Petoskey and Mount Pleasant, Mich.; (c) between Louisville, Ky., and Henderson, Ky.; (d) between Columbus, Ohio and Marion, Ohio; (e) between Raleigh, N.C., on the one hand, and on the other, Tarboro and Wilson, N.C.; (f) between Kansas City, Kans., and Emporia, Kans.; (g) between Memphis, Tenn., on the one hand, and, on the other, Trenton, Tenn., and Paragould, Ark.; (h) between Fargo, N. Dak., and Grand Forks, N. Dak.; (i) between San Francsico, Calif., and Huntington Park, Calif.

(j) Between Sioux Falls, S. Dak., and Watertown, S. Dak. Parts (2) (b) through (2) (j) above are restricted to the transportation of traffic having an immediately prior or subsequent movement by air; (3) *Fresh and dried cut flowers, decorative greens, green plants, and floral supplies*, when moving at the same time and in the same vehicle with commodities the transportation of which is subject to economic regulation, from Minneapolis, Minn., to Omaha, Nebr.; Ironwood, Mich; and points in Iowa, North Dakota, South Dakota and Wisconsin, for 180 days. Supporting shippers: (1) Colonial Ford Truck Sales, Inc., 1833 Commerce Road, Richmond, Va. (2) Computer Consulting Service, Dubuque Bldg., Dubuque, Iowa. (3) Flowers, Incorporated, 16 Glenwood, Minneapolis, Minn. Send protests to: Anthony D. Giaimo, District Supervisor, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 127834 (Sub-No. 110TA), filed November 7, 1975. Applicant: CHEROKEE HAULING & RIGGING, INC., 540-42 Merritt Ave., Nashville, Tenn. 37203. Applicant's representative: Louis J. Amato, P.O. Box E, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum lamp posts*, from Holophane Division of Johns-Manville Co., near Barbourville, Ky., to points in the United States (except Alaska and Hawaii, Washington, Oregon, Idaho, Montana, Wyoming, Utah, California, Arizona, New Mexico and Nevada), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Holophane Division of Johns-Manville Co., Box 668, Barbourville, Ky. 40906. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 128030 (Sub-No. 98TA), filed November 10, 1975. Applicant: THE STOUT TRUCKING CO., INC., P.O. Box 177, Urbana, Ill. 61801. Applicant's representative: R. C. Stout (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from Louisville, Ky., Columbus, Ohio; Peoria, Ill., and Milwaukee, Wis., to Edinburg, Ind., for 180 days. Supporting shipper: Steven Kellams, Blue River Products, Inc., 305 E. Main Cross St., P.O. Box 38, Edinburg, Ind. 46124. Send protests to: Patricia A. Roscoe, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, Ill. 60604.

No. MC 128273 (Sub-No. 209TA), filed November 10, 1975. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, Kans. 66701. Applicant's representative: Harry Ross, 1403 South Horton, Fort Scott, Kans. 66701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry powdered printing ink* when moving on the same vehicle and at the same time with printing paper being transported under currently held operating authority, from Riegelsville, Milford, Hughesville and Warren Glenn, N.J., to points in the United States (except Alaska, Hawaii, Connecticut, Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, New York, Pennsylvania, New Jersey, Maryland, Delaware, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama and the District of Columbia), for 180 days. Supporting shipper: Riegel Products Corporation, P.O. Box R, Milford, N.Y. 08848. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 501 Petroleum Bldg., Wichita, Kans. 67202.

No. MC 135482 (Sub-No. 4TA), filed November 10, 1975. Applicant: H. A. BEYER and ROBERT A. BEYER, doing business as H. A. BEYER & SON, Box 615, Valley City, N. Dak. 58072. Applicant's representative: Gene P. Johnson, 425 Gate City Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk (except in tank vehicles), from the plantsites and storage facilities of Dundee Cement Company, located at or near Minneapolis, Minn., to the plantsites and storage facilities of Beyer's Cement, Inc., located at or near Valley City, N. Dak., under a continuing contract with Beyer's Cement, Inc., for 180 days. Supporting shipper: Beyer's Cement, Inc., Valley City, N. Dak. 58072. Send protests to: J. H. Ambs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 136032 (Sub-No. 16TA), filed November 7, 1975. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, Tex. 76039. Applicant's representative: Richard A. Peterson, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hair and skin care products, toilet preparations, and equipment, materials and supplies*, used in the production and distribution thereof (except commodities in bulk), in vehicles

equipped with mechanical temperature control devices, between points located within a 65-mile radius of Los Angeles, Calif., on the one hand, and, on the other, points in the United States on and east of U.S. Highway 85, under a continuing contract with Redken Laboratories, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Redken Laboratories, Inc., Van Nuys, Calif. Send protests to: H. C. Morrison, District Supervisor, Room 9A27, Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 138335 (Sub-No. 2TA), filed November 7, 1975. Applicant: HARTLEY OIL COMPANY, INC., Route 2, P.O. Box 398, Ravenswood, W. Va. 26164. Applicant's representative: John M. Friedman, 2930 Putnam Ave., Hurricane, W. Va. 25526. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electric cable on reels*, from Baltimore, Md., to points in West Virginia, and (2) Empty reels, from points in West Virginia to Baltimore, Md., under a continuing contract with Western Electric Company, Inc., for 180 days. Supporting shipper: Western Electric Company, Inc., P.O. Box 25000, Greensboro, N.C. 27240. Send protests to: H.R. White, District Supervisor, Interstate Commerce Commission, 3108 Federal Bldg., 500 Quarrier St., Charleston, W. Va. 25301.

No. MC 140024 (Sub-No. 57TA), filed November 5, 1975. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, Colo. 80022. Applicants' representative: John F. DeCock (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Nucor Steel Division of Nucor Corporation, at or near Norfolk, Nebr., to points in Illinois, Indiana, Michigan, Ohio and Wisconsin. Restriction: Restricted to traffic originating at the steel mill facilities of the Nucor Steel Division of Nucor Corporation, at or near Norfolk, Nebr., and destined to the named destinations, for 180 days. Supporting shipper: Nucor Steel Division of Nucor Corporation, P.O. Box 59, Norfolk, Nebr. 68701. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 1961 Stout St., 2022 Federal Bldg., Denver, Colo. 80202.

No. MC 140468 (Sub-No. 4TA), filed November 11, 1975. Applicant: DONALD R. BAJEMA AND GERALD O. BAJEMA, doing business as, RIVERVIEW DAIRY FARMS, 2777 Hillside Drive, N.W., Grand Rapids, Mich. 49504. Applicant's representative: David E. Jerome, P.O. Box 400, Northville, Mich. 48167. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products*, (except in bulk, in tank vehicles equipped with mechanical refrigeration), and the *return of empty containers, damaged or refused products*, from the plantsite of Sealtest Foods, Division of Kraftco Corp., at Lansing, Mich., to South Bend, Ind., for 180 days. Supporting shipper: Sealtest Foods Division Kraftco Corp., 2224 W. Willow, Lansing, Mich. 48917. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Bldg., Lansing, Mich. 48933.

No. MC 141482 (Sub-No. 1TA), filed November 7, 1975. Applicant: AL DWYER, doing business as DWYER TRUCKING, Route 1, Bangor, Wis. 54614. Applicant's representative: Joseph E. Ludden, 309 State Bank Bldg., La Cross, Wis. 54601. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood products, face frame stock and mouldings*, restricted to movements on flat bed trailers only, from Bangor, Wis., to Chicago, Ill., and the Chicago, Ill., Commercial Zone, under a continuing contract or contracts with Coulee Region Enterprises, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Coulee Region Enterprises, Inc., Bangor, Wis. 54614. Send protests to: Barney L. Hardin, District Supervisors Interstate Commerce Commission, 139 W. Wilson St., Room 202, Madison, Wis. 53703.

No. MC 141485 TA, filed November 10, 1975. Applicant: CLIFFORD RAY RUTLAND, doing business as, CLIFF RUTLAND TRUCKING, Route 1, Independence, Kans. 67301. Applicant's representative: Alvin F. Grauerholz, P.O. Box 361, Coffeyville, Kans. 67337. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Animal feeds and feed ingredients;* (1) from Ava, Mo. (in Douglas County), to points in Beckham, Grady, Oklahoma, McClain and Tulsa Counties, Okla.; points in Cherokee, Labette and Montgomery Counties, Kans.; points in Kankakee County, Ill., and other points in Ill.; points in Indiana, Wyoming and Arkansas; and points in Greene County, Mo., for the following Contracting Party: Super Sup Equine Products, Inc., of 817 West Walnut Lawn, Springfield, Mo. 65807. (2) from Republic, Mo. (in Greene County), to points in Beckham, Grady, Oklahoma, McClain and Tulsa Counties, Okla.; points in Cherokee, Labette and Montgomery Counties, Kans.; points in Kankakee County, Ill., and other points in Illinois; points in Indiana, Wyoming and Arkansas; and in Douglas County, Mo., for the following Contracting Party: American Agri Products, Inc., 112 South Maine, Republic, Mo. 65738. (3) from points in Montgomery County, Kans., to points in Oklahoma, Kansas, Illinois, Indiana, Arkansas, Missouri, Colorado, Nebraska and Wyoming, for the following Contracting Party: Guy Ray Rutland, doing business as Rutland Quarter Horse Ranch, Route 1, Independence, Kans. 67301, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Super Sup Equine Products, Inc., 817 West Walnut Lawn, Springfield, Mo. 65807. Guy Ray Rutland, dba Rutland Quarter Horse Ranch, Route 1, Independence, Kans. 67301. American Agri Products, Inc., 112 South Main, Republic, Mo. 65738. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 501 Petroleum Bldg., Wichita, Kans. 67202.

PASSENGER APPLICATIONS

No. MC 141112 (Sub-No. 3TA), filed November 10, 1975. Applicant: BURWELL RAY GALLOP, doing business as, GALLOP BUS LINES, 3900 East Indian River Road, Chesapeake, Va. 23325. Applicant's representative: Frank B. Hand, Jr., P.O. Box 187, Berryville, Va. 22611. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in special and/or round-trip charter operations, beginning and ending at Portsmouth, Norfolk and its Commercial Zone, Chesapeake, Suffolk, Virginia Beach, Hampton, and Newport News, Va., and extending to Wilmington, Del.; Louisville, Ky.; Orlando and Miami, Fla.; Stowe and Burlington, Vt.; New York City, Alexandria Bay and Niagara Falls, N.Y.; Washington, D.C.; Asheville, Charlotte, Burlington, Cherokee, Fayetteville, Winston-Salem, Greensboro, Raleigh, Nags Head, and Bowling Green, N.C.; Philadelphia, Mt. Pocomo, Lancaster, York, Pittsburgh and Reading, Pa.; New Orleans, La.; Natchez, Miss.; Savannah and Atlanta, Ga.; Charleston, S.C.; Nashville, Memphis and Gatlinburg, Tenn.; Bangor, Maine; Canaan Valley, Wheeling, Harpers Ferry, Charles Town and Blackwater Falls, W. Va.; Baltimore, Md.; Boston, Mass.; and Houston, Tex., for 180 days. Supporting shippers: There are approximately 49 statements of support attached to the application, which may be examined 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: Paul D. Collins, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 10-502 Federal Bldg., 400 North 8th St., Richmond, Va. 23240.

No. MC 141486 TA, filed November 11, 1975. Applicant: SLOPE & TRACK PLEASUREWAYS, INC., 7446 Metcalf, Overland Park, Kans. 66204. Applicant's representative: R. Michael Gunn, 5600 Antioch Road, Kansas City, Mo. 64119. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in charter operations, in sleeper berth equipped vehicles, between points in the territory bounded by a line beginning at the Missouri-Kansas state line and extending in a westerly direction along U.S. Highway 54 to the junction of U.S. Highway 75, thence northerly along U.S. Highway 75 to the junction of U.S. Highway 36, thence along U.S. Highway 36 to the junction of U.S. Highway 65, thence along U.S. Highway

65 to the junction of U.S. Highway 54, thence westerly along U.S. Highway 54 to the Missouri-Kansas state line, the point of beginning on the one hand, and, on the other, points in Kansas, Colorado, Missouri, Nebraska, Louisiana, Arkansas and Mississippi, for 180 days. Supporting shippers: There are 7 statements of support attached to the application, which may be examined 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: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 911 Walnut St., Kansas City, Mo.

By the Commission.

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

[FR Doc.75-31670 Filed 11-21-75;8:45 am]

[Notice No. 123]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

NOVEMBER 24, 1975.

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 15, 1975. 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-F-75793. By order of November 17, 1975, the Motor Carrier Board approved the transfer to George H. Golding, Inc., Lockport, N.Y., of the operating rights in Permit No. MC 135124 (Sub-No. 1) issued September 11, 1973, to Dressing Transport, Inc., Wilson, N.Y., authorizing the transportation of salad dressing and tartar sauce, except in bulk, from Wilson, N.Y., to points in New Hampshire, Massachusetts, Connecticut, New York, Pennsylvania, New Jersey, Maryland, Ohio, Michigan, Illinois, Florida, Georgia, South Carolina, Maine, Vermont, Rhode Island, West Virginia, Kentucky, Wisconsin, North Carolina, and the District of Columbia, and materials, equipment, and supplies used in the manufacture or distribution of tartar sauce and salad dressing, except in bulk, from points in the District of Columbia and the above-named states to Wilson, N.Y., restricted (1) against the transportation of glass products, from Brockaway, Pa., to Wilson, N.Y., and (2) to transportation performed under continuing contract with Pfeiffer Foods, Inc., of Wilson, N.Y. William J. Hirsch, 43 Court Street, Buffalo, N.Y. 14202 Attorney for transferee.

No. MC-FC-75961. By order of November 17, 1975, the Motor Carrier Board approved the transfer to Central New England Warehouse, Inc., Worcester, Massachusetts, of Permit No. MC 58933, issued October 14, 1958, to L. P. Wagner, Inc., Worcester, Massachusetts, authorizing the transportation of abrasive products and grinding machinery, between Worcester, Massachusetts, on the one hand, and, on the other, specified points in the State of Connecticut, and points in the State of Massachusetts. Arthur A. Wentzell, P.O. Box, 764, Worcester, Massachusetts, 01613 Attorney for Transferee and Transferor.

No. MC-FC-76040. By order of November 17, 1975, the Motor Carrier Board on reconsideration approved the transfer to Price Transfer, Inc., Wilmington, Calif., of the operating rights in Certificate No. MC 5178 issued August 16, 1960, to M.A.P., Inc., Midway City, Calif., authorizing the transportation of general commodities, with usual exceptions, between Los Angeles, Calif., on the one hand, and, on the other, Los Angeles Harbor and Long Beach Harbor, Calif. Donald Murchison, 9454 Wilshire Boulevard, Suite 400, Beverly Hills, Calif. 90212 Attorney for applicants.

No. MC-FC-76082. By order of November 18, 1975, the Motor Carrier Board approved the transfer to Southern Motors & Bus Lines Ltd., Winnipeg, Manitoba, Canada, of Certificate No. MC 134140 issued July 2, 1970, to Stock-Algar Coach Lines Limited, Lindsay, Ontario, Canada, authorizing the transportation of passengers and their baggage, in charter and special operations, in round-trip sightseeing and pleasure tours, beginning and ending at ports of entry on the United States-Canada Boundary line and extending to points in the United States (including Alaska, but excluding Hawaii). S. Harrison Kahn, Suite 733 Investment Building, Washington, D.C. 20005, Attorney for applicants.

No. MC-FC-76098. By order of November 18, 1975, the Motor Carrier Board approved the transfer to Norman Kruse, d.b.a. Union City Warehouses, Union City, N.J., of Certificate No. MC 94046, issued April 13, 1951, to Alfred P. Gualino and James Antoniotti, d.b.a. Union City Warehouses, Union City, N.J., authorizing the transportation of household goods, between points in Hudson County, N.J., on the one hand, and, on the other, points in New York within 100 miles of Union City, N.J. Victor P. Mullica, 800 Summit Avenue, Union City, New Jersey 07087, Attention Richard J. Plaza, Esq., Attorney for Transferor.

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

[FR Doc.75-31672 Filed 11-21-75;8:45 am]

RAILROAD PROPOSALS TO INCREASE RATES ON RECYCLABLES [1]

Postponement of Informal Conference

NOVEMBER 14, 1975.

By Notice dated November 11, 1975, the Interstate Commerce Commission, Division 2, scheduled an informal conference for November 18, 1975, in order that staff personnel, shippers of recyclables, and railroad representatives might engage in informal discussions in an effort to limit potential controversies in railroad rate increase proceedings.

Due to illness of counsel for the National Association of Recycling Industries, a request for postponement has been received. In response to this request, the informal conference has been postponed to December 17, 1975. The conference will commence at 9:30 a.m., at the Office of the Interstate Commerce Commission, Washington, D.C.

Parties interested in attending this conference should indicate their intention to participate by notifying the Commission no later than December 1, 1975. Letters of intent to participate should be addressed to the Interstate Commerce Commission, Room 5342, Washington, D.C. 20423. Notice of this informal conference shall be given to the general public by depositing a copy of this notice in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy of the notice to the Director, Office of the Federal Register, for publication therein as notice to interested persons.

ROBERT L. OSWALD, *Secretary.*

[FR Doc. 75-31669 Filed 11-21-75;8:45 am]

[1] Recyclable commodities are those identified in 49 CFR 1100.251(c).

federal register

MONDAY, NOVEMBER 24, 1975

PART II:

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

■

SULFUR DIOXIDE

Occupational Exposure

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1910]

[Docket No. H–039]

OCCUPATIONAL EXPOSURE TO SULFUR DIOXIDE

Notice of Proposed Rulemaking

Pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), and Title 29, Code of Federal Regulations (CFR) Part 1911, it is proposed to amend 29 CFR Part 1910 by deleting the present standard for sulfur dioxide (SO_2) contained in 29 CFR 1910.1000, Table Z–1, and by adding a new standard for occupational exposure to sulfur dioxide as 29 CFR 1910.1030. This standard would apply to all employments in all industries covered by the Act, including "general industry", construction, and maritime. In addition, pursuant to section 4(b)(2) of the Act (84 Stat. 1592, 29 U.S.C. 653), if the new standard, when promulgated, is determined to be more effective and appropriate than corresponding standards now applicable to the maritime and construction industries contained in Subpart B of Part 1910, Parts 1915, 1916, 1917, 1918, and 1926 of 29 CFR, the new sulfur dioxide standard will supersede the corresponding maritime and construction standards for exposure to sulfur dioxide. Appropriate conforming amendments will be made in Subpart B of Part 1910, and amendments to delete the superseded standards will be made in 29 CFR 1926.55 and in similar sections of Parts 1915–1918.

The accompanying document is a proposal issued pursuant to section 6(b) of the Act. The notice requests the submission of written comments, data, and arguments from any interested persons on a variety of issues addressed or implicit in the proposal. In addition to filing comments, interested persons may also file objections to the proposal requesting an informal hearing with respect thereto.

The proposed standard contains a requirement limiting employee exposure to an 8-hour time-weighted average exposure concentration of 2 parts sulfur dioxide per million parts air (5.23 mg/m^3), together with a ceiling limit of 10 ppm (26.12 mg/m^3) as measured over a sampling period of 15 minutes. The proposal also provides for employee exposure measurements, methods of compliance, personal protective clothing and equipment, training, medical surveillance, employee observation of exposure measurements, and recordkeeping.

The issues raised in the proposal include, among others, the following:

(1) Whether proposed permissible exposure limit of 2 ppm based on an 8 hour time-weighted average for a 40 hour week, and the ceiling limit of 10 ppm as measured over a sampling period of 15 minutes is appropriate;

(2) To what extent are there hypersusceptible employees in the working population and to what extent, if any, should such employees be considered in establishing a standard for occupational exposure to any substance, in this case sulfur dioxide;

(3) To what extent, if any, are there chronic effects of sulfur dioxide exposure;

(4) To what extent, if any, does sulfur dioxide promote cancer;

(5) Should OSHA seek in one standard to regulate one substance, SO_2, and cover other sulfur dioxide decay products in subsequent standards; or should OSHA attempt to set one standard inclusive of sulfur dioxide and its decay products.

(6) The provisions for, among other things, employee exposure measurements, methods of compliance, signs and labels, medical surveillance, protective equipment and clothing, training, and recordkeeping;

(7) The environmental and inflationary impacts of this proposal;

(8) The feasibility of complying with a TWA of 2 ppm and a ceiling of 10 ppm; and

(9) The application of the recordkeeping and similar requirements to small businesses and those with highly transient work forces.

In the development of this proposal, OSHA has considered recommendations contained in the document entitled "Criteria for a Recommended Standard . . . Occupational Exposure to Sulfur Dioxide," which was developed for the Secretary of Labor by the National Institute for Occupational Safety and Health (NIOSH), Department of Health, Education, and Welfare. Further, OSHA has reviewed and considered numerous reference works and scientific journal articles. (See References section of this Notice for partial listing of sources).

I. Background

A. *General.* Sulfur dioxide (SO_2), Chemical Abstracts Service Registry Number 7446095, is a colorless, nonflammable, irritant gas having the odor of burning sulfur. It is formed whenever sulfur is burned in the air. It is readily liquified and is shipped as a liquified gas in steel cylinders under its own vapor pressure (about 35 psig at 70° F).

Industrially, sulfur dioxide is used in the manufacture of sodium sulfite and as an intermediate in the manufacture of sulfuric acid. It is also used in refrigeration, bleaching, fumigating, and preserving operations, and as an antioxidant in the melting, pouring, and heat treatment of magnesium. In addition to its wide range of uses in industry, sulfur dioxide is also released as an unwanted by-product of processes such as smelting of ores, combustion of coal or fuel oils containing sulfur as an impurity, paper manufacturing, and petroleum refining.

There are numerous chemical reactions which occur in the workplace due to the presence of sulfur dioxide. In the presence of oxygen and water, ferrous sulfate ($FeSO_4$) catalyzes the direct oxidation of sulfur dioxide to sulfuric acid. Also some metal oxides, such as magnesium oxide, ferric oxide, zinc oxide, manganic oxide, cerous oxide, and cupric oxide oxidize sulfur dioxide directly to sulfate compounds. Sulfides are also formed if the metal ions are not reduced to a lower valence state. Sulfur dioxide is also known to react with the halogens to produce sulfuric acid and with water to firm sulfuric acid or the salts of sulfuric acid. Experiments have shown that SO_2 may act as either an oxidizing or reducing agent at room temperoture. As a reducing agent, SO_2 gas reacts slowly with oxygen at 400 degrees centigrade to form sulfur trioxide. However, with a catalyst, such as finely divided platinum, charcoal, vanadic oxide, graphite, chromic oxide, ferric oxide, or nitrogen oxides, oxidation to SO_3 may occur at room temperatures. (Nitrogen oxides are used as catalysts in the chamber process of manufacturing sulfuric acid from sulfur dioxide.)

Sulfur dioxide is a common workplace hazard. The National Institute of Occupational Safety and Health (NIOSH) estimates that as many as 500,000 workers could have potential exposure to the substance. It is also a community air pollution problem.

B. *History of Regulations.* In 1945, Cook compiled a summary of standards which listed the maximum allowable concentration (MAC) of sulfur definite discomfort in exposed workers. The tentative TLV of 5 ppm was adopted in 1958.

In 1968, the ACGIH further documented the 5 ppm TLV and included Greenwald's human and animal studies and information of acute upper respiratory irritation and nosebleeding which had occurred in workers exposed to 10 ppm sulfur dioxide, but not at a level of 5 ppm.

The present Occupational Safety and Health Administration (OSHA) standard for exposure to sulfur dioxide, found in 29 CFR 1910.1000, Table Z–1, was adopted from the applicable standard under the Walsh-Healey Act (41 U.S.C. 35 *et seq.*), incorporating the ACGIH on 29 May 1971.

In June 1974, NIOSH published the document entitled "Criteria for a Recommended Standard . . . Occupational Exposure to Sulfur Dioxide." In this document, NIOSH recommended a permissible exposure limit of 2 ppm time-weighted average (TWA) to control the effects of exposure to sulfur dioxide. This recommendation was based on reports of irritant effects, pulmonary function reduction, and also the possible cancer "promoting effects" of sulfur dioxide in workers. Although not itself a carcinogen, sulfur dioxide may promote cancer by lowering the body's defenses in the respiratory system to the penetration and retention of certain carcinogens.

II. Health Implications of Occupational Exposure to Sulfur Dioxide

Sulfur dioxide is a recognized human irritant. Its irritant properties are due to the rapidity with which it forms sulfurous acid on contact with moist membranes. An estimated 90 percent of all SO_2 inhaled is absorbed in the upper respiratory passages with only slight

penetration in the lower respiratory tract.

Sulfur dioxide exerts its toxic influence on humans through acute and possibly chronic effects. Acute symptoms of exposure are eye, mucosal, and upper respiratory irritation. Potential chronic effects include nasopharangitis, reduction of pulmonary function, increased resistance to air flow and promotion of cancer.

A. *Chronic effects.* Chronic effects of sulfur dioxide exposure may result from repeated bronchoconstriction. While bronchoconstriction is not itself a chronic effect, it is believed that continual insults actually lead to substantial permanent pulmonary impairment in excess of the normal gradual decrease in pulmonary function due to the aging process.

There are, unfortunately, only limited epidemiological studies and a few animal studies which attempt to uncover any chronic effects due to sulfur dioxide exposure.

1. *Epidemiological Studies.* In 1932, Kehoe *et al.* published the results of a study on the effects of chronic exposure to relatively pure sulfur dioxide gas, which resulted from the evaporation of liquid sulfur dioxide used as a refrigerant. The study examined two groups of 100 male workers. The exposed group had a mean duration of occupational exposure to sulfur dioxide of 3.8 years. Average exposure concentrations during the period of the study (1929–1930) were 20–30 ppm with a range between 10 and 70 ppm. However, prior to 1927, exposures in the plant averaged 80–100 ppm with frequent fluctuations. The control group, age-matched with the exposed group, had no known exposure to sulfur dioxide or any other noxious gases, fumes, or dusts.

Each of the 200 subjects was questioned in detail as to the length and nature of his exposure to sulfur dioxide, and complete physical examinations, including chest x-rays, blood tests, and urinalysis were conducted. Kehoe found a significantly higher incidence of nasopharangitis, alteration of the senses of smell and taste, and an increased sensitivity to other irritants in the exposed group as compared to the control group. The exposed group also exhibited a higher incidence of abnormal urine acidity, a tendency to increased fatigue, dyspnea on exertion, and abnormal reflexes.

