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federal register

MONDAY, DECEMBER 1, 1975

highlights

PRIVACY ACT OF 1974

On Thursday, December 4, 1975, the Office of Management and Budget will publish Supplementary Guidance on Implementing the Privacy Act. This document will address comments and questions of general interest raised since the release of OMB's Privacy Act Guidelines of July 1, 1975.
Extra copies of this document may be obtained from:

Office of Management and Budget
Room 5235
New Executive Office Building
Washington, D.C. 20503
Telephone: 202/395–5163

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

Rules Going Into Effect Today

NOTE: There were no items that are eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

NOTE: No acts approved by the President were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

ATTENTION: Questions, corrections, or requests for information regarding the contents of this issue only may be made by dialing 202–523–5282. For information on obtaining extra copies, please call 202–523–5240. To obtain advance information from recorded highlights of selected documents to appear in the next issue, dial 202–523–5022.

federal register

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

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $50 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Table of Effective Dates and Time Periods—December 1975

This table is for use in computing dates certain in connection with documents which are published in the FEDERAL REGISTER subject to advance notice requirements or which impose time limits on public response.

Federal Agencies using this table in calculating time requirements for submissions must allow sufficient extra time for FEDERAL REGISTER scheduling procedures.

In computing dates certain, the day after publication counts as one. All succeeding days are counted except that when a date certain falls on a weekend or holiday, it is moved forward to the next Federal business day. (See 1 CFR 18.17)

A new table will be published monthly in the first issue of each month. All January, February and March dates are in 1976.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
December 1	December 16	December 31	January 15	January 30	March 1
December 2	December 17	January 2	January 16	February 2	March 1
December 3	December 18	January 2	January 19	February 2	March 2
December 4	December 19	January 5	January 19	February 2	March 3
December 5	December 22	January 5	January 19	February 3	March 4
December 8	December 23	January 7	January 22	February 6	March 8
December 9	December 24	January 8	January 23	February 9	March 8
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December 17	January 2	January 16	February 2	February 17	March 16
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December 19	January 5	January 19	February 2	February 17	March 18
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December 23	January 7	January 22	February 6	February 23	March 22
December 24	January 8	January 23	February 9	February 23	March 23
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December 30	January 14	January 29	February 13	March 1	March 29
December 31	January 15	January 30	February 17	March 1	March 30

rules and regulations

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

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

Title 1—General Provisions

CHAPTER I—ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

CFR CHECKLIST

1975 Issuances

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1975. New units issued during the month are announced on the back cover of the daily FEDERAL REGISTER as they become available.

The rate for subscription service to all revised volumes issued for 1976 will be $350 domestic, $75 additional for foreign mailing.

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

CFR Unit (Rev. as of Jan. 1, 1975):

Title	Price
1	$1.45
2	.70
3A 1974 Compilation	2.75
4	2.70
5	4.35
6 [Reserved]	
7 Parts:	
0–45	6.15
46–51	4.10
52	6.15
53–209	6.10
210–699	5.65
700–749	4.25
750–899	2.95
900–944	4.50
945–980	2.30
981–999	2.55
1000–1059	4.35
1060–1119	4.80
1120–1199	3.75
1200–1499	4.05
1500–end	6.30
8	2.45
9	6.25
10 Parts:	
0–199	4.90
200–end	3.00
11	1.35
12 Parts:	
1–299	6.35
300–end	6.40
13	3.60
14 Parts:	
1–59	5.85
60–199	6.10
200–end	7.15
15	4.50
16 Parts:	
0–149	6.05
150–end	5.50
Finding Aids	4.05

CFR Unit (Rev. as of April 1, 1975):

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17	$6.30
18 Parts:	
1–149	4.65
150–end	4.65
19	5.40
20 Parts:	
1–399	$2.45
400–end	9.70
21 Parts:	
1–9	2.10
10–199	6.75
200–299	1.60
300–499	5.80
500–599	3.60
600–1299	2.95
1300–end	1.90
22	4.75
23	3.55
24 Parts:	
0–499	5.80
500–end	5.45
25	4.40
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1 (§§ 1.0–1—1.169)	5.90
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1 (§§ 1.401–1.500)	3.45
1 (§§ 1.501–1.640)	4.00
1 (§§ 1.641–1.850)	4.40
1 (§§ 1.851–1.1200)	5.80
1 (§ 1.1201–end)	6.90
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600–end	1.70
27 (Rev. May 1, 1975)	7.70

CFR Unit (Rev. as of July 1, 1975):

28	$2.70
29 Parts:	
0–499	5.90
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30	5.80
31	4.90
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400–589	4.90
590–699	2.35
700–799	7.55
800–999	5.35
1000–1399	2.05
1400–1599	3.65
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39	3.10
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Title 9—Animals and Animal Products

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

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

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

Handling Procedures for Birds During Port of Entry Quarantine

● **Purpose. The purpose of this amendment is to clarify and update regulations contained in Part 92 which apply to handling procedures for birds during port of entry quarantine.** ●

Statement of considerations. This amendment will clarify and update the regulations contained in § 92.11(f)(3)(ii)(E) which relate to the handling of birds found to be infected with or exposed to exotic Newcastle disease while in port of entry quarantine. Inasmuch as the use of sentinel birds was primarily related to the Extraordinary Emergency declared by the Secretary of Agriculture on November 10, 1972 (9 CFR Part 90; 37 FR 24336), the reference to sentinel birds and to Part 90 of Chapter I of Title 9, Code of Federal Regulations, which contained the provisions for sentinel birds is deleted and the regulations are clarified to reflect this change. The revocation of the Extraordinary Emergency and of Part 90 was published in the FEDERAL REGISTER on July 9, 1974 (39 FR 25224).

Accordingly, Part 92, Title 9, Code of Federal Regulations is amended in the following respects:

In § 92.11(f)(3)(ii)(E) the second and the third sentences are deleted; and in the fourth sentence the phrase "commercial or sentinel" is deleted.

(Sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132 (21 U.S.C. 111, 134a, 134b, 134c, 134f); 37 FR 28464, 28477; 38 FR 19141)

Effective date. The foregoing amendment shall become effective December 2, 1975.

The amendment clarifies and updates the requirements for handling birds in quarantine under the regulations of this Part and does not impose or relieve any restrictions. The amendment should be made effective promptly to be of maximum benefit to persons affected. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 21st day of November, 1975.

J. M. HEJL,
Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc.75-32299 Filed 11-28-75;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Y]

PART 225—BANK HOLDING COMPANIES

Transfer Agent for Certain Registered Securities

Section 17(A)(c)(1) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q-1) prohibits, after December 1, 1975, any transfer agent from using the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to certain securities, unless such transfer agent is registered under section 17A with the "appropriate regulatory agency". The Board has now been informed of the view of the Securities and Exchange Commission that the "appropriate regulatory agency" with which a subsidiary of a bank holding company (which subsidiary, although not a "bank" within the meaning of section 2(c) of the Bank Holding Company Act (12 U.S.C. 1841(c)), nevertheless holds a bank charter) must register, is the Board, rather than the Commission. In the view of the Commission, such a subsidiary is a "bank" within the meaning of section 3(a)(6) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c(a)(b)), for purposes of section 17A(c) of that Act. Accordingly, the Board has amended Regulation Y (12 CFR 225) to provide for registration of bank holding companies, and their subsidiaries that are not "bank[s]" within the meaning of the Bank Holding Company Act, but which are "bank[s]" as defined in section 3(a)(6) of the Securities Exchange Act, wishing to perform the function of a transfer agent after December 1, 1975. Such registration must conform to the requirements of Form TA-1, a uniform form adopted by the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission for such purpose.

Pursuant to the amendment, which is adopted pursuant to sections 17, 17A and 23(a) of the Securities Exchange Act of 1934, as amended, a new paragraph (c) is added to § 225.5, as set forth below:

§ 225.5 **Administration.**

* * * * *

(c) *Registration of certain bank holding companies and their nonbank subsidiaries as transfer agents.* (1) On or after December 1, 1975, no bank holding company or any of its nonbank subsidiaries that are "banks" as defined in section 3(a)(6) of the Securities Exchange Act of 1934 ("Act"), shall act as transfer agent, as defined in section 3(a)(25) of that Act, with respect to any security registered under section 12 of the Act or that would be required to be registered under section 12 of the Act, except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section, unless it shall have filed a registration statement with the Board in conformity with the requirements of Form TA-1, which registration statement shall have become effective as hereinafter provided. Any registration statement filed by such a bank holding company or its nonbank subsidiary shall become effective on the thirtieth day after filing with the Board, unless the Board takes affirmative action to accelerate, deny or postpone such registration in accordance with the provisions of section 17A(c) of the Act. Such filings with the Board will constitute filings with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act.

(2) If the information contained in Items 1-6 of Form TA-1 becomes inaccurate, misleading or incomplete for any reason, the bank holding company or its nonbank subsidiary shall, within twenty-one calendar days thereafter file an amendment to Form TA-1 correcting the inaccurate, misleading or incomplete information. Within thirty calendar days following the close of any calendar year (beginning with the period from the date as of which the registration statement is prepared to December 31, 1976) during which the information required by Item 7 of Form TA-1 becomes inaccurate, misleading or incomplete, the bank holding company or its nonbank subsidiary shall file an amendment to Form TA-1, correcting the inaccurate, misleading or incomplete information.

(3) Each registration statement on Form TA-1 or amendment thereto shall constitute a "report" or "application" within the meaning of section 17, 17A(c) and 32(a) of the Act.

The notice, opportunity for comment, and delayed effective date requirements of 5 U.S.C. 553 have not been observed in the adoption of this amendment because the Board has found that observance of such requirements in this matter is impracticable, unnecessary, and contrary to the public interest. Because section 17A(c) requires registration by December 1, 1975 if a transfer agent is to continue to perform that function and because of the nearness of that date, it is both impracticable and contrary to the public interest to precede the adoption of this amendment with notice of proposed rulemaking, opportunity for comment, and thirty-day delayed effective date. The facts that Form TA-1 is identical to the form adopted by the above-mentioned agencies after full rulemaking procedures, that the text of the amendment is identical (but for the substitution of the phrase "bank holding companies and their nonbank subsidiaries" or variations thereof for the phrase "State member bank") with an amendment to Regulation H (12 CFR section 208) adopted by the Board October 17, 1975 after full rulemaking procedures, and that this amendment merely clarifies that procedural duties, previously thought to be owed the Securities and Exchange Commission, are rather owed the Board, with no change in the substance or scope of those duties are the reasons for the Board's finding that observance of 5 U.S.C. 553 is unnecessary in this matter.

By order of the Board of Governors, effective November 24, 1975.

[SEAL] GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.75-32263 Filed 11-28-75;8:45 am]

[Reg. Z]

PART 226—TRUTH IN LENDING

Disclosure of Single-Component Finance Charges

This interpretation relates to the application of Regulation Z to credit transactions other than open end when the finance charge is composed of a single element. The interpretation provides that in such instances the creditor may disclose that single element under the term "finance charge" and there is no need to further identify or describe the element. However, where there is more than one element comprising the finance charge, creditors are required under Regulation Z to describe each amount included in the finance charge.

Section 226.820 is added to read as set forth below:

§ 226.820 Disclosure of single-component finance charges.

(a) Sections 226.8(c)(8)(i) and 226.8(d)(3) require the disclosure of the total amount of the finance charge "with description of each amount included," except in the case of certain real property transactions. The question arises whether the nature of the finance charge must be described where only one type of charge, such as an interest charge, comprises the total finance charge.

(b) The primary purpose of this disclosure requirement is to assure that all sums constitute finance charges under § 226.4(a) are properly taken into account in determining the total finance charge. In addition, this information permits the customer to make a more meaningful comparison of the finance charges and annual percentage rates available from various sources of consumer credit and to make an informed selection on this basis. A description of the amounts included in the finance charge is necessary to carry out the purposes of the Act only when the total charge includes more than one element. Therefore, where only a single type of charge comprises the finance charge, disclosure of the total dollar amount of such charge, using the term "finance charge," complies with the requirements of §§ 226.8(c)(8)(i) and 226.8(d)(3), and there is no further requirement under those sections that the single type of charge be otherwise identified or described.

(Interprets and applies 12 CFR 226.8)

By order of the Board of Governors, November 21, 1975.

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

[FR Doc.75-32264 Filed 11-28-75;8:45 am]

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Specific Functions Delegated to Board Employees and Federal Reserve Banks

In order to expedite and facilitate the handling of certain of its functions, the Board has amended its Rules Regarding Delegation of Authority adopted pursuant to the provisions of section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) to delegate to the Director of the Division of Banking Supervision and Regulation the authority to accelerate the effective date of a registration statement filed by a member State bank or a subsidiary thereof, a bank holding company, or a nonbank subsidiary of a bank holding company with respect to its transfer agent activities under section 17(A)(c)(2) of the Securities Exchange Act of 1934, as amended, (15 U.S.C. 78q-1).

The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date are not followed in connection with the adoption of § 265.2(c) because the rule involved therein relates to internal agency management and accordingly does not constitute a susbtantive rule subject to the requirements of that section.

Effective November 7, 1975, paragraph (c) of § 265.2 is amended by adding subparagraph (17) as follows:

§ 265.2 Specific functions delegated to board employees and to Federal reserve banks.

* * * * *

(c) The Director of the Division of Banking Supervision and Regulation (or in his absence, the Acting Director) is authorized: * * *

(17) Under the provisions of section 17(A)(c)(2) of the Securities Exchange Act of 1934, as amended, (15 U.S.C. 78q-1) to accelerate the effective date of a registration statement filed by a member State bank or a subsidiary thereof, a bank holding company, or a subsidiary of a bank holding company which is a bank as defined in section 3(a)(6) of that Act other than a bank specified in clause (i) or (iii) of section 3(a)(34)(B) of that Act (15 U.S.C. 78c) with respect to its transfer agent activities.