Kehoe concluded that there was "no demonstrable association between frequency or severity of initial symptoms and frequency of heavy exposure, nor was there any relation between exposure and the frequency and severity of symptoms arising from the customary exposure." However, he found a positive correlation between frequency of heavy exposure and the presence of symptoms of abnormal acid accumulation in body tissues, and "increased fatigability during the period of employment and shortness of breath on exertion."

Kehoe also noted that although the incidence of colds was not significantly different between the two groups, the exposed group appeared to have colds of longer duration than the control group. In all other respects, Kehoe found no significant differences between the exposed group and controls.

Kehoe's findings suggest that the primary observed effects of exposure to sulfur dioxide are acute. However, the higher incidence of nasopharangitis, the tendency to increased fatigue, shortness of breath on exertion, and dyspnea indicate that at concentrations above the present standard of 5 ppm, there are chronic effects in the form of physical symptoms. Some inherent problems exist with this study, however: First, this study was made in 1932, and sampling techniques, methods of analysis, x-ray techniques and ability to measure pulmonary function have greatly improved. Factors such as general conditions within the plant, temperature extremes, the percent of the work force who were smokers, and even the length of the average work day and the work week were not clearly defined. Such factors could have affected his results.

A study by Anderson in 1950 analyzing the effects of sulfur dioxide exposures on Iranian oil refinery workers found no evidence of adverse health effects from exposure to sulfur dioxide. This study, however, has been strongly criticized because it made no mention of any effects such as pulmonary irritation, coughing, or nasal irritation.

A study by Skalpe (1964) reported on the chronic effects of sulfur dioxide exposure among workers in Norwegian paper-pulp mills, where exposures ranged from 2–36 ppm. In combination with the sulfur dioxide were agents such as chlorine, chlorine dioxide, hydrogen sulfide, and some organic sulfides including mercaptans. Unlike the preceding studies, the research was begun in response to complaints of chronic coughing among workers in the digester plant. He attempted to determine whether there was a higher incidence of respiratory disease among these workers than among comparable groups of unexposed workers.

The results of Skalpe's study indicated a significantly higher frequency of respiratory disease symptoms such as coughing, expectoration, and dyspnea, among the exposed group, especially in those workers under 50 years of age, where employment exposure duration was shortest. However, among those workers over 50, there appeared to be no significant difference in symptoms between the exposed group and the controls. Further, vital capacity values showed no difference between exposed and nonexposed workers, which could suggest that chronic pulmonary disease does not result from chronic exposure to sulfur dioxide. According to the author, the most likely explanation for the disparity in symptoms between the under-49 age group and the over-50 group is that, because respiratory disease is rare in younger age groups, the effect of small external insults was easier to detect than in the older age groups where respiratory disease from other causes is more common and small additions due to sulfur dioxide exposure would tend to be less noticeable. Another possible explanation, although not suggested by the author, is that younger workers with respiratory disease remove themselves from sulfur dioxide exposure before they reach the age of 49.

The preliminary reports by Archer of NIOSH and T. Smith of the University of Utah suggest that occupational exposure to sulfur dioxide may lead to the reduction of pulmonary function. The investigators examined two groups for effects of exposure to sulfur dioxide. The workers from a copper smelter served as the exposed group and those from the mine haulage truck maintenance shop, which was located 15 miles from the smelter, served as the control. Measurements were made for Forced Vital Capacity (FVC) and Forced Expiratory Volume in one second (FEV_1). Utilizing the British Medical Research Council questionnaire, each participant was questioned on a history of cough, coughing up phlegm, chest noises and shortness of breath among other things. Personal air samples were collected when workers were not wearing respirators to accurately determine exposures to sulfur dioxide and particulates.

The results of the measurements indicated that most of the workers in the smelter were exposed to less than 2 ppm TWA of sulfur dioxide and as high as approximately 1 mg/m³ of particulates. The particulates in the smelter were found to be a mixture of various metal oxides including arsenic, silicates, sulfates, and sulfites (including iron sulfite). The control work environment was determined to be similar in particulate concentrations without sulfur dioxide, although the components of the contaminants were quite different. The control population was exposed to nitrogen oxides, aldehydes and benzene soluble particulates. These contaminants were not found in measurable amounts in the smelter. The results of the questionnaires indicate an overall trend for the smelter workers to have a greater percentage of chronic respiratory disease than the controls. However, this trend is statistically significant only among non-whites, and tends to be reversed among "light and former" smokers.

The results of the pulmonary function tests indicate that the smelter workers show a 4.8 percent greater reduction of FVC and FEV_1 as compared to the controls. The authors found this reduction to be statistically significant. It appears that the control population was also exposed to substances that might reduce the pulmonary function, which tends to raise the control values higher than the general population. It should be noted that other substances such as iron sulfites, which are protein reactors, might also be responsible for the reduction of pulmonary function. While this study is preliminary in nature and requires a thorough examination by the scientific community, our tentative judgment is that sulfur dioxide exposure may well lead to reduced pulmonary function.

In order to determine whether the observed pulmonary function reduction also results in an excess mortality due to lung disease, OSHA has reviewed the mortality studies of copper smelter workers. According to the Le and Fraumeni and the Rencher and Carter studies, there was no excess of mortality due to lung disease, influenza and pneumonia in the copper smelter workers.

OSHA requests comments on the significance of the observed reduction of pulmonary function during the employee's lifetime, on the finding of no excess mortality due to lung disease, and on any related issue.

2. *Animal Studies.* A number of researchers have investigated the effects of sulfur dioxide inhalation on experimental animals.

Prokhorov and Rogov (1959) studied the histopathological and histochemical effects of prolonged exposure of rabbits up to 76 ppm sulfur dioxide, and also to combinations of sulfur dioxide and carbon monoxide, for periods of 30 hours per week for 13 weeks.

The investigators found that exposure to sulfur dioxide alone resulted in edema of the myocardial muscle fibers, capillary enlargements, and perivascular hemorrhages. Further, exposure to sulfur dioxide produced dystrophic changes in the epithelial cells of the renal tubules. It also produced alveolar epithelial cell proliferation in the lungs. The authors found that many of these changes were more pronounced when exposures were to both sulfur dioxide and carbon monoxide.

In 1970 Alarie *et al.* reported the results of a study in which guinea pigs were exposed almost continuously (22 hours per day, 7 days per week) to approximately 0.1, 1.0, and 5 ppm sulfur dioxide for one year. Thorough pulmonary function measurements, including tidal volume, respiratory rate, minute volume, dynamic compliance, pulmonary flow resistance and carbon monoxide uptake, indicated no detrimental changes attributable to sulfur dioxide exposure. Hematological and light microscopic tissue studies (electro-microscopic examination was not performed) also failed to show any adverse effects in body weight, growth, and survival.

In a subsequent study, Alarie reported on the long-term effects of sulfur dioxide on young cynomolgus monkeys. The exposure was 24 hours per day for 78 weeks. Levels of exposure ranged from 0.1 to 5 ppm. Control groups exposed to fresh air for the same duration of time were also included.

Evaluations were made on mechanical properties of the lung, arterial blood tension, lung histology, hematological and blood biochemical indices, and organ histology. No deleterious effects could be attributed to concentrations of 0.1 to 5 ppm of sulfur dioxide.

Alarie also completed several studies on long-term continuous exposure to sulfur dioxide in combination with other mixtures, such as fly ash and sulfuric acid mists. In all experiments both guinea pigs and cynomolgus monkeys were used. Monkeys were grouped into sets of 9 animals, with one group serving as a control. Guinea pigs were divided into groups of 50, likewise with one group serving as a control. Exposure duration was 24 hours per day, 7 days per week, for 78 consecutive weeks for the monkeys and 52 consecutive weeks for the guinea pigs. Exposure conditions and biological measurements for both animal types were the same. They consisted of pulmonary function tests, including: measurements of the mechanical properties of the lungs and respiratory system, the distribution of pulmonary ventilation, diffusing capacity of the lung, and arterial blood gas tension. Hematological, serum biochemical determinations, body weight, and survival measurements were also taken. At termination of exposure both animal groups were killed and necropsies were performed.

The results of the combined sulfur dioxide and fly ash exposures were that no detectable deleterious effects could be attributed to either agent. It also appeared that when pulmonary infection is low, sulfur dioxide is without any "beneficial" effect, and when pulmonary infection is high, animals exposed to sulfur dioxide show a reduced incidence and severity of symptoms.

Deleterious effects resulted from the combined sulfur dioxide and sulfuric acid mist exposures. The author concluded that these effects could be attributed to exposure to sulfuric acid mists at concentrations between 0.1 and 1 mg/m³ regardless of particle size. Effects were small and variable at 0.1 and more pronounced at 1.0 mg/m³ of the mist.

Alarie further elaborated upon his finding in a study in which exposure consisted of combinations of sulfur dioxide, sulfuric acid mists, and fly ash mixtures. All conditions were the same as for previous experiments, and concentrations of the substances were consistent with previous experiments. The results of this study were that deleterious histopathological changes of the same nature as those in the sulfuric acid mist experiments were found in pulmonary tissues of both animal types at the same exposure levels.

From the findings of all his studies, Alarie conclude that no detrimental effects were detected in either animal type from long-term exposure to sulfur dioxide alone or in the presence of fly ash at levels ranging from 0.1–5 ppm.

Moreover, the deleterious effects detected from the exposures to mixtures of sulfur dioxide, fly ash, and sulfuric acid mist, were attributable to the presence of the sulfuric acid mist alone.

Amdur has also completed several studies on sulfur dioxide exposure alone and in combination with other substances. In a current EPA report, "Toxicology of Atmospheric Sulfur Dioxide Decay Products", she presented her views of effects due to exposure to sulfur dioxide, including the effects of the decay products of sulfur dioxide, such as SO_3, SO S_2O_3, S_2O_7, SO_4, H_2SO_3, H_2SO_4, SO_4 compounds and SO_3 compounds. She suggests on the basis of studies which she performed with Pattle and Bustueva, that sulfuric acid mists, and various sulfate and sulfite particulates coupled with sulfur dioxide exposures, should be considered in setting an air quality standard. In fact, she concluded that these products of sulfur dioxide decay present more of a hazard than exposure to sulfur dioxide alone.

In reviewing the literature in this EPA report, Amdur concluded that data on mass concentrations alone are an insufficient basis on which to predict irritant potency, because particle size plays an important role in determining the potency of sulfuric acid particles, and, secondly, because particulate oxidation products of sulfur dioxide are generally much more potent irritants than the sulfur dioxide gas alone.

B. *Acute effects.* Acute exposures to concentrations of SO_2 ranging from 10 to 50 ppm have been reported to cause irritation of the nose and throat, and rhinorrhea, choking, and coughing. These symptoms are sufficiently disagreeable that most persons will not tolerate them for more than 15 minutes. These concentrations within a time frame of 5-15 minutes, have caused temporary reflex bronchoconstriction with increased pulmonary resistance to air flow.

There have also been reports, such as those in the Galea report, of the development of symptoms comparable to those of bronchial asthma following acute exposure to sulfur dioxide concentrations.

Sulfur dioxide gas is also an eye irritant, causing burning and lacrimation, although actual eye injury from the gas occurs only at very high concentrations. Exposure to liquid sulfur dioxide from pressurized containers is capable of causing corneal burns and opacification of the cornea resulting in a loss of vision. Liquid sulfur dioxide also produces skin burns upon contact due to the freezing effect of the rapidly evaporating liquid.

Numerous experimental studies on human subjects who had no occupational exposure have examined the effects of sulfur dioxide inhalation on the respiratory mechanism.

Frank *et al.* (1962) reported no detectable changes in pulmonary flow resistance or peak flow rate in adult males exposed to 1 ppm sulfur dioxide. Exposures lasted for 10–30 minutes and were spaced at least one month apart.

Snell and Luchsinger (1969), however, reported a small, but statistically significant, decrease in maximum expiratory flow from the level of one-half vital capacity in a group of 9 physicians and technicians exposed to 1 ppm of sulfur dioxide for 15 minutes. Because these studies were conducted under controlled laboratory conditions, with a forced inhalation technique, this response may have been caused by anticipation, irritation of the mucous membranes, and other factors. Also, the reaction was reversed upon cessation of sulfur dioxide exposure, indicating that the reported response was acute.

In 1964, Frank, *et al.* found a 39 percent increase in pulmonary flow resistance in male subjects exposed to 5 ppm

sulfur dioxide for 10 minutes. Frank's experiments involved the inhalation of a series of increasing concentrations of sulfur dioxide. The investigators found that only one of the 11 volunteers had any increase in airway resistance at the 1–2 ppm level, but that there was a 72 percent increase in airway resistance at the 10–16 ppm level.

One of the chief limitations of this experiment is that the number of subjects involved was too small to establish a trend. Also, Frank's subjects were not examined for evidence of any chronic effect from sulfur dioxide inhalation. The increase in pulmonary flow resistance was an acute response attributable to the irritation of the nasal mucosa, which in turn reflexively narrowed the subject's airways, producing the flow resistance.

Weir, *et al.* (1969) exposed 4 groups of 3 young adult males to low levels of sulfur dioxide continuously for 120 hours. The investigators found no evidence of dose-related changes in subjective complaints, clinical evaluation, or pulmonary function measurements at levels of 0.3 and 1 ppm. However, at 3.0 ppm there was evidence of significant, but minimal, reversible decreases in small airway conductance and compliance.

Nadel, *et al.* (1965) found that inhalation exposure of 4–6 ppm for 10 minutes by male subjects resulted in an increase in airway resistance. This effect could be completely prevented by injection of atropine subcutaneously. Nadel's findings support the theory that increased airway resistance following sulfur dioxide inhalation may be due to a reflex bronchoconstrictive effect caused by irritation of the nasal mucosa. This theory is also supported by the fact that the reaction diminishes as a function of the level of sulfur dioxide to which the subjects were exposed, and that the reaction reverts to normal upon cessation of exposure.

Burton *et al.* exposed 10 healthy men (age ranges from 25–34 years) to low concentrations (1.2–3.0 ppm) of sulfur dioxide in air. Five of the men were smokers and five were not. The results of the study showed that low concentrations of sulfur dioxide in the air did not result in immediate physiologic effects on measures of pulmonary mechanics in the volunteers. Also a gas-aerosol synergism for sulfur dioxide and inert aerosols could not be demonstrated.

In 1970, Melville studied changes in specific airway conductance of volunteers exposed to levels of 2.5, 5, and 10 ppm, SO_2 for one hour. Melville observed a more pronounced decrease in specific airway conductance when inhalation was through the mouth rather than through the nose, at these levels. However, at 10 ppm, the same degree of reduction of conductance was noted regardless of the method of inhalation. The author suggested that at levels up to 5 ppm, the nasal passages absorb some of the inhaled sulfur dioxide, and thereby diminish the stimulation of sensitive receptors in the larynx, trachea, and bronchi. Further, at all levels the greatest percentage change (irrespective of the path of entry) was seen when exposures reached approximately 5 minutes. However, there was no significant decrease in specific airway conductance after the first 5 minutes of exposure. Melville also noted that there were no detectable adverse effects after an hour's exposure to sulfur dioxide at levels up to 10 ppm.

C. *Hypersusceptibility and Adaptation.* In reviewing experimental studies on sulfur dioxide exposure, two phenomena repeatedly manifest themselves, i.e., hypersusceptibility and adaptation.

Hypersusceptibility may be defined as acute sensitivity or overreaction to sulfur dioxide exposure at concentrations at which most persons have only a mild or no response. The mechanism of hypersusceptibility is unknown, and in some cases the reactions elicited by such individuals may not be reversible.

In 1969, a study by Burton *et al.* estimated that such "hyperreactors" may comprise 10–20 percent of the healthy young adult population. The hyperreactive responses can occur with single exposures to sulfur dioxide. Apparently, many such persons voluntarily remove themselves from surroundings involving sulfur dioxide exposure, as was indicated by the Ferris *et al.* study.

Adaptation may be defined as a physiological compensation for the effects of sulfur dioxide. It is thought to occur through depression of tracheobronchial nerve reflexes, coupled with a direct action on bronchial smooth muscles. A prolonged decrease in airway conductance (caused by the tracheobronchial nerve depression) may have adverse effects on pulmonary function.

Several studies have shown evidence of rather rapid adaptation to sulfur dioxide, especially on respiratory mechanics. In 1953, Amdur reported that 2 men who worked in atmospheres containing 10 ppm sulfur dioxide showed no changes in respiratory rate, tidal volume, or pulse rate at 5 ppm exposures. Frank *et al.* also demonstrated that initial coughing and irritation subsided after 5 minutes of exposures to 5 and 13 ppm SO_2.

Melville's study on adaptation found no adverse physical effects attributable to adaptation to sulfur dioxide exposure.

D. *Carcinogenic Implications.* Although no study has implicated sulfur dioxide alone as a carcinogen, the suggestion has been made by some researchers that it may have a "promoting" effect on man when he is exposed simultaneously to a carcinogenic agent such as inorganic arsenic or benzo(a)pyrene. It has been postulated that due to the irritant properties of sulfur dioxide, the pulmonary clearance mechanism may be retarded, thus enhancing the retention of such agents. The only mortality study available on this subject is one by Lee and Fraumeni.

Lee and Fraumeni reviewed the total mortality among workers in smelters, and found as much as an 8-fold excess in instances of respiratory cancer as compared with that of the white male populations of the same states. Their findings indicate that agents in the smelters, such as arsenic, may be responsible for the excess. However, the Lee and Fraumeni data also indicate that as the levels of both sulfur dioxide and inorganic arsenic increase, the incidence of respiratory cancer also increases, except that employees with heavy arsenic exposure and moderate to heavy sulfur dioxide exposure were most likely to die of respiratory cancer.

Other investigators have attempted to establish a link between sulfur dioxide inhalation and carcinogenesis in animals. In 1967, Peacock and Spence exposed male and female spontaneous tumor-susceptible mice to 500 ppm sulfur dioxide for 5 minutes. The exposures were repeated 5 days per week for 300 days. The observed distribution of tumors (both malignant and nonmalignant) was not shown to be satistically different from those of the controls. The authors concluded, however, that sulfur dioxide exposures at this level accelerated the onset of neoplasia as a result of the initial, essentially inflammatory reaction caused by the sulfur dioxide. However, these effects were not considered to be sufficient to justify the classification of sulfur dioxide as a chemical carcinogen.

Laskin, *et al.* (1970) reported the induction of bronchogenic squamous cell carcinomas in rats exposed to sulfur dioxide in combination with benzo(a)-pyrene. Laskin's results suggest a "promoting effect" for sulfur dioxide because sulfur dioxide and benzo(a)pyrene when inhaled singly by rats have failed to produce bronchogenic carcinomas.

OSHA invites comment on whether sulfur dioxide should be treated as a cancer promoting substance; and if so, what effect this should have on the way in which sulfur dioxide is regulated in the workplace.

III. Pertinent Legal Authority

The primary purpose of the Act is to assure so far as possible safe and healthful working conditions for every working man and woman. One means prescribed by Congress to achieve this goal is the authority vested in the Secretary of Labor to set mandatory safety and health standards. The standards setting process under section 6 of the Act is an integral part of an occupational safety and health program in that the process permits the participation of interested parties in consideration of medical data, industrial processes and other factors relevant to the identification of hazards. Occupational safety and health standards mandate the requisite conduct or exposure level and provide a basis for ensuring the existence of safe and healthful workplaces.

The Act provides that:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such

employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. (Section 6(b)(5))

Sections 2(b) (5) and (6), 20, 21, 22, and 24 of the Act reflect Congress' recognition that conclusive medical or scientific evidence including causative factors, epidemiological studies or dose-response data may not exist for many toxic materials or harmful physical agents. Nevertheless, standards cannot be postponed because definitive medical or scientific evidence is not currently available. Indeed, while final standards are to be based on the base available evidence, the legislative history makes it clear that "it is not intended that the Secretary be paralyzed by debate surrounding diverse medical opinion." House Comm. on Education and Labor, H.R. Rep. No. 91-1291, 91st Cong., 2d Sess. 18 (1970).

This congressional judgment is supported by the courts which have reviewed standards promulgated under the Act. In sustaining the standard for occupational exposure to vinyl chloride (29 CFR 1910.1017), the U.S. Court of Appeals of the Second Circuit stated that "it remains the duty of the Secretary to act to protect the workingman, and to act even in circumstances where existing methodology or research is deficient." "Society of Plastics Industry, Inc v. Occupational Safety and Health Administration" 509 F. 2d 1301, 1308 (2d Cir. 1975), cert. denied, ------ U.S. ------, 95 S. Ct. 1998, 44 L Ed. 2d 482 (1975).

A similar rationale was applied by the U.S. Court of Appeals for the District of Columbia Circuit in reviewing the asbestos standard (29 CFR 1910.1001). The Court stated:

> some of the questions involved in the promulgation of these standards are on the frontiers of scientific knowledge, and consequently as to them insufficient data is presently available to make a fully informed factual determination. Decision-making must in that circumstance depend to a greater extent upon policy judgments and less upon purely factual analysis.

"Industrial Union Department, AFL-CIO v. Hodgson," 499 F. 2d 467, 474 (D.C. Cir. 1974).

In setting standards, the Secretary is expressly required to consider the feasibility of the proposed standards. Senate Comm. on Labor and Public Welfare, S. Rep. No. 91-1282, 91st Cong., 2d Sess., p. 58 (1970). Nevertheless, considerations of technological feasibility are not limited to devices already developed and in use. Standards may require improvements in existing technologies or require the development of new technology. "Society of Plastics Industry, Inc. v. Occupational Safety and Health Administration," *supra* at 1309.

Where appropriate, the standards are required to include provisions for labels or other forms of warning to apprise employees of hazards, suitable protective equipment, control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, and appropriate medical examinations. Moreover, where a standard prescribes medical examinations or other tests, they must be made available at no cost to the employees (Section 6(b)(7)). Standards may also prescribe recordkeeping requirements where necessary or appropriate for enforcement o fthe Act or for developing information regarding occupational accidents and illnesses (Section 8(c)).

IV. The Proposal

The following section discusses and analyzes some of the significant issues of the proposed standard for occupational exposure to sulfur dioxide.

A. *Permissible exposure limits.*—1. *Time-weighted average.* Chronic pulmonary effects have been tentatively reported by Archer and Smith at 2 ppm, and perhaps lower. It is believed that these chronic effects may result from repeated insults, even at levels as low as 2.5 ppm, which cause bronchoconstriction. In addition, the present data suggest sulfur dioxide may promote cancer and it is clear that sulfur dioxide decay products also present a significant workplace hazard.

Based upon the foregoing, it appears that the present 5 ppm TWA does not adequately protect workers from the effects resulting from chronic exposure to sulfur dioxide. We believe, however, that the proposed 2 ppm TWA will significantly minimize potential chronic effects resulting from exposures to sulfur dioxide. We recognize that, based solely upon health considerations, the Smith and Archer data suggest that employee exposures should be reduced to 2 ppm, and perhaps lower. Yet, based upon current feasibility data, it appears that employee exposures cannot be feasibly reduced below 2 ppm TWA. The extensive survey of the smelting industries by W. Wagner of NIOSH indicates that most of the operations can be controlled to meet the proposed permissible exposure limit, even though some of the operations may not be controlled fully. In these circumstances, it is OSHA's judgment that the affected industries can feasibly comply with the proposed permissible exposure limit and that employees will be provided significant protection from the hazards associated with sulfur dioxide.

2. *Ceiling Limit.* Based on the available scientific evidence, it appears that acute symptoms such as severe eye and upper respiratory irritation appear in many workers at approximately 20 ppm. Milder irritation may appear in workers at levels beginning at approximately 10 ppm.

OSHA believes that it is necessary to establish a ceiling limit of 10 ppm, as measured over a sampling period of 15 minutes, to curtail the acute effects due to exposures to sulfur dioxide. In addition, it is thought that this ceiling will have a secondary effect of reducing the effects of the decay products of sulfur dioxide by controlling the source of such contaminants.

As with the proposed 2 ppm TWA, we believe that the proposed 10 ppm ceiling level represents an appropriate consideration of the health and feasibility factors. Thus, a 10 ppm ceiling will protect normal employees from the severe effects of exposure and provide significant protection against the mild symptoms associated with sulfur dioxide exposure. Moreover, it appears that the proposed ceiling will be feasible for most employers in most job classifications.

B. *Action level.*—In addition to time-weighted average and ceiling limits, the proposed standard prescribes an action level which is a concentration of SO_2 equal to one-half of the TWA, at or above which certain precautionary measures such as exposure measurements and medical surveillance must be initiated.

The proposed action level for SO_2 is any concentration greater than or equal to 1 part per million (2.61 mg/m^3). Like the TWA, the action level is based on an eight-hour time-weighted average.

In OSHA's judgment, two kinds of uncertainties can affect an employer's efforts to be reasonably confident of the results of his exposure measurement program. First, he must know if his sampling and analysis accurately inform him of his employee's actual exposure level on the day of measurement. Assuming that an employee's exposure has been properly measured, an employer can be reasonably sure of the employee's exposure on the day of measurement.

Second, the employer must also know whether the measured exposure level on one day is indicative of exposure levels on days he does not measure. It is known that the level of contamination in occupational environments varies from day to day in a random fashion. This variation in levels is unavoidable; it is only minimally related to the precision and accuracy of the method of measurement, and does not include variations due to changes in work processes or controls.

OSHA has determined statistically that even though all measurements of exposure level may fall below the permissible limit, some possibility exists that on unmeasured days the employee's actual exposure may exceed the permissible limit. Leidel, N.A. *et al.* "Exposure Measurement Action Level and Occupational Environmental Variability," DHEW, PHS, CDC, NIOSH, DLCD (August 1975). Above one half the permissible limit, i.e., the action level, the statistical risk is such that an employer can not reasonably be confident that his employees may not be overexposed. Therefore, requiring exposure measurements to begin at the action level provides the employer with a reasonable degree of confidence in the results of his measurement program.

In view of these considerations and in order to provide maximum employee protection, the proposal would also re-

quire the employer to commence medical surveillance at the action level.