By order of the Board of Governors, November 7, 1975.

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

[FR Doc.75-32265 Filed 11-28-75;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 75-NW-39-AD; Amendment 39-2445]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 727 Series Airplanes

Amendment 39-2375 (40 FR 44807), AD 75-20-09 requires replacement of blind rivets with bolts and nutplates or equivalent on the outboard aileron tab mast fittings of Boeing Model 727 series airplanes. Prior to issuance of AD 75-20-09, Amendment 39-2164 (40 FR 15866), AD 75-08-10 required a one time inspection for loose blind rivets within 200 flight hours from the effective date of the AD and submittal of reports of the inspection results, whether positive or negative. The number of reports of loose rivets indicated the need for replacement of all blind rivets; therefore, AD 75-20-09 was issued requiring replacement by July 1, 1977, with an interim inspection within 2,500 flight hours from the effective date of the AD. Subsequent to issuance of AD 75-20-09 it has become apparent that clarification of the applicability and sequence of compliance of AD 75-08-10 and AD 75-20-09 may be necessary, since AD 75-08-10 was not superseded by AD 75-20-09. At the time AD 75-20-09 was issued the majority of operators had accomplished the inspection per AD 75-08-10. However, several operators of Boeing Model 727 series airplanes are private businesses and do not accumulate total time at the rate of airline operators. Therefore, several airplanes may still be within the 200 flight hour limit specified in AD 75-08-10. Also, the airplane effectivity was not specified in either AD at the time of their issuance since the applicable Boeing Service Bulletin No. 727-57-137 and its first revision were in telegraphic form. Revision 2 to this service bulletin now lists the effectivity. Of course, many of those listed airplanes are no longer affected because they have received the terminating action modification. Although reference to the service bulletin which lists the effectivity is not required, it is extremely helpful to authorities to quickly determine applicability.

Therefore, AD 75-20-09 is being amended to specify the effectivity to airplanes in the applicability paragraph and to incorporate the inspection requirement of AD 75-08-10 for those airplanes which may yet be under the 200 flight hour limit. AD 75-08-10 is superseded by the amendment.

Since this amendment provides a clarification only 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 the Federal Aviation Regulations, Amendment 39-2375 (40 FR 44807), AD 75-20-09 is amended as follows:

1. By amending the applicability paragraph to read:

"BOEING: Applies to Boeing Model 727 series airplanes, certificated in all categories, listed in Boeing Service Bulletin No. 727-57-137, Revision 2, or later FAA approved revisions. Compliance required as indicated."

2. By redesignating paragraph A as paragraph B and striking out the words "effective date of this AD" with the words "November 5, 1975" in place thereof.

3. By redesignating paragraph B as paragraph C.

4. By adding the following new paragraph A:

"Within the next 200 flight hours from April 21, 1975, unless AD 75-08-10 has previosuly been accomplished, inspect all outboard aileron tab mast fittings for looseness, and repair, as necessary, in accordance with Boeing Alert Service Bulletin No. 727-57-137, Revision 2, or later FAA approved revisions, or in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region. Within 15 days from the time of the inspection of each airplane, report all findings, positive or negative, to the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, or call the FAA project engineer at (206) 767-2516. The report must include the following:

a. Airplane model number.

b. Airplane total time.

c. Description of looseness condition, if applicable, including number and type of fasteners loose and number of fittings per tab with loose fasteners.

(Reporting approved by the Bureau of the Budget under BOB No. 04R0174)."

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 Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 12, 1975.

This amendment supersedes AD 75-08-10.

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)).

The incorporation by reference provisions in the document were approved by the Director of the FEDERAL REGISTER on June 19, 1967.

Issued in Seattle, Washington November 21, 1975.

C. B. WALK, Jr.,
Director,
Northwest Region.

[FR Doc.75-32204 Filed 11-28-75;8:45 am]

[Docket No. 75-NW-26-AD; Amdt. 39-2444]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 737 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring operational checks, inspections, and rework of overwing exit emergency escape handle cover on Boeing Model 737 series airplanes, serial numbers 19013 to 20544, inclusive, that have been modified in accordance with Boeing Service Bulletin Nos. 737-52-1004 and/or 737-52-1034 was published in 40 FR 42024.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Due consideration has been given to all comments received in response to the above notice. Although not objecting to the basic intent of the proposed AD, the ATA considered the proposed compliance times and extent of modification too stringent. The ATA recommended that the AD not require inside and outside operational checks and corrective action, where these had already been accomplished within the last 360 days (instead of 120 days). Also, since Boeing advised kit availability was December 5, 1975, ATA considered 180 days a reasonable time to accomplish the modification for those airplanes on which the operational check and associated corrective action had been accomplished within the last 360 days. Further, the ATA considered that the requirement for operational check and inspection of the hatch handle cover for wear, abrasion, and corrosion should be deleted for airplanes modified per Boeing Service Bulletin No. 737-52-1054. Also the ATA considered the recontouring of hatch lining per Figure 1, steps 15, 16, and 17 of Boeing Service Bulletin No. 737-52-1054 unnecessary and not enhancing the level of safety. Under all circumstances and after considering the additional information developed since issuance of the notice, the agency has determined that the ease of accomplishment coupled with consequences of failure preclude extending the compliance times to the extent recommended by ATA. The Agency does agree that the AD compliance time for both inside and outside operational checks and corrective action required by paragraph A can be extended for airplanes inspected within the last 200 days. Also due to parts availability, the agency has determined that an adequate level of safety can be provided the operators by extending to 90 days the compliance time for rework. The Agency agrees that the paragraph A requirement for operational checks and inspection of the hatch handle cover for wear, abrasion, and corrosion are not required for airplanes on which the rework prescribed in Boeing Service Bulletin No. 737-52-1054 has been accomplished. With regard to recontouring the lower hatch lining, the agency continues to believe that the combination of spacers, spring, and recontour, as prescribed by Boeing Service Bulletin No. 737-52-1054 is necessary to prevent interference with the handle cutout when the hatch is opened. No contrary evidence having been presented, the recontour requirement will remain as part of the corrective action.

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

BOEING: Applies to Boeing Model 737 series airplanes, serial numbers 19013 to 20544, inclusive, that have:

a. Been modified in accordance with Boeing Service Bulletin Nos. 737-52-1004 and/or 737-52-1034; or

b. Received the equivalent of Boeing Service Bulletin No. 737-52-1034 in production. Airplanes in this category are those listed under Group II of Boeing Service Bulletin No. 737-52-1054.

Compliance required as indicated unless already accomplished.

To eliminate possbile interference between the escape hatch handle cover and the hatch lining and to ensure that the hatch may be easily opened from outside the airplane, accomplish the following:

A. Within 30 days time in service from the effective date of this AD, unless already accomplished within the last 200 days, perform both inside and outside operational checks of the overwing exits and visually inspect condition of hatch handle cover assembly for wear, abrasion, and corrosion. Repair or replace as necessary with serviceable parts.

B. Within 90 days time in service from the effective date of this AD, unless already accomplished, rework hatch handle cover in accordance with Boeing Service Bulletin No. 737-52-1054, or later approved revisions, or in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region. Accomplishment of this paragraph constitutes terminating action for this AD.

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 Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 5, 1976.

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)).

The incorporation by reference provisions in the document were approved by the Director of the FEDERAL REGISTER on June 19, 1967.

Issued in Seattle, Washington, November 21, 1975.

C. B. WALK, Jr.,
Director,
Northwest Region.

[FR Doc.75-32203 Filed 11-28-75;8:45 am]

[Docket No. 75-NW-40-AD; Amdt. 39-2446]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 747 Series Airplanes

Amendment 39-2371, AD 75-20-05, as amended by Amendment 39-2426, requires inspection and lubrication of fore flap airload rollers and replacement of certain fittings and rollers on Boeing Model 747 series airplanes. After issuing Amendment 39-2426 the agency has determined that Boeing Service Bulletin No. 747-57-2138 can be accomplished at the next scheduled roller inspection required by this AD without compromising public safety. Therefore, the AD is being further amended to require incorporation of Boeing Service Bulletin No. 747-57-2138 at the next scheduled roller inspection.

Since this amendment relieves a restriction, and imposes no additional burden on any person, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment 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 the Federal Aviation Regulations, Amendment 39-2371, AD 75-20-05, as amended by Amendment 39-2426, is amended as follows:

Revise paragraph E to read:

E. "Unless already accomplished, on or before the next airload roller scheduled inspection, cut inspection holes in the mid flaps in accordance with Boeing Service Bulletin No. 747-57-2138."

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 Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 12, 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)).

The incorporation by reference provisions in the document were approved by the Director of the Federal Register on June 19, 1967.

Issued in Seattle, Washington, November 21, 1975.

C. B. WALK, Jr.,
Director,
Northwest Region.

[FR Doc.75-32205 Filed 11-28-75;8:45 am]

[Docket No. 75-CE-26-AD; Amdt. 39-2419]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna T310, 320, 340, 401, 402, 411, 414 & 421 Series Airplanes

CORRECTION

In F.R. Doc. 75-30251, appearing on Pages 52717 through 52720, in the issue of Wednesday, November 12, 1975, make the following corrections:

1. In Paragraph I. A. following the phrase "or 50 hours' time in service after the last AD 75-04-01 inspection (in service aircraft)" and before the words "visually inspect" insert the phrase "and within each 50 hours' time in service thereafter".

2. Following Paragraph I. A. 2. g. right after the Paragraph entitled "NOTE" and right before the Paragraph entitled "II. Parts replacement" insert the enclosed table entitled "TABLE 1".

3. In Paragraph IV. A. add to the list of aircraft serial numbers between the number "T310R0275" and the number "3400001" the following numbers "320D0001 thru 320F0045".

Issued in Kansas City, Missouri, on November 21, 1975.

C. R. MELUGIN, Jr.,
Director,
Central Region.

	ONE PIECE "V" BAND CLAMP (Turbine Outlet)				LIFE LIMITED SEGMENTED "V" BAND CLAMP (Turbine Inlet)			
Aircraft Model	Part Number	Clamps Per Aircraft	Location (See Notes)	Torque (Inch Lbs.)	Part Number	Clamps Per Aircraft	Location (See Notes)	Torque (Inch Lbs.)
T310	V57A4234 Alt. 41195AA423	2	A	40	MVT64832 Alt. 4309AL 4309AF	3	C	35
320	None	-	B	--	51394H250 (51134-250S Gasket)	3	C	35
320A thru 320C	None	-	B	--	B38C37 Alt. 4309AL 4309AF	3	C	35
320D thru 320F	V57A4234 Alt. 41195AA423	2	A	40	MVT64832 Alt. 4309AL 4309AF	3	C	35
340	V57A5019 Alt. 41195AA502	2	A	40	MVT68892-250 Alt. 430187250	4	C	45
401	V57A4234 Alt. 41195AA423	2	A	40	MVT64832 Alt. 4309AL 4309AF	3	C	35
402	V57A4234 Alt. 41195AA423	2	A	40	MVT64832 Alt. 4309AL 4309AF	3	C	35
411	None	-	B	--	None	-	B	--
414	V57A5019 Alt. 41195AA502	2	A	40	MVT68892-250 Alt. 430187250	4	C	45
					4255A8200 Alt. MVT68892-200	2	D	65-75
421	V57A5019 Alt. 41195AA502	2	A	40	4355AA300	2	D	70-90

TABLE 1

Notes:

A Turbine Outlet to Outboard Exhaust Stack Clamp

B Not Applicable (affected clamps not used)

C Turbine Inlet Exhaust Wye to Inboard and Outboard exhaust manifold clamps

D Waste Gate Inlet clamp

[FR Doc.75-32206 Filed 11-28-75;8:45 am]

[Airspace Docket No. 75-SO-151]

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

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Plymouth, N.C., transition area.

The Plymouth transition area is described in § 71.181 (40 F.R. 441). In the description, an extension is predicated on the 205° bearing from the Plymouth RBN. The location of the RBN has been changed and it is necessary to alter the description by amending the geographical coordinates of the RBN and the bearing of the extension. Since this amendment is minor in nature, notice and public procedure hereon are unnecessary.

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

In § 71.181 (40 FR 441), the Plymouth transition area is amended as follows:

PLYMOUTH, N.C.

"* * * (Lat. 35°48'23" N., Long. 76°45'30" W.) * * *" is deleted and "* * * (Lat. 35° 48'35" N., Long. 76°45'47" W.) * * *" is substituted therefor, and "* * * 205° * * *" is deleted and "* * * 188° * * *" 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 of Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on November 19, 1975.

PHILLIP M. SWATEK,
Director,
Southern Region.

[FR Doc.75-32202 Filed 11-28-75;8:45 am]

[Airspace Docket No. 75-WE-30]

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

Revocation of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to revoke the San Rafael, California control zone.

The Department of the Air Force has informed the Federal Aviation Administration that they are terminating the operation of the air traffic control tower and navigational aids including the TACAN and ILS at Hamilton Air Force Base, San Rafael, California. Accordingly, there will be no further need for the control zone and it will be revoked.

Since the amendment would be less restrictive than currently exists and would pose no additional burden on any person, notice and public procedure thereon is unnecessary.

In consideration of the foregoing in § 71.171 (40 FR 354) the San Rafael, California control zone is revoked.

Effective date. This amendment shall be effective 0901 G.M.T. January 10, 1976.

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

Issued in Los Angeles, California on November 19, 1975.

W. R. FREHSE,
Acting Director,
Western Region.

[FR Doc.75-32201 Filed 11-28-75;8:45 am]

Title 19—Customs Duties

CHAPTER I—U.S. CUSTOMS SERVICE

[T.D. 75-300]

PART 159—LIQUIDATION OF DUTIES

Countervailing Duties To Be Imposed Under Section 303, Tariff Act, 1930

On June 30, 1975, a "Notice of Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (40 FR 27498). The notice stated that it had been determined tentatively that payments are being made, directly or indirectly, by the European Communities (consisting of France, the United Kingdom, West Germany, Luxembourg, Ireland, the Netherlands, Denmark, Italy and Belgium), upon the manufacture, production, or exportation of canned hams and canned shoulders, which constitute a bounty or grant within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303). The notice provided interested parties 15 days from the date of publication to submit relevant data, views, or arguments in writing with respect to the preliminary determination. The time period was later extended to September 3, 1975 (40 FR 34423).

After consideration of all information received, it has been determined that exports of canned hams and canned shoulders from the European Communities are subject to bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

Accordingly, notice is hereby given that canned hams and canned shoulders imported directly or indirectly from the European Communities, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the FEDERAL REGISTER, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303, the net amount of the bounties or grants has been ascertained and determined, or estimated, to be the refunds referred to in Article 15 of Regulation (EEC) No. 121/67 applicable on the exportation of canned hams and canned shoulders from the member states, as set forth by the regulations of the European Communities as published in the *Official Journal of the European Communities*. To the extent that it has been or can be established to the satisfaction of the Commissioner of Customs that imports of canned hams and canned shoulders from the European Communities are subject to a bounty or grant in an amount other than that applicable under the above declaration, the amount so established shall be assessed and collected on imports of such canned hams and canned shoulders.

Effective on or after the date of publication of this notice in the FEDERAL REGISTER and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable canned hams and canned shoulders imported directly or indirectly from the European Communities, which benefit from these bounties or grants, there shall be collected in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

The liquidation of all entries for consumption or withdrawal from warehouse for consumption of such dutiable canned hams and canned shoulders imported directly or indirectly from the European Communities, which benefit from these bounties or grants, and are subject to this order, shall be suspended pending declarations of the net amounts of the bounties or grants paid.

Notwithstanding the above, a notice of "Waiver of Countervailing Duties" is being published concurrently with this order in accordance with section 303(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(d)). At such time as the waiver ceases to be effective, in whole or in part, a notice will be published setting forth the deposit of estimated countervailing duties which will be required at the time of entry, or withdrawal from warehouse, for consumption of each product then subject to the payment of countervailing duties.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting in the column headed "Commodity", the words "Canned Hams and Canned Shoulders" after the last entry for France, Great Britain (the United Kingdom), West Germany, Luxembourg, Ireland, the Netherlands, Denmark, Italy and Belgium. The column headed "Treasury Decision" is amended by inserting the number of this Treasury Decision, and the column headed "Action" is amended by inserting the words "Bounty Declared-Rate".

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2050; 19 U.S.C. 66, 1303, as amended, 1624).

VERNON D. ACREE,
Commissioner of Customs.

Approved: November 24, 1975.

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.75-32364 Filed 11-28-75;8:45 am]

[T.D. 75-301]

PART 159—LIQUIDATION OF DUTIES

Determination Under Section 303(d), Tariff Act of 1930, as Amended, To Waive Countervailing Duties

NOVEMBER 24, 1975.

In T.D. 75-300 published concurrently with this determination, it has been determined that bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended, (19 U.S.C. 1303), are being paid or bestowed, directly or indirectly, upon the manufacture, production, or exportation of canned hams and shoulders from the European Communities consisting of France, the United Kingdom, West Germany, Luxembourg, Ireland, the Netherlands, Denmark, Italy and Belgium.

Section 303(d) of the Tariff Act of 1930, as added by the Trade Act of 1974 (Pub. L. 93-618, January 3, 1975), authorizes the Secretary of the Treasury to waive the imposition of countervailing duties during the 4-year period beginning on the date of enactment of the Trade Act of 1974 if he determines that:

(1) adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

(2) there is a reasonable prospect that, under section 102 of the Trade Act of 1975, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

(3) the imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Based upon analysis of all the relevant factors and after consultation with interested agencies, I have concluded that steps have been taken to reduce substantially the adverse effect of the bounties or grants by virtue of a series of reductions in the applicable export restitution payments, from a high of 57 units of account per 100 kilos in September 1973 to 20 units of account per 100 kilos on canned hams and 16.5 units of account per 100 kilos on canned shoulders effective November 10, 1975.

In addition this waiver is conditioned on:

(1) the general economic situation of the swine industry in the U.S. which will be appraised from time to time in order to determine whether remaining restitution payments on EC canned hams and shoulders are having an adverse effect on the industry. In assessing the state of the industry, the following factors will be taken into account:

(a) import penetration by the EC product, including share of U.S. market;

(b) trends in U.S. consumption;

(c) changes in profitability of the U.S. hog industry;

(d) the hog-corn ratio (the relationship of the price of hogs to the price of corn) in the United States commodity markets. A reduction in the hog-corn ratio below 15:1 would in particular be viewed as one indicator of a change in the conditions under which the waiver has been granted;

(2) the absence of aggressive marketing by European Community countries of canned hams and shoulders in the United States and of any prospective increase from present levels of restitution payments on canned hams and shoulders.

Should the conditions outlined above change, additional downward adjustments in the level of remaining restitution payments may be required in order to assure continuation of the waiver.

After consulting with appropriate agencies, including the Department of State, the Office of the Special Representative for Trade Negotiations, and the Department of Agriculture, I have further concluded (1) that there is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elemination of barriers to or other distortions of international trade; and (2) that the imposition of countervailing duties on canned hams and shoulders from the European Communities would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Accordingly, pursuant to section 303 (d) of the Tariff Act of 1930, as amended, (19 U.S.C. 1303(d)), I hereby waive the imposition of countervailing duties as well as the suspension of liquidation order in T.D. 75-300 on canned hams and shoulders from the European Communities.

This determination may be revoked, in whole or in part, at any time and shall be revoked whenever the basis supporting such determination no longer exists. Unless sooner revoked or made subject to a resolution of disapproval adopted by either House of the Congress of the United States pursuant to section 303(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(e)), this waiver of countervailing duties will, in any event, by statute cease to have force and effect on January 4, 1979.

On or after the date of publication in the FEDERAL REGISTER of a notice revoking this determination in whole or in part, the day after the date of adoption by either House of the Congress of a resolution disapproving this "Waiver of Countervailing Duties", or January 4, 1979, whichever occurs first, countervailing duties will be assessable on canned hams and shoulders imported directly or indirectly from the European Communities in accordance with T.D. 75-300, published concurrently with this determination.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for France, the United Kingdom, West Germany, Luxembourg, Ireland, the Netherlands, Denmark, Italy, and Belgium under the commodity heading "Canned Hams and Shoulders", the number of this Treasury Decision in the column heading "Treasury Decision", and the words "Imposition of countervailing duties waived" in the column headed "Action".

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759; 88 Stat. 2050; 19 U.S.C. 66, 1303, as amended, 1624)

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

NOVEMBER 24, 1975.

[FR Doc.75-32363 Filed 11-28-75;8:45 am]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PART 630—PRECONSTRUCTION PROCEDURES

Project Agreements

● **Purpose. The purpose of this document is to amend the regulations of the Federal Highway Administration to:**

(a) Change the title "Division Engineer" to "Division Administrator" throughout;

(b) Impose new obligations on State highway agencies pursuant to regulations (40 CFR, Part 15) of the Environmental Protection Agency in implementation of the Clean Air Act and the Federal Water Pollution Control Act; and

(c) Require the State highway agency to execute the original and one copy of the project agreement, rather than "three copies" as heretofore. ●

The matters affected relate to grants, benefits, or contracts within the purview of 5 U.S.C. 553(a)(2), therefore general notice of proposed rulemaking is not required.

The revisions will become effective January 1, 1976.

Issued on November 20, 1975.

NORBERT T. TIEMANN,
Federal Highway Administrator.

Subpart C—Project Agreements

§ 630.302 [Amended]

1. Section 630.302(e) is hereby amended to substitute the word "Administrator" for the word "Engineer," in the first line thereof.

§ 630.304 [Amended]

2. Section 630.304(b) is hereby amended to substitute the word "Administrator" for the word "Engineer," in the fourth line thereof.

3. Section 630.304(c)(9) is hereby amended to substitute the word "Administrator" for the word "Engineer" in the last line thereof.

4. Section 630.304(d) is hereby revised to read as follows:

• • • • •

(d) The original agreement and one copy thereof will be executed by the proper officer of the State highway agency and forwarded to the Division Administrator for review and execution. The Division Administrator will retain the original agreement as part of the project status records. One executed copy will be returned to the State highway agency. When required by the regional office, a conformed copy will be sent to that office.

§ 630.305 [Amended]

5. Section 630.305(b) is hereby amended to substitute the word "Administrator" for the word "Engineer," in the fifteenth and sixteenth lines (excluding the schedule) thereof.

§ 630.306 [Amended]

6. Section 630.306(b) is hereby amended to substitute the word "Administrator" for the word "Engineer" in the sixth line thereof.

7. Appendix A is revised as follows:

Appendix A

TO BE COMPLETED BY FHWA MONTHLY TRANSACTION NO.	U. S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION FEDERAL-AID PROJECT AGREEMENT	State County Project No.

The State, through its Highway Agency, having complied, or hereby agreeing to comply, with the applicable terms and conditions set forth in (1) Title 23, U.S. Code, Highways, (2) the Regulations issued pursuant thereto and, (3) the policies and procedures promulgated by the Federal Highway Administrator relative to the above designated project, and the Federal Highway Administration having authorized certain work to proceed as evidenced by the date entered opposite the specific item of work, Federal funds are obligated for the project not to exceed the amount shown herein, the balance of the estimated total cost being an obligation of the State. Such obligation of Federal funds extends only to project costs incurred by the State after the Federal Highway Administration authorization to proceed with the project involving such costs.

PROJECT TERMINI

PROJECT CLASSIFICATION OR PHASE OF WORK	EFFECTIVE DATE OF AUTHORIZATION	APPROXIMATE LENGTH (Miles)
HIGHWAY PLANNING AND RESEARCH (HP & R)		
PRELIMINARY ENGINEERING		
RIGHTS-OF-WAY		
CONSTRUCTION		
OTHER (Specify)		

FUNDS	
ESTIMATED TOTAL COST OF PROJECT	FEDERAL FUNDS
$	$

The State further stipulates that as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions set forth on the reverse hereof.

_____
(Official name of Highway Agency)

By _____

_____
(Title)

By _____

_____
(Title)

By _____

_____
(Title)

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By _____
(Division Administrator)

Date executed by Division Administrator _____

Form PR-2 (Rev. 10-75) PREVIOUS EDITIONS ARE OBSOLETE

AGREEMENT PROVISIONS

1 RESPONSIBILITY FOR WORK

a. Except for projects constructed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in compliance with the approved plans and specifications or project proposal which, by reference, are made a part hereof.

b. With regard to projects performed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in accordance with the terms of its approved Certification, or exceptions thereto as may have been approved by the Federal Highway Administration.

2. HIGHWAY PLANNING AND RESEARCH (HP&R) PROJECT. The State highway agency will (a) conduct or cause to be conducted, under its direct control, engineering and economic investigations of projects for future construction, together with highway research necessary in connection therewith, pursuant to the work program approved by the Federal Highway Administration and (b) prepare reports suitable for publication of the result of such investigations and research, but no report will be published without the prior approval of the Federal Highway Administration.

3. PROJECT FOR ADVANCE ACQUISITION OF RIGHTS-OF-WAY. In the event that actual construction of a road on this right-of-way is not undertaken by the close of the tenth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

4. PRELIMINARY ENGINEERING PROJECT FOR PREPARATION OF RIGHT-OF-WAY PLANS OR FOR PREPARATION OF CONSTRUCTION PLANS, SPECIFICATIONS AND ESTIMATES. In the event that right-of-way acquisition for, or actual construction of the road for which this preliminary engineering is undertaken is not started by the close of the fifth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

5. INTERSTATE SYSTEM PROJECT. (a) The State highway agency will not add or permit to be added, without the prior approval of the Federal Highway Administration any points of access to, or exit from, the project in addition to those approved in the plans and specifications for the project. (b) The State highway agency will not permit automotive service stations, or other commercial establishments for serving motor vehicle users, to be constructed or located on the right-of-way of the interstate system. (c) The State highway agency will not after June 30, 1968, permit the construction of any portion of the Interstate Route on which this project is located, including spurs and loops, as a toll road without the written concurrence of the Secretary of Transportation or his officially designated representative. The term 'toll road' does not include toll bridges or toll tunnels.

6. PROJECT FOR CONSTRUCTION IN ADVANCE OF APPORTIONMENT. (a) This project authorized pursuant to 23 U.S.C. 115 as amended, will be subject to all procedures and requirements, and conform to the standards applicable to projects on the system on which located, financed with the aid of Federal funds. (b) No obligation of previously apportioned Federal funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway agency, and approval thereof by the Federal Highway Administration, any Federal-aid funds of the class designated by the project number prefix, apportioned to the State under 23 U.S.C. 104 subsequent to the date of this agreement, may be used to reimburse the State for the Federal share of the cost of work done on the project.

7. STAGE CONSTRUCTION. The State highway agency agrees that all stages of construction necessary to provide the initially planned complete facility, within the limits of this project, will conform to at least the minimum values set by approved AASHTO design standards applicable to this class of highways, even though such additional work is financed without Federal-aid participation.