C. *Effects of overtime on exposure.*—The permissible TWA is based upon an 8-hour concentration over a 40-hour work week. OSHA recognizes, however, that work shifts can extend beyond the regular eight-hour period as the result of overtime or other alterations of the work schedule. This extension of work time also extends the time during which the employee is exposed. The effects of this additional exposure time must be considered in arriving at a level of exposure.

For the purpose of calculating an exposure level, the relationship of concentration and time of exposure has been assumed to be linear. As the time increases, the factor of concentration multiplied by time (C×T) should remain constant. Thus, for example, employees exposed to SO_2 for ten hours could not be exposed to more than 1.6 ppm on the average. It is believed that by equating exposure with the eight-hour TWA, reasonable assurance of maintaining a safe level is retained.

D. *Dermal exposure limit.*—Liquid sulfur dioxide from pressurized containers can produce severe corneal burns upon contact with the eyes, resulting in opacification and loss of vision. The pressurized liquid is also irritating to the skin and may freeze and burn the skin due to its rapid evaporation.

For these reasons, the proposed standard would prohibit employers from exposing employees to any eye or skin contact with liquid sulfur dioxide.

E. *Determination and measurement of exposure.*—Each employer is required to make an initial determination of employee exposure to airborne or liquid sulfur dioxide. This initial determination may be an observation based on the amount of sulfur dioxide present, type of operations being performed, the amount of ventilation, and the proximity of employees to the sources of emission. Also, the employer must consider any employee complaints of symptoms that may be attributable to sulfur dioxide exposures. No measurements of employee exposure are required at this time. However, if the employer has made any measurements, these must also be considered in the determination. This determination must reflect employee conditions over the entire work day, as well as ceiling excursions.

In establishments having more than one work operation involving the use of sulfur dioxide, an initial determination must be made for each operation. Also, the determination must be repeated each time there is a change in production, process, or control measures which could result in new or additional exposure conditions.

If the results of the initial determinations are negative, that is, if the employer determines that no employee is exposed to potential skin or eye contact with sulfur dioxide, or to concentrations of sulfur dioxide at or above the action level or above the ceiling limit, a written record of this determination must be made. This record must contain any information or observations that indicate an employee may be exposed in any of the ways mentioned, including employee complaints of symptoms that may be attributable to overexposure. Further, the determination record must include any measurements of sulfur dioxide that have been made (although none are required to be made at this time), and the names and social security numbers of the employees considered under the determination. When results of the initial determination of dermal exposure indicate that any employee may be exposed by skin or eye contact to liquid sulfur dioxide, the employer must provide affected employees with protective clothing and devices to protect the area(s) of the body likely to come in contact with sulfur dioxide.

If the results of the initial determination of inhalation exposure are positive, indicating that an employee may be exposed to concentrations of the gas at or above the action level, or in excess of the ceiling limit, the employer would be required to measure the exposure of the employee believed to have the greatest exposure. Because a positive determination indicates possible exposure in excess of either the action level or ceiling limit, thus triggering the exposure measurement program, with its own recordkeeping requirements, no written records of positive determinations need be made.

When the results of the single employee's exposure measurement reveal exposures in excess of the action level or the ceiling limit, the employer would be required to identify all other employees who might be similarly exposed, and to measure the exposures of each of these employees. The proposed standard contains detailed instructions for monitoring the exposure of such employees.

The measurement procedures may be terminated if the measured employee's exposure does not indicate exposures in excess of the action level or ceiling limit. However, it should be noted that if an employer has knowledge of a production, process, or control change which could result in increased exposure to sulfur dioxide, or if the employer has any other reason to suspect that a change in exposure conditions has occurred, the determination procedure must be repeated.

The monitoring provisions are designed so that employers need not perform regular periodic measurements with respect to operations or workplaces in which sulfur dioxide exposures are below the action level (without regard to the use of respirators). Further, those employers having establishments with exposures at or above the action level, but below the TWA, would be required to make only the minimum number of exposure measurements necessary to assure that employees' exposures remained within those limits. The intent of these procedures is to provide adequate protection for employees while minimizing the burden on employers.

F. *Methods of measurement.*—The proposal would require that exposure measurements reflect the actual exposure conditions for each employee. It is recommended that a personal breathing zone sampling method that gives an accurate indication of the employee's exposure be used (See Appendix D). Further, any appropriate combination of long-term or short-term samples would be acceptable. However, the proposal requires that all exposures be calculated on an 8-hour time-weighted average basis, with the exception of the ceiling concentration measurements.

For sulfur dioxide, the required analytical accuracy is 25 percent at a 95 percent confidence level. This means that out of a long series of measurements, 95 percent must be within 25 percent of the true value.

G. *Methods of compliance.*—The proposed standard would require the employer to immediately institute engineering controls to reduce employee exposures to or below the 2 ppm TWA and the 10 ppm ceiling, except in situations in which such controls are infeasible. Further, in areas where engineering controls that can be instituted immediately will not reduce exposures to the permissible exposure limits, they must nonetheless be used to reduce exposures to the lowest practicable level, and be supplemented by the use of work practices.

Where engineering controls and work practices will not reduce exposures to the permissible exposure limits, they must nonetheless be implemented to reduce exposures to the lowest practicable limit, and be supplemented by the use of personal protective devices, such as respirators. In addition, a program must be established and implemented to reduce exposures to within the permissible exposure limits, or to the greatest extent feasible, solely by means of engineering controls. These plans must be reviewed and updated regularly to reflect the current status of exposure control.

Engineering controls are the preferred means of compliance because they reduce exposure hazards in the workplace environment by removing the airborne contaminant. Engineering controls may include the installation of local exhaust ventilation or the modification of a process so as to reduce emission of the contaminant into the workplace. When mechanical ventilation is used for engineering control, checks of air system efficiency, such as capture velocity, duct velocity, or static pressure must be made at least every three months. These checks are necessary to assure that the primary control system (mechanical ventilation) is functioning effectively at all times.

When engineering controls prove to be infeasible or inadequate, work practices become the preferred means of compliance. Work practice controls include such items as good housekeeping and adherence to proper process techniques. However, work practice controls are effective only when strong supervisory control is maintained, and are therefore less reliable than engineering controls.

Respirators are the least satisfactory means of control because of certain difficulties inherent in their use. Respirators are capable of providing good protection

only if they are properly selected for the concentrations of airborne contaminants present, properly fitted to the employee, worn by the employee, and replaced when they have ceased to provide protection. While it is possible for all of these conditions to be met, it is often the case that they are not, and as a consequence, the protection of employees by respirators is not as effective as the protection provided by engineering and work practice controls.

H. *Medical surveillance.*—The proposed standard contains medical surveillance requirements for employers having employees exposed at or above the action level. The purpose of the requirements is to ensure, to the extent possible, that early symptoms of overexposure or conditions which may be further aggravated by sulfur dioxide exposures are properly diagnosed and appropriate measures taken.

As discussed in section II of this notice, the toxic effects of sulfur dioxide stem from its irritant properties. Since most of the toxic effects involve the respiratory mechanism, it is necessary to perform chest x-rays and pulmonary function tests, as well as a general physical examination on employees who are, or will be, exposed to sulfur dioxide. Skin and eye examinations are also required in the proposal to identify those persons with conditions that may be worsened by the irritant effects associated with sulfur dioxide exposures.

Although the proposal specifies the types of medical tests and examinations to be given employees, the employer may allow the examining physician to use other types of medical examinations, provided they can give at least equal assurance of detecting the medical conditions pertinent to protecting employees against sulfur dioxide exposure. If the examining physician elects to use such alternative medical examinations, the employer must obtain a statement from the physician setting forth the alternative medical examinations and the rationale for their substitution. Further, the employer must inform the affected employees that medical examinations other than those prescribed by the standard are to be made available.

The employer must provide the examining physician with a copy of the standard for sulfur dioxide, including appendices; a description of the employee's duties; a description of any personal protective equipment used by the employee; the results of the employee's exposure measurement; and an estimate of the levels to which the employee will be exposed. The employer must also provide any available employee medical history information requested by the physician.

Following the medical examination, the employer must obtain a written opinion from the examining physician stating whether the employee has any medical condition that would be aggravated by exposure to sulfur dioxide. Additionally, the physician's opinion must state any recommended limitations upon the employee's exposure or upon the employee's use of protective equipment and respirators. Also, the opinion must state that the employee has been informed of any medical conditions which require further examination or treatment, although the written opinion must not contain specific findings or diagnoses unrelated to the employee's exposure to sulfur dioxide. The employer must provide a copy of the physician's written opinion to the employee.

If, based on the physician's opinion, the employer determines that exposure of an employee to sulfur dioxide would materially impair the employee's health, the employer must place specific limitations on the employee's continued exposure to sulfur dioxide so as to remove the employee from increased risk.

If an employee refuses to take an examination, the proposed standard contains a provision requiring the employer to inform the employee of the risks that may be incurred as a result of his refusal, and to obtain a signed statement from the employee stating that the employee fully understands the protential risks, but still does not wish to be examined. The purpose of this provision is not to encourage employees to avoid medical examinations. On the contrary, OSHA believes the positive action taken by employers to inform employees of the risks involved will encourage employees to undergo the examinations.

I. *Employee information and training.*—Information and training are essential for the protection of employees because an employee can do much to protect himself if, and only if, he is informed of the nature of the hazards in his workplace. To be effective, an employee education system must apprise the employee of the specific hazards associated with his work environment. For this reason, the employer must inform each employee, in detail, about the nature of the sulfur dioxide-related health problems, the necessity for exposure control, and the medical and industrial hygiene monitoring programs. Further, the employee must be instructed to report promptly the development of symptoms or conditions which could be attributed to overexposure to sulfur dioxide.

The proposed standard would require the employer to take positive action in informing his employees about the hazards of sulfur dioxide. The proposal would also require the employer to present the information contained in the substance safety data sheet and substance technical guidelines (Appendixes A and B), to inform the employees of the purpose for, proper use of, and limitations of respiratory protection devices, and to explain procedures to be followed in emergencies. Additionally, the training program must include a review of this standard.

J. *Recordkeeping.*—The proposed standard would require employers to keep written records of the following: initial determinations which indicate that employees are not exposed at or above the action level or above the ceiling limit; measurements of employee exposure; tests of mechanical ventilation system efficiency (where such systems are used for engineering control); annual training and information sessions; medical examinations; and pre-placement histories.

Besides showing that an employer has made an examination of the workplace, records of negative determinations also assist the employer in pinpointing areas of his operations where there might be potential for exposure above the action level in the future. Records of initial positive determinations, however, are not needed, because a positive determination requires the employer to take other actions which carry their own recording requirements.

When symptoms of organic damage appear, a physician often needs information as to the patient's previous medical conditions to make an accurate diagnosis of the problem and its apparent cause. Records of previous occupational medical examinations could be an invaluable aid to the physician treating a patient with organic damage which may be due to exposure to a toxic chemical substance. For this reason, the proposal would require the employer to retain records of employee exposure measurements and medical examinations for the duration of employment plus 5 years, even if the employee ceases to work for the employer.

A record of the tests of mechanical ventilation system efficiency is required to be maintained so that the employer can ensure that tests of the system are being made at the required time intervals. Further, the record is useful to the employer, since comparison of the most recent test with previous tests will assist in the evaluation of the effectiveness of the ventilation system, and will enable the employer to detect any progressive loss of efficiency before it becomes critical.

Section 8(c)(3) of the Act requires, and paragraph (k) of this proposal contains provisions for, access to records of exposure measurements by employees and former employees or their representatives, and for access to medical records made pursuant to paragraph (h) by physician designated by employees or former employees. It should be noted that such access is limited to the records of determinations, exposure measurements, and medical examinations that are being maintained by the employer in accordance with the recordkeeping requirements. It should also be noted that the employer is not required to retain or make those records accessible for periods longer than those required in paragraph (k) of the proposed standard.

The proposal provides for the transfer of monitoring and medical records, when: (1) one employer succeeds another, or (2) an employer ceases to do business and there is no successor. An employer succeeding another is required to receive and maintain those records which his predecessor would have been required to keep. Employers closing out their businesses without successors are required to send their records to NIOSH and notify each employee and former employee of the transfer.

OSHA is aware that certain provisions of this proposal, such as medical surveillance and the extended retention period for medical monitoring records may pose special problems to some employers, especially those who have small numbers of employees, operate with non-fixed places of employment, or use workforces which are highly transient in nature.

This awareness has been expressed by the Department of Labor in a statement submitted to the House Subcommittee on Environmental Problems Affecting Small Business on 26 June 1975, as follows: "It has become increasingly evident that the combined body of Federal regulations imposes a substantial, and, to some extent, unnecessary burden upon employers, particularly those who run small businesses. While most of these requirements serve a necessary and useful purpose, a definite potential exists for duplication, conflicting standards, and inappropriate recordkeeping requirements. In an effort to eliminate problems where any exist in the Department of Labor, I have requested my agency heads to assess the small business impact of the laws they administer and determine what can be done to ease the burden on the small employer, while still assuring compliance with the law."

Although it is clear that OSHA's first and prime responsibility is to assure employees safe and healthful places of employment, the Act and its legislative history recognize that economic and technological feasibility are legitimate factors to be considered in the setting of occupational safety and health standards.

In addition, the Act explicitly takes cognizance of its impact upon affected small business, specifically with respect to any recordkeeping requirements which are imposed.

Pursuant to section 8(d) of the Act, OSHA is exploring methods of reducing, to the maximum extent possible, the administrative and economic burdens of the proposal's various recordkeeping requirements.

While the proposal does not address itself to specific alternatives, OSHA invites comments concerning options which would both provide full protection to affected employees and at the same time minimize the administrative and economic burden on affected employers—especially those with small numbers of employees, non-fixed workplaces, or highly transient workforces.

(K) *Observation of monitoring.*—Section 8(c)(3) of the Act requires employers to provide employees or their representatives with the opportunity to observe monitoring of employee exposures to toxic materials or harmful physical agents. In accordance with this section, the proposed standard contains provisions for such observation. To ensure that the right to observe is meaningful, observers would be entitled to receive an explanation of the measurement procedure, and to record the results obtained.

It should be noted that the observer, whether an employee or designated representative, must be provided with and is required to use any personal protective devices required to be worn by employees working in the area that is being monitored, and must comply with all other applicable safety procedures.

(L) *Appendices.*—Four appendices have been included in this proposal: Appendix A, "Substance Safety Data Sheet;" Appendix B, "Substance Technical Guidelines;" Appendix C, "Medical Surveillance Guidelines"; and Appendix D, "Methods for Sampling and Analytical Procedures for Determination of Sulfur Dioxide." It should be noted that the appendixes have been included for informational purposes. None of the statements contained therein should be construed as a mandatory regulation, unless the same statement appears in the proposed standard.

The information contained in Appendices A and B is meant to aid the employer in complying with requirements of the standard. This information is also to be provided to employees as part of the annual training and education program.

Appendix C gives the employer a means of providing the examining physician with an explanation of the potential health effects of sulfur dioxide exposure and information needed by the physician to make an accurate interpretation of other types of examinations, not required by the standard, which may help the physician in making an accurate assessment as to whether any limitation should be placed upon the employee's exposure to SO_2.

Appendix D suggests a method of sampling and analytical procedures for determination of SO_2.

V. Conclusion

The Secretary recognizes that many of the matters considered in this proposal are controversial and that gaps exist in the available scientific evidence, especially in the area of the chronic effects due to SO_2 exposure. Unanswered questions cannot be permitted to hold back the process of setting a standard for protecting workers exposed to SO_2. The Secretary believes that over-exposure to sulfur dioxide is undesirable. Considering the best available evidence at present, OSHA has determined permissible exposure limits below which there is little likelihood of finding deleterious effects of SO_2 exposure among workers.

Therefore, based on the available evidence and in view of the above consideration, we believe that employee exposures to SO_2 must be reduced to the level of 2 ppm for an 8-hour TWA based on a 40-hour work week and be accompanied by a ceiling limit of 10 ppm based on a sampling period of 15 minutes, as set forth in the proposal. We further believe that on the basis of the available information, it will be feasible to reduce employee exposure to the permissible exposure.

VI. Environmental Impact Assessment

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347), requires, among other things, that Federal agencies assess their proposed major actions, including rulemaking, to determine whether a significant impact on the quality of the human environment may result. Furthermore, 29 CFR 1999.3(d) requires that where OSHA determines that an environmental impact statement should be prepared, the determination to do so must be published in the Federal Register. Accordingly, it is hereby noticed that OSHA intends to prepare an environmental impact statement on the proposed standard for occupational exposure to sulfur dioxide in accordance with the requirements of 29 CFR Part 1999.

Once the draft environmental impact statement has been prepared, a copy of it will be made available by OSHA to any member of the public who requests an opportunity to comment on it. Any person or agency submitting comments on it to OSHA must at the same time forward five copies of the comments to the Council on Environmental Quality (CEQ), 722 Jackson Place, NW., Washington, D.C. A 45-day period will be allowed for the submission of comments after the publication of the notice of availability of the draft environmental impact statement. The draft statement will be available, where practicable, at least 15 days prior to a public hearing on the proposed standard. The environmental impact of the proposal would be an appropriate issue at such hearing.

It appears at present that the preceding preamble to the proposed standard for occupational exposure to sulfur dioxide adequately assesses the impact of the proposal on the workplace environment. It further appears that the proposed standard for occupational exposure to sulfur dioxide will have no significant effects on the quality of the human environment external to the workplace. The proposal does not increase the amount of sulfur dioxide released into the ambient air, nor does the proposal call for changes of industry practice in disposal of sulfur dioxide wastes. For these reasons, OSHA does not anticipate any increased impact on the community contiguous to establishments in which sulfur dioxide is used or produced.

Interested persons may submit comments that may be helpful in preparing the draft environmental impact statement on the proposed standard. Any person having relevant information or data not readily available in the open literature is invited to submit it to David R. Bell, Office of Standards Development, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3669, Washington, D.C. 20210, by December 24, 1975. Comments submitted in regard to the proposed standard need not be resubmitted. All material received on environmental impact will be available for public inspection and copying at the above address.

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VIII. Public Participation

Interested persons are invited to comment on the proposed standard on or before January 23, 1976. Written data, views, and arguments concerning the proposal must be submitted in quadruplicate to the Docket Officer, Docket No. H–039, Room N–3620, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (Telephone 202/523–8076). Written submissions must clearly identify the provision of the proposal addressed and the position taken with respect to each such provision. The data, views, and arguments will be available for public inspection and copying at the above address. All written submissions received will be made a part of the record of this proceeding.

Pursuant to 29 CFR 1911.11 (b) and (c), interested persons may, in addition to filing written comments as provided above, file objections to the proposal and request an informal hearing with respect thereto, in accordance with the following conditions:

1. The objections must include the name and address of the objector;

2. The objections must be postmarked on or before January 23, 1976;

3. The objections must specify with particularity the provision of the proposed rule to which objection is taken, and must state the grounds therefor;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

In addition to the comments and objections invited above, concerning the proposal and its environmental impact, OSHA hereby solicits comments from interested parties regarding the potential inflationary impact of the proposed standard. Comments must be submitted in accordance with the above requirements for comments on the proposal and may be directed toward any or all of the following subjects:

1. Cost impact on consumers, businesses and markets, or Federal, State, or local governments;

2. Effect on the productivity of wage earners, businesses, or government;

3. Effect on competition;

4. Effect on supplies of important materials, products, or services;

5. Effect on employment; and

6. Effect on energy supply or demand.

It is OSHA's intention to prepare an inflationary impact statement and analysis, if appropriate, or a certification that the standard has no substantial inflationary impact, and to make such statement or certification available at least 30 days prior to any public hearings on the proposed standard. The potential inflationary impact of the proposed standard. The potential inflationary impact of the proposed standard would be an appropriate issue at such hearings.

This procedure has been concurred in by the Council on Wage and Price Stability in accordance with the Office of Management and Budget Circular A–107 (January 28, 1975), issued pursuant to Executive Order 11821 (39 FR 41501, November 27, 1974).

Accordingly, pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599; 29 U.S.C. 653, 655, 657) and 29 CFR Part 1911, it is hereby proposed to amend Part 1910 of Title 29 of the Code of Federal Regulations as set forth below.

Signed in Washington, D.C., this 14th day of November 1975.

John T. Dunlop,
Secretary of Labor.

1. Table Z–1 in 29 CFR 1910.1000 is proposed to be amended by deleting the following:

*	*	*	*	*
Sulfur dioxide.....		5 (p/m)		13 (mg/m³)
*	*	*	*	*

2. A new § 1910.1030 is proposed to be added to Part 1910 of Title 29 of the Code of Federal Regulations, reading as follows:

§ 1910.1030 Sulfur dioxide.

(a) *Scope and application.* This section applies to the production, release, storage, handling, transportation, or use

of sulfur dioxide except as to working conditions with respect to which any other Federal agency has exercised statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health hazards covered by this section.

(b) *Definitions.* "Action level" means a concentration of sulfur dioxide greater than or equal to 1 ppm (2.61 mg/m³) determined on an 8-hour time-weighted average based on a 40 hour work week, at or above which certain actions prescribed by this standard must be initiated.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health, Education, and Welfare, or his designee.

"Emergency" means any occurrence such as, but not limited to equipment failure, rupture of containers, or failure of control equipment which is likely to, or does, result in an unexpected release of sulfur dioxide.

"Secretary" means the Secretary of Labor, U.S. Department of Labor, or his designee.

"Sulfur dioxide" means sulfur dioxide in the form of gas or pressurized liquid.

(c) *Permissible exposure limits.* (1) *Inhalation exposure limits.* (i) *Time-weighted average limit (TWA).* No employee may be exposed to an 8-hour time-weighted average concentration based on a 40 hour work week of sulfur dioxide in excess of 2 ppm (5.23 mg/m³).

(ii) *Ceiling limit.* No employee may be exposed to an airborne concentration of sulfur dioxide in excess of 10 ppm (26.12 mg/m³) as determined by a sampling time of 15 minutes.

(2) *Dermal exposure.* No employee may be exposed to skin or eye contact with liquid sulfur dioxide.

(d) *Determination and measurement of exposure.* (1) *Determination of requirement for measurement.* Each employer who has a place of employment in which sulfur dioxide is present, shall inspect each workplace and work operation to determine if any employee may be exposed, without regard to the use of respirators, to airborne concentrations of sulfur dioxide at or above the action level or in excess of the ceiling limit, or to skin or eye contact with liquid sulfur dioxide. Such a determination shall be based on the following, along with any other relevant considerations:

(i) Any information, observations, or calculations which would indicate employee exposure to sulfur dioxide;

(ii) Any measurements of airborne sulfur dioxide; and

(iii) Any employee complaints of symptoms which may be attributable to exposure to sulfur dioxide.

(2) *Negative determination.* When a determination is made that no employee is exposed to airborne concentrations of sulfur dioxide at or above the action level or in excess of the ceiling limit or by skin or eye contact with liquid sulfur dioxide, the employer shall make a record of such determination. This record shall include any records of measurements of sulfur dioxide level, any information which would indicate employee exposure, employee complaints of symptoms which may be attributable to exposure to sulfur dioxide, the date of the determination, work being performed at the time, the location within the work site, and the names and social security numbers of employees considered.

(3) *Positive determination.* When a determination conducted under paragraph (d)(1) of this section indicates the possibility of any employee exposure at or above the action level or in excess of the ceiling limit, without regard to the use of respirators, the employer shall within 30 days, measure the exposure of the employee believed to have the greatest exposure in each work operation in which a positive determination is made. The exposure measurement shall be representative of the maximum exposure to the employee.

(4) *Exposed employee identification.* If the exposure measurement taken pursuant to paragraph (d)(3) of this section reveals employee exposure to airborne concentrations of sulfur dioxide to be at or in excess of the action level or in excess of the ceiling limit, the employer shall:

(i) Identify all employees who may be similarly exposed; and

(ii) Measure the exposures of the employees so identified.

(5) *Exposure between action level and TWA.* If exposure measurements reveal employee exposure at or above the action level, but below the TWA and ceiling limit, the employer shall repeat measurements for such employees at least every two months.

(6) *Exposure over TWA or ceiling limit.* If exposure measurements reveal employee exposure to be above the TWA or ceiling limit, the employer shall:

(i) Inform the employee in writing of the exposure as required by paragraph (d)(11) of this section;

(ii) Measure the exposure of the employee at least monthly; and

(iii) Institute control measures as required by paragraph (e) of this section.

(7) *Remeasurements below action level.* If two consecutive measurements, taken at least one week apart, reveal that an employee is exposed to concentrations of sulfur dioxide below the action level and the ceiling limit, the employer may discontinue exposure measurement for that employee.

(8) *Records.* A record of all measurements shall be made and shall include at least the information required in paragraph (d)(2) of this section.

(9) *Liquid sulfur dioxide contact.* Where a determination conducted under paragraph (d)(1) of this section shows the possibility of employee exposure by skin or eye contact with liquid sulfur dioxide, the employer shall provide such employees with protective devices and clothing in accordance with paragraph (g) of this section.

(10) *Redetermination.* Whenever there has been a production, process, or control change which may result in new or additional exposures, or whenever the employer has any other reason to suspect a change in exposure conditions, a new determination under paragraph (d)(1) of this section shall be made.

(11) *Employee notification.* The employer shall individually notify in writing, within 5 working days after receipt of measurement results, every employee who is found to be exposed to sulfur dioxide above the TWA or ceiling limit. The employee shall also be notified of the corrective action being taken to reduce exposure to within permissible limits.

(12) *Accuracy of measurement.* The method of measurement shall have an accuracy (within a confidence limit of 95%) of not less than plus or minus 25% for concentrations of sulfur dioxide greater than or equal to 1.0 ppm.

(e) *Methods of compliance.* Employee exposures to sulfur dioxide shall be controlled to or below the TWA and ceiling limit provided in paragraph (c) of this section by engineering controls, work practices, and personal protection controls as follows:

(1) *Control priorities.* (i) Engineering controls shall be instituted immediately to reduce exposures to or below the TWA and the ceiling limit except to the extent that such controls are not feasible.

(ii) Wherever engineering controls which can be instituted immediately are not sufficient to reduce exposure below the TWA and ceiling limit, they shall nonetheless be used to reduce exposures to the lowest practicable level and shall be supplemented by work practice controls.

(iii) Where engineering and supplemental work practice controls are not sufficient to reduce exposures to or below the TWA and ceiling limit, they shall nonetheless be used to reduce exposures to the lowest practicable level, and shall be supplemented by the use of respiratory protection in accordance with paragraph (e)(4) of this section.

(2) *Compliance program.* (i) A program shall be established and implemented to reduce exposures to or below the TWA and the ceiling limit or to the greatest extent feasible, solely by means of engineering controls.

(ii) Written plans for such a program shall be developed and furnished upon request for examination and copying to the Secretary and the Director. Such plans shall be reviewed and revised at least every six months to reflect the current status of the program.

(3) *Mechanical ventilation.* When mechanical ventilation is used to control exposure, measurements which demonstrate the effectiveness of the system to control the exposure, such as capture velocity, duct velocity, or static pressure, shall be made at least every three months. Measurements of the system's effectiveness to control exposure shall also be made within five days of any change in production, process or control which might result in any change in airborne concentrations of sulfur dioxide.

(4) *Respiratory protection.* (i) *Required use.* Compliance with the permissible exposure limits may not be achieved by the use of respirators except:

(a) During the time period necessary to install engineering controls or work practice controls or both;

(b) In work operations in which engineering controls and supplemental work practice controls are not feasible;

(c) In work situations in which feasible engineering controls and supplemental work practice controls are insufficient to reduce exposure to or below the TWA and the ceiling limit; or

(d) In emergencies.

(ii) *Respirator selection.* (a) Where respiratory protection equipment is to be used in accordance with paragraph (e)(4)(i) of this section, the employer shall select and provide the appropriate respirator from the table below, and shall ensure that the affected employee uses the respirator provided.

(b) The appropriate respirator in accordance with the table below must be worn at any time the permissible exposure limit is exceeded.

REQUIREMENTS FOR RESPIRATOR USAGE

Concentration of SO_2	*Permissible respirator protection*
Less than or equal to 50 p/m.	Chemical cartridge respirator for sulfur dioxide with quarter, half, or full facepiece (30 CFR 11.150). Type C supplied-air respirator, demand type (negative pressure) with quarter or half mask facepiece (30 CFR 11.110).
Less than or equal to 500 p/m.	Gas mask with chin-style canister for acid gases (30 CFR 11.90(a)(3)). Gas mask with front- or back-mounted chest-type canister for acid gases (30 CFR 11.90(a)(1)). Type C supplied-air respirator, demand (negative pressure); pressure-demand; or continuous flow type with full facepiece (30 CFR 11.110). Self-contained breathing apparatus in demand mode (negative pressure) with full facepiece (30 CFR 11.70(a)(2)(i)).
Greater than 500 p/m and emergency.	Self-contained breathing apparatus in pressure-demand mode (positive pressure) (30 CFR 11.70(a)(2)(ii)).

(c) Respirators shall be selected from those approved by the Mining Enforcement and Safety Administration (formerly called the Bureau of Mines) or by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11.

(d) Respirators prescribed for higher concentrations may be used for any lower concentration.

(iii) *Respirator program.* (a) The employer shall institute a respiratory protection program in accordance with § 1910.134.

(b) Employees who wear respirators shall be allowed to leave work areas to wash the face and respirator facepiece to prevent potential skin irritation associated with respirator use.

(f) *Emergency situations.* (1) *Written plan.* (i) A written plan for emergency situations shall be developed for each facility involved in a sulfur dioxide operation in which there is a possibility of an emergency as defined in paragraph (b) of this section. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped with respirators and protective clothing in accordance with paragraphs (e)(4) and (g) of this section until the emergency is abated.

(iii) Employees not engaged in correcting the emergency shall be restricted from the area and normal operations in the affected area shall not be resumed until the emergency is abated.

(2) *Alerting employees.* Where there is the possibility of employee exposure to sulfur dioxide in excess of the ceiling level due to the occurrence of an emergency, a general alarm shall be installed and maintained to promptly alert employees of such occurrences.

(g) *Personal protective equipment.* (1) *Skin contact.* Employers shall provide, and ensure that employees wear, impervious clothing, gloves, face shields (8 inch minimum), and other appropriate protective clothing as necessary to prevent skin contact with liquid sulfur dioxide. Face shields shall comply with § 1910.133(a)(2)–(a)(6).

(2) *Eye contact.* Employers shall provide, and ensure that employees use cup-cover type dust and splash-proof safety goggles, which comply with § 1910.133(a)(2)–(a)(6), where liquid sulfur dioxide may contact the eyes.

(h) *Medical surveillance.* (1) *General requirements.* (i) Each employer who has a place of employment in which employees are or will be exposed to concentrations of sulfur dioxide at or above the action level or the ceiling limit, without regard to the use of respirators, shall institute a medical surveillance program.

(ii) The program shall provide each affected employee with an opportunity for medical examinations in accordance with this paragraph.

(iii) All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, and shall be provided during the employee's normal working hours, without cost to the employee.

(iv) If any employee refuses any required medical examination, the employer shall inform the employee of the possible health consequences of such refusal and shall obtain a signed statement from the employee indicating that the employee understands the risk involved in the refusal to be examined.

(2) *Initial examinations.* At the time of initial assignment, or upon institution of medical surveillance, the following shall be performed by the physician.

(i) A work history and a medical history which are designed to determine whether the employee has experienced any respiratory symptoms, i.e., breathlessness, cough, sputum production, and wheezing; vision impairments or chronic skin disease; and

(ii) A medical examination which must include as a minimum the following:

(a) A 14 x 17 posterior-anterior chest x-ray;

(b) Pulmonary function tests to include Forced Vital Capacity (FVC) and Forced Expiratory Volume in one second (FEV_1);

(c) An eye examination; and

(d) A skin examination.

(3) *Periodic examinations.* Examinations specified in this paragraph shall be performed at least annually for all employees specified in paragraph (h)(1)(i) of this section.

(4) *Alternative medical examinations.* If in the judgement of the examining physician, medical examinations alternative to those specified in paragraph (h)(2) of this section will provide at least equal assurance of detecting medical conditions pertinent to protecting the employee against exposure to sulfur dioxide, the employer may accept such alternative medical surveillance examinations as meeting the requirements of this section, provided that the employer:

(i) Obtains a statement from the examining physician setting forth the alternative medical examinations and the rationale for their substitution;

(ii) Informs each exposed employee of the fact that medical examinations alternative to those required in paragraph (h)(2) of this section are to be made available.

(5) *Information provided to the physician.* The employer shall provide the following information to the examining physician.

(i) A copy of this regulation for sulfur dioxide including Appendices A, B, and C;

(ii) A description of the affected employee's duties as they relate to the exposure to sulfur dioxide;

(iii) The results of the employee's exposure measurement, if available;

(iv) A description of any personal protective equipment used;

(v) The employee's estimated exposure level; and

(vi) Upon request of the physician, information from previous medical examinations of the affected employee.

(6) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician, containing the following:

(a) The physician's opinion as to whether the employee is at increased risk of material impairment of the employee's health from exposure to sulfur dioxide or whether the exposure would directly or indirectly aggravate any medical condition;

(b) Any recommended limitations upon the employee's exposure to sulfur dioxide and upon the use of protective equipment and respirators; and

(c) A statement that the employee has been informed by the physician of any medical conditions which require further examination or treatment.

(ii) The written opinion shall not reveal specific findings or diagnoses unrelated to exposure to sulfur dioxide.

(iii) A copy of the written opinion shall be provided to the affected employee.

(iv) If the employer determines, on the basis of the physician's written opinion, that any employee's health would be materially impaired by continued exposure to sulfur dioxide, the employer shall place specific limitations, based on the physician's written opinion, on the employee's continued exposure to sulfur dioxide. In no case shall any employee be placed at increased risk of material impairment of health from such exposure.

(i) *Employee information and training.* (1) *Training program.* (i) The employer shall provide a training program for employees assigned to workplace areas in which any sulfur dioxide is produced, released, stored, handled, or used.

(ii) The training program shall be provided at the time of initial assignment, and at least annually thereafter, and shall include informing each employee of:

(a) The information contained in the substance data sheets for sulfur dioxide, which are contained in Appendices A and B;

(b) The quantity, location, manner of use, release, or storage of sulfur dioxide and the specific nature of operations which could result in exposure at or above the action level, as well as any necessary protective steps;

(c) The purpose for, and a description of, the medical surveillance program as required by paragraph (h) of this section and the information contained in Appendix C;

(d) The purpose, proper use, and limitations of respiratory protection devices as specified in § 1910.134;

(e) Emergency procedures as required by paragraph (f) of this section; and

(f) A review of this standard.

(2) *Access to training materials.* (i) A copy of this standard and its appendices shall be made readily available to all employees who might be exposed to sulfur dioxide.

(ii) All materials relating to the employee information and training program shall be provided upon request to the Secretary and the Director.

(j) *Signs and labels.* (1) *General.* (i) Signs or labels required by this paragraph may be in addition to or in combination with signs or labels required by other statutes, regulations, or ordinances.

(ii) No statement shall appear on or near any required sign, label or instruction which contradicts or detracts from the effect of any such required sign, label or instruction.

(2) *Signs.* (i) All entrances or access ways to areas where sulfur dioxide is likely to be present to the extent that an employee may be exposed at or in excess of the action level, shall be marked with legible signs bearing at least the following information:

CAUTION (OR WARNING)
SULFUR DIOXIDE
IRRITANT GAS
AVOID INHALATION

(ii) The following sign shall be posted at all entrances or access ways to areas where concentrations of sulfur dioxide exceed the TWA or ceiling limit.

CAUTION (OR WARNING)

SULFUR DIOXIDE

IRRITANT GAS

USE RESPIRATORS IN THIS AREA

(3) *Labels.* Precautionary labels shall be applied to all containers, packages, or equipment containing sulfur dioxide. The label shall provide at least the following information:

(i) the word "CAUTION" or "WARNING";

(ii) The word "SULFUR DIOXIDE"; and

(iii) A statement concerning the irritant properties of sulfur dioxide and a warning to avoid inhalation or skin or eye contact.

(k) *Recordkeeping.* (1) *Exposure determinations.* The employer shall keep an accurate record of all determinations prescribed by paragraphs (d)(1), (d)(2) and (d)(11).

(i) This record shall include the written determinations and supporting documentation required by paragraphs (d)(1), (d)(2), and (d)(11) of this section.

(ii) This record shall be maintained for at least one year or until replaced by a more recent determination, whichever is longer.

(2) *Measurement.* The employer shall keep an accurate record of all measurements taken to monitor employee exposure to sulfur dioxide as prescribed by paragraphs (d)(3) to (d)(10) of this section.

(i) This record shall include:

(a) The date of measurement;

(b) The operation involving exposure to sulfur dioxide being monitored;

(c) The sampling and analytical methods used and their accuracy;

(d) Number, duration, and results of samples taken;

(e) Name, social security number, and exposure of the employees measured; and

(f) The type of respiratory protective devices worn, if any.

(ii) This record shall be maintained for at least twenty years.

(3) *Mechanical ventilation measurements.* When mechanical ventilation is used as an engineering control, the employer shall maintain a record of the measurements demonstrating the effectiveness of such ventilation as required by paragraph (e)(3) of this section.

(i) This record shall include:

(a) Date of measurement;

(b) Type of measurement taken; and

(c) Result of measurement.

(ii) This record shall be maintained for at least one year.

(4) *Employee training.* The employer shall keep an accurate record of all employee training required by paragraph (i) of this section.

(i) This record shall include;

(a) Data of training;

(b) Name and social security number of employee(s) trained; and

(c) Content and scope of training provided.

(ii) This record shall be maintained for at least one year.

(5) *Medical surveillance.* The employer shall keep an accurate medical record for each employee subject to medical surveillance required by paragraph (h) of this section.

(i) This record shall include:

(a) Physician's written opinion;

(b) Any employee medical complaints related to exposure to sulfur dioxide; and

(c) A copy of the information provided to the physician as required by paragraph (h)(5) of this section.

(ii) This record shall be maintained for the duration of employment of the affected employee plus five years.

(l) *Observation of monitoring.* (1) *Employee observation.* The employer shall give affected employees or their representatives an opportunity to observe any measuring of their exposure to sulfur dioxide which is conducted pursuant to this section.

(2) *Observation procedures.* (i) When observation of the monitoring of employee exposure to sulfur dioxide requires entry into an area where the use of personal protective devices is required, the observer shall be provided with and required to use such equipment and shall comply with all other applicable safety and health procedures.

(ii) Without interfering with the measurement, observers shall be entitled to:

(a) Receive an explanation of the measurement procedures;

(b) Observe all steps related to the measurement of airborne concentrations of sulfur dioxide performed at the place of exposure; and

(c) Record the results obtained.

(m) *Effective date.* This standard shall become effective 30 days following publication of the final standard in the FEDERAL REGISTER.

(n) *Startup dates.* (1) *Determination and measurement.* Determinations and measurements prescribed in paragraph (d) of this section shall be instituted within three months of the effective date of the final standard, except that for new production areas or operations, determinations and measurements shall be instituted within 30 days of startup of the new production areas or operations.

(2) *Medical surveillance.* Medical surveillance prescribed in paragraph (h) of this section shall be instituted within three months of the effective date of the final standard.

(o) *Appendices.* The information contained in the appendices to this section is advisory in nature and is not intended, by itself, to create any additional obli-

gations not otherwise imposed by the standard or to detract from any existing obligations.

APPENDIX A—SUBSTANCE SAFETY DATA SHEET—SULFUR DIOXIDE

I. SUBSTANCE IDENTIFICATION

A. *Substance:* Sulfur dioxide.

B. *Permissible exposure:* 1. *Airborne.* 2 ppm of sulfur dioxide (5.23 mg/m³), time-weighted average (TWA) for an 8-hour workday, with a ceiling limit of 10 ppm (26.12 mg/m³).

2. Dermal. No employee may be exposed to eye or skin contact with sulfur dioxide liquid.

C. *Appearance and Odor:* Sulfur dioxide has a strong pungent odor. Caution: The odor should not be used as a warning of its presence in the air, since it may deaden sense of smell.

II. HEALTH HAZARD DATA

A. *Comments:* Sulfur dioxide is an extremely irritating gas, or liquid.

B. *Ways in which sulfur dioxide affects your body:* Sulfur dioxide can affect your body if inhaled, or if it comes in contact with your skin, or if you swallow it.

C. *Effects of overexposure:*

1. *Acute.*

A. If you breathe excessive concentrations of sulfur dioxide, your eyes, nose, or throat will become irritated. Excessive concentrations may also cause upset stomach, vomiting, headache, sleepiness, dizziness, weakness, and incoordination. In extreme cases, sulfur dioxide may cause unconsciousness and asphyxiation.

B. Skin contact with liquid sulfur dioxide can cause severe burns to the skin.

C. Eye contact with liquid sulfur dioxide may cause corneal burns closely resembling those produced by acids and alkalies.

2. *Chronic.*

Long term exposure may reduce your upper respiratory function, and if it is in the presence of a cancer causing agent, may promote cancer.

III. REPORTING SYMPTOMS

You should inform your employer if you develop any of the above symptoms and suspect that they may be caused by exposure to sulfur dioxide.

IV. EMERGENCY AND FIRST AID PROCEDURES

1. *Inhalation.* If you breathe in large amounts of sulfur dioxide or if you develop any of the symptoms listed in II above, leave the contaminated area and get to fresh air immediately. Call a physician as soon as possible. If an employee breathes in large amounts of sulfur dioxide and the employee's breathing has stopped, apply artificial resuscitation. Call a doctor immediately.

2. *Eye or face exposure.* If liquid sulfur dioxide (in any state) is splashed in your eyes, wash it out immediately with large amounts of water. Call a doctor as soon as possible.

3. *Skin exposure.* If liquid sulfur dioxide is spilled on your clothing or skin, remove the contaminated clothing and wash the exposed skin immediately with large amounts of water, since skin contact can cause a sulfur dioxide burn.

4. *Swallowing.* If liquid sulfur dioxide is swallowed do not induce vomiting. In fact, dilution is necessary. Make victim drink water, or milk, and repeat dosage fluids. Call a physician immediately. Fifty percent of the persons who swallow sulfur dioxide die and 95 percent of the survivors receive permanent internal burns.

V. PROTECTIVE CLOTHING AND EQUIPMENT

Respirators: Suitable respirators are to be worn:

(1) During the time necessary to install engineering controls to reduce the airborne concentration of sulfur dioxide below 2 ppm;

(2) In work situations in which engineering controls are inadequate to reduce the airborne concentration of sulfur dioxide below the permissible exposure limits;

(3) In emergencies.

If respirators are worn, they must have a Mining Enforcement and Safety Administration or National Institute for Occupational Safety and Health approval label. Older respirators may have a Bureau of Mines approval label. If you can smell sulfur dioxide, the respirator is not working correctly. Go immediately to fresh air, then check the respirator for fitting and cartridge age. If you experience difficulty breathing while wearing a respirator, tell your employer.

VI. PRECAUTIONS FOR SAFE USE, HANDLING, AND STORAGE

Sulfur dioxide is nonflammable and a relatively stable gas. It should be stored in pressurized containers in well-ventilated areas, and at temperatures less than 165 degrees F. Cylinders and tank cars can be left in direct sunlight and appropriate temperatures. Cylinders and containers, however, should be stored away from heating ducts. Containers should be welded pressure tanks with the proper corrosive factor applied.

APPENDIX B—SUBSTANCE TECHNICAL GUIDELINES—SULFUR DIOXIDE

I. PHYSICAL AND CHEMICAL DATA

A. *Substance identification.*

1. Synonyms: Sulfurous Oxide, Sulfurous Anhydride

2. Formula: SO_2

B. *Physical data.*

1. Boiling Point (760 mm/hg): −10 C (14 F).

2. Specific Gravity (liquid): 1.434 at 0 C (32 F).

3. Vapor Density (air=1): 2.264.

4. Melting Point: −72.7 C (−99 F).

5. Vapor Pressure: @20 C (68 F): 3.2 atm.

6. Solubility in water @20 C (68 F): 11.28 g/100ccH2O.

C. *Appearance and odor:* Sulfur dioxide is a colorless gas which has a strong, pungent odor. Caution: The odor of this gas should not be used as a warning of its presence in air, since it may deaden the sense of smell. Sulfur dioxide can also exist as a liquid under low temperature and high pressure conditions.

II. FIRE, EXPLOSION AND REACTIVITY HAZARD DATA

A. *Fire:* 1. Sulfur dioxide gas and liquid is not flammable.

B. *Reactivity:* 1. Chemical stability: Sulfur dioxide is weakly reactive.

2. Incompatibility: Sulfur dioxide (gas) is not corrosive to ordinary metals; however, upon contact with moisture it does become corrosive.

3. Hazardous products: SO_2 (gas) on contact with moisture produces sulfurous acid.

III. SPILL, LEAK, AND DISPOSAL METHODS

Steps to be taken if the material is spilled or leaked:

1. No one should enter areas where sulfur dioxide has been released unless air testing shows concentrations are safe, and proper clothing, respirators, etc., are used. Respirators as prescribed by (e)(1)(iii) of the standard shall be used during emergencies, cleanup, and repair work.

2. Emergency procedures shall be followed for emergency entry into areas of high gas concentrations or liquid spills, until the situation has been resolved.

IV. MONITORING AND MEASUREMENT PROCEDURES

Measurements taken for the purpose of evaluating employee TWA exposure under this section are best taken in a fashion such that the average 8-hour exposure may be determined from continuous monitoring. Short time interval samples (up to 30 minutes) may also be used to determine average exposure level if a minimum of five (5) measurements are taken in a random manner over the 8-hour work shift. Random sampling means that any portion of the work shift has the same chance of being sampled as any other. The arithmetic average of 11 such random samples taken on one (1) work shift is an estimate of an employee's average level of exposure for that work shift. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee). Sampling and analyses may be performed by instruments, such as detector tubes certified by NIOSH under 42 CFR Part 84, portable direct-reading instruments, or with continuous monitoring systems that can sample and analyze those areas most likely to represent the highest airborne concentrations of sulfur dioxide where employees are exposed. The analytical method must determine the concentrations of sulfur dioxide to plus or minus 25 percent.

V. MISCELLANEOUS PRECAUTIONS

A. Since sulfur dioxide vaporizes at ambient temperatures and pressure it should be stored in pressurized containers and kept at temperatures not to exceed 165 degrees F.

B. Fusible plugs: Never use a blow torch or flames to heat cylinders because plugs melt at 165 degrees F.

C. Employers shall advise employees of all plant areas and operations where exposure to sulfur dioxide could occur.

D. Since tanks are pressurized, unloading procedures should include proper depressurization.

VI. COMMON OPERATIONS

Occupations considered to frequently have exposures to sulfur dioxide are:

Beet sugar bleachers, blast furnace workers, brewery workers, diesel engine operators, diesel engine repairmen, disinfectant makers, disinfectors, firemen, flour bleachers, food bleachers, foundry workers, fruit bleachers, fumigators, fumigant makers, furnace operators, gelatin bleachers, glass makers, glue bleachers, ice makers, meat preservers, oil bleachers, oil processors, ore smelter workers, organic sulfonate makers, paper makers, petroleum refinery workers, preservative makers, protein makers, food protein makers, industrial refrigeration workers, straw bleachers, sugar refiners, sulfite makers, sulfur dioxide workers, sulfuric acid makers, sulfuryl chloride makers, tannery workers, textile bleachers, thermometer makers, vapor pressure, wicker ware bleachers, wine makers, wood bleachers, and wood pulp bleachers.

APPENDIX C—MEDICAL SURVEILLANCE SULFUR DIOXIDE

I. PHYSICAL AND CHEMICAL PROPERTIES

Sulfur dioxide, or SO_2, is chemically stable, noncombustible, and is widely present both as a manufactured substance and by-product. Sulfur dioxide can exist as a liquid under low temperature and high pressure conditions and has a strong, pungent odor.

II. ROUTE OF ENTRY

Primarily inhalation, insignificant skin absorption.

III. TOXICOLOGY

There is a great deal of irritation to the nose, throat, lungs, and eyes (effects may be more pronounced in unacclimated individuals).

IV. SYMPTOMS AND SIGNS

Acute irritation of the eyes (and possible blindness), of the mucous membranes, and of the upper respiratory tract, and headache. Excessive skin contact may produce a dermatitis; and at sustained levels asphyxia may result.

V. SPECIAL TESTS

Pulmonary function test, anterior and posterior x-rays.

VI. TREATMENT

Wash eyes and skin immediately. Give artificial resuscitation if indicated. Recovery is usually rapid and complete. If swallowed, do not make person vomit but dilute with water or milk.

VII. PREPLACEMENT

Routine medical histories and physical examination are required. The employer must screen prospective employees for history of certain medical conditions (listed below) which might place the employee at increased risk of exposure.

1. *Chronic respiratory disease:* In persons with impaired pulmonary function, especially those with obstructive airway disease, the breathing of sulfur dioxide might cause exacerbation of symptoms due to its irritant properties.

2. *Skin disease:* Liquid sulfur dioxide is a freeze-burn agent and does cause severe burns. Uticaria is common in some persons from exposure to the gas.

3. *Eye disease:* Liquid sulfur dioxide can be extremely damaging to the eyes especially the cornea. Therefore contact lenses should not be worn due to the freezing nature of the substance.

VIII. PERIODIC EXAMINATION

Routine periodic examinations are required. In addition, if an employer becomes aware of any of the listed conditions he must refer the employee for further medical examinations. It is important that the physician become familiar with plant operating conditions in which exposure to sulfur dioxide occurs. Prevention of overexposure consists of adequate local exhaust and general ventilation, protective clothing including gloves, respirators for emergencies, and washing contaminated skin and work areas.

APPENDIX D—RECOMMENDED METHOD FOR SAMPLING AND ANALYTICAL PROCEDURES FOR DETERMINATION OF SULFUR DIOXIDE

The following sampling and analytical method for analysis of sulfur dioxide in air employs absorption and oxidation in hydrogen peroxide solution followed by volumetric titration.

GENERAL REQUIREMENTS

Sulfur dioxide concentrations should be determined within the worker's personal breathing zone and should meet the following criteria in order to evaluate conformance with the standard:

(a) Samples collected must be representative of the individual worker's exposure.

(b) Sampling data sheets should include:

(1) The date and time of sample collection.

(2) Sample duration.

(3) Volumetric flowrate of sampling.

(4) A description of the sampling location.

(5) Other pertinent information.

A. Personal breathing zone sampling—1. Personal monitor samples.

A suggested method is that used by Smith, Wagner and Moore in their most recent study. In this study all samples were full-shift, 7 to 8 hours in duration. The personal exposure of smelter workers to airborne contaminants was measured with a particle-size selective device, designed to sample the breathing zone when the worker was not using his respirator. When the worker put on his respirator, his chin pressed a microswitch, which turned off the air pump and activated a timer that measured the cumulative time the respirator was worn.

(a) *Sampling equipment.* To replicate this method a calibrated personal sampling pump with flowmeter (range up to 2 liters/minutes), a midget impinger containing 15 ml of 0.3 N hydrogen peroxide absorbing solution, and an 0.8 micrometer nominal pore size cellulose membrane filter holder are used for sample collections.

(b) *Sampling procedure.* The filter is placed upstream of the impinger to collect any sulfuric acid mist or other airborne particulate sulfates prior to the air passing through the impinger. The filter holder is connected to the impinger inlet by a piece of flexible vinyl tubing as short as possible. The impinger outlet is connected to the personal sampling pump inlet by a piece of tubing of convenient length, but not in excess of 3 feet. The filter and impinger assembly is attached to the worker's clothing so as to sample from the worker's breathing zone. The sample is collected at a rate of 1–2 liters/minute for an appropriate length of time to attain a 100-liter air sample. If sulfur dioxide concentrations are expected to be greater than 100 mg/m³ of air (approximately 40 ppm), a smaller air volume should be sampled but never less than 10 liters.

A minimum of 3 samples is taken for each operation (more samples if the concentrations are close to the standard) and averaged on a timeweighted basis. At least one blank impinger is provided containing hydrogen peroxide solution through which no air has been sampled. One additional blank impinger is supplied with every 10 samples obtained.