8. BOND ISSUE PROJECT. Construction, inspection and maintenance of the project will be accomplished in the same manner as for regular Federal-aid projects. No present or immediate obligation is created by this Agreement against Federal funds, its purpose and intent being to provide aid to the State, as authorized by 23 U.S.C. 122, for retiring maturities of the principal indebtedness of the bonds referred to below. When the State requests Federal reimbursement to aid in the retirement of such bonds, the request will be supported by the appropriate certification required by 23 CFR Part 140, Subpart F, and Volume 1, Chapter 4, Section 8 of the Federal-Aid Highway Program Manual or the alternative State procedure set forth in the State's Certificate, and payment of the authorized Federal share will be made from appropriate funds available. If in any year there is no unobligated balance of any apportioned Federal funds available from which payments hereunder may be made, there will be no obligation on the part of the Federal Government on account of bond maturities for that year. Funds available to the highway agency for this project are the proceeds of bonds issued by the governmental unit indicated on the attached tabulation, pursuant to the authority and in the amounts by date of issue and beginning date of maturities set forth therein.

9. SPECIAL HIGHWAY PLANNING AND RESEARCH PROJECT. The State Highway agency hereby authorizes the Federal Highway Administration to charge the State's pro rata share of costs incurred against funds apportioned to the State under 23 U.S.C. 307 (c), as amended. In the event a project is financed with both Federal-aid funds and State matching funds, the State agrees to advance to The Federal Highway Administration the State matching funds for its share of the estimated cost. For a National Pooled Fund study, the State hereby assigns its responsibility for the work to the Federal Highway Administration. For an Intra-Regional Cooperative Study, the State hereby assigns its responsibility for the work to the lead State for the study.

10. PARKING REGULATION AND TRAFFIC CONTROL. The State highway agency will not permit any changes to be made in the provisions for parking regulations and traffic control as contained in the agreement between the State and the local unit of Government referred to in the paragraph on "Additional Provisions," without the prior approval of the Federal Highway Administration, unless the State determines, and the Division Administrator concurs, that the local unit of Government has a functioning traffic engineering unit with the demonstrated ability to apply and maintain sound traffic operations and control.

AGREEMENT PROVISIONS

11. SIGNING AND MARKING. The State highway agency will not install, or permit to be installed, any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administrator pursuant to 23 U.S.C. 109(d) or the State's Certificate as applicable.

12. MAINTENANCE. The State highway agency will maintain, or by formal agreement with appropriate officials of a county or municipal government cause to be maintained, the project covered by this agreement.

13. LIQUIDATED DAMAGES. The State highway agency agrees that on Federal-aid highway construction projects not under Certification Acceptance the provisions of 23 CFR Part 630, Subpart C and Volume 6, Chapter 3, Section 1 of the Federal-Aid Highway Program Manual, as supplemented, relative to the basis of Federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

14. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (APPLICABLE TO CONTRACTS AND SUBCONTRACTS WHICH EXCEED $100,000).

a. The State highway agency stipulates that any facility to be utilized in performance under or to benefit from this agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

b. The State highway agency agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

c. The State highway agency stipulates that as a condition of Federal aid pursuant to this agreement it shall notify the Federal Highway Administration of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this agreement is under consideration to be listed on the EPA List of Violating Facilities.

d. The State highway department agrees that it will include or cause to be included in any Federal-aid to highways agreement with a political subdivision of the State which exceeds $100,000 the criteria and requirements in these subparagraphs a. through d.

NONDISCRIMINATION PROVISION

15. The State highway agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the following equal opportunity clause:

"During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway agency setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The contractor will send to each labor union representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway agency advising the said labor union or workers' representative of the contractor's commitments under this section II-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway agency or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; *Provided, however*, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

The State highway agency further agrees that it will be bound by the above equal opportunity clause with respect to its own

NONDISCRIMINATION PROVISION

employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The State highway agency also agrees:

(1) To assist and cooperate actively with the Federal Highway Administration and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor.

(2) To furnish the Federal Highway Administration and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Federal Highway Administration in the discharge of its primary responsibility for securing compliance.

(3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order.

(4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Federal Highway Administration or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

In addition, the State highway agency agrees that if it fails or refuses to comply with these undertakings, the Federal Highway Administration may take any or all of the following actions:

(a) Cancel, terminate, or suspend this agreement in whole or in part;

(b) Refrain from extending any further assistance to the State highway agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the State highway agency; and

(c) Refer the case to the Department of Justice for appropriate legal proceedings.

ADDITIONAL PROVISIONS

8. Appendix B is revised as follows:

Appendix B

TO BE COMPLETED BY FHWA	U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION	Form Approved; O M B No. 04-R2035
MONTHLY TRANSACTION NUMBER		State
PROJECT REPORT NUMBER	MODIFICATION OF FEDERAL-AID PROJECT AGREEMENT	County
MODIFICATION NUMBER		Project Number

The Project Agreement for the above-referenced project entered into between the undersigned parties

and executed by the Division Administrator on ,19

is hereby modified as follows:

	Former amount	Revised amount
Estimated total cost of project	$	$
Federal funds	$	$
Other revisions		

This modification is made for the following reasons:

All other terms and conditions of the Project Agreement will remain in full force and effect. This modification is effective as of the day of ,19

(Official name of Highway Agency)

By (Title)

By (Title)

By (Title)

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By (Division Administrator)

Form PR-2A (Rev. 10-70) Previous editions are obsolete GPO 895-112

[FR Doc.75-32075 Filed 11-28-75;8:45 am]

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

[Docket No. 75-8]

PART 712—THE ACQUISITION FUNCTION

Land Service Facilities; Interim Regulations

Correction

In FR Doc. 75-30772 appearing at page 53236 in the FEDERAL REGISTER of Monday, November 17, 1975, the following changes in section 712.804(d)(4) on page 53237 should be made:

1. The word "directive" in the first sentence is changed to read: "regulation."

2. The first eight words of the second sentence are corrected to read: "This would not preclude participation in payments made * * *."

Issued on November 21, 1975.

DAVID E. WELLS,
Chief Counsel.

[FR Doc.75-32196 Filed 11-28-75;8:45 am]

Title 46—Shipping

CHAPTER II—MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER H—TRAINING

PART 310—MERCHANT MARINE TRAINING

Admission and Training of Midshipmen at United States Merchant Marine Academy

Part 310 of Title 46 of the Code of Federal Regulations currently specifies that applicants for the U.S. Merchant Marine Academy must qualify in the College Entrance Examination Board's Scholastic Aptitude Test. There is no provision for permitting the use of the American College Testing examinations.

● **Purpose. The purpose of this amendment is to permit the use of the American College Testing examinations as an optional alternative to the College Entrance Examination Board's Scholastic Aptitude Test in evaluating candidates for the U.S. Merchant Marine Academy.** ●

Part 310 of Title 46 of the Code of Federal Regulations is amended as follows:

(1) Revise paragraph (b) of § 310.54 to read as follows:

§ 310.54 Scholastic requirements.

* * * * *

(b) *Scholastic examinations*—(1) *Required entrance examinations.* Applicants are required to qualify in either the College Entrance Examination Board or the American College Testing Program examinations administered nationally on scheduled dates at convenient testing centers. The entrance examination consists of either the Scholastic Aptitude Test (verbal and mathematics sections) or the American College Testing Program examination (english, mathematics, and social and natural sciences sections). Qualifying scores on the entrance examinations will be determined by the Academy for each entering class. Any unacceptable score on any one section is cause for rejection. The cost of the examinations must be borne by the applicant. Nominess must have taken all the required examinations by the January testing date in the year for which they seek appointment, unless special authorization to take later examinations is received from the Academy admissions office.

(2) *Forwarding test results.* Candidates who take the tests required by the U.S. Merchant Marine Academy and who desire that the results be considered for scholastic qualification should request the College Entrance Examination Board and/or the American College Testing Program to submit their scores to the U.S. Merchant Marine Academy, Kings Point, N.Y.

(3) *Test information.* General information on the tests, including dates of administration, location of testing centers, registration, etc. is published by the

College Entrance Examination Board in a booklet entitled "Bulletin of Information," a copy of which can be obtained from the candidate's high school guidance office. In addition, a booklet entitled "A Description of the College Board Scholastic Aptitude Test" may be obtained, without charge, from the candidate's high school or the College Entrance Examination Board, P.O. Box 592, Princeton, N.J. 08540, or the College Entrance Examination Board, P.O. Box 1025, Berkeley, Calif. 94701. Similar information on the American College Testing Program may be obtained from the candidate's high school guidance office or from the American College Testing Program, P.O. Box 168, Iowa City, Iowa 52240.

(2) Revise paragraphs (c)(3)(i) and (c)(4) of § 310.64 to read as follows:

§ 310.64 Foreign students.

* * * * *

(c) *Regulations.* * * *

(3) * * * (i) Must qualify in either the College Entrance Examination Board Scholastic Aptitude Test or the American College Testing Program examinations. See § 310.54(b). Detailed certificates covering schoolwork will not be required of candidates from the other American Republics and the Trust Territories of the Pacific. When available, special foreign language College Board examinations may be substituted for the College Entrance Examination Board or American College Testing Program examinations. * * *

(4) Candidates will be furnished information as to the time, place, etc., of the College Entrance Examination Board or the American College Testing Program examinations. A maritime representative or a diplomatic representative of the United States in the candidate's country shall in the case of all these candidates furnish a report as to the candidate's proficiency in the use of idiomatic English.

Effective date. This amendment shall become effective on December 1, 1975.

(Section 204(b), Merchant Marine Act, 1936, as amended (49 Stat. 1987, 46 U.S.C. 1114), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 842) as amended by Pub. L. 91-469 (84 Stat. 1036), Department of Commerce Order 10-8 (38 FR 19707, July 23, 1973))

(Catalog of Federal Domestic Assistance Program No. 11-507 U.S. Merchant Marine Academy (Kings Point))

Dated: November 24, 1975.

By order of the Assistant Secretary of Commerce for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.75-32320 Filed 11-28-75;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 1—PRACTICE AND PROCEDURE

Air Mail Service of Documents

Order. In the matter of editorial amendment of § 1.47(f), rules of practice and procedure.

1. Section 1.47(f) now provides that service of documents shall be by air mail if the distance between the parties is 500 miles or more. Since the U.S. Postal Service is now delivering all first class mail by air if the distance exceeds 300 miles, this provision is no longer needed and should be deleted. Authority for this amendment is contained in sections 4(i), 5(d) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(d), and 303(r) and in § 0.231(d) of the Commission's rules, 47 CFR 0.231(d). Because the amendment is editorial and procedural in nature, the notice and effective date requirements of 5 U.S.C. 553 are inapplicable.

2. Accordingly, § 1.47(f) is revised as set out below effective December 1, 1975.

(Secs. 4, 5, 303, 307, 48 Stat., as amended, 1066, 1068, 1082, 1083; (47 U.S.C. 154, 155, 303, 307))

Adopted: November 18, 1975.

Released: November 20, 1975.

[SEAL] R. D. LICHTWARDT,
Executive Director.

In Part 1 of Chapter I of Title 47 of the Code of Federal Regulations, § 1.47(f) is revised to read as follows:

§ 1.47 Service of documents and proof of service.

* * * * *

(f) Service by mail is complete upon mailing.

* * * * *

[FR Doc.75-32138 Filed 11-28-75;8:45 am]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Kernville, Calif.

Memorandum opinion and order. In the matter of amendment of § 73.202(b), Table of assignments, FM Broadcast Stations. (Kernville, California).

1. The Commission here considers on its own motion[1] the deletion of FM Channel 272A from Kernville, California, as a matter of public interest. The channel was assigned effective May 9, 1973, by our "Second Report and Order" in Docket 19578, 40 F.C.C. 2d 310, in response to a petition from Kern River Valley Radio, Inc. At that time, petitioner stated that it was prepared to apply for authorization to operate on Channel 272A. However, no application or other communication has been received to date. No other party has applied for Channel 272A and it has remained unused since its assignment to Kernville more than two years ago. Kernville is a very small unincorporated community of less than 1,000 population located near Lake Isabella, another small town, both in Kern County, California. The Lake Isabella region is still without a local broadcast service of any kind.

2. An attempt to bring service to the region was made by John M. Ridenour on July 13, 1972, prior to the Kernville FM assignment, when he applied for a new AM station at Lake Isabella, requesting waiver of the Commission's AM Freeze. That application was returned July 28, 1972, because of prohibited overlap. Ridenour commented in the Kernville rulemaking that he was revising his AM application, and that he had no objection to the assignment of Channel 272A to Kernville: *Provided*, That it would not foreclose consideration of his AM application. We replied in our "Second Report and Order," 40 F.C.C. 310, 311 (1973):

> The assignment of Channel 272A to Kernville would not foreclose consideration of an AM station there. Kernville is an isolated community, 38 miles from Bakersfield and 41 miles from Porterville where aural broadcast stations are located, and does not receive aural broadcast services as defined by Section 73.37(e) of the rules. Thus it would qualify for at least two aural broadcast stations as provided by that Rule.

This statement was based on our expectation that Kern River Valley, Inc., would keep its commitment to utilize Channel 272A. Since it has not, Ridenour's new AM application of October 25, 1974, is blocked by § 73.37(e)(1)(iii) of our rules,[2] which requires demonstration that no FM channel is available for use in the community designated in the application. Channel 272A is available for use at Lake Isabella under the "10-mile" rule (§ 73.203(b); see also § 73.37 Note 6).

3. Our FM non-availability rule in § 73.37(e)(1)(iii) is designed to foster the growth of FM service. We continue to support that policy and will not waive its requirements, even in a case like this one. Under the unique circumstances presented here, however, we do not think it is contrary to the spirit of that policy to delete an FM channel for lack of use. Had we known that the FM petitioner would not apply for a construction permit immediately, as it represented, we would not have made the assignment in the first place, since it is our policy in such situations to make an assignment only if a commitment to use the channel has been expressed. We therefore have no hesitation now in deleting that channel, so that the interested party may proceed.

4. We strictly limit the action taken here to the facts and equities of this case. The AM applicant unsuccessfully applied for a construction permit prior to the FM assignment, was promised in the FM proceeding by the Commission that his AM application would not be foreclosed, but the FM channel has remained unused for more than two years and thus prevents an interested party from providing a first local broadcast service to a small community. Under the circumstances, we find that the public

[1] The Commission deleted *sua sponte* unused FM channels because of short-spacing in our Memorandum Opinion and Order, Re Revision of FM Broadcast Rules, 28 FR 11690 (1963). And recently, in Charleston, W. Va., 51 F.C.C. 2d 496 (1975), a short-spaced FM channel was deleted on our own motion when it became unlicensed through a forfeiture.

[2] Formerly § 73.37(e)(1)(ii), adopted by "Report and Order," 39 F.C.C. 2d 645 (1973). The language and number of this section were amended to the present form by Report and Order, 54 F.C.C. 2d 1 (adopted June 27, 1975) and Errata, 54 F.C.C. 2d 301 (adopted July 16, 1975).

interest would best be served by deletion of the FM channel at Kernville without prejudice to assignment of an available FM channel there when an interested party so petitions.

5. This action is taken by authority contained in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended; 5 U.S.C. 553(b)(3)(B) and (d)(3); and § 0.281(b)(6) of our rules. In view of the lack of interest in the unused FM channel, and in order to expedite action on the pending AM application mentioned herein, we find notice and public procedure unnecessary here, pursuant to 5 U.S.C. 553(b)(3)(B). Likewise, the 30-day notice requirement is inapplicable for the same reasons, as provided in 5 U.S.C. 553(d)(3).

6. *Accordingly, it is ordered,* That effective December 1, 1975, the FM Table of Assignments (§ 73.202(b) of the rules) is amended to read as follows for the city listed below:

City	*Channel No.*
Kernville, California	—

(Secs. 4, 5, 303, 307, 48 Stat., as amended, 1066, 1068, 1082, 1083; (47 U.S.C. 154, 155, 303, 307))

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

Adopted: November 17, 1975.

Released: November 20, 1975.

[FR Doc.75-31906 Filed 11-28-75;8:45 am]

Title 49—Transportation

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—GENERAL PROVISIONS

PART 310—BRIDGE TOLL PROCEDURAL RULES

Hearing by Affidavit

The Federal Highway Administrator is amending the Bridge Toll Procedural Rules to provide for optional hearing of contested toll bridge rate cases by affidavit, in the interest of expedition and economy for the parties.

A hearing by affidavit involves the presentation of a party's position entirely by the submission and exchange of sworn statements containing the evidence supporting the party. A hearing by affidavit may be ordered by the Administrator or by the administrative law judge, and either the administrative law judge or the Administrator may preside, as the Administrator shall decide. Oral presentation and cross-examination of an opposing party may be permitted only for good cause shown. Good cause may be demonstrated by the existence of a material conflict as to the facts, but not as to the conclusions to be drawn from them. Good cause may also be shown by raising a material question of credibility of an affiant. The administrative law judge shall determine whether any material dispute of facts exists, regardless of who initially ordered the hearing by affidavit.

Toll cases frequently involve complex analyses of the financial and operation structure of large institutions, which operate the bridges, in question. Frequently, factual matters of this nature offered by the bridge proprietor is not contested by the other parties. Hence, oral presentations of this and other evidence not in dispute is often unduly time consuming and awkward. The more expedient method is to permit all initially uncontested facts to be presented by affidavit on direct, but allow subsequent oral presentation and cross-examination on those material facts determined to be in dispute. Since many toll proceedings held to date have taken substantial periods of time to complete, fairness to all parties requires that future toll proceedings be expedited, in a manner compatible with due process. It is desirable to avoid unfairness to bridge users who must continue to pay during the pendency of the investigation, hearing, and petitions for reconsideration. It is equally important to obviate uncertainty to toll bridge authorities who may be relying on a prompt adjudication of the toll increase for reasons of investment and development. Finally, the Administrator has the responsibility to fairly and expeditiously resolve all matters arising within his authority, and thus must prevent a delay of justice caused by unnecessarily lengthy proceedings in any one area of his responsibility.

These considerations appear to have been the basis for the Congressional enactment of section 133(b) of the Federal-Aid Highway Act of 1973 (33 U.S.C. 526a). It appears to have been the express legislative intent of Congress to empower the Secretary of Transportation or his delegatee, the Administrator, to promulgate regulations that, among other effects, would expedite bridge toll proceedings in order to prevent injustice to either bridge users or bridge authorities.

Since these amendments relate to a pleading and practice before the Federal Highway Administration and do not affect substantive rights or liabilities, notice and public procedure are unnecessary and they are effective on the date of issuance set forth below.

In consideration of the foregoing, in Part 310 of Chapter III of title 49 CFR, the table of sections, the authority paragraph, § 310.7 are revised, and a new Subpart B is added as set forth below.

1. The table of sections of Part 310 are revised to read as follows:

Subpart A—General Procedure

* * * * *

Subpart B—Hearing by Affidavit

Sec.
310.101 Definitions.
310.103 How initiated.
310.105 Proofs.
310.107 Rebuttal proofs; interrogatories.
310.109 Oral presentation and cross-examination.
310.111 Intervention.
310.113 Hearing and decision procedure.

AUTHORITY: Sec. 4 of the Bridge Act of 1906, as amended (33 U.S.C. 494), section 503 of the General Bridge Act of 1946, as amended (33 U.S.C. 526), section 2 and section 6 of the International Bridge Act of 1972 (33 U.S.C. 535 and 535(d)), section 133(b) of the Federal-Aid Highway Act of 1973 (33 U.S.C. 526a), section 6 of the Department of Transportation Act (49 U.S.C. 1655), and the delegation of authority by the Secretary of Transportation, 49 CFR 1.48.

2. Part 310 is amended by adding immediately before § 310.1 the following new heading:

Subpart A—General Procedure

3. Section 310.7 is revised to read as follows:

§ 310.7 Initial determination.

After such investigation under § 310.5 and such conferences under § 310.6 as he deems appropriate, the Administrator determines whether there are sufficient grounds for initiating formal adjudication. If he determines that no such grounds exist, he dismisses the proceeding. If he determines that grounds for formal adjudication exist, he issues an order appointing an administrative law judge, or reserving the hearing to himself, and directing that either a public hearing under this Subpart or a hearing by affidavit under Subpart B be held. The order is served on the parties where the Administrator is to preside over the hearing. All subsequent regulations that refer to the "administrative law judge" shall also mean "the Administrator."

4. Part 310 is amended by adding immediately after § 310.14 the following new subpart:

Subpart B—Hearing by Affidavit

§ 310.101 Definitions.

(a) "Hearing by affidavit" means the procedure prescribed under this Subpart for determination of a bridge toll proceeding upon statements and exhibits supported by oath or affirmation.

(b) "Proofs" means written statements and graphic or other exhibits, supported by oath or affirmation, offered by a party in a hearing by affidavit, which separately states the facts and arguments of law upon which a party relies.

(c) The words "Administrator," "complainant," and "respondent" have the meaning given them by § 310.2.

§ 310.103 How initiated.

The Administrator or the administrative law judge may, on their own motion or on the motion of any party, order that the proceeding be determined through hearing by affidavit. The order shall be served on all parties, and shall direct them to comply with the rules in this Subpart.

§ 310.105 Proofs.

After the complaint and response have been filed, proofs may be submitted by any party to the administrative law judge. The oath or affirmation supporting facts asserted in any proof must be made by a person having knowledge of those facts, whose knowledge thereof

must be asserted in the affidavit. All parties shall file their proofs simultaneously with the administrative law judge and serve them on all other parties, within 30 days from the issuance of the order for hearing by affidavit, or in such sequence and at such times as the administrative law judge prescribes in the order. The period for filing proofs may be enlarged for good cause shown.

§ 310.107 Rebuttal proofs; interrogatories.

Any party may file and serve a single rebuttal proof within 20 days of receipt of any other party's proofs. Any party may submit written interrogatories within 20 days of receipt of any other party's proofs to be answered by any affiant within 10 days. The period for response for either rebuttal proofs or interrogatories may be enlarged for good cause shown.

§ 310.109 Oral presentation and cross-examination.

Upon good cause shown the administrative law judge may permit a party to cross-examine any affiant as to credibility or disputed material fact, but not as to inferences and arguments that may be drawn from the facts. To the extent that a material dispute of fact exists, a party may request the administrative law judge to order an oral presentation of those facts under the procedures of Subpart A. An order requiring an oral hearing shall describe the matters upon which the parties are not in agreement, or shall state the reasons for and the limitations on oral testimony or cross-examination.

§ 310.111 Intervention.

Persons may be permitted to intervene as a party for all purposes in a hearing by affidavit under the rule of § 310.9. Intervenors in a hearing by affidavit must comply with all the rules of this Subpart and all orders issued thereunder.

§ 310.113 Hearing and decision procedure.

All provisions of §§ 310.8, 310.10, 310.11, 310.12, 310.13, and 310.14 of Subpart A apply to a hearing by affidavit, except that the requirement of stenographic transcription under paragraph (c) of section 310.10 does not apply when the hearing by affidavit involves no oral presentations.

(Section 4 of the Bridge Act of 1906, as amended (33 U.S.C. 494, section 503 of the General Bridge Act of 1946, as amended (33 U.S.C. 526), section 2 and section 6 of the International Bridge Act of 1972 (33 U.S.C. 535 and 535(d)), section 133(b) of the Federal-Aid Highway Act of 1973 (33 U.S.C. 526(a)), section 6 of the Department of Transportation Act (49 U.S.C. 1655), and the delegation of authority by the Secretary of Transportation in 49 CFR 1.48).)

Effective date: The revision and additions to Part 310 become effective on November 24, 1975.

NORBERT T. TIEMANN,
Federal Highway Administrator.

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Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

[Amendment No. 71; FSP No. 1976-1.1]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program; Maximum Monthly Allowable Income Standards and Basis of Coupon Issuance: 48 States and District of Columbia

On September 19, 1975, there was published in the FEDERAL REGISTER (40 FR 43404-43410), a notice of proposed rulemaking to examine alternative proposals to establish the maximum monthly allowable income standards and the basis of coupon issuance set forth in FSP Notice 1975-1.2, effective July 1, 1975 (40 FR 19856). All proposals were based on the thrifty food plan and revised economies of scale developed by the Agricultural Research Service, United States Department of Agriculture (ARS).

BACKGROUND

On June 12, 1975, the United States Appeals Court for the District of Columbia Circuit, in its opinion in the case of *Rodway* v. *United States Department of Agriculture*, 514 F.2d 809, ruled that the Department of Agriculture (USDA) failed to comply with the requirements of the Administrative Procedure Act in promulgating the allotment regulations and required new rulemaking proceedings to be undertaken and completed within 120 days of the date of the decision. This deadline was later extended by the Court to December 13, 1975.

The Court also pointed out that a system of establishing coupon allotments would be sustained only if the Secretary could show that the system delivers coupons to substantially all recipients in amounts sufficient to allow them to purchase nutritionally adequate diets, and that nutritional adequacy is plainly a factual question within the expertise of the Secretary of Agriculture.

To comply with the *Rodway* decision, the Department considered several possible changes in the current method of determining coupon allotments and eligibility standards, along with the possibility of continuing the current method, subject to any changes suggested as a result of the public notice. The specific changes under Departmental consideration were (a) use of a new thrifty food plan as an alternative to the economy food plan in calculating coupon allotments, (b) provide revised economies of scale as an alternative to the present method of adjusting coupon allotments for larger size households, and (c) individualize coupon allotment calculations based on the age and sex composition of each applicant household.

As stated in the notice of September 19, 1975, the coupon allotment tables published in the notice were illustrative and were based on the July 1975 cost of the thrifty food plan. They did not include tables for Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands. The tables for these areas will be based on the allotment table for the continental United States, adjusted for the cost of food in these areas.

DESCRIPTION AND ANALYSIS OF COMMENTS RECEIVED

Responses to the three alternative proposals and the thrifty food plan were received from a total of 1,958 interested parties, expressing over 5,200 comments, as of the close of business, November 13, 1975. Over 200 miscellaneous comments not specifically commenting on the proposed amendment were generated by this notice of proposed rulemaking. Some of these comments expressed concern with the high-quality and large quantity of food purchased by food stamp recipients, based on visual observations at grocery story check-out counters; and others were simply critical of the level of the purchase requirements. All comments were reviewed and considered. Comments not specifically discussed or reflected herein have nevertheless been weighed in determining the final rule.

1. *Proposals I and II.* Proposals I and II developed an individualized basis of determining coupon allotments taking into consideration the sex and age of each household member. Proposal II differs from Proposal I only in that it temporarily preserves for households participating December 31, 1975, the current income eligibility standards and coupon allotments until the total of the individual allotments adjusted for changes in the cost of food equals or exceeds the household's allotment as of December 31, 1975.

While Proposals I and II provide to all households 100 percent of the cost of the thrifty food plan discussed in the proposed rulemaking, these proposals generally reduce allotments for one- and two-person households.