SHIPPING

After sampling, one removes the glass stopper and impinger stem from the impinger bottle. The stem is tapped gently against the inside wall of the impinger bottle to recover as much of the sampling solution as possible. The stem is washed with a small amount of unused absorbing solution from a wash bottle, adding the wash to the impinger. The impinger is stopper tightly with plastic caps (do not seal with rubber), placed in an upright position, and shipped the impinger samples to the analytical laboratory in a suitable container to prevent damage in transit. Special impinger shipping containers designed by NIOSH are available. It is important that the impinger bottles be sealed very tightly to prevent leakage and subsequent loss of samples.

CALIBRATION OF SAMPLING TRAINS

Since the accuracy of an analysis can be no greater than the accuracy of the volume of air which is measured, the accurate calibration of a sampling pump is essential to the correct interpretation of the pump's indication. The frequency of calibration is dependent on the use, care, and handling to which the pump is subjected. In addition, pumps should be recalibrated if they have been misused or if they have just been repaired or received from a manufacturer. If the pump receives hard usage, more frequent calibration may be necessary.

Ordinarily, pumps should be calibrated in the laboratory both before they are used in the field and after they have been used to collect a large number of field samples. The accuracy of calibration is dependent on the type of instrument used as a reference. The choice of calibration instrument will depend largely upon where the calibration is to be performed. For laboratory testing, primary standards such as a spirometer or soapbubble meter are recommended, although other standard calibrating instruments such as a wet test meter or dry gas meter can be used. The actual setup will be the same for all instruments. Instructions for calibration with the soapbubble meter follow. If another calibration device is selected, equivalent procedures should be used.

(a) *Flowmeter calibration test method.* The calibration setup for personal sampling pumps with the sampling system of a filter and a midget impinger proceeds as follows:

(1) Procedure—

(A) Check the voltage of the pump battery with a voltmeter to assure adequate voltage for calibration. Charge the battery if necessary.

(B) Fill the impinger with 15 ml of the absorbing solution and place the cellulose membrane filter in the filter holder.

(C) Assemble the sampling train.

(D) Turn the pump on and moisten the inside of the soapbubble meter by immersing the buret in the soap solution and draw bubbles up the inside until they are able to travel the entire buret length without bursting.

(E) Adjust the pump rotameter to provide a flowrate of 1 liter/minute.

(F) Check the water manometer to insure that the pressure drop across the sampling train does not exceed 13 inches of water (1 in. of Hg.).

(G) Start a soapbubble up the buret and, with a stopwatch, measure the time it takes for the bubble to move from one calibration mark to another. For a 1000-ml buret, a convenient calibration volume is 500 ml.

(H) Repeat the procedure in (G) above at least 2 times, average results, and calculate the flowrate by dividing the volume between the preselected marks by the time required for the soapbubble to traverse the distance.

(I) Data for the calibration include the volume measured, elapsed time, pressure drop, air temperature, atmospheric pressure, serial number of the pump, date, and name of the person performing the calibration.

ANALYTICAL

(a) *Principle of the Method.* Sulfur dioxide in the air is absorbed and oxidized in 0.3 N hydrogen peroxide reagent. The pH of the sample solution is adjusted with dilute perchloric acid. After isopropyl alcohol is added bringing the alcohol concentration to approximately 80 percent by volume, the resulting solution is titrated with 0.005 M barium perchlorate using Thorin as the indicator. The endpoint is determined as a change from yellow to pink.

(b) *Range and sensitivity.* The method is sensitive to 0.1 mg sulfur dioxide/cu m of air, assuming a 100 liter air sample. This would correspond to approximately 0.25 ppm of sulfur dioxide in the air. The upper limit is the amount of sulfur dioxide absorbed in the hydrogen peroxide reagent and is at least 5 mg.

(c) *Interferences.* Soluble particulate sulfates and sulfuric acid in the air sample would give erroneously high sulfur dioxide values; however, these can be eliminated by placing an 0.8 micrometer nominal pore size cellulose membrane filter upstream of the impinger in the sampling train.

Metal ion interferences can be eliminated by either the use of the prefilter or, alter-

natively, by passing the solution through an ion exchange column.

Concentrations of phosphate ions greater than any sulfate ion concentration cause appreciable interference. Phosphate can be removed by precipitation with magnesium carbonate. The use of the prefilter should also remove phosphates.

(d) *Accuracy and precision.* At 2.5 ppm, the accuracy is 5 percent with a relative standard deviation of 4 percent. At 25 ppm, the accuracy and relative standard deviation can be improved to about 1 percent.

(e) *Advantages and disadvantages.* The samples are easily collected and conveniently shipped to the laboratory for analysis in glass vials.

The sulfuric acid formed is stable and nonvolatile, making this manner of collection of sulfur dioxide desirable.

The analysis is relatively rapid and simple.

Spillage from the impingers is possible and could be hazardous if spilled into molten metal.

(f) *Apparatus.* (1) Absorber-glass midget impingers.

(2) Personal sampling pump with flow meter capable of sampling at a rate of 1–2 liters/minute.

(3) 37 mm mixed cellulose ester filter, 0.8 micrometer pore size.

(4) Necessary glassware.

(5) A buret of 10 ml capacity graduated in 0.05 ml subdivisions.

(6) Daylight fluorescent lamp aids in identifying the endpoint.

(7) Ion exchange resin—Strongly acidic cation exchange resin, 20–50 mesh, or equivalent. Ion exchange columns may be constructed using glass burets or tubing. A column with an inside diameter of 8 mm and 7 inches of resin has a capacity of approximately 25 milliequivalents.

(g) *Reagents.* (1) Alcohol—isopropanol, reagent grade.

(2) Barium perchlorate, 0.005 M. Dissolve 2.0 g of barium perchlorate trihydrate in 200 ml of water and add 800 ml of isopropanol. Adjust pH to about 3.5 with perchloric acid. Standardize against 0.005 M sulfuric acid.

(3) Thorin—prepare a 0.1–0.2 percent solution in distilled water.

(4) Standard sulfate solution—prepare a 0.005 M solution of sulfuric acid and standardize by titration with 0.005 M sodium hydroxide solution or dissolve 0.7393 g anhydrous sodium sulfate in distilled water and dilute to 1 liter (1 ml=.5 mg sulfur dioxide). The sodium is removed by passage of the standard solution through the ion exchange column.

(5) Hydrochloric acid, 4N—add 300 ml concentrated HCL to 600 ml of distilled water. This is needed only to regenerate the column if the ion exchange procedure is used.

(6) Absorbing solution—hydrogen peroxide, 0.3 N—dilute 17 ml of 30 percent hydrogen peroxide solution to 1 liter with distilled water.

(h) *Procedure.* (1) Cleaning of equipment—the glassware should be chemically clean. Wash in detergent and rinse with tap water and distilled water.

(2) Ion exchange procedure (used to purify standard sulfate solution)—when about two-thirds of the capacity of the resin has been exhausted (deterioration in sharpness of the end point), regenerate the resin by passing 30 ml of 4 N hydrochloric acid through the column. After thorough washing with distilled water, the column is ready for use. Since small volumes of sample solution are passed through the ion exchange column, care must be taken not to dilute the sample with distilled water that remains in the resin. One way this can be accomplished is by forcing air through the resin with a squeeze bulb to remove most of the distilled water from the ion exchange resin. One or 2 ml of sample is passed through the column and is discarded after air is again forced through the resin. The remainder of the sample is then passed through the ion exchange column and an aliquot is titrated according to the general procedure in (1) (3) below.

The column is flushed with distilled water between samples to prevent contamination from the previous sample.

(i) *Analysis of samples.* (1) Measure the volume of the sample solution or dilute it to a given volume.

(2) If high air concentrations of metal ions are encountered which are not completely removed by the prefilter, samples may be passed through the ion exchange column by the procedure detailed in (h) (2) above.

(3) To a 10 ml aliquot, add 40 ml isopropanol. Adjust the pH, if necessary, to between 2.5 and 4.0 with perchloric acid. Add 1–3 drops of Thorin indicator and titrate with barium perchlorate, taking the change from yellow or yellow-orange to pink as the endpoint.

(4) Analyze the standard and absorbing solution blank in the same manner.

(j) *Standardization.* The barium perchlorate solution is standardized by titrating a 5 ml aliquot with 0.005 M sulfuric acid to the endpoint using Thorin as an indicator. The molarity of the solution is calculated as follows:

$$M[\text{barium perchlorate}] = \frac{ml[\text{sulfuric acid}] \times M[\text{sulfuric acid}]}{ml[\text{barium perchlorate}]}$$

Periodic checks of the molarity of the barium perchlorate solution should be run following this same procedure.

If anhydrous sodium sulfate is used to standardize the barium perchlorate, it must first be ion-exchanged since sodium obscures the endpoint. A 5 ml aliquot of the 0.5 mg/ml sulfate solution is ample for standardization.

(k) *Calculations.* The analytical results are calculated on the basis of the following reactions:

SO_2 + hydrogen peroxide = sulfuric acid

H_2SO_4 + barium perchlorate = barium sulfate + 2 perchloric acid

$$\frac{mg[\text{sulfur dioxide}]}{\text{cu m}} = \frac{ml[s] \times M[\text{barium perchlorate}] \times MW}{V[\text{cu m}]} [\text{sulfur dioxide}] \times \frac{V}{V[\text{aliq}]}$$

ml[s] = ml of barium perchlorate solution needed to titrate the sample aliquot minus the blank value.

MW[sulfur dioxide] = molecular weight of sulfur dioxide = 64.

V[cu m] = volume of air sampled in cubic meters.

V[aliq] = volume of sample aliquot used for the titration in ml.

V = original volume of sample in impinger in ml.

or

$$\text{sulfur dioxide (ppm) by volume} = ml[s] \times M[\text{barium perchlorate}] \times 24{,}451 \times \frac{V[1]}{V[\text{aliq}]}$$

V[1] = volume of air in liters at 25° C.

24,450 = ml/mole that ideal gas occupies at 25° C.

(Secs. 4, 6, 8, 84 Stat. 1592, 1593, 1599 (29 U.S.C. 653, 655, 657) and 29 CFR Part 1911)

[FR Doc.75-31379 Filed 11-17-75;3:53 pm]

federal register

MONDAY, NOVEMBER 24, 1975

PART III:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOODS

Onion Rings, Seafood Products, and Potato Chips

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. 75P-0280]

PART 102—COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOODS

Common or Usual Name for Onion Rings Made From Diced Onions

The Food and Drug Administration is establishing a common or usual name for the restructured food product resembling onion rings that is made from diced onions. The common or usual name established is "onion rings made from dried diced onions" when the product is composed of dried onions and "onion rings made from diced onions" when any other form of onions is used. The words "made from dried diced onions" or "made from diced onions" are required to appear on the package label in type not less than one-half the size of the largest type in which the words "onion rings" appear. The regulation is effective December 31, 1977.

The Commissioner of Food and Drugs proposed, in the FEDERAL REGISTER of August 2, 1973 (38 FR 20746), to establish common or usual names for certain restructured foods. Numerous comments were received in response to these proposals. The regulation establishing the common or usual name for potato chips made from dried potatoes is published elsewhere in this issue of the FEDERAL REGISTER. Comments that were applicable to all the proposed regulations are discussed in the preamble to the regulation on potato chips made from dried potatoes; they will not be repeated in this preamble. The comments pertinent only to onion rings made from diced onions, and the Commissioner's conclusions thereon, are as follows:

1. Comments contended that calling a product made from comminuted onions "onion rings" is misleading to consumers, who associate that term with the product made from sliced onion bulbs.

One comment stated that "onion rings" as defined in the U.S. Department of Agriculture standard, by other technical and cookbook references, and by consumer understanding are made from fresh onion bulbs sliced and separated into rings. The comment argued that products made from diced onions should not be labeled as "onion rings," with or without any qualifying statement. One comment pointed to a seizure action instituted by the Food and Drug Administration against a product labeled "onion rings" because the product was made from fresh chopped onions.

The Commissioner agrees that it would be inappropriate and misleading for a product made from comminuted onions to be labeled simply as "onion rings." The use of the qualifying phrase required by the regulation that is being adopted fully distinguishes the reconstructured product from the product made from sliced fresh onion bulbs.

2. One comment suggested that the emphasis on the common or usual name should be reversed, with the component food in larger letters, followed by the form of the restructured food, e.g., "DICED ONIONS made into onion rings."

The Commissioner concludes that it is unnecessary to emphasize the comminuted form of a restructured food to inform the consumer fully about the product. Moreover, the name suggested would focus emphasis on an ingredient rather than the product for which the name is being established. Consequently, the emphasis in the common or usual name adopted is on the form in which the food is purchased.

3. Comments objected to the proposed requirement that the quantity of onion be not less than the quantity present in the similar product made from rings of sliced whole onion. The comments contended that there are no established benchmarks for the quantity of onion in rings of sliced whole onion and that it was unclear how the quantity was to be measured.

The Commissioner advises that a common or usual name regulation is not intended to prescribe the composition of a product. Instead, its purpose is to establish an appropriately descriptive name for a food. It was not the intention of the proposal, which required that the restructured food contain a quantity of onions not less than that contained in onion rings made from sliced fresh onion bulbs, to prescribe the content of the food. Instead, the intent was to limit use of the name "onion rings made from _____ diced onions" to those foods that differ from traditional onion rings only because they contain a different form of onion. The proposed regulation has been revised to clarify this intention. Because the emphasis of this regulation is on the difference between the restructured food and the traditional food, the regulation adopted describes only the difference and does not attempt to describe the product completely. The regulation does not recognize the addition of ingredients to the restructured onion rings, other than those appropriately used in onion rings made from sliced onion bulbs and those ingredients related to the use of onion in its comminuted form, e.g., binders used to hold together the particles of comminuted onions.

4. One comment criticized the definition of onion rings in the proposal which, the comment stated, defined the food as onions "fried in a suitable fat or oil bath" because it failed to recognize that most onion rings used in the food service trade are not fried by the manufacturer but are frozen raw. The comment contended that the proposed definition did not include frozen raw products.

The Commissioner notes that this comment refers to the proposal of the petitioner, Mrs. Paul's Kitchen, Inc., and not to the Commissioner's proposal. The Commissioner's proposal, and the final regulation being adopted, do not exclude frozen raw products from use of the common or usual name.

5. One comment stated that the type size requirement for the qualifying phrase was too large and would unduly emphasize the form of the ingredients used.

The subject of this comment is fully discussed in the document that appears elsewhere in this issue of the FEDERAL REGISTER, which establishes the common or usual name for potato chips made from dried potatoes. The Commissioner concludes that the same principles applicable to potato chips are applicable to onion rings.

6. One comment asserted that restructured onion ring products contain extenders that have been added in addition to the usual breading. The comment contended that such products should bear a name such as "onion and _____ rings," the blank to be filled in with the significant characterizing ingredient other than onions, e.g., cereal.

The Commissioner agrees in principle with this comment. The common or usual name adopted in this regulation is applicable only to products that are of the same composition as onion rings. The addition of an extender would make the product adulterated and misbranded, unless labeling similar to that suggested by the comment is used.

7. One comment requested that the term "onion rings prepared from oven-dried onions" be permitted as a more accurate description of the process.

The Commissioner has revised the proposed regulation to require use of the word "dried" instead of the word "dehydrated." Use of the word "dried" as an alternative to the word "dehydrated" was suggested by a comment to the proposed common or usual name for restructured potato chip products. The Commissioner agreed with that comment—that the word "dried" is as accurate as the word "dehydrated," that it is probably more understandable to consumers, and that it would take up less labeling space. The Commissioner concludes that this rationale is equally applicable to restructured onion ring products.

The Commissioner concludes that the term "oven dried," although a more accurate description of one drying process, should not be permitted: other methods of drying may also be used, and the term "dried" is not misleading when used to describe the oven-dried product. The Commissioner concludes that a proliferation of names identifying minor variations in processing techniques should not be encouraged because the variation would cause confusion to consumers.

8. One comment objected to the proposed regulation because it did not provide for the option to use a fanciful name such as "onion loops." The comment contended that such a name should be permitted as long as the common or usual name established by regulation is also used.

The Commissioner advises that neither this regulation nor any other labeling regulation prohibits use of fanciful names as long as the common or usual name established in this regulation is used, the labeling complies with all other requirements, and the fanciful name does

not imply that the onion rings are manufactured in the traditional manner. This policy is explicitly set forth in 21 CFR 1.8(e)(2)(ii).

9. Comments objected to mandatory use of the word "diced" as the single term to designate the comminuted form of onions.

The Commissioner concludes that the word "diced" should be the only word used to describe the form of the onions. Since these foods are restructured and not sold in the comminuted form, the consumer is better served by limiting the terms to be used to inform the consumer of the similarities rather than minor differences among competing products. As stated in the preamble to the proposed regulation, the Commissioner believes that in establishing common or usual names for these products, only one term should be used so that further consumer confusion is avoided. The comments presented no evidence indicating that consumer confusion would not follow from use of a variety of qualifying terms.

10. One comment opposed the use of the terms "fresh" and "dehydrated" as part of the common or usual name. The comment stated that the products made from fresh or dehydrated onions or a combination of the two do not necessarily have substantial differences and are not identifiable as different products. The comment also questioned whether onion bulbs that have been in storage 3 months are "fresh." One comment stated that the requirement to specify whether the onions used were fresh or dehydrated would eliminate a manufacturer's flexibility in securing and utilizing components that for all practical purposes result in a similar finished product. The comment further stated that, if required to be used, both the terms "fresh" and "dehydrated" should be defined in the regulations.

The purpose of a common or usual name is to describe the basic properties of a food. For restructured products, the name is also required to identify differences from the traditional food that affect the basic integrity of the product. The Commissioner concludes that the use of fresh onions in manufacturing the restructured product does not affect the basic integrity of the food as compared to the traditional product; hence, identification of the diced onions as "fresh" is not required in the final regulation. However, the Commissioner concludes that the use of dehydrated onions does affect the basic integrity of the food and, therefore, that the term "dried" should be part of the common or usual name when dehydrated onions are used. This conclusion is consistent with the Commissioner's conclusions, published elsewhere in this issue of the FEDERAL REGISTER, regarding potato chips made from dried potatoes. The proposed regulation has been modified to reflect these conclusions. The Commissioner further concludes that the term "dehydrated" is well understood and need not be defined in the regulation.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the FDA environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047–1048, as amended, 1055 (21 U.S.C. 321(n), 343, 371(a))) and under authority delegated to the Commissioner (21 CFR 2.120), Part 102 is amended by adding § 102.13, to read as follows:

§ 102.13 Onion rings made from diced onion.

(a) The common or usual name of the food product that resembles and is of the same composition as onion rings, except that it is composed of comminuted onions, shall be as follows:

(1) When the product is composed of dehydrated onions, the name shall be "onion rings made from dried diced onions."

(2) When the product is composed of any form of onion other than dehydrated, the name shall be "onion rings made from diced onions."

(b) The words "made from dried diced onions" or "made from diced onions" shall immediately follow or appear on a line(s) immediately below the words "onion rings" in easily legible boldface print or type in distinct contrast to other printed or graphic matter, and in a height not less than the larger of the following alternatives:

(1) Not less than one-sixteenth inch in height on packages having a principal display panel with an area of 5 square inches or less and not less than one-eighth inch in height if the area of the principal display panel is greater than 5 square inches; or

(2) Not less than one-half the height of the largest type used in the words "onion rings."

Effective date. All products shipped in interstate commerce after December 31, 1977, shall comply with this regulation.

(Secs. 201(n), 403, 701(a), 52 Stat. 1041, as amended, 1047–1048, as amended, 1055 (21 U.S.C. 321(n), 343, 371(a)).)

Dated: November 15, 1975.

SHERWIN GARDNER,
Deputy Commissioner of Food and Drugs.

[FR Doc.75-31455 Filed 11-21-75;8:45 am]

[Docket No. 75P-0282]

PART 102—COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOODS

Restructured Seafood Products

The Food and Drug Administration is establishing common or usual names for the restructured food products resembling fish sticks, fried clams, and breaded composite shrimp units that are made from comminuted seafood. The common or usual names established are "fish _____ made from minced fish," the blank to be filled with the words "sticks" or "portions" as the case may be; "fried clams made from minced clams"; and "_____ made from minced shrimp," the blank to be filled in with words describing the shape of the product, such as "breaded shrimp cutlets." The words "made from _____" are required to appear on the package label in type not less than one-half the size of the largest type in which the initial words appear. The regulation is effective December 31, 1977.

The Commissioner of Food and Drugs proposed, in the FEDERAL REGISTER of August 2, 1973 (38 FR 20746), to establish common or usual names for certain restructured foods. Numerous comments were received in response to these proposals. The regulation establishing the common or usual name for potato chips made from dried potatoes is published elsewhere in this issue of the FEDERAL REGISTER.

Comments that were applicable to all the proposed regulations are discussed in the preamble to the regulation on potato chips made from dried potatoes; they will not be repeated in this preamble. The comments pertinent only to the restructured seafood products, and the Commissioner's conclusions thereon, are as follows:

1. One comment opposed use of the term "minced," contending that the word carries the connotation of fine subdivision. The comment contended that the consumer, detecting discrete and identifiable particles of food, might consider such particles to be foreign contaminants if the product constituents were described as "minced."

Another comment contended that the description "minced shrimp" was too restrictive and that the manufacturer should have the latitude to use other forms of chopped shrimp meats such as diced, pureed, or ground.

The Commissioner concludes that the word "minced" should be the only word used to describe the form of the seafood. Since these foods are restructured and not sold in the comminuted form, the consumer is better served by limiting the terms to be used so as to inform the consumer of the similarities rather than minor differences among competing products. As stated in the preamble to the proposed regulation, the Commissioner believes that in establishing common or usual names for these products, only one term should be used in order to avoid further consumer confusion. The comments presented no evidence indicating that there would not be consumer confusion if a variety of qualifying terms were used. Although the word "minced" connotes fine subdivision of a food, the Commissioner does not believe it connotes such fine subdivision that its use in connection with food containing discrete and identifiable particles would be misleading.

The Commissioner advises that the regulation does not limit the form of comminuted seafood that may be used to that which is commonly referred to as "minced." Instead, the regulations require that the food be designated as having been made from "minced" seafood, even though the manufacturer

may regard the seafood used as having been diced, pureed, or ground.

2. One comment by a manufacturer stated the manufacturer's intention to market products formed by extrusion of mixed minced seafoods such as mixtures of fish, clams, scallops, shrimps, and the like. The comment suggested that because of the disparity in the wording among the proposed common or usual names, it would be impossible to label the products according to the regulations.

The Commissioner advises that the common or usual names adopted do not apply to a restructured food formed by extrusion of mixed minced seafoods (both fish and shellfish) such as is described in the comment. Upon petition, the Commissioner will establish an appropriate common or usual name for such foods. Alternatively, a manufacturer could label such foods with a name analogous to those established in these regulations. The Commissioner advises that a statement of the percentage of each seafood component present, in accordance with the provisions of § 102.1 (b) (21 CFR 102.1(b)), may be necessary to ensure an appropriately descriptive name for such foods.

3. One comment stated that the qualifying phrase for fish sticks or fish portions should be one-quarter rather than one-half the size of the words "fish sticks" or "fish portions," as was proposed.

The subject of this comment is fully discussed elsewhere in this issue of the FEDERAL REGISTER in connection with the common or usual name established for potato chips made from dried potatoes. The Commissioner concludes that the same principles applicable in the case of potato chips are applicable in the case of these seafood products, and that the qualifying phrase should be one-half the size of the words it modifies.

4. One comment asked what ingredients not found in the traditional product were permitted to be added to the restructured product.

The Commissioner advises that a common or usual name regulation is not intended to prescribe the composition of product. Instead, its purpose is to establish a name for a food that is appropriately descriptive. Because the emphasis of these regulations is on the difference between the restructured food and the traditional food, the regulations adopted describe only the difference and do not attempt to describe the product completely. The regulations do not recognize the addition of ingredients to the restructured seafood products other than those appropriately used in the traditional seafood products and those ingredients related to the use of seafood in its comminuted form, e.g., binders used to hold together the particles of comminuted seafood. All ingredients must be declared on the package label in accordance with section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(i)(2)).

5. One comment contended that the proposed common or usual name for nonstandardized breaded composite shrimp units was too restrictive and, by using the term "breaded," prevented use of other coatings such as tempura, batters, and taco.

The Commissioner advises that use of the term "breaded" does not prohibit the alternative coatings mentioned in the comment. The regulation defines a class of food based on its difference from the standard food prescribed in § 36.30 (d) (21 CFR 36.30(d)). Consequently, this regulation permits the same broad range of safe and suitable breading ingredients permitted by § 36.30(d). The Commissioner concludes that the term "breaded" is sufficiently descriptive, and it is retained in the regulation.

6. One comment by a manufacturer stated it was developing for market a product consisting of chopped shrimp extended by textured soy flour. The comment stated that the quantity by weight of the comminuted shrimp is 40 percent or more and that the dehydrated textured soy flour is approximately 12 percent, with the rest consisting of breading. The comment noted that the proposed regulation requires that the product must have as much shrimp as the standardized product. The definition and standard of identity for frozen raw breaded shrimp in § 36.30 provides that the quantity of shrimp required to be present in frozen raw breaded composite shrimp unit products must be not less than 50 percent. The comment requested that the Commissioner exempt shrimp stick products containing plant protein product as an extender from the regulation establishing a common or usual name.

The Commissioner concludes that a shrimp product that contains less than 50 percent shrimp, because the fish is extended by soy flour, does not purport to be the standard food if its labeling is appropriately descriptive. However, the product described by the comment is not covered by this regulation since the percentage of shrimp is less than the 50 percent required by the definition and standard of identity. Proposed common or usual names for seafood products extended by plant protein products were published in the FEDERAL REGISTER of June 14, 1974 (39 FR 20892). When these regulations are made final, they will cover the product mentioned in the comment.

7. One comment asked what would be the appropriate descriptive phrase to be inserted into the blank in the common or usual name when the product was made in the shape of shrimps. The comment noted that the proposed regulation seemed to require the product to be called "breaded shrimp shrimp shapes made from minced shrimp." The comment requested that the requirement as to shape be revised so that the words "portions" or "servings" could be used in place of a statement of the product's shape.

The Commissioner concludes that the terms "servings" or "portions" used for a product without a specific recognizable shape is permitted by the regulation as proposed and adopted. For a product formed in a shape of a whole shrimp, but made from comminuted shrimp, it is sufficient for it to be labeled "breaded shrimp shapes made from minced shrimp."