In the current program, about 4.3 million participants are in this category. Two million of this group are elderly persons 60 years of age or older. Under Proposals I and II all persons 55 years and over would, because of the reduced nutritional needs of adults as they grow older, receive substantially smaller allotments than are now provided for one- and two-person households regardless of age. Proposals I and II have an adverse impact on households with children below the age of 6. These proposals would also make many households now participating or eligible to participate ineligible because the proposals also provide for individualized standards of eligibility based upon the individualized allotments.

As of November 13, 1975, 1,911 comments had been received on Proposal I. Of these comments, 1,901 opposed the proposal. Of 1,796 comments received on Proposal II, 1,790 were adverse.

Issue: Proposals I and II reduce benefits now available to one- and two-person households and households with children under the age of 6. They also make ineligible many households now eligible to participate.—Nearly all commenters objected to the adoption of either of these proposals on the ground that the aged

who constitute a large portion of this group would be deprived of benefits. Opposition was expressed by the Food Research and Action Center, State and local welfare agencies, the Senate Special Committee on Aging (signed by the Chairman and 19 of 22 members as well as 30 other Senators), the House Select Committee on Aging (signed by the Chairman and 21 of 28 members) as well as by other Members of Congress, and many interested individuals.

USDA recognizes that while these proposals would radically reduce the level of benefits received by the aged and, in particular, make ineligible many who are now eligible, the proposals would provide 100 percent of the cost of the thrifty food plan for all participating households including the aged whose nutritional requirements are generally less than those of many younger participants. However, the change in allocation of benefits through the adoption of either of these proposals is inherent in any plan which provides for individualized allotments based on nutritional needs according to age and sex. If Proposal I were adopted no immediate reduction of benefits would be imposed on continuously participating households. Although their allotments would be sustained, the allotments would not be increased in the future in response to cost-of-living adjustments until the households' individualized allotments under the proposal exceeded their current allotments.

Issue: Proposals I and II are illegal because they would deprive participants of mandated cost-of-living increases and are unconstitutionally discriminatory since they are based on age and sex.—At least three commenters (Food Research and Action Center; Women's Rights Project, American Civil Liberties Union; and the Department of Health and Social Services of the State of Wyoming) raised such legal issues. Under Proposals I and II the cost of the thrifty food plan would be adjusted semi-annually to reflect changes in the cost of food. These changes would be reflected in individualized allotments. Under Proposal II those households who would not receive any increase in their present benefits until their individualized allotments exceeded such benefits, would nevertheless have their individualized allotments adjusted for such increases in the cost of food. However, since they would already be receiving benefits in excess of such levels, no actual increases in allotments for such households would be required. Neither plan is discriminatory because there is a rational basis for determining individual food needs based on age and sex. Moreover, individualized allotments based on age and sex received judicial approval in the Rodway case.

Issue: Proposals I and II are administratively complex and would increase certification costs.—Thirty-eight State welfare agencies pointed out that calculating individualized allotments for each household during the certification process would be difficult. They generally stated that such procedures would require gathering additional data, thereby adding to the administrative cost of the program. The Food Research and Action Center also opposed these proposals because of administrative complexity. Similar comments were received in letters from the Senate Special Committee on Aging. Other Members of Congress also joined in commenting adversely on the administrative problems presented by these proposals. USDA recognizes that adoption of either Proposal I or II would substantially increase administrative costs, delay certification of households, and make certification determinations more difficult and error-prone.

2. *Proposal III.* Proposal III is a uniform allotment and eligibility standard schedule, much like the one presently in use. The uniform allotment would be based on the value of food required to feed a family of four persons consisting of a man and woman twenty through fifty-four; a child six through eight; and a child nine through eleven years of age. The cost of such a diet would be the basis for uniform coupon allotments for all households, regardless of composition, except for household size adjustments and adjustments to reflect the economies of scale set forth in the thrifty food plan. The revised economies of scale developed by ARS are more generous for households of six or more persons than those used formerly in all of the food plans and are more liberal with respect to these households than the ones included in previous allotment schedules. Economies of scale remain unchanged for other households.

This proposal would provide 75.5 percent of all households with an allotment equal to or above 100 percent of the cost of the thrifty food plan and 97.3 percent would receive an allotment equal to or above 90 percent of that cost. In order to achieve this result, the common allotment actually provides many households with more than the cost of the thirty food plan. For example, analysis of the Chilton Study (Joint Economic Print, 93d Congress, 2nd Session, Studies in Public Welfare, Paper No. 17, December 31, 1974) shows that about 35 percent of all households would receive approximately 120 percent or more of the cost of the thrifty food plan.

More than 3,900 of the documents received indicated acceptance of this proposal. Two hundred of these comments fully supported it, a far greater number than supported either Proposal I or II. The remainder of the comments indicated preference for Proposal III over Proposals I and II, but some expressed dissatisfaction with the thrifty food plan. The House Select Committee on Aging made no mention of this proposal; the Senate Special Committee on Aging and many other Members of Congress who submitted comments jointly indicated they had no specific comments on this proposal.

Issue: The cost of the thrifty food plan is insufficient to provide a nutritionally adequate diet.—Most of the comments on this proposal indicated preference for it over Proposals I and II, but took issue with the cost of the thrifty plan as sufficient to provide a nutritionally adequate diet. This issue is fully analyzed and discussed in the analysis of the thrifty food plan.

Issue: Proposal III does not provide "substantially all" or "virtually all" food stamp households with the opportunity to purchase food in the quantity and variety described in the thrifty food plan.—This issue was raised by, among others, the Food Research and Action Center. A number of commenters stated that Proposal III does not meet the "virtually all" or "substantially all" test of the *Rodway* decision.

As indicated above, 75.5 percent of all households would receive a coupon allotment equal to or more than 100 percent of the cost of the thrifty food plan and 97.3 percent would receive an allotment equal to or greater than 90 percent of that cost under Proposal III.

The primary practical constraint which precludes attempting to increase the percentage of households receiving 100 percent of the cost of the thrifty food plan under Proposal III is that raising the average allotment would also increase the disparity which now exists because over 75 percent of the households already receive equal to or more than 100 percent of the cost of the thrifty food plan. Extrapolation from the Chilton Study shows that one-person households, who are largely the aged and have allotments above the cost for the plan, now constitute over half of the households who would receive more than 120 percent of the cost of the thrifty food plan under Proposal III.

If the average allotment of the four-person household with school children were raised to provide more households of all sizes with higher allotments, the one-person households would receive allotments far in excess of their cost for the thrifty plan. If such action were taken the same problem would exist to only a slightly lesser degree with respect to all households who would receive 100 percent or more of the cost of thrifty food plan under this proposal.

Increasing this disparity would not be justified because (1) nutritious diets can be obtained at cost lower than those estimated by USDA for the thrifty plan, and (2) many program participants receive benefits under other food programs that provide for a part of their food needs. Households might obtain nutritious diets at costs lower than estimated for the thrifty food plan by USDA by careful selection of foods from within the food groups of the thrifty food plan. In order to achieve nutritious diets at a cost lower than the thrifty food plan, participants' selections would be limited to those foods which are the least expensive rather than selections typical of those of survey households used as the basis for the thrifty plan. For example, the thrifty food plan contains some fluid milk. Some nonfat dry milk costs about half as much as fluid milk and is equally or more nutritious. A plan could be developed at a cost lower than the USDA estimated cost for the thrifty food plan

if it were assumed that nonfat dry milk were used exclusively.

In response to Senate Resolution 58, 94th Congress, 1st Session, the Food and Nutrition Service undertook a study of the food stamp program. Its report appears in a Committee Print of the Committee on Agriculture and Forestry, United States Senate, dated July 21, 1975. The data reflected there show that 38 percent of the food stamp program households had one or more children receiving school lunch; 37 percent of them received free lunches and only one percent "paid" lunches. Many of the remaining households in the study did not have children in school. Another study done by the General Accounting Office of 1,758 households in five cities done at the request of the Senate Subcommittee on Fiscal Policy of the Joint Economic Committee of the Congress showed 34 percent of 198 households getting food stamps also have children in school getting free lunches. A survey of households with children in school recently conducted in the State of Washington indicated that 95 percent of the households under the food stamp program received free lunches.

The value of school lunches adds considerably to the food benefits received by a household on food stamps. In fiscal year 1974, before recent increases in the Federal contribution to free lunches, the cost to the Federal Government for such lunches was 63.6 cents in cash and direct food support. Based upon the food stamp program as it existed before this rulemaking, a family of four with two children receiving free lunches and getting the U.S. average food stamp bonus of $17.54 per person per month, or $842 for the family for the year, would receive an additional $218 in benefits from the school lunch program. These benefits would have, at that time, added 26 percent to the stamp benefits. Since that time, school lunch benefits in cash and direct food support have been increased to 77.75 cents per free meal.

In addition to the school lunch program, other Federal assistance is provided to needy persons under the special milk program, school breakfast program, the special food service program, other supplemental food programs for pregnant and lactating mothers, infants, and small children, and the Administration on Aging's program for providing nutritious meals for the elderly. While not all food stamp households would have members in these categories, it must be recognized that the special nutritional needs of many members of many households are met by programs which overlap the food stamp program. It is apparent from the foregoing that the allotment schedules in Proposal III are not the only Federal source of food to meet the nutritional needs of food stamp households.

Generally one- and two-person adult households receive few benefits from other USDA food programs. However, an analysis of the Chilton sample showed the total of all of the adult persons in one- and two-person households whose allotment would be less than 100 percent of the cost of the thrifty food plan under Proposal III was only 3.3 percent of all persons in the sample. Except for adult persons in one- and two-person households who are blind or who are totally and permanently disabled and who do not reside in SSI "cash out" States, the group of 3.3 percent of all households consists largely of young adults and persons between the ages of twenty-five and fifty-five. Few aged persons are in this group. Most of these persons are in households which would receive allotments equal to at least 90 percent of the cost of the thrifty food plan and none would receive allotments worth less than 80 percent of such cost. Upward adjustment of the average of all allotments to assure that this relatively small number of households receive allotments equal to 100 percent of the cost of the thrifty food plan is not justified. All other households in the Chilton Study would receive allotments of at least 100 percent of the cost of the thrifty food plan or would be most likely to have children or other household members eligible for additional food assistance under other USDA food programs.

3. *Other considerations. Issue: The proposals and the thrifty food plan make no provision for regional differences in food prices or for variances in allotments to account for differences in State sales taxes on food.*—These issues were raised by the Food Research and Action Center. The fact that costs for the thrifty plan that reflect price differences by region are not provided is analyzed and discussed in the analysis of the thrifty food plan. In addition, even if the plan costs could be sufficiently defined to reflect food price differences among regions, administrative reasons make it impractical to adjust allotments accordingly; e.g., such metropolitan areas as New York, Chicago, Baltimore, Washington, D.C., and San Francisco would each lie in a different region if the regions using the thrifty food plan were the same as those in other USDA food plans. Since inadequate price data exist to establish substantial differences between food costs in such cities, it is not reasonable from an administrative viewpoint to use a system of allotments which is not uniform.

Aside from the legal problem which may be presented by placing the burden of sales taxes on food purchased with food coupons on the Federal Government through upward adjustments in coupon allotments in certain States, adoption of such a proposal would be difficult to administer because of the complexity of State sales tax laws. In most States that have sales taxes on food items, such items are not uniformly taxed; e.g., Indiana—food items are not taxed except for a 4 percent sales tax on items such as gum, candy, soft drinks, all of which may be purchased with food stamps; Minnesota—food items are not taxed except for a 4 percent tax on items such as gum and distilled water; New York—food items are not taxed except for a 4 to 7 percent tax on hot prepared foods, candy, and soda, depending on county or city; Pennsylvania—has no tax on food except a 6 percent tax on soft drinks and fruit drinks (not juices).

Since some States (e.g., Illinois and Wisconsin) have taken steps to enact legislation to exempt food purchased with food stamps from sales taxes, USDA believes action of this nature by State legislatures is the preferable way to resolve the issue.

Issue: None of the proposals or the thrifty food plan make provision for such factors as the health and individual physical activity of household members.—Some commenters, including the Food Research and Action Center, indicated that neither the thrifty food plan nor the three proposals make provision for adjustments in allotments on the basis of such factors as the health and individual physical activity of household members. The reasons why the thrifty food plan makes no provision for the differing nutritional requirements of persons which may result because of their special circumstances with respect to these factors is discussed in the analysis of the thrifty food plan.

In addition, even if the nutritional standards could be sufficiently defined to take such factors into account, administrative reasons make it impractical to adjust allotments to take into consideration the health and physical activity of household members. Comments from a number of State welfare agencies cited this problem. It must be recognized that State welfare agencies are presently required to make certification determinations approximately 3.2 times per year for nearly six million households who now are participating in the program, or a total of 18 million certification determinations. Only a relatively few of the households involved would have members varying sufficiently from the norm to require special allotments, yet all of the certification actions would have to explore this possibility. This would add immeasurably to the work of welfare agencies and would constitute a nearly insurmountable undertaking solely for the purpose of individualizing the allotments of such unusual households.

4. *Thrifty Food Plan.* Letters that contained one or more comments about the thrifty food plan were received from over 300 persons or organizations.

The USDA food plans at four levels of cost—thrifty, low-cost, moderate-cost, and liberal—are developed and interpreted through publications for leaders and consumers by the Agricultural Research Service (ARS), USDA. Each plan specifies amounts of foods of different types (food groups) that together make up nutritious diets for men, women, and children of different ages. Costs for individuals by sex and age are estimated monthly. The food plans, first developed in the 1930's, have been evaluated and revised as required, when a new information on food consumption, food prices, food composition, and nutritional needs has become available.

In 1974–75 the plans were revised using the most recent, complete, and re-

liable information available. The data base, the nutritional goals, and the procedures used in developing the plans were determined after consultation with groups of economists, nutritionists, and mathematicians and leaders who counsel low-income families, inside and outside of Government.

Most of the negative comments about the thrifty plan focused on the inadequacy of the household food consumption data used in developing the plan and the insufficiency of the cost of the plan as a basis for stamps to provide nutritious diets for program participants. The response to these and other comments presented below constitutes the basis upon which this Department has rejected the objections presented and has determined to adopt the thrifty food plan.

FOOD CONSUMPTION DATA USED

Issue: More recent data might have been used.—Information from USDA's 1965–66 Household Food Consumption Survey for households with food costs at or slightly above the cost for the economy food plan (used in setting the current coupon allotment) was adopted to indicate the kinds and amounts of foods that might be palatable to families using the plan. The USDA survey data were used because no more recent data that provides sufficient detail on the quantities and prices of food used by U.S. households for food plan development are available. The following studies suggested by some commenters had been reviewed by ARS and data from them found inadequate to provide nutritional and economic data for food plan development: the National Consumer Congress' Low Income Food Consumption Survey, Spring 1975 (Food consumption data were not collected; sample was from only 10 areas); the Department of Health, Education, and Welfare's Health and Nutrition Examination Survey, and Ten-State Nutrition Survey (One day's food intake was collected but not tabulated; no price and food cost information collected); the study conducted by the University of California at Davis, "Food Distribution and Food Stamp Program Effects on Nutritional Achievement," Kern County, California (Food consumption data for only one county); and the Bureau of Labor Statistics Study of Consumer Expenditures, 1972–73 (Data, which will not be sufficient to provide required nutritional evaluation of diets, are expected to be available in 1976). Preliminary data on average expenditures for food at home from this BLS study are considerably lower than the money value of purchased food used at home from the 1965–66 survey updated to 1972–73 levels. It appears likely, therefore, that a plan based on these data, if sufficient for developing a plan, might be less costly than the thrifty plan.

Issue: 1965–66 data do not reflect current food consumption patterns.—USDA's annual estimates of the disappearance of food (national food supply) and *Supermarketing* magazine's annual study of consumer expenditures in grocery stores show no dramatic changes in food consumption patterns since 1965. These studies, though, provide information only for the country as a whole, not for households at different economic levels. It is recognized that current food consumption in low-income households in the U.S. may be somewhat different than indicated by the 1965–66 survey data. Changes in food consumption brought about by increased food prices since 1965 were probably in the same direction as changes in food patterns of survey households that were made in developing the thrifty food plan as required to meet specifications for nutrient content, palatability, and cost. Such changes were the use of less meat and more dry beans and peas and whole grain and enriched breads and cereals. Therefore, the changes of consumption patterns of low-income households in 1975 required to follow the plan would probably be *less* drastic than changes from 1965–66 patterns required in developing the nutritious plan.

Issue: The economic level of the subsample of households selected for use as a basis for the plan—those with food costs at or slightly above the cost for the economy plan—was too high to reflect food consumption patterns of poor people.—Households were selected by their food cost per person per week. Food patterns of the selected households represent a slightly more costly way of eating than persons using the economy plan (or the thrifty plan) could afford, a way of eating that they might select if they had a little more money to spend for food. These food patterns were used because they are believed to represent a diet that would be palatable to families using the thrifty plan. If households with less costly food consumption patterns and lower incomes had been selected, a similar plan at slightly lower cost probably could have been developed. This is because low-income households make more economical food choices on the average. (See below.)

Issue: Food intake of persons in sex-age categories from only households with low food costs should have been used to estimate the amount of food to purchase for sex-age categories.—Differences in the average quantity of food in the form eaten (intake) of persons in sex-age categories from *all* urban households surveyed were used to estimate the part of the food in the form as purchased that was used by households with relatively low food costs to prepare meals and snacks for household members by sex and age. The food intake by sex-age categories of a subsample of low-income households was reviewed by ARS for this purpose, but rejected because there were inadequate numbers of persons in some sex-age categories to provide reliable data. Relationships of intakes among sex-age categories for all households and for low-income households, for which cells were sizable, were similar except that older teenage boys in low-income households appeared to drink proportionately less milk on the average than in all households.

FOOD GROUPS

Issue: Plan does not allow for food preference.—The thrifty food plan is presented as amounts of 15 food groups that together make up nutritious diets for men, women, and children of different ages. Families following the plan may choose from the food groups those economical foods they enjoy eating. For example, families can select rice or pasta, depending on preference, from the cereals group. However, rice is not to be substituted for potatoes, which is in another food group, as was the concern in one letter.

Issue: Bacon and salt pork, because of their high fat and salt content, should not be in the meat group.—Generally, foods within a food group are similar to each other in nutritive value. In some groups—meat, poultry, and fish, for example—one food in the group might be used to replace another in a meal. Bacon and salt pork were placed in the meat group because some persons use them in meals as a meat. The nutrients they provide, including fat, were taken into account in computing the nutritive value of the plan, and their use is restricted to help protect the nutritional quality of diets. (See footnote 3, Table 1 on the thrifty food plan.)

ADJUSTMENT OF FOOD CONSUMPTION PATTERNS TO DEVELOP FOOD PLAN

Issue: It is not realistic to expect families to change their food consumption patterns.—Admittedly, changing food use is not easily accomplished. However, a nutritious food plan could not have been developed without adjustment of customary food patterns. Food patterns of groups of survey households used as basis for all of the food plans—even the plan at the liberal cost level—had to be adjusted to meet nutritional goals. That is, food consumption of groups of survey households at all levels of food cost had nutritional shortcomings. A quadratic programming model was used to adjust consumption patterns as little as necessary to meet specifications for the plan. Adjustments to food patterns were limited to changes in quantities of groups of foods, not "by selecting the least expensive foods within each food category" as was understood by some commenters.

Issue: Plan does not allow adequately for waste of food by needy families.—The thrifty food plan allows for some discard of *edible* food without jeopardizing the nutritional quality of the diet. Such allowance is believed necessary because quantities of foods suggested in the plans represent food as it enters the kitchen, some of which may not be eaten. The discard of *inedible* parts of food, such as peelings, bone, and excessive fat, and the losses of vitamins in cooking, are allowed for in the nutritive values used in evaluating the plans. There is little information about the amount of edible food households discard, although some *edible* food is probably discarded in most homes in the preparation of food, as plate waste or due to spoilage. Many survey households, especially those with high food costs,

used foods in amounts considerably greater than required to provide the recommended allowance for food energy for family members, indicating appreciable discard. A study of discard made by the University of Arizona in Tucson found considerably less discard in areas predominantly made up of households with incomes below the poverty thresholds than in areas with large concentrations of high-income households.

COST LEVEL OF THE PLAN

Issue: The cost of the thrifty plan was predetermined by USDA in that it was not allowed to be higher than the cost of the economy plan.—The economy food plan was first developed by ARS in 1961, several years before the Food Stamp Program became a permanent program, as a guide for leaders to use in helping needy families plan nutritious diets. The economy plan was the least costly of USDA's food plans at four levels of cost. In developing the thrifty food plan, ARS first tried to develop a plan which would provide nutritional adequacy at the cost level of the economy plan, using the same quadratic programming model, nutritional goals, and palatability constraints as used for the three more expensive plans. *Such a plan was found to be feasible.* This plan contained more meat, poultry, and fish and less dry beans, potatoes, and grain products than the economy plan, previously used for setting the coupon allotment. However, both the new plan (thrifty plan) and the economy plan contain less meat, poultry, and fish and more dry beans and grain products than families consume on the average, as do most nutritious diets at low cost. Thus, the thrifty plan met all predetermined specifications, and is more desirable than the economy plan it replaces while at the same time providing nutritional adequacy at low cost.

Issue: The cost of the plan is unreasonably low.—Practical trials were attempted to see if the plan could be used as a basis for appetizing meals. Using the thrifty plan, a set of sample meal plans—a month's meals and lists of foods and recipes needed to provide the meals for a family of four—was developed. Then, several families receiving food stamps purchased the food and prepared and served the meals. These trials showed that some families in the program can shop for and prepare satisfying meals based on the thrifty food plan. The amount of food in the plan was found to be sufficient, or too great, for all families that tried the plan. Single copies of these meal plans are available from the Consumer and Food Economics Institute, Agricultural Research Service, USDA, Hyattsville, Maryland 20782. Other meal plans, allowing for preference of individual families for foods within food groups, can be prepared based on the thrifty plan. The thrifty plan will be used by the Department in the preparation of dietary guidance materials for the many consumers and leaders who request information on how to economize on food, including food stamp recipients and leaders working with families in the program.

Issue: Allotments should be higher because food stamp recipients do not have skill in shopping and preparing food.—Skill and interest in shopping for food and preparing it are required to get a nutritious diet at all levels of cost, and the person with little money to spend for food must exercise special care in making food purchases. USDA studies indicate that many households with low food costs and/or low incomes have indeed learned to exercise such care. They make more economical choices and pay lower prices for similar foods and get greater returns in calories and most nutrients per dollar spent for food on the average than households with higher food costs and incomes. Furthermore, households surveyed in 1965 with incomes below the poverty threshold selected diets that were as nutritious on the average as households that spent similar amounts for food and had incomes above the poverty threshold.

The skill in shopping for and preparing food, insofar as it affects the selections of foods, was taken into account in both the nutritional evaluation and the costing of the thrifty plan. The average selection of foods within the food groups that survey households with relatively low food costs made were used in determining the nutritive values and costs for the plan. The average prices paid by these households are used as the basis for cost estimates. Therefore, the thrifty plan and its costs are based on the assortment of meats, of vegetables, of cereals, etc.; the assortment of container sizes and brands; the differences in quality of food selected; and the price level of the store of purchase for households using food at relatively low cost.

Issue: Food plan costs should reflect regional price differences.—Some persons felt that the plan should allow for place-to-place differences in food prices and suggested the use of the family budgets and the "Estimated Retail Food Prices in Cities" of the Bureau of Labor Statistics (BLS) for this purpose. BLS does not consider its budgets for families of city workers to be appropriate for purposes relating to needy families. Furthermore, the food component of these budgets, like the regional costs of the low-cost, moderate cost and liberal food plans published in ARS' Family Economics Review annually, reflect regional differences in food consumption as well as food prices. BLS also cautions against the use of food prices it collects in several cities each month for measuring place-to-place differences, recognizing them as useful only in measuring changes in prices over time. However, if its prices are used to estimate the cost of a market basket of foods in cities, cost differences among cities within a region are as great as cost differences among cities in different parts of the country. BLS data are authorized in the food stamp legislation for use in adjusting the coupon allotment for changes in food prices. BLS prices (U.S. average) are used by ARS to measure change in prices over time in estimating costs for the thrifty food plan as follows: The percentage change in average prices of about 100 different foods in U.S. cities collected by BLS from 1965–66 to the current month is used by USDA in updating prices paid by survey households with relatively low food costs.

ECONOMIES OF SCALE

Issue: Only urban households with low food costs should have been used to develop economy of scale factors.—Over 4,000 urban and rural non-farm survey households, without regard for food cost level, were used in developing economies of scale to be used in estimating costs of the plan for households of different sizes because the number of large households in subsamples by urbanization and food cost level were insufficient for study. However, the per capita income of households was included as a variable in the regression analyses used as a basis for the economy of scale factors, in an effort to hold economic level of households constant. Results from a preliminary study of about 1,000 households with incomes below the poverty threshold were neither sufficiently different nor sufficiently conclusive to warrant the use of different economy of scale factors for food plans at lower cost levels.

NUTRITIONAL ADEQUACY OF THE PLAN

Issue: Foods in the plan do not provide a nutritionally adequate diet.—Foods in the plan provide for a nutritionally adequate diet—one that meets the Recommended Dietary Allowances (RDA), set in 1974 by the National Academy of Sciences-National Research Council (NAS-NRC) for all nutrients for which adequate reliable food composition data are available for determining the content of the plan, with the possible exception of iron.

The higher iron enrichment for bread and flour proposed by the Food and Drug Administration in 1973 was assumed in the development of the thrifty plan (and the three more expensive USDA food plans). If that enrichment level is not adopted, the nutritional goal for iron will not be met by the thrifty plan (or the three more expensive plans) for young children, teenage girls, and women of childbearing age, when average selections within food groups are made. However, plans for all sex-age categories provide iron in excess of the amount specified by the NAS–NRC as likely to be furnished by a balanced and varied diet—6 mg of iron/1000 kcal—when current enrichment levels are assumed. Plans that meet the nutritional goals for young children, teenage girls and women of childbearing age, assuming average selections within food groups, can be developed, but they deviate drastically from food consumption patterns. The goal can be met more reasonably by these persons through the frequent selection of foods providing important amounts of iron, such as liver, heart, kidney, lean meats, shellfish, dry beans, dry peas, dark-green vegetables, dried fruit, cereals with iron added, and molasses. (One comment, that cereals with iron added were unusually expensive, was not substantiated by a CFEI study of iron levels and cost of 50

cereals available in stores in the Washington, D.C. area in the summer of 1975.)

Phosphorus levels of foods in the plans were not calculated but are believed to be well above the RDA. The use of iodized salt is recommended as an efficient way to supplement dietary iodine. The requirement for vitamin D for normal persons can be met by exposure to sunlight. However, for infants and persons whose activities limit their exposure to sunlight, the allowance should be provided in the diet by such foods as eggs, liver, butter, and milk fortified with vitamin D or by supplementation.

For several nutrients insufficient reliable information is available on the content in foods to make reliable estimates of levels provided by the plans.