8. One consumer requested percentage labeling of the shrimp ingredient in nonstandardized breaded composite shrimp units.

The Commissioner concludes that, because the 50 percent minimum shrimp content requirement of the definition and standard of identity for frozen raw breaded shrimp under § 36.30 applies to the nonstandardized comminuted product, it is not necessary at this time to require percentage labeling.

9. The proposed regulation on nonstandardized breaded composite shrimp units has been revised to state that the product covered is made from comminuted shrimp. This change clarifies the scope of the regulation, which, as the reference in the name to "minced shrimp" indicates, applies only to products made from comminuted shrimp and not to all products made from pieces of shrimp.

10. In the preamble to the proposed regulation, the Commissioner stated his intention to propose an amendment to the standard of indentity for frozen raw breaded shrimp to include minced shrimp. The Commissioner recognizes that the common or usual name established for the nonstandardized product will be the same as that to be established for the standardized product made from raw shrimp if the present format in the standard of identity is retained. The Commissioner concludes, however, that consumers would not be misled by such a result because the directions for use would adequately distinguish the raw product from the nonstandardized product.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the FDA environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a))) and under authority delegated to the Commissioner (21 CFR 2.120), Part 102 of Chapter I of Title 21 of the Code of Federal Regulations is amended by adding the following three new sections:

§ 102.14 Fish sticks or portions made from minced fish.

(a) The common or usual name of the food product that resembles and is of the same composition as fish sticks or fish portions, except that it is composed of comminuted fish flesh, shall be "fish _____ made from minced fish," the blank to be filled in with the word "sticks" or "portions" as the case may be.

(b) The words "made from minced fish" shall immediately follow or appear on a line(s) immediately below the words "fish_____" in easily legible boldface print or type in distinct contrast to

other printed or graphic matter, and in a height not less than the larger of the following alternatives:

(1) Not less than one-sixteenth inch in height on packages having a principal display panel with an area of 5 square inches or less and not less than one-eighth inch in height if the area of the principal display panel is greater than 5 square inches; or

(2) Not less than one-half the height of the largest type used in the words "fish_____."

§ 102.15 Fried clams made from minced clams.

(a) The common or usual name of the food product that resembles and is of the same composition as fried clams, except that it is composed of comminuted clams, shall be "fried clams made from minced clams."

(b) The words "made from minced clams" shall immediately follow or appear on a line(s) immediately below the words "fried clams" and in easily legible boldface print or type in distinct contrast to other printed or graphic matter, and in a height not less than the larger of the following alternatives:

(1) Not less than one-sixteenth inch in height on packages having a principal display panel with an area of 5 square inches or less and not less than one-eighth inch in height if the area of the principal display panel is greater than 5 square inches; or

(2) Not less than one-half the height of the largest type used in the words "fried clams."

§ 102.16 Nonstandardized breaded composite shrimp units.

(a) The common or usual name of the food product that conforms to the definition and standard of identity described by § 36.20(c)(6) of this chapter, except that the food is made from comminuted shrimp and is not in raw frozen form, shall be "_____ made from minced shrimp," the blank to be filled in with the words "breaded shrimp sticks" or "breaded shrimp cutlets" depending upon the shape of the product, or if prepared in a shape other than that of sticks or cutlets "breaded shrimp _____ made from minced shrimp," the blank to be filled by a word or phrase that accurately describes the shape and that is not misleading.

(b) The words "made from minced shrimp" shall immediately follow or appear on a line(s) immediately below the other words required by this section in easily legible boldface print or type in distinct contrast to other printed or graphic matter, and in a height not less than the larger of the following alternatives:

(1) Not less than one-sixteenth inch in height on packages having a principal display panel with an area of 5 square inches or less and no less than one-eighth inch in height if the area of the principal display panel is greater than 5 square inches; or

(2) Not less than one-half the height of the largest type used in the words "breaded shrimp sticks" or the other comparable words required by this section.

Effective date. All products shipped in interstate commerce after December 31, 1977, shall comply with these regulations.

(Secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a)))

Dated: November 15, 1975.

SHERWIN GARDNER,
Deputy Commissioner of Food and Drugs.

[FR Doc.75-31457 Filed 11-21-75;8:45 am]

[Docket No. 75P-0281]

PART 102—COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOODS

Potato Chips Made From Dried Potatoes

The Food and Drug Administration is establishing a common or usual name for the restructured food product resembling potato chips that is made from dehydrated potatoes. The name established is "potato chips made from dried potatoes." The words "made from dried potatoes" are required to appear on the package label in type not less than one-half the size of the largest type in which the words "potato chips" appear. The regulation is effective December 31, 1977.

The Commissioner of Food and Drugs proposed, in the FEDERAL REGISTER of August 2, 1973 (38 FR 20746), to establish common or usual names for certain restructured foods, including potato chips made from dehydrated potatoes. Forty-four comments were received in response to the proposed regulations, 20 of which expressed general approval. Comments were received from consumers, manufacturers, trade associations, state agencies, a dietetic association, and one Congressman.

This notice deals with comments on the common or usual names proposed for the several restructured foods and also with those comments pertinent only to the common or usual name for potato chips made from dehydrated potatoes. Published elsewhere in this issue of the FEDERAL REGISTER are regulations concerning the other restructured foods for which common or usual names are being established.

1. Comments asserted that there is no statutory authority for substantive regulations establishing common or usual names under the Federal Food, Drug, and Cosmetic Act.

The Commissioner concludes that there is ample authority for the establishment of common or usual names. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes promulgation of substantive regulations. In 1973 the Supreme Court reiterated its earlier holdings that similar language in other statutes grants broad authority to issue regulations reasonably related to the purposes of the legislation. See *Mourning* v. *Family Publications Service Inc.*, 411 U.S. 356 (1973); see also *National Petroleum Refiners Ass'n.* v. *FTC*, 482 F.2d 672 (D.C. Cir. 1973). The application of this general rule to the Federal Food, Drug, and Cosmetic Act is indicated by decisions that have upheld regulations issued under the authority of section 701(a). See, e.g., *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); *National Nutritional Foods Ass'n.* v. *Weinberger*, 512 F.2d 688 (2d Cir. 1975); *CIBA-GEIGY Corp.* v. *Richardson*, 466 F.2d 466 (2d Cir. 1971).

Regulations establishing common or usual names are issued pursuant to section 701(a) of the act (21 U.S.C. 371(a)) for the efficient enforcement of section 403 (a), (b), and (i) of the act (21 U.S.C. 343 (a), (b), and (i)).

2. One comment referred to what it called a "stay in business" petition campaign instituted in 1973 by a trade association of potato chip manufacturers, which was designed, the comment stated, to seek new legislation from Congress reversing the Food and Drug Administration position regarding the labeling of potato chip products, and subsequently aimed at supporting a restrictive regulation under the common or usual name procedure of the Food and Drug Administration prohibiting the use of the term "potato chip" for products made from dried potatoes. The comments stated that this petition campaign was evidence that the dispute over the proper common or usual name for potato chip products "actually reflects an intraindustry competitive struggle" and involves the potato chip manufactures' "purely competitive consideration of sharing their potato chip volume with products made from dried potatoes."

Other industry comments generally took one of two approaches. Some argued that restructured potato chip products should be permitted to be called "potato chips" without qualification. Others argued that the word "chip" should not appear in the name of the restructured food and that it should be called "potato snacks" or some other coined name.

The Commissioner recognizes that much of the controversy over the proper common or usual names for the two potato chip products reflects intraindustry competition, as indicated by the lawsuit *Potato Chip Institute* v. *General Mills, Inc.*, 333 F. Supp. 173 (1971), *aff'd per curiam* 461 F.2d 1088 (8th Cir. 1972). The Commissioner advises, however, that the effects on competition between different products are not a factor in considering the proper common or usual name for a food. The statute charges the Commissioner with establishing a name that is not false or misleading and that accurately describes the product to the consumer. The effect that adoption of a particular nondeceptive name may have on a portion of the industry is not a relevant consideration.

3. One comment cited language in the preamble to the proposal that indicated that issuance of the proposed common or usual names for restructured foods was based on the fact that the new foods had the appearance of traditional foods but were manufactured by new processes. The comment stated that the use of alternative processing methods is a practice of long standing in the food industry and is used in such products as ice cream;

corn flakes; certain macaroni, noodle, cacao and cheese products; and processed fruit products such as fruit butters. The comment contended that in none of these instances is the usual generic name for such products foreclosed because of the use of an alternative processing method and that none of these products is required to carry a prominent labeling reference to the type of processing used. The comment contended that there is no consumer concern regarding the manufacturing process used as long as the basic integrity of the food product is maintained, and urged that the name "potato chip," without qualification, was appropriate for both traditional and restructured foods.

The Commissioner advises that use of a particular manufacturing process is not by itself reason for establishing a common or usual name reflecting such use. The comment properly notes that an unimportant difference in manufacturing practice is not a basis for distinguishing products by differences in their common or usual names. In the case of these two types of potato chip products, however, the difference in manufacturing process, i.e., use of sliced raw versus granulated dried potatoes, relates to the basic integrity of the food.

This distinction was drawn by the Supreme Court over 50 years ago in *United States* v. *95 Barrels . . . Apple Cider Vinegar*, 265 U.S. 438 (1924). In that case, the Court held that apple cider vinegar made from dried apples was not the same product as apple cider vinegar made from fresh apples even though it was similar in taste and appearance. The Court noted that "the use of dried apples necessarily results in a different product." The Court also noted that the manufacturing process need not always be revealed in labeling. The Court said, "When considered independently of the product, the method of manufacture is not material. The act requires no disclosure concerning it." The Court thus differentiated incidental changes in processing methods from those that affected the basic integrity of the product, even if, as in that case, no change in the final product could be discerned.

The Commissioner concludes that making potato chips from dried potato granules instead of from raw potato slices effects a change in the basic integrity of the product, which is appropriately revealed as part of the new food's name.

Moreover, the difference between potato chips made from raw potatoes and potato chips made from dried potatoes is reflected in different characteristics of the final products. One of the comments received in response to the proposed regulation, citing an article in the February 1973 issue of the trade publication "Snack Food," quoted Mr. V. Walter, president of the Potato Chip Institute International as stating, "All of a sudden, traditional chippers are competing with a product that is very close to what our customers have been telling us they have been wanting for 20 years—fresh, crisp, perfectly shaped unbroken chips, appetizing in color, no grease and defects and in a moisture-proof container that's easy to store and reseal. The only thing that is missing is the natural potato flavor * * *." While the Commissioner does not necessarily agree with this characterization of the difference between the two products, he does agree that differences in the products' characteristics do exist or are thought by consumers to exist and that the products are therefore properly distinguished by different common or usual names.

4. Citing cases including *El Moro Cigar Co.* v. *FTC*, 107 F.2d 429 (1939) and *H. N. Heusner and Sons* v. *FTC*, 106 F.2d 596 (1939), comments stated that the law is clear, and has been consistently upheld, that a false or deceptive statement cannot be cured by a qualifying statement even though the qualifying statement is completely accurate.

The Commissioner concludes that the common or usual name established is entirely consistent with the decisions in the cases cited. The principle of the cases cited is that a false statement cannot be remedied by a disclaimer or other qualifying language. However, the words "potato chips," when applied to the restructured product, are not false, but incomplete. Additional words are necessary to describe the food informatively. Similarly, use of the word "potato" on a package of potato chips is not unlawful on the ground that the word "potato" is a false statement that cannot be remedied by addition of the qualifying word "chip"; it is simply incomplete. Under the theory suggested by the comment, no food's name could contain any word used in the name of another food.

5. One comment noted that the Food and Drug Administration had reviewed the labeling and product identity designation of a restructured potato chip product shortly after its introduction and concluded that it could properly be designated as "potato chips" if that designation were accompanied by a "prominent declaration" regarding the use of dried potatoes. The comment stated that this position is reflected in section 7210.2 of the Compliance Policy Guidance System of the Food and Drug Administration, issued on July 8, 1969. The comment argued that there was no justification for reopening the issue at this time under the subsequently created common or usual name procedure.

The Commissioner notes that the initial decision with respect to the proper common or usual name for this new product was reached without benefit of opportunity for public comment. The Commissioner concludes that such decisions are made through the process of rule making, and that the earlier decision made prior to the development of the procedure for establishing common or usual names by regulation should be no bar to a full review at this time.

In accordance with the provisions of the regulation adopted, this order also revokes § 7210.2 of the Compliance Policy Guidance System.

6. One comment referred to the statement in a petition that in markets where both types of potato chip products are sold, the product made from dehydrated potatoes has as much as 25 percent of the market, and contended that this statistic was evidence of consumer acceptance of the product and an indication that there is no evidence of consumer confusion, deception, or concern regarding the quality of these products or their labeling.

The Commissioner concludes that a product's market share provides little evidence on whether or not a product's labeling is misleading. Contrary to the comment's contention, in the case of a new product that resembles an established product, a large market share may indeed indicate consumer deception.

7. One comment, arguing that "potato chip" is the common or usual name for slices of raw potato fried until crisp, quoted dictionary definitions of "potato chip," dated as early as 1909, to establish that "potato chip" had acquired such a meaning. The comment also cited court decisions that have referred to dictionary definitions to establish the meaning of a term, and argued that the Food and Drug Administration was therefore obliged to take the dictionary definitions into account. The comment contended that no dictionary has ever defined "potato chip" as a food made from dried or dehydrated potatoes.

Another comment argued, to the contrary, that dictionary definitions are always behind the times, since they describe usage current when the dictionary was prepared.

The Commissioner concludes that there is no inconsistency between the dictionary definitions referred to and the common or usual name established. The common or usual name established for the product made from dehydrated potatoes consists of more than the term "potato chip." The additional qualifying words fully describe the food, and distinguish it from the product made from raw potatoes.

Moreover, the dictionary definitions cited by the comment support the Commissioner's action by pointing up the similarities between the products made from raw and dehydrated potatoes. Besides the characteristic of having been made from a slice of potato, the dictionary definitions cited in the comment identify several other characteristics of a "potato chip": That it is made from potato, that it is thin, that it is fried crisp, and, in some definitions, that it is salted. According to the cited dictionary definitions, the traditional and restructured products have many more characteristics in common than they have differences. In these circumstances, the Commissioner's conclusion that the term "potato chip" should be used for both, and that one should have additional descriptive terms, is fully justified.

8. One comment submitted the results of a consumer survey asking how "potato chips" are made. Of the 1,020 consumers surveyed, 72 percent said they were made from slices of raw or fresh potato, 2 percent said they were made from dehydrated buds, flakes, or granules, and most of the rest did not mention a form. The comment argued that the conclu-

sion to be drawn from the survey is that the term "potato chips" applied to any product not made from slices of raw or fresh potato is misleading to the vast majority of consumers. The comment also argued the conclusion that the survey demonstrates that the term "potato chips" without any qualifying statement accurately defines the product made from slices of raw potato.

The Commissioner agrees that the survey shows consumers understand the term "potato chips" to mean the product made from slices of raw potato. Consequently, the Commissioner has not established a common or usual name for potato chips made from raw potatoes that includes any qualifying phrase. This product will continue to be known as "potato chips." The Commissioner does not agree with the comment's conclusion that the survey shows that the term "potato chips" would be misleading if made part of any name applied to a product other than that made from raw potatoes. The survey results simply reaffirm the basis for the common or usual name established. That is, that the term "potato chip" is misleading without a qualifying phrase in the case of the product made from dehydrated potatoes.

9. One comment enclosed copies of advertisements from the 1890's using the term "potato chips" and argued that long usage of the term prohibited its use for a product made from dehydrated potatoes.

The Commissioner agrees that use of the name "potato chips" for a product made from dehydrated potatoes is inappropriate and misleading without the qualification required by this regulation.

10. One comment presented the results of a survey in which 300 consumers were shown (among other products) a filled bag labeled "potato chips made from dried potatoes." The respondents in the survey were then given three cards, each describing a manufacturing process. The results were that 45 percent of those surveyed thought that the product was made from raw slices of potato, 44 percent thought it was made from dried slices of potato, and 14 percent thought the product was made from dehydrated potato buds, flakes, or granules. The comment argued from the results of the survey that the proposed common or usual name fails to enable consumers to distinguish the products from traditional potato chips or to understand its characterizing properties. The comment presented the results of another similar survey in which labeling on the product was "potato chips made from dehydrated potato granules." The results of that survey were that 37 percent thought the product was made of raw slices of potato, 18 percent thought the product was made from dried slices, and 46 percent thought it was made from potato buds, granules, or flakes. The comment argued from the results of these two surveys that the descriptive statement "made from dehydrated potato granules" is substantially more effective in informing consumers than the phrase "made from dried potatoes." In addition, the comment argued that since 37 percent of the consumers failed to distinguish the product from the traditional potato chips made from slices of raw potato, no qualifying statement was adequate to distinguish the product when the term "potato chips" was part of it.

The Commissioner concludes that the phrase "made from dehydrated potato granules" should not be substituted for the phrase "made from dried potatoes" even if it might more accurately convey the precise nature of the manufacturing process used. Because the finished food is not in the shape of granules, but rather in the shape of chips, an emphasis on the granulated nature of the potato ingredient is unnecessary. The Commissioner concludes that identifying the product as one made from dried potatoes is sufficient to distinguish the product from traditional potato chips. Moreover, the qualifying phrase suggested by the comment is considerably longer than the phrase adopted in the regulation. The Commissioner concludes that package labeling space, especially where scant, should not be burdened with required words not necessary to an informative description of the food.

The Commissioner is of the opinion that no relevant conclusion can be drawn from the fact that many consumers surveyed who looked at a bag labeled "potato chips made from dried potatoes" or "potato chips made from dehydrated potato granules" decided that the product was made from raw potatoes. It is obvious that these consumers did not examine the words on the package but instead relied on the prominent vignette or on the product package, which was identical to that for traditional potato chips. The Commissioner notes that the survey apparently did not examine other possible names, such as "potato snacks," to determine whether consumer recognition of the difference between the product shown and traditional potato chips would have been improved. The Commissioner concludes that labeling cannot be expected to inform consumers fully who do not read it, and that the common or usual name adopted will adequately explain the nature of the food to any consumer who examines the label.

11. One of the petitions leading to the Commissioner's proposal stated that "Consumer research * * * has shown that the overwhelming majority of consumers voluntarily recognize and accept [restructured] products as 'potato chips,' even when put on direct notice of the processing difference versus the other potato chips."

The Commissioner agrees that the restructured product is similar enough to the traditional product, as is evident from the consumer research cited, that the term "potato chips" should remain part of the name. Additional terms are necessary for a full description, however.

12. One comment stated that the Food and Drug Administration has consistently taken the position that "potato chips" are made from raw potatoes, and that consumers would be deceived by calling products made from dehydrated potatoes "potato chips." The comment enclosed letters from Food and Drug Administration officials stating that position.

The Commissioner notes that this regulation is consistent with the earlier opinions. Use of the term "potato chips" alone, without the qualifying terms required by this regulation, to label a product made from dehydrated potatoes renders that product misbranded.

13. One comment criticized the proposals of Proctor & Gamble and General Mills, proposing that common or usual names be established both for the product made from slices of raw potatoes and for the product made from dehydrated potatoes. The comment contended that establishing a common or usual name for the product made from slices of raw potato by regulation was unnecessary because the product already has a recognized common or usual name.

The Commissioner agrees with this comment. The Commissioner concludes that the term "potato chips" without any qualifying phrase is well understood by consumers to mean the product made from slices of raw potatoes and that no qualifying phrase is necessary.

14. One comment requested that the word "dried" be substituted for the word "dehydrated" in the proposed common or usual name on the grounds that it is as accurate, that it is probably more understandable to consumers, and that it would not take up as much labeling space.

The Commissioner agrees with the comment and has revised the regulation accordingly.

15. One comment objected to the requirement in the proposal that potato chips made from dehydrated potatoes contain a quantity of potatoes not less than that contained in potato chips made from raw potatoes. The comment stated that the requirement would preclude the addition of ingredients that would improve the flavor, color, texture, and nutritive value of the product. The comment further stated that allowing such ingredients would permit the manufacture of products having improved protein, vitamin, and mineral content, which would be superior to the product made from raw potatoes.

A comment contended that the proposed regulation, which characterized the product as "formed into the shape of traditional potato chips," was inaccurate as applied to a currently sold particular product made of dehydrated potatoes. The comment stated that the product differs significantly in that the chips are of a uniform size and shape. The comment suggested that the food product be defined as one made from dried potatoes which are thinly formed and deep fat fried.

The Commissioner advises that a common or usual name regulation is not intended to prescribe the composition of a product. Instead, its purpose is to establish a name for a food that is appropriately descriptive. It was not the intention of the proposal, which required that the restructured food contain a quantity of potatoes not less than that contained in potato chips made from raw potatoes, to prescribe the content of the food. Instead, the intent was to limit use of the

name "potato chips made from dehydrated potatoes" to those foods that differed from traditional potato chips only because the form of potato used was different. The final regulation clarifies this intention. Other types of potato products might be marketed containing less potato or different ingredients than found ordinarily in traditional potato chips, but they would be required to have a descriptive name other than the one established by this regulation; e.g., "potato snacks" might be appropriate for such a product. Because the emphasis of this regulation is on the difference between the restructured food and the traditional food, the regulation adopted describes only the difference and does not attempt to describe the product completely. Thus, the suggestion that the product be defined as one made from dried potatoes which are thinly formed and deep fat fried is inappropriate, because such a description is incomplete and at the same time unnecessary.

The Commissioner advises that proposed rules governing the fortification of foods with protein, vitamins, and minerals were published in the FEDERAL REGISTER of June 14, 1974 (39 FR 20900). The fortification of potato products will be subject to those regulations when they are finalized.

16. One comment submitted a package of an experimental product manufactured to illustrate a type of potato product that can be made "resembling potato chips." In fact the product did not resemble potato chips at all; it was much thicker and smaller and not of the familiar shape of potato chips. The point of the comment was that a product that in fact does not resemble potato chips would be permitted to be called "potato chips" under the common or usual name established in this regulation.

The Commissioner concludes that the product sample submitted does not resemble potato chips and could not be called "potato chips made from dried potatoes." The regulation clearly states that the only permissible difference between the old and new products is that one is made from dehydrated potatoes.

17. One comment was concerned about ingredients added to the restructured product that are not found in the "similar product made from sliced whole potatoes." Another comment questioned whether all the ingredients in the restructured product must be the same as those in traditional potato chips.

The Commissioner advises that the common or usual name established does not recognize the addition of ingredients to the potato chips other than those appropriately used in potato chips made from slices of raw potatoes and those ingredients related to the use of potato in its dehydrated form, e.g., binders used to hold together the particles of dehydrated potato. As with any other food product, including potato chips made from slices of raw potatoes, safe ingredients may be added for their functional effect. Such ingredients are required to be declared in the statement of ingredients on each package.

18. One comment contended that because the minimum type size for the qualifying language ("made from dried potatoes") is required to be one-half the size of the words "potato chips," the potential "clearly exists for the declaration to be excessively large." The comment stated that since potato chips made from dehydrated potatoes may be packed in a cylindrical cannister (a type of container not associated with potato chips), it is essential that the generic name be prominently displayed. Moreover, the comment contended, because of the large lettering typically used on the large bags of potato chips made from raw potatoes, the cannisters are required to carry a large generic designation in order to achieve the same degree of prominence as that achieved by the larger bagged products with their larger size labeling. Furthermore, the comment contended, because potato chip products are often on separate individual racks in a variety of different locations within a single store, it is necessary to have a highly prominent generic name to locate the product for consumers. Since the generic name is required to be large, the comment contended that the size of the qualifying language would so unduly emphasize the form of ingredient used as to suggest to the consumer that products made from dehydrated potatoes are compositionally or nutritionally inferior to the traditional product. The comment also suggested that the prominence required by the proposal might mislead consumers into believing that the food was not fully prepared and ready to eat because they associate dehydrated potatoes with the preparation of packaged mashed potatoes in the home.

Comments contended that the requirement that the qualifying phrase be half the size of the words "potato chips" was inconsistent with minimum sizes provided for by other Federal labeling requirements. They urged that the qualifying phrase be the size of the net weight statement required under the Fair Packaging and Labeling Act. One comment stated that the minimum size of the net content declaration on a particular current package of restructured potato chips is three-sixteenth inch in height under the Fair Packaging and Labeling Act and that the signal word for warnings required under the Federal Hazardous Substances Act for that size package would also be three-sixteenths inch in height; the comment stated that, given the current size of words "potato chips" on the package, the required qualifying phrase in the common or usual name would have to be about eleven-sixteenths inch in height.

One comment contended that the size of the qualifying statement should be related not merely to the size of the introductory words in the common or usual name but also to the size of the principal display panel. The comment contended that on a large package with a large vignette showing the product, the common or usual name including the qualifying phrase is meaningless in relation to the prominence of the vignette and size of the package. The comment urged that the initial words be required to appear on the label in boldface type not less than one-half inch in height on packages having a principal display panel with an area of 25 square inches or less, not less than five-eighths inch in height if the area of the principal display panel is more than 25 square inches and not more than 75 square inches, and not less than three-fourths inch in height if the area of the principal display panel is more than 75 square inches.

The Commissioner concludes that the size of the qualifying phrase "made from dried potatoes" is properly related to the size of the words "potato chips." Thus, the situation is unlike that of the net weight statement or required warnings, where the required statements are basically unrelated to other statements on the label. The required size of the net weight statement ensures that the statement is prominent with respect to the package. In the case of the qualifying statement "made from dried potatoes," however, the Commissioner does not seek to establish prominence with respect to the package, but rather prominence with respect to the words it qualifies, i.e., "potato chips." The most familiar example of congressional judgment on the relative size of a phrase in labeling that is required to be prominent with respect to another phrase in the same labeling is contained in section 502(e) of the act (21 U.S.C. 352(e)). That section requires that the established name of a prescription drug appear in type at least half as large as that used for the proprietary name. Based on agency experience in reviewing labeling statements for sufficient prominence, the Commissioner agrees with this congressional judgment on relative sizes of related labeling phrases. Consequently, the Commissioner concludes that it is appropriate and reasonable that the qualifying phrase "made from dried potatoes" appear in type one-half the size of the words "potato chips."

At the same time, a minimum type size, depending on the size of the package, is specified in the regulation. The Commissioner concludes that this provision is appropriate to ensure that labeling does not mislead consumers as to the identity of the food through use of a prominent vignette and inconspicuous lettering.

The Commissioner is not persuaded that it would be appropriate to reduce the required size of the qualifying phrase because the words "potato chips" commonly appear in very large letters on canisters of the restructured potato chip product. On the contrary, the common use in large letters of the words "potato chips" on restructured potato chip products emphasizes the need for qualifying words with a sufficient degree of prominence to obtain the same consumer attention that the large letters of the words "potato chips" are intended to attract.

The Commissioner concludes that the large letters of the qualifying language would not suggest that the products are

compositionally or nutritionally inferior. The qualifying phrase indicates that the restructured product is compositionally different, which is the intention of the required phrase. If the product were nutritionally inferior, it would be required to be labeled as an "imitation" in accordance with § 1.8(e) (21 CFR 1.8(e)).

The Commissioner does not agree that the prominence of the required qualifying phrase might lead consumers to believe that the food is not ready to eat. Potato chip products that need further preparation before eating are unknown, and there is no reason to believe that consumers would interpret the name required by this regulation as indicating that the package contains such a food. Moreover, use of the word "dried" in the name established, rather than "dehydrated" as proposed, should eliminate any confusion with mashed potatoes made from dehydrated potatoes.

19. One comment urged that the requirement for type size be specified in the regulation establishing the common or usual name rather than by cross-reference to § 102.1 (21 CFR 102.1).

The Commissioner agrees with this comment. Since the existing requirements in § 102.1 refer to percentage declarations, it would be confusing to adopt the type-size requirements by cross-reference.

20. The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the FDA environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a))) and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered*, That

1. Part 102 of Chapter I of Title 21 of the Code of Federal Regulations is amended by adding a new § 102.17 to read as follows:

§ 102.17 Potato chips made from dried potatoes.

(a) The common or usual name of the food product that resembles and is of the same composition as potato chips, except that it is composed of dehydrated potatoes (buds, flakes, granules, or other form), shall be "potato chips made from dried potatoes."

(b) The words "made from dried potatoes" shall immediately follow or appear on a line(s) immediately below the words "potato chips" in easily legible boldface print or type in distinct contrast to other printed or graphic matter, and in a height not less than the larger of the following alternatives:

(1) Not less than one-sixteenth inch in height on packages having a principal display panel with an area of 5 square inches or less and not less than one-eighth inch in height if the area of the principal display panel is greater than 5 square inches; or

(2) Not less than one-half the height of the largest type used in the words "potato chips."

2. Section 7210.2 of the Compliance Policy Guidance System, issued on July 8, 1969, is revoked.

Effective date. All products shipped in interstate commerce after December 31, 1977, shall comply with this regulation.

(Secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a)).)

Dated: November 15, 1975.

SHERWIN GARDNER,
Deputy Commissioner of Food and Drugs.

[FR Doc.75-31456 Filed 11-21-75;8:45 am]

federal register

MONDAY, NOVEMBER 24, 1975

PART IV:

FEDERAL ELECTION COMMISSION

■

ADVISORY OPINION PROCEDURE

Notice of Proposed Rulemaking

Digest

FEDERAL ELECTION COMMISSION

[11 CFR Part 114]

[Notice 1975–80]

ADVISORY OPINION PROCEDURE

Notice of Proposed Rulemaking

The Federal Election Commission today publishes proposed regulations covering the issuance of Advisory Opinions by the Commission, 2 U.S.C. section 434f.

Comment period. Interested parties are invited to submit written comments on these proposed regulations to the Rulemaking Section, Office of the General Counsel, Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463. Comments should be received on or before December 24, 1975.

Hearings. The schedule for public hearings on the proposed regulation will be published in the near future.

Effective date. These regulations shall become effective on a date specified in a future notice published in the FEDERAL REGISTER, which effective date shall not be less than 30 calendar days after the date of this notice of proposed rulemaking, nor before approval by the United States Congress.

It is proposed to add Part 114 to 11 CFR Chapter I to read as follows:

PART 114—ADVISORY OPINION PROCEDURE

Sec.

AUTHORITY: 2 U.S.C. 434f.

§ 114.1 Requests for advisory opinions.

(a) Any (1) Federal officeholder; (2) candidate for Federal office; or (3) political committee may request an advisory opinion in wirting with respect to whether any specific transaction or activity by that Federal officeholder, candidate or committee would constitute a violation of the sections of law cited in § 114.4(b). An agent may request an opinion on behalf of a principal if the agent discloses the identity of that principal.

(b) Requests shall include all facts relevant to the specific transactions or activities with respect to which the request is made.

(c) Advisory opinion requests may be sent to the Federal Election Commission, Office of General Counsel, Advisory Opinion Section, 1325 K Street, NW., Washington, D.C. 20463.

(d) Upon receipt by the Commision, each advisory opinion request (AOR) shall be assigned an AOR number, reflecting the year and sequence of receipt.

§ 114.2 Publication of requests.

(a) Advisory opinion requests submitted under § 114.1 shall be published in the FEDERAL REGISTER.

(b) Publication shall be either in the form originally submitted or in an edited or paraphrased form, as the Commission considers appropriate.

(c) Any interested person may inspect a copy of the original request, except when such request involves a compliance action, at the Federal Election Commission, Public Records Division, 1325 K Street, NW., Washington, D.C. 20463, telephone (202) 382–7012.

§ 114.3 Public comment.

(a) Interested persons are invited to submit written comments concerning published advisory opinions requests.

(b) Written comments may be submitted within 15 calendar days of the date of publication in the FEDERAL REGISTER.

(c) Comments on advisory opinion requests should refer to the AOR number of the request, and statutory references should be to the United States Code citations, rather than to Public Law citations.

(d) Additional time in which to comment may be granted upon written request or in the discretion of the Commission.

(e) Written comments and requests for additional time to comment shall be sent to the Federal Election Commission, Office of General Counsel, Advisory Opinion Section, 1325 K Street NW., Washington, D.C. 20463.

(f) All timely comments received by the Commission shall be considered by the Commission before it issues an advisory opinion.

§ 114.4 Preliminary discussion of advisory opinion requests.

The Commission shall preliminarily discuss each pending Advisory Opinion Request in public session prior to the circulation of any draft opinion.

§ 114.5 Issuance of advisory opinions.

(a) After considering all comments submitted, the Commission shall issue advisory opinions within a reasonable time.

(b) The Commission shall issue advisory opinions concerning only the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. section 431–456, 26 U.S.C. sections 9001–9012, 9031–9042, and 18 U.S.C. sections 608, 610, 611, 613, 614, 615, 616, or 617.

(c) Advisory opinions shall be published in the FEDERAL REGISTER and sent by certified or registered mail, return receipt requested, to the person who submitted the request.

§ 114.6 Effect of advisory opinions.

Any person to whom an advisory opinion is issued under this part, and who acts in good faith in accordance with the provisions and findings of the advisory opinion, shall be presumed to be in compliance with the applicable sections of law with respect to which the advisory opinion is issued.

§ 114.7 Reconsideration of advisory opinions.

The Commission may reconsider advisory opinions upon written request by the party originally submitting the request.

Dated: November 18, 1975.

NEIL STAEBLER,
Vice Chairman for the Federal Election Commission.

[FR Doc.75–31582 Filed 11–21–75;8:45 am]

federal register

MONDAY, NOVEMBER 24, 1975

PART V:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

■

EQUAL EMPLOYMENT OPPORTUNITY

Proposed Policy and Procedures

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[24 CFR Part 7]

Office of the Secretary

[Docket No. R-75-361]

EQUAL EMPLOYMENT OPPORTUNITY

Proposed Policy and Procedures

Notice is hereby given that the Department of Housing and Urban Development proposes to amend its regulations relating to equal employment opportunity by revising the existing provisions in 24 CFR Part 7, Subpart A, and adding a new Subpart B to carry out the policy of nondiscrimination based on age in Pub. L. 93-259. These proposed amendments are being published to make the Department's regulations consistent with the present regulations of the Civil Service Commission which have been revised to implement the Equal Employment Opportunity Act of 1972, 86 Stat. 103, and to strengthen the system of discrimination complaint processing. They are designed to assure employees and applicants of their right to fair and fast adjudication of discrimination complaints and to assure that the Department moves affirmatively in accordance with the law in effecting equal employment opportunity for all persons.

Interested persons are invited to participate in the making of the proposed rule by submitting written data, views or statements. Comments should be filed with the Rules Docket Clerk, Office of General Counsel, Room 10245, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. All relevant material received on or before December 26, 1975, will be considered before adoption of final rules. Copies of comments will be available for examination during business hours at the above address.

1. Subpart A is amended to read as follows:

Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, or National Origin

GENERAL PROVISIONS

Sec.

AUTHORITY: Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535 (d); E.O. 11478, 34 FR 12985.

Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, or National Origin

GENERAL PROVISIONS

§ 7.1 Policy.

In conformity with the policy expressed in Executive Order 11478 and with implementing regulations of the Civil Service Commission, codified under 5 CFR Part 713, it is the policy and intent of the Department of Housing and Urban Development to provide equality of opportunity in employment in the Department for all persons; to prohibit discrimination because of race, color, religion, sex, or national origin in all aspects of its personnel policies, programs, practices, and operations and in all its working conditions and relationships with employees and applicants for employment; and to promote the full realization of equal opportunity in employment through continuing programs of affirmative action at every management level within the Department.

§ 7.2 Definitions.

(a) For the purpose of this subpart, organizational unit means the jurisdictional area of the Office of the Secretary; the General Counsel; each Assistant Secretary; the Federal Insurance Administrator; Inspector General; Federal Disaster Assistance Administrator; General Manager, New Community Development Corporation; President, Government National Mortgage Association; Interstate Land Sales Administrator; and each Regional Administrator. For the purpose of this subpart the jurisdictional area of each Regional Administrator includes all HUD Area Offices and HUD-FHA Insuring Offices within the region.

(b) The term "EEO" as used herein, means Equal Employment Opportunity.

§ 7.3 Designations.

(a) Director of Equal Employment Opportunity. The Assistant Secretary for Equal Opportunity is designated the Director of EEO.

(b) Deputy Director of Equal Employment Opportunity. The Deputy Assistant Secretary for Equal Opportunity is designated the Deputy Director of EEO.

(c) Equal Employment Opportunity Officers. The General Counsel; each Assistant Secretary; the Federal Insurance Administrator; Inspector General; Federal Disaster Assistance Administrator; General Manager, New Community Development Corporation; President, Government National Mortgage Association; Interstate Land Sales Administrator; and each Regional Administrator shall be the EEO Officer for his/her organizational unit. The Executive Assistant to the Secretary shall be the EEO Officer for the Office of the Secretary.

(d) Equal Employment Opportunity Counselors. Each EEO Officer, with the concurrence of the Director of EEO, shall designate a sufficient number of EEO Counselors for his/her organizational unit.

§ 7.4 Affirmative Action Programs.

The General Counsel; each Assistant Secretary; the Federal Insurance Administrator; Interstate Land Sales Administrator; Inspector General; Federal Disaster Assistance Administrator; General Manager, New Community Development Corporation; President, Government National Mortgage Association; the Executive Assistant to the Secretary; and each Regional Administrator, Area Office Director, and HUD-FHA Insuring Office Director shall establish, maintain, and carry out a plan of affirmative action to promote equal opportunity in every aspect of the Department's personnel policy and practice in employment, development, advancement, and treatment of employees. Each plan is subject to approval by the Director of EEO and shall be developed within the framework of department-wide guidelines published by the Director of EEO. Under the terms of this program, the Department shall:

(a) Provide sufficient resources to administer its equal employment opportunity program in a positive and effective manner and assure that the principal and operating officials responsible for carrying out the equal employment opportunity program meet established qualification requirements; and

(b) Conduct a continuing campaign to eradicate every form of prejudice or discrimination based upon race, color, religion, sex or national origin, from the Department's personnel policies and working conditions.

RESPONSIBILITIES

§ 7.10 Responsibilities of the Director and Deputy Director of EEO.

The Director and Deputy Director of EEO are assigned the functions of:

(a) Advising the Secretary with respect to the preparation of national and regional equal employment opportunity plans, procedures, regulations, reports, and other matters pertaining to the policy in § 7.1 and the Department program required to be established under § 7.4;

(b) In coordination with other officials, developing and maintaining plans, procedures, and regulations necessary to carry out the Department's EEO program, including a department-wide program of affirmative action developed in coordination with other officials; approving programs of affirmative action established throughout the Department;

(c) Evaluating from time-to-time the sufficiency of the Department's EEO program and reporting thereon to the Secretary with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibility;

(d) Appraising the Department's personnel operations at regular intervals to insure their conformity with the policy of the Government and the Department's equal employment opportunity program;

(e) Making changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO program;

(f) Providing for counseling by an EEO Counselor of an aggrieved employee or applicant for employment who believes that he/she has been discriminated against because of race, color, religion, sex, or national origin, and for attempting to resolve on an informal basis the matter raised by the employee or applicant before a complaint of discrimination may be filed under § 7.31;

(g) Providing for the receipt and investigation and for the prompt, fair, and impartial consideration and disposition of individual complaints involving issues of discrimination within the Department subject to §§ 713.211 through 713.222 of the Regulations of the Civil Service Commission, codified under 5 CFR Part 713 and §§ 7.25 through 7.40 of this Part;

(h) Providing for the receipt, investigation, and disposition of general allegations by organizations or other third parties of discrimination in personnel matters within the Department subject to § 7.70;

(i) Making the final decision on discrimination complaints and ordering such corrective measures as he/she may consider necessary, including the recommendation for such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice;

(j) Concurring in the designation of EEO Counselors by each EEO Officer.

(k) Insuring that equal opportunity for women is an integral part of the Department's overall program by assigning to the Federal Women's Program Coordinators the function of advising the Director of EEO on matters affecting the employment and advancement of women.

(l) Making readily available to employees a copy of the regulations issued to carry out the program of equal employment opportunity;

(m) Submitting annually for review and approval of the Civil Service Commission written EEO plans of action established throughout the Department; and

(n) Providing recognition to employees, supervisors, managers and units demonstrating superior accomplishment in equal employment opportunity.

§ 7.11 Responsibilities of the EEO Officers.

Each EEO Officer shall:

(a) Advise the Director or Deputy Director of EEO on all matters affecting the implementation of the Department's EEO policy and program in his/her organizational unit;

(b) Develop and maintain a program of affirmative action for his/her organizational unit and insure that it is carried out in an exemplary manner;

(c) Serve as processing officer for discrimination complaints and keep the Director or Deputy Director of EEO informed of significant developments;

(d) Refer complaints of discrimination, filed under this Part, at the regional level, to the Assistant Regional Administrator for Equal Opportunity for processing under this Part;

(e) Publicize to all employees of the organizational unit for which he/she is responsible the name and address of the Director and Deputy Director of EEO, the EEO Officer, the EEO Counselors, and Federal Women's Program Coordinators;

(f) Inform all supervisors in the organizational unit of the responsibilities and objectives of the EEO Counselor and of the importance of cooperating with him/her in the effort to informally find solutions to problems brought to his/her attention by employees and applicants; and

(g) Review the activities of the EEO Counselors in the organizational unit as well as furnish guidance and otherwise assist them in their work.

§ 7.12 Responsibilities of EEO Counselors.

The EEO Counselors are responsible for counseling, in accordance with § 7.26, any employee or applicant for employment who believes that he/she has been discriminated against because of race, color, religion, sex, or national origin.

§ 7.13 Responsibilities of the Assistant Secretary for Administration.

The Assistant Secretary for Administration shall:

(a) Provide leadership in developing and maintaining personnel management policies, programs, and procedures which will promote continuing affirmative action to insure equal opportunity in the recruitment, selection, placement, training, promotion of employees;

(b) Provide positive assistance and guidance to organizational units and personnel offices to insure effective implementation of the personnel management policies, programs, and procedures on equal employment opportunity; and

(c) Participate at the national and community level with other Government departments and agencies, other employers, and other public and private groups, in a cooperative action to improve employment opportunities and community conditions that affect employability.

§ 7.14 Responsibilities of Personnel Officials.

In conformity with guidelines issued by the Director of Personnel of the Department, personnel officials designated by the Director shall:

(a) Appraise job structure and employment practices to insure genuine equality of opportunity for all employees to participate fully on the basis of merit in all occupations and levels of responsibility;

(b) Communicate the Department's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, or national origin, and solicit their recruitment assistance on a continuing basis;

(c) As appropriate, provide personnel information to complainants, complainants' representatives, counselors, and others who are involved in a discrimination complaint;

(d) Evaluate hiring methods and practices to insure fair and impartial consideration for all job applicants;

(e) Insure that new employee orientation programs contain appropriate references to the Department's EEO policies and programs.

(f) Participate in the preparation and distribution of such educational materials as may be necessary to inform adequately all employees of their rights and responsibilities as described in this chapter, including the Department's directives issued to carry out the Equal Employment Opportunity Program;

(g) Develop an on-going training program for various levels of administration and supervision, to insure understanding of the Departmental EEO procedures and practices; and

(h) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs, and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;

§ 7.15 Responsibilities of the Assistant Regional Administrators for Equal Opportunity.

Each Assistant Regional Administrator for Equal Opportunity is responsible for advising and assisting the Regional Administrator in carrying out all aspects of the EEO program, including:

(a) Appraising the equal employment opportunity program in the jurisdic-

tional area of the Regional Administrator;

(b) Conducting reviews and making special studies; and

(c) Processing complaints of discrimination in employment in accordance with the functional requirements pursuant to the provisions of §§ 7.25 through 7.38 of this subpart.

§ 7.16 Responsibilities of Supervisors.

Supervisors shall: (a) Keep informed on current EEO policies, plans, and procedures;

(b) Provide positive leadership and support for the EEO program;

(c) Maintain relationships with all those supervised in a manner that fosters effective teamwork and high morale, and provide communication with employees on any matter related to equal employment opportunity.

(d) Take all personnel actions on merit principles and in a manner which will demonstrate affirmative equal employment opportunity for the supervisor's organization;

(e) Utilize to the fullest extent the present skills of employees by all means, including redesigning of jobs where feasible so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements;

(f) Insure that the staff member selected by the EEO Officer to be the EEO Counselor is given sufficient official time to carry out his/her duties;

(g) Promptly take or recommend appropriate action to overcome any impediment to the achievement of the objectives of the EEO program; and

(h) Make reasonable accommodations to the religious needs of applicant and employees, including the needs of those who observe the Sabbath on other than Sunday, when those accommodations can be made (by substitution of another qualified employee, by a grant of annual leave, compensatory time, a change of a tour of duty or other means) without undue hardship on the business of the Department. If the Department cannot accommodate an employee or applicant, it has a duty in a complaint arising under this subpart to demonstrate its inability to do so.

§ 7.17 Responsibilities of employees.

All employees of the Department are responsible for: (a) Being informed as to the Department's EEO Program;

(b) Adopting an attitude of full acceptance of minority group associates;

(c) Providing equality of treatment of, and service to, all citizens with whom they come in contact in carrying out their job responsibilities; and

(d) Providing assistance to supervisors and managers in carrying out their responsibilities in the EEO Program.

§ 7.18 Responsibilities of Federal Women's Program Coordinators.

The Federal Women's Program Coordinators are responsible for advising the Director of EEO on matters affecting the employment and advancement of women.

PRECOMPLAINT PROCESSING

§ 7.25 Who may request counseling.

An aggrieved person who believes that he/she has been discriminated against by the Department because of race, color, religion, sex, or national origin, and who wishes to resolve the matter, shall consult with an appropriate EEO Counselor.

§ 7.26 The EEO Counselor.

The EEO Counselor shall:

(a) Make whatever inquiry into the matter he/she believes necessary;

(b) Seek a solution of the matter on an informal basis;

(c) Counsel the aggrieved person concerning the issues in the matter;

(d) Insofar as practicable, conduct his/her final interview with the aggrieved person not later than 21 calendar days after the date on which the matter was called to his/her attention by the aggrieved person;

(e) If the final interview is not concluded within 21 days and the matter has not previously been resolved to the satisfaction of the aggrieved person, inform the aggrieved person in writing at that time of his/her right to file a complaint of discrimination. The notice shall inform the complainant of his/her right to file a complaint at any time after receipt of the notice up to 15 calendar days after the final interview (which shall be so identified in writing by the EEO Counselor) and the appropriate officials with whom to file a complaint;

(f) Keep a record of his/her counseling activities so as to be able to periodically brief the appropriate EEO Officer on those activities;

(g) When advised that a complaint of discrimination has been received from an aggrieved person, submit a written report to the EEO Officer, with a copy to the aggrieved person, concerning the issues in the matter;

(h) Not reveal the identity of an aggrieved person who has come to him/her for consultation, except when authorized to do so by the aggrieved person until the Department has accepted a complaint of discrimination from him/her;

(i) Upon acceptance by the Department of a complaint of discrimination from an aggrieved person, be relieved of further counseling responsibility with respect to the matter; and

(j) Be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of his/her duties.

COMPLAINTS PROCESSING

§ 7.30 Presentation of complaint.

(a) At any stage in the presentation of a complaint, including the counseling stage, the complainant shall be free from restraint, interference, coercion, discrimination or reprisal and shall have the right to be accompanied, represented, and advised by a representative of his/her own choosing. If the complainant is an employee of the Department, he/she shall have a reasonable amount of official time to present his/her complaint if he/she is otherwise in an active duty status. If the complainant is an employee of the Department and he/she designates another employee of the Department as his/her representative the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have a reasonable amount of official time, if he/she is otherwise in an active duty status, to present the complaint.

(b) Sections 7.25 through 7.45 do not apply to the consideration of a general allegation of discrimination by an organization or other third party which is unrelated to an individual complaint of discrimination subject to §§ 7.25 through 7.45. (Section 7.70 applies to general allegations by organizations or other third parties.)

§ 7.31 Who may file a complaint, with whom filed, and time limits.

(a) Any aggrieved person (hereafter referred to as the complainant) who has observed the provisions of § 7.25 may file a signed complaint if the matter of discrimination was not resolved to his/her satisfaction. A complaint may also be filed by an organization acting for the complainant with his/her consent. The Department may accept a complaint only if the complainant:

(1) Brought to the attention of the EEO Counselor the matter causing him/her to believe he/she has been discriminated against within 30 calendar days of the date of the matter; or, if a personnel action, within 30 calendar days of its effective date, and

(2) Submitted his/her complaint in writing to the appropriate EEO Official within 15 calendar days of the date of his/her final interview with the EEO Counselor.

(b) The appropriate officials to receive complaints are the Secretary of HUD, the Director of Equal Employment Opportunity, Area Office Director, Insuring Office Director, an Equal Employment Opportunity Officer, a Federal Women's Program Coordinator, a Spanish Speaking Coordinator, and an Indian Program Coordinator. Upon receipt of the complaint, the Department Official shall transmit it to the appropriate EEO Officer, who shall acknowledge its receipt in accordance with paragraph (c) of this section.

(c) A complaint shall be deemed filed on the date it is received, if delivered to an appropriate official, or on the date postmarked if addressed to an appropriate official designated to receive complaints. All complaints shall be forwarded to the appropriate EEO Officer who shall acknowledge to the complainant or his/her representative in writing receipt of the complaint, and advise the complainant in writing of all of his/her administrative rights and of his/her right to file a civil action as set forth in § 7.101, including the time limits imposed on the exercise of these rights.

(d) The EEO Officer shall extend the time limits in this section:

(1) When the complainant shows that he/she was not notified of the time limits and was not otherwise aware of them, or

that he/she was prevented by circumstances beyond his/her control from submitting the matter within the time limits; or

(2) For other reasons considered sufficient by the EEO Officer.

(e) A complaint concerned with a continuing discriminatory practice having a material bearing on employment may be filed at any time.

(f) The Department will also accept from organizations or other third parties general allegations of discrimination in personnel matters which are unrelated to an individual complaint of discrimination subject to § 7.70.

(g) The right to withdraw a complaint at any stage is assured.

§ 7.32 Contents.

(a) In order to expedite the processing of complaints of discrimination, the complainant should be urged to include in his/her complaint the following information:

(1) Whether the alleged discrimination is based upon race, color, religion, sex, or national origin.

(2) The specific action or personnel matter about which the complaint is made.

(3) Facts and other pertinent information to support the allegation of discrimination.

(4) The relief desired.

(b) In no event shall the lack of complete information at the time of filing constitute grounds for refusal by the Department to accept a complaint.

(c) The written complaint need not conform to any particular style or format.

§ 7.33 Acceptability.

(a) The EEO Officer shall determine whether the complaint comes within the purview of this subpart and shall advise the complainant in writing of the acceptance, rejection, or cancellation of his/her complaint. The EEO Officer shall advise the Director or Deputy Director of EEO of the acceptance of a complaint. The EEO Officer may, with the concurrence of the Director or Deputy Director of EEO, reject a complaint because it was not filed within the required time limits or because it is not within the purview of this subpart, and shall reject those allegations in a complaint which are not within the purview of Section 7.1 or which set forth identical matters as contained in a previous complaint filed by the same complainant which is pending in the Department or has been decided by the Department. A complaint may be cancelled because of a failure of the complainant to prosecute the complaint. The decision to reject or cancel shall be transmitted by letter to the complainant and his/her representative and shall state the reasons for such action.

(b) If the EEO Officer determines, and the Director or Deputy Director of EEO concurs, that the complaint is to be rejected or cancelled, the written decision of the EEO Officer to the complainant shall inform him/her of his/her right to appeal to the Civil Service Commission and of the time limit within which the appeal may be submitted and his/her right to file a civil action as described in Section 7.101, if he/she believes the rejection or cancellation improper.

§ 7.34 Investigation.

(a) The EEO Officer will process complaints involving the organizational unit for which he/she is responsible. However, the Director or Deputy Director of EEO, as he/she deems necessary, may assume jurisdiction of any case. This may include the designation as processing officer of an official other than the EEO Officer for the organizational unit concerned. In the latter case, the Director or Deputy Director of EEO shall so notify all interested parties.

(b) When he/she has been advised of the acceptance of a complaint, the Director or Deputy Director of EEO shall provide for the prompt investigation of the complaint. The request for an investigation shall be made in writing to the Inspector General.

(1) The person assigned to investigate the complaint shall occupy a position in the Department which is not, directly or indirectly, under the jurisdiction of the head of that part of the Department in which the complaint arose and shall be authorized to administer oaths and require that statements of witnesses shall be under oath or affirmation, without a pledge of confidence.

(2) The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his/her complaint as compared with the treatment of other employees in the organizational unit in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. If necessary, the investigator may obtain information regarding the membership of a person in the complainant's group by asking each person concerned to provide the information voluntarily. He/she shall not require or coerce an employee to provide this information. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file.

(3) Insofar as is practicable, the investigative process shall be completed within 30 calendar days.

(4) The investigative file shall contain the various documents and information acquired during the investigation including affidavits: (i) of the complainant; (ii) of the official charged with discrimination; and (iii) of other persons interviewed and copies of, or extracts from, records, policy statements, or regulations of the Department organized to show their relevance to the complaint or the general environment out of which the complaint arose.

(5) When the investigation is to be conducted by the Civil Service Commission, the Director of EEO shall furnish the investigator with written authorization to: (i) investigate all aspects of complaints of discrimination, (ii) require all employees of the Department to cooperate with him/her in the conduct of the investigation, and (iii) require employees of the Department having any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence.

(6) The Inspector General shall submit to the Director of EEO the results of the investigation as well as the investigative file, which shall be included in the complaint file.

(7) The Director of EEO shall furnish the appropriate EEO Officer and the complainant or his/her representative a copy of the investigative file.

§ 7.35 Adjustment of complaint.

The EEO Officer shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file. The EEO Officer shall convene a meeting of the complainant, his or her representative, and appropriate Department officials to discuss the investigative file.

(a) *Adjustment arrived at.* If an adjustment of the complaint is arrived at, the terms of the adjusment shall be reduced to writing by the EEO Officer, signed by him/her, the complainant, and other appropriate persons, and made part of the complaint file. The EEO Officer shall furnish a copy of the terms to the complainant and forward the complaint file to the Director of EEO. If the Department does not carry out, or rescinds, any action specified by the terms of the adjustment for any reason not attributable to acts or conduct of the complainant, the Department shall, upon the complainant's written request, reinstate the complaint for further processing from the point processing ceased under the terms of the adjustment.

(b) *Adjustment not arrived at.* If an adjustment of the complaint is not arrived at, the EEO Officer shall notify the complainant in writing of the proposed dispositon of his/her case. The proposed disposition must include a finding on the issue of discrimination and must be one which the Department is willing and able to carry out. The notice shall advise the complainant of his/her right to a hearing with subsequent decision by the Director of EEO. The notice also shall indicate the complainant's right to a decision without a hearing if he/she so elects. The notice shall advise the complainant that he/she has 15 calendar days from receipt of the notice to inform the EEO Officer in writing whether or not a hearing is desired. The EEO Officer

shall make a copy of the notice a part of the complaint file.

(1) *No hearing to take place.* Upon timely notification to the EEO Officer by the complainant that he/she does not desire a hearing, or upon his/her failure to notify the EEO Officer of his/her wishes within the 15 day period, the EEO Officer shall forward the complaint file to the Director or Deputy Director of EEO for decision under § 7.39.

(2) *Hearing to take place.* Upon timely notification in writing to the EEO Officer by the complainant that he/she desires a hearing, the EEO Officer shall take the steps described in § 7.36.

§ 7.36 Hearing.

(a) *Complaints examiner.* The hearing shall be held by a complaints examiner who must be an employee of a Federal agency other than the Department. The EEO Officer shall request the appropriate local office of the Civil Service Commission to supply the name of a complaints examiner who has been certified by the Commission as qualified to conduct a hearing under this section.

(b) *Arrangements for hearing.* The EEO Officer shall transmit the complaint file to the complaints examiner who shall review it to determine whether further investigation is needed before scheduling the hearing. The complaint file shall include all the documents described in § 7.40 which have been acquired in the processing of the complaint. When the complaints examiner determines that further investigation is needed, he/she shall remand the complaint to the EEO Officer for further investigation or arrange for the appearance of witnesses necessary to supply the needed information at the hearing. The requirements of § 7.34 apply to any further investigation by the Department on the complaint. The complaints examiner shall schedule the hearing for a convenient time and place.

(c) *Prehearing conference.* In arranging for the hearing, the complaints examiner at his/her discretion may arrange a prehearing conference during which he/she shall seek to clarify the issues, accept stipulations of facts to which the interested parties may agree, establish a schedule for the hearing, and explain his/her role in the hearing.

(d) *Conduct of hearing.* (1) Attendance at the hearing shall be limited to persons determined by the complaints examiner to have a direct connection with the complaint; (2) the complaints examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the complaints examiner shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence. The complainant, his/her representative and the representatives of the Department at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(e) *Powers of complaints examiner.* In addition to the other powers vested in the complaints examiner by the Department in accordance with this subpart, the complaints examiner is authorized to:

(1) Administer oaths or affirmations;

(2) Regulate the course of the hearing;

(3) Rule on offers of proof;

(4) Limit the number of witnesses whose testimony would be unduly repetitious; and

(5) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

(f) *Witnesses at hearing.* The complaints examiner shall request the EEO Officer to make available as a witness at the hearing an employee requested by the complainant when he/she determines that the testimony of the employee is necessary. The complaints examiner may also request the appearance of an employee of any other Federal agency whose testimony he/she determines is necessary to furnish information pertinent to the complaint under consideration. The complaints examiner shall give the complainant his/her reasons for the denial of a request for the appearance of employees as witnesses and shall insert those reasons in the record of the hearing. Employees shall be made available at a hearing on a complaint when so requested by the complaints examiner and it is administratively practicable to comply with the request. When it is not administratively practicable to comply with the request for a witness, the EEO Officer shall provide an explanation to the complaints examiner. If the explanation is inadequate, the complaints examiner shall so advise the EEO Officer and request that the employee be made available as a witness at the hearing. If the explanation is adequate, the complaints examiner shall insert it in the record of the hearing, provide a copy to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. Employees shall be in a duty status during the time they are made available as witnesses. Witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony at the hearing or during the investigation.

(g) *Record of hearing.* The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the complaints examiner at the hearing shall be made a part of the record of the hearing. If the Department submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, he/she shall make the document available to the Department representative for reproduction.

(h) *Findings, analysis, and recommendations.* The complaints examiner shall transmit to the Director or Deputy Director of EEO the complaint file (including the record of the hearing), together with his/her findings and analysis with regard to the matter which gave rise to the complaint and the general environment out of which the complaint arose, and his/her recommended decision on the merits of the complaint, including recommended remedial action where appropriate. The complaints examiner shall notify the complainant of the date on which this was done. In addition, the complaints examiner shall transmit, by separate letter to the Director or Deputy Director of EEO, whatever findings and recommendations he/she considers appropriate with respect to conditions in the Department which do not bear directly on the matter which gave rise to the complaint or which bear on the general environment out of which the complaint arose.

§ 7.37 Relationship to other HUD appellate procedures.

When an employee makes a written allegation of discrimination on grounds of race, color, religion, sex, or national origin in connection with an action that would otherwise be processed under a grievance or other system of the Department, the allegation of discrimination shall be processed under this part.

§ 7.38 Avoidance of delay.

(a) The complaint shall be resolved promptly. To this end, both the complainant and the Department shall proceed with the complaint without undue delay so that the complaint is resolved within 180 calendar days after it was filed, including time spent in the processing of the complaint by the complaints examiner under § 7.36.

(b) The Director of EEO may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. However, instead of cancelling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available.

(c) The Director of EEO shall furnish the Civil Service Commission monthly reports on all complaints pending within the Department in a form specified by the Commission. If the Director of EEO has not issued a final decision, and has not requested the Commission to supply a complaints examiner, within 75 calendar days from the date a complaint was filed, the Commission may require the Department to take special measures to insure prompt processing of the complaint or may assume responsibility for processing the complaint, including supplying an investigator to conduct any necessary investigation on behalf of the Department. When the Commission supplies an investigator, the Department shall reimburse the Commission for all expenses incurred in connection with the investigation and shall notify the complainant in writing of the proposed disposition of the complaint no later than 15 calendar days after its receipt of the investigative report.

(d) When the complaints examiner has submitted a recommended decision finding discrimination and the Director of EEO has not issued a final decision within 180 calendar days after the date the complaint was filed, the complaints examiner's recommended decision shall

become a final decision binding on the Department, 30 calendar days after its submission to the Director of EEO. In such event, the Director of EEO shall notify the complainant of the decision and furnish to him/her a copy of the findings, analysis, and recommended decision of the complaints examiner under § 7.36(h) and a copy of the hearing record and also shall notify him/her in writing of his/her right of appeal to the Commission and the time limits applicable thereto and of his/her right to file a civil action as described in § 7.101.

§ 7.39 Decision by Director of EEO.

(a) Following consultation with the General Counsel and the Assistant Secretary for Administration, the Director of EEO shall make the decision of the Department on a complaint based on information in the complaint file.

(b) The decision shall be in writing and shall be transmitted by letter to the complainant and his/her representative, with copies to the head of the organizational unit in which the complaint arose; the Assistant Secretary for Administration; and the General Counsel. When there has been a hearing on the complaint, the complainant shall be furnished a copy of the findings, analysis, and recommended decision of the complaints examiner as described in § 7.36 (h), as well as a copy of the transcript of the oral testimony and other oral statements at the hearing.

(1) When there has been a hearing, the decision shall adopt, reject, or modify the decision recommended by the complaints examiner. When the decision is to reject or modify the recommended decision of the complaints examiner, the letter transmitting the decision shall set forth the specific reasons in detail for rejection or modification.

(2) When there has been neither an adjustment as described in § 7.35 nor a hearing, the letter transmitting the decision shall set forth the findings, analysis, and decision of the Director of EEO.

(c) The decision shall require any remedial action authorized by law determined to be necessary or desirable to effect the resolution of the issues of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. In such cases, the decision shall include any necessary instructions to the head of the organizational unit concerned and the Assistant Secretary for Administration as to the specific action to be taken with respect to each individual involved. When discrimination is found, the Director of EEO shall require remedial action to be taken in accordance with § 7.90, shall review the matter giving rise to the complaint to determine whether disciplinary action against alleged discriminatory officials is appropriate, and shall record the basis for the decision to take, or not to take, disciplinary action but this decision shall not be included in the complaint file.

(d) The decision letter shall inform the complainant of his/her right to appeal the decision of the Department to the Civil Service Commission, of his/her right to file a civil action in accordance with § 7.101, and of the time limits applicable thereto.

(e) An employee, other than a complainant, who believes that a decision constitutes an inequity to him/her has recourse to the Department grievance procedures, and if applicable, appeal to the Civil Service Commission.

§ 7.40 Complaint file.

The Director of EEO shall establish and maintain a complaint file. Except as provided in § 7.39(c), this file shall contain all documents pertinent to the complaint. The complaint file shall not contain any document that has not been made available to the complainant or to his designated physician under § 294.401 of Title 5, CFR. The complaint file shall include copies of:

(a) The notice of the EEO Counselor to the aggrieved person under § 7.26(e);

(b) The written report of the EEO Counselor under § 7.26(g) to the EEO Officer on whatever precomplaint counseling efforts were made with regard to the complainant's case;

(c) The complaint;

(d) The investigative file;

(e) If the complaint is withdrawn by the complainant, a written statement of the complainant or his/her representative to that effect;

(f) If adjustment of the complaint is arrived at under § 7.35, the written record of the terms of the adjustment;

(g) If no adjustment of the complaint is arrived at under § 7.35 a copy of the letter notifying the complainant of the proposed disposition of the complaint and of his/her right to a hearing;

(h) If the decision is made under § 7.35, a copy of the letter to the complainant transmitting that decision;

(i) If a hearing was held, the record of the hearing, together with the complaints examiner's findings, and analysis, and recommended decision on the merits of the complaint;

(j) If the decision is made under § 7.39, a copy of the decision of the Department; and

(k) If the decision is made under § 7.39, a copy of the letter transmitting the decision of the Director of EEO.

Appeal to the Civil Service Commission

§ 7.45 Entitlement.

(a) Except as provided by paragraph (b) of this section, a complainant may appeal to the Civil Service Commission the decision of the Department:

(1) To reject his/her complaint, or a portion thereof, for reasons covered by § 7.33;

(2) To cancel his/her complaint because of the complainant's failure to prosecute his/her complaint; or

(3) On the merits of the complaint, under § 7.35(b) or § 7.39, but the decision does not resolve the complaint to the complainant's satisfaction.

(b) A complainant may not appeal to the Civil Service Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the Commission.

§ 7.46 Where to appeal.

An appeal by a complainant must be filed by him/her or his/her representative in writing either personally or by mail, with the Appeals Review Board, U.S. Civil Service Commission, Washington, D.C. 20415.

§ 7.47 Time limit.

(a) Except as provided in paragraph (b) of this section, a complainant may file an appeal at any time up to 15 calendar days after his/her receipt of the letter transmitting the decision of the Department.

(b) The time limit stated in paragraph (a) of this section may be extended in the discretion of the Appeals Review Board upon a showing by the complainant that he/she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his/her control prevented him/her from filing an appeal within the prescribed time limit.

§ 7.48 Appellate procedures.

The Appeals Review Board shall review the complaint file of the Department and all relevant written representations made to the Board. However, there is no right to a hearing before the Board. The Board may remand a complaint to the Department for further investigation or a rehearing if the Board considers that action necessary, or have additional investigation conducted by Commission personnel. The provisions of this subpart apply to any further investigation or rehearing resulting from a remand from the Board. The Board shall issue a written decision setting forth its reasons for the decision and shall send copies thereof to the complainant, his/her designated representative, and the Department's Director of EEO. When corrective action is ordered, the Director of EEO shall report promptly to the Board that the corrective action has been taken. The decision of the Board is final, but shall contain a notice of the right to file a civil action in accordance with § 7.101.

§ 7.49 Review by the Commissioners.

(a) The Civil Service Commissioners may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written arguments or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the previous decision was issued.

(2) The previous decision involves an erroneous interpretation of law or regulations or misapplication of established policy; or

(3) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

(b) When the Department gives notice of intent to request reopening within the time specified in the decision of the Appeals Review Board for the Department's report of corrective action, the Department may not effect the corrective action recommended by the Board except as provided in this paragraph. When the Department gives notice of intent to request reopening, and when the appeal involves removal, separation, or suspension continuing beyond the date of the request for reopening, and when the Board decision recommends retroactive restoration, the Department shall comply with the Board decision only to the extent of the temporary or conditional restoration of the employee to duty status in the position recommended by the Board pending the outcome of the Department's request for reopening. The Department shall notify the Board and the employee in writing that the corrective action it takes is temporary or conditional at the same time it gives notice of intent to request reopening. When the Department does not give notice of intent to request reopening within the time specified in the Board decision for the Department's report of corrective action, or when, after giving notice of intent to request reopening, the Department does not file a request for reopening within 30 days from the date of the Board decision, or when a request to reopen is denied, the Department shall effect the corrective action recommended by the Board, and there is no further right by the Department to request reopening. However, service under the temporary or conditional restoration provisions of this paragraph may not be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure.

§ 7.50 Relationship to other appeals.

When the basis of the complaint of discrimination because of race, color, religion, sex, or national origin, involves an action which is otherwise appealable to the Commission, and the complainant having been informed by the Department of his/her right to proceed under this subpart elects to proceed by appeal to the Commission, the case, including the issue of discrimination, will be processed under the regulations appropriate to that appeal when the complainant makes a timely appeal to the Commission in accordance with those regulations.

REPORTS TO THE COMMISSION

§ 7.60 Reports to the Commission on Complaints.

The Director of EEO shall report to the Commission information concerning precomplaint counseling and the status and disposition of complaints under this subpart at such times and in such manner as the Commission prescribes.

THIRD PARTY ALLEGATIONS

§ 7.70 Third party allegations of discrimination.

(a) The Department will also accept from organizations or other third parties general allegations of discrimination in personnel matters within the Department which are unrelated to an individual complaint of discrimination subject to §§ 7.25 through 7.40. Precomplaint counseling is not required.

(b) The organization or third party shall state the allegation with sufficient specificity so that the Director may provide for the prompt investigation of the allegation. The Director of EEO may require additional specificity as necessary to proceed with the investigation of the allegation. The request for investigation shall be in writing to the Inspector General.

(c) The Director of EEO shall:

(1) Establish a file on each general allegation and this file shall contain copies of all material used in making the decision on the allegation.

(2) Furnish a copy of the general allegation file to the party submitting the allegation and shall make it available to the Commission for review on request.

(3) Notify the party submitting the allegation of the decision of the Department, including any corrective action taken on the general allegations, and shall furnish to the Commission on request a copy of the decision. This notice shall inform the third party if it disagrees with the decision of the Department, it may, within 30 days after receipt of the decision, request the Commission to review it. The request shall be in writing and shall set forth with particularity the basis for the request.

(d) When the Commission receives a request under paragraph (c)(3) of this section when the third party disagrees with the decision of the Department, the Commission shall make, or require the Director of EEO to make, any additional investigations the Commission deems necessary. The Commission shall issue a decision on the allegation ordering such corrective action, with or without back pay, as it deems appropriate.

FREEDOM FROM REPRISAL OR INTERFERENCE

§ 7.80 Freedom from reprisal.

Complainants, their representatives, and witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage under this part.

§ 7.81 Review of allegations of reprisal.

(a) *Choice of review procedures.* A complainant, his/her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this subpart, may, if an employee or applicant, have the allegation reviewed as an individual complaint of discrimination subject to §§ 7.25 through 7.40 or as a charge subject to paragraph (b) of this section.

(b) *Procedure for review of charges.* (1) An employee or applicant may file a charge of restraint, interference, coercion, discrimination, or reprisal, in connection with the presentation of a complaint with an appropriate agency official as defined in § 7.31 within 15 calendar days of the date of the alleged occurrence. The charge shall be in writing and shall contain all pertinent facts. Except as provided in paragraph (b)(2) of this section, the Department shall undertake an appropriate inquiry into such a charge and shall forward to the Commission within 15 calendar days of the date of its receipt a copy of the charge and report of action taken. The Director of EEO shall provide the charging party with a copy of the report of action taken. When the Department has not completed an appropriate inquiry 15 calendar days after receipt of such a charge, the charging party may submit a written statement with all pertinent facts to the Commission, and the Commission shall require the Director of EEO to take whatever action is appropriate.

(2) When a complainant, after completion of the investigation of his/her complaint under § 7.34 requests a hearing and in connection with that complaint alleges restraint, interference, coercion, discrimination, or reprisal, the complaints examiner assigned to hold the hearing shall consider the allegation as an issue in the complaint at hand or refer the matter to the agency for further processing under the procedure chosen by the complainant pursuant to paragraph (a) of this section.

REMEDIAL ACTIONS

§ 7.90 Remedial actions.

(a) *Remedial action involving an applicant.* (1) When the Director of EEO, or the Commission, finds that an applicant for employment has been discriminated against and except for that discrimination would have been hired, the Department shall offer the applicant employment of the type and grade denied him/her.

(i) The offer shall be made in writing. The individual shall be advised that he/she has 15 calendar days from receipt of the offer within which to accept or decline the offer. He/she should also be advised that failure to notify the Department of his/her decision within the 15 day period will be considered a declination of the offer, unless he/she can show that circumstances beyond his/her control prevented him/her from responding within the time limit.

(ii) If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired, sub-

ject to the limitation in paragraph (a)(4) of this section. Back pay, computed in the same manner prescribed in § 500.804 of Civil Service Commission regulations, shall be awarded from the beginning of the retroactive period, subject to the same limitation, until the date the individual actually enters on duty. The individual shall be deemed to have performed service for the Department during this period of retroactivity for all purposes except for meeting service requirements for completion of a probationary or trial period that is required.

(iii) If the offer is declined, the Department shall award the individual a sum equal to the back pay he/she would have received, computed in the same manner prescribed by § 550.804 of Civil Service Commission regulations, from the date he would have been appointed until the date the offer was made, subject to the limitation of paragraph (a)(4) of this section. The Department shall inform the applicant, in its offer, of his/her right to this award in the event he/she declines the offer.

(2) When the Director of EEO, or the Commission, finds that discrimination existed at the time the applicant was considered for employment but does not find that the individual is the one who would have been hired except for discrimination, the Department shall consider the individual for any existing vacancy of the type and grade for which he/she had been considered initially and for which he/she is qualified before consideration is given to other candidates. If the individual is not selected, the Department shall record the reason for nonselection. If no vacancy exists, the Department shall give him/her this priority consideration for the next vacancy for which he/she is qualified. This priority shall take precedence over priorities provided under other regulations in Title 5 CFR, Chapter 1—Civil Service Commission.

(3) This section shall be cited as the authority under which the above-described appointments or awards of back pay shall be made.

(4) A period of retroactivity or a period for which back pay is awarded under this paragraph may not extend from a date earlier than two years prior to the date on which the complaint was initially filed by the applicant. If a finding of discrimination was not based on a complaint, the period of retroactivity or period for which back pay is awarded under this paragraph may not extend earlier than two years prior to the date the finding of discrimination was recorded.

(b) *Remedial action involving an employee.* When the Director of EEO, or the Commission, finds that an employee of the Department was discriminated against and as a result of that discrimination was denied an employee benefit, or an administrative decision adverse to him was made, the Director of EEO shall take remedial actions which shall include one or more of the following, but need not be limited to these actions:

(1) Retroactive promotion, with back pay computed in the same manner prescribed in § 550.804 of Civil Service Commission regulations, when the record clearly shows that but for the discrimination the employee would have been promoted or would have been employed at a higher grade, except that the back pay liability may not accrue from a date earlier than two years prior to the date the discrimination complaint was filed, but in any event, not to exceed the date he/she would have been promoted. If a finding of discrimination was not based on a complaint, the back pay liability may not accrue from a date earlier than 2 years prior to the date the finding of discrimination was recorded, but, in any event, not to exceed the date he/she would have been promoted.

(2) Consideration for promotion to a position for which he/she is qualified before consideration is given to other candidates when the record shows that discrimination existed at the time selection for promotion was made but it is not clear that except for the discrimination the employee would have been promoted. If the individual is not selected, the Department shall record the reasons for nonselection. This priority consideration shall take precedence over priorities under other regulations in Title 5 CFR, Chapter 1—Civil Service Commission.

(3) Cancellation of an unwarranted personnel action and restoration of the employee.

(4) Expunction from the Department's records of any reference to or any record of an unwarranted disciplinary action that is not a personnel action.

(5) Full opportunity to participate in the employee benefit denied him/her (e.g., training, preferential work assignments, overtime scheduling).

RIGHT TO FILE A CIVIL ACTION

§ 7.100 Statutory right.

An employee or applicant is authorized by section 717(c) of the Civil Rights Act of 1964, as amended, 84 Stat. 112, to file a civil action in an appropriate U.S. District Court:

(a) Within thirty (30) calendar days of his/her receipt of notice of final action taken by the Department on a complaint;

(b) After one hundred-eighty (180) calendar days from the date of filing a complaint with the Department if there has been no decision;

(c) Within thirty (30) calendar days of his/her receipt of notice of final action taken by the Commission on his/her complaint; or

(d) After one hundred-eighty (180) calendar days from the date of filing an appeal with the Commission if there has been no Commission decision.

§ 7.101 Notice of right.

The Director of EEO shall notify an employee or applicant of his/her right to file a civil action, and of the 30 day time limit for filing, in any final action on a complaint under §§ 7.33, 7.38, or 7.39.

§ 7.102 Effect on administrative processing.

The filing of a civil action by an employee or applicant does not terminate Department processing of a complaint or Commission processing of an appeal under this subpart.

2. A new subpart B is added to 24 CFR Part 7.

Subpart B—Nondiscrimination on Account of Age

GENERAL PROVISIONS

COMPLAINTS PROCESSING

AUTHORITY: Sec. 7(d), 79 Stat. 670, 42 U.S.C. 3535(d); Section 29(a), Pub. L. 93-259, 29 U.S.C. 633a.

Subpart B—Nondiscrimination on Account of Age

GENERAL PROVISIONS

§ 7.201 Purpose and applicability.

(a) This subpart sets forth the policy under which the Department of Housing and Urban Development has established a continuing program to assure nondiscrimination on account of age and the regulations under which the Department will process complaints of discrimination on account of age.

(b) This subpart applies only to employees and applicants who are at least 40 years of age and less than 65 years of age.

(c) *Exceptions.* Reasonable exceptions to the provisions of this subpart may be established by the Civil Service Commission for each position for which the Civil Service Commission establishes a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position.

§ 7.202 General policy.

It is the policy of the Department of Housing and Urban Development to prohibit discrimination in employment on account of age, and to assure that all personnel actions affecting employees and applicants for employment are free from discrimination on account of age.

COMPLAINT PROCESSING

§ 7.211 General.

These regulations provide for the acceptance and processing of complaints of discrimination on account of age and, subject to §7.214, comply with the principles and requirements in §§ 7.25 through 7.40, 7.60, and 7.80 through 7.90 of subpart A.

§ 7.212 Coverage.

(a) Any aggrieved employee or applicant for employment who believes that he or she has been discriminated against on account of age, who was at least 40 years of age but less than 65 years of age at the time of the action complained of, and who has observed the provisions of § 7.25 may file a complaint if the matter of discrimination was not resolved to his or her satisfaction.

(b) A complaint may also be filed by an organization for the person with his or her consent.

§ 7.213 Effect on administrative processing.

The filing of a civil action by an employee or applicant does not terminate Department processing of a complaint or Civil Service Commission processing of an appeal under this subpart.

§ 7.214 Exclusions.

Sections 7.70, 7.100, and 7.101 shall not apply to processing of discrimination complaints on account of age.

§ 7.221 Appeal to the Civil Service Commission.

Except for the requirement in § 7.48 that the decision of the Appeals Review Board contain a notice of the right to file a civil action in accordance with § 7.101, §§ 7.45 through 7.50 of subpart A shall apply to this subpart.

Issued at Washington, D.C., November 17, 1975.

CARLA A. HILLS,
Secretary of Housing and Urban Development.

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Just Released

CODE OF FEDERAL REGULATIONS

(Revised as of October 1, 1975)

Title 43—Public Lands: Interior (Parts 1–999)---------- $2.90

Title 46—Shipping (Parts 70–89)---------- 2.05

Title 46—Shipping (Parts 90–109)---------- 1.95

Title 46—Shipping (Parts 110–139)---------- 1.90

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