Only rough estimates of the vitamin B_6, vitamin B_{12}, and magnesium content of all USDA food plans were made because their content in many foods in the plans is not known. Accordingly to these estimates, foods in the thrifty plan (and the three more expensive plans) furnish more than the RDA for vitamin B_{12} but do not meet the RDA for vitamin B_6 and magnesium for several sex-age categories. Plans that meet the nutritional goals for vitamin B_6 and magnesium can be developed by using the limited food composition data available, but such plans contain large amounts of vegetables, fruit, and cereal—two to three times as much as consumed by some sex-age categories in 1965–66. Such distortion of food consumption patterns is not justified on this basis. Therefore, 80 percent of the RDA for vitamin B_6 and magnesium was used as the basis for goals in developing all of the USDA food plans.

Food composition data for three other nutrients for which RDA are set—vitamin E, folacin, and zinc—are insufficient to estimate levels provided by the plans.

Food plans developed to meet the RDA would be expected to provide generous amounts of nutrients for most persons. The NAS-NRC states that the basis for the RDA is such that "even if a person habitually consumes less than the recommended amounts of some nutrients, his diet is not necessarily inadequate for those nutrients."

Issue: The fat level of the thrifty plan is too high.—Fat in foods in the plan provides 30 to 39 percent of the food energy, depending on the sex-age category. This level approximates the level (35 percent) recommended by the American Heart Association and is somewhat lower than found in average diets in the U.S. One commenter suggested added modification of diets to restrict fat as suggested by the Intersociety Commission for Heart Disease Resources, a group that believes enough is known to recommend that the general public should modify its diet by reducing the amount of fat (to 35 percent of food energy) and limiting certain types of fat, among other changes. Others disagree. The Committee on Nutrition of the American Academy of Pediatrics has issued a statement against the adoption of dietary changes for all children as urged by the Intersociety Commission. The Food and Nutrition Board of the National Academy of Sciences-National Research Council and the Council on Foods and Nutrition of the American Medical Association have recommended dietary modification for persons at high risk of developing heart disease. The National Heart and Lung Institutes' Task Force on Arteriosclerosis concluded that, intuitively, it would seem prudent to decrease the incidence of excessive fat levels in the blood in the population of the United States by controlling diet; however, this would be a formidable venture if it were to invoke changing the diet of the entire Nation. Before advocating such a major revolution in diet, the Task Force concluded that convincing evidence should be sought that lowering the levels of fats in blood reduced the number of cases of, and the number of deaths from arteriosclerosis. Currently, NHLI is involved in a major study to determine whether the reduction of high blood cholesterol levels and two other major risk factors for coronary heart disease will prevent or reduce the incidence of heart attacks and premature death in a high-risk segment of the U.S. population.

Issue: The sugar in the plan will cause increased dental caries.—Confronted with virtually no scientific opinion, and none from any scientific body, on what is a desirable level of sugar in the diet, ARS's aim was to control the amount of sugars and sweets in the plan, but not eliminate them. A clear cut relationship exists between sucrose and dental caries. The form in which sucrose is eaten, however, is more important than the amount consumed. The inclusion of some sugar, jams, and jellies contributes toward greater palatability of diets, especially those that contain large amounts of flour, bread and cereal.

Issue: Food stamp recipients have higher requirements for nutrients than other people (1) because they are more likely to have chronic and infectious diseases (2) because they are under stress, and (3) because they are more active than the general population.—Although special diets may be prescribed for persons with certain diseases, there is no evidence that such diets must of necessity cost more than normal diets. Indeed many ill people require less food because of inactivity associated with their illness. We know of no evidence that food stamp recipients are more likely to experience unusual stress than people with high income although the cause of stress may differ. The NAS–NRC in its 1974 edition of the Recommended Dietary Allowances recognizes the incompleteness of present knowledge of nutritional needs and cites specifically two problems under active investigation—the relationship between nutrition and the resistance to infection and stress. The NAS–NRC does not, however, at this time offer any guidelines for modifying allowances to account for infections or stress. No body of information is available indicating that food energy (calorie) needs of individuals differ with income due to occupation or other activities engaged in. Indeed, a higher incidence of overweight has been found in some low income groups than among persons with higher incomes indicating an imbalance between food intake and activity.

Issue: Only 10 percent of the 1965–66 survey households that used food at the cost of the economy plan selected nutritionally adequate diets.—This statement was made on the basis of a nutritionally adequate diet as defined at the time of the survey, using the RDA as set in 1964. Using this definition, nutrient shortages occurred in household diets most frequently for calcium, vitamin A value, and ascorbic acid. However, the economy plan, if followed, would provide a nutritious diet and was recommended by ARS consistently in USDA publications as a guide for leaders who help families to select nutritious diets at low cost.

To estimate the percentage of 1965–66 survey households using food at the cost level of the economy plan (or thrifty plan) that met the 1974 RDA would require recalculating the RDA for all survey households, a major task that has not been attempted. However, it is clear that the percentage would be higher than the 10 percent estimated using the 1964 RDA because the 1974 allowances for ascorbic acid (and for protein) for all sex-age categories are substantially lower than the 1964 allowances. Also, allowances for calcium and vitamin A value for certain sex-age categories are lower than those set in 1964. The low-cost plan was recommended as a basis for setting the coupon allotment by several persons, based on the evidence that 30 percent of the households might be expected to select nutritious diets at that cost level. If it could be shown, as may well be the case, that as many as 30 percent of the survey households that had food costs at the thrifty food plan level selected nutritious diets as defined by the 1974 RDA, the thrifty plan might be considered as suitable as a food cost standard as the low-cost plan was assumed to be when the recommendations were made.

Also relevant to this consideration are studies underway in ARS of relationships between food cost and nutritional quality of diet when a variety of measures of nutritional adequacy of the diet are used. For example, quality of diets among households with high food costs is only slightly higher than among households with low food costs if adequacy of diets is based on nutrient density measure—the ratio of nutrients to food energy for the diet related to the ratio of nutrients to food energy in the RDA. It appears that much of the improvement in diet (as measured by the percentage of diets providing the RDA) which has been attributed to higher economic level of the household, (as indicated by their income or food cost) may not reflect better diets, but more discard of edible food.

Because of these findings it appears that using percentage of households obtaining a "good" diet at any cost level probably should not be used as a basis for determining a food cost standard.

NUTRITION EDUCATION

Issue: Food stamp recipients need help in selecting foods to make up nutritious diets.—The Department agrees that educating and encouraging participants, and others as well, to select nutritious diets is of utmost importance and that nutrition education should be emphasized. The Expanded Food and Nutrition Education Program, initiated in 1969, provides some such assistance to needy families. Nutrition programs for the elderly and many other community programs also help people to select nutritious diets. Sample meal plans for a family of four for a month, developed by ARS to show how foods in the thrifty plan can be combined into nutritious and appetizing meals, may be useful to teachers and leaders who work with needy families.

The thrifty food plan which will be used by the Department in preparing dietary guidance materials for food stamp recipients will be evaluated and revised when new information on food consumption, food prices, food composition, and nutritional needs becomes available. A nationwide food consumption survey in 1977 is being planned by ARS to provide information on variation and factors affecting variation in food consumption and food prices among households and variation in food patterns of individuals in households of different sizes. With the data from this study, new methods for developing and costing the plans can be explored. More complete composition data on a wider variety of foods will be forthcoming from the Nutrient Data Bank—a repository for food composition data now being developed in ARS. This additional information will make possible a more complete assessment of the nutritional quality of foods in the plan.

The amounts of food in the thrifty food plan suggested for men, women, and children of different ages are shown in Table 1. The cost of food at home estimated for the thrifty food plan for August 1975 is shown in Table 2. A food list for a month based on the thrifty food plan is shown in Table 3.

Table 1.—Thrifty Food Plan

Amounts of Food for a Week 1/

Family member	Milk, cheese, ice cream 2/	Meat, poultry, fish 3/	Eggs	Dry beans and peas, nuts 4/	Dark-green, deep-yellow vegetables	Citrus fruit, tomatoes	Potatoes	Other vegetables, fruit	Cereal	Flour	Bread	Other bakery products	Fats, oils	Sugar, sweets	Accessories 5/
	Qt	Lb	No	Lb	Lb	Lb	Lb	Lb	Lb	Lb	Lb	Lb	Lb	Lb	Lb
Child:															
7 months to 1 year	4.95	.39	1.2	.15	.41	.55	.09	2.49	1.02 6/	.02	.08	.04	.04	.19	.05
1-2 years	3.30	.63	3.3	.17	.22	.89	.65	2.26	1.02 6/	.31	.76	.24	.11	.30	.37
3-5 years	3.54	.95	2.5	.28	.20	.92	.88	2.28	1.03	.37	.94	.53	.38	.74	.59
6-8 years	4.22	1.27	2.4	.49	.22	1.10	1.23	2.50	1.12	.62	1.42	.79	.51	.94	.84
9-11 years	4.92	1.61	3.4	.53	.28	1.52	1.48	3.38	1.34	.81	1.82	1.10	.67	1.20	1.10
Male:															
12-14 years	5.18	1.79	3.6	.67	.33	1.45	1.59	3.30	1.22	.81	2.07	1.13	.77	1.21	1.45
15-19 years	5.08	2.35	4.0	.43	.32	1.70	2.10	3.43	.98	.99	2.36	1.46	1.00	1.05	1.73
20-54 years	2.57	3.03	4.0	.44	.39	1.80	2.02	3.69	.89	.92	2.29	1.33	.95	.86	1.24
55 years and over	2.37	2.45	4.0	25	.51	1.85	1.75	3.77	1.09	.80	1.90	1.12	.79	.94	.73
Female:															
12-19 years	5.35	1.80	3.8	.28	.42	1.74	1.22	3.61	.72	.76	1.49	.84	.51	.74	1.36
20-54 years	2.81	2.41	4.0	.27	.52	1.86	1.51	3.39	.90	.67	1.41	.67	.57	.57	1.18
55 years and over	2.85	1.84	4.0	.19	.60	2.02	1.26	3.73	1.12	.68	1.30	.58	.37	.45	.66
Pregnant	5.25 7/	2.69	4.0	.42	.36	2.17	1.89	4.03	1.13	.58	1.41	.66	.59	.58	1.48
Nursing	5.25 7/	3.00	4.0	.38	.57	2.36	1.92	4.27	.98	.63	1.56	.82	.80	.75	1.54

1/ Amounts are for food as purchased or brought into the kitchen from garden or farm to prepare all meals and snacks for the week. Amounts allow for a discard of about 5 percent of the edible food as plate waste, spoilage, etc.

2/ Fluid milk and beverage made from dry or evaporated milk. Cheese and ice cream may replace some milk. Count as equivalent to a quart of fluid milk: Natural or processed Cheddar-type cheese, 6 oz.; cottage cheese, 2-1/2 lbs.; ice cream or ice milk, 1-1/2 quarts; unflavored yoghurt, 4 cups.

3/ Bacon and salt pork should not exceed 1/3 pound for each 5 pounds of this group.

4/ Weight in terms of dry beans and peas, shelled nuts, and peanut butter. Count 1 pound of canned dry beans—pork and beans, kidney beans, etc.—as .33 pound.

5/ Includes coffee, tea, cocoa, soft drinks, punches, ades, leavenings, and seasonings.

6/ Cereal fortified with iron is recommended.

7/ For pregnant and nursing teenagers, 7 quarts is recommended.

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Table 2.--Cost of Food at Home Estimated for the Thrifty Food Plan 1/
August 1975, U.S. Average

Sex-age groups	Cost for-- 1 Week	1 Month
	Dollars	Dollars
FAMILIES		
Family of 2: 2/		
20-54 years	22.70	98.00
55 years and over	20.20	87.50
Family of 4:		
Couple, 20-54 years and--		
-Children, 1-2 and 3-5 years	31.90	138.40
-Children, 6-8 and 9-11 years	38.60	166.90
Household receiving food stamps 3/	35.70	154.50
INDIVIDUALS 4/		
Child:		
7 months to 1 year	4.40	19.30
1-2 years	5.10	22.30
3-5 years	6.20	27.00
6-8 years	8.00	34.50
9-11 years	10.00	43.30
Male:		
12-14 years	10.70	46.30
15-19 years	11.80	51.10
20-54 years	11.40	49.20
55 years and over	10.10	43.60
Female:		
12-19 years	9.50	41.20
20-54 years	9.20	39.90
55 years and over	8.30	35.90
Pregnant	11.40	49.30
Nursing	12.10	52.60

1/ The cost of the food plan was first estimated by using the average price per pound of each food group paid by urban survey families with relatively low food costs in 1965-66. These prices were adjusted to current levels by use of "Estimated Retail Food Prices by Cities" released periodically by the Bureau of Labor Statistics.
2/ Ten percent added for family size adjustment. See footnote 4.
3/ Costs are for average sex-age composition of survey households of four persons, National Survey of Food Stamp and Food Distribution Recipients, November 1973.
4/ The costs given are for individuals in 4-person families. For individuals in other size families, the following adjustments are suggested: 1-person--add 20 percent; 2-person--add 10 percent; 3-person--add 5 percent; 5-or6-person--subtract 5 percent; 7-or-more-person--subtract 10 percent.

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Table 3.--Food List for a Month Based on the Thrifty Food Plan
Average 4-Person Household Receiving Food Stamps

Milk (includes nonfat dry milk)	54 qt	Fruit, canned	5-1/2 lb
Cheese	4-3/4 lb	Fruit juice, canned	2-1/2 lb
Ice cream	6 qt	Lettuce, salad greens	4 lb
Beef	13 lb	Cabbage	2-1/2 lb
Pork	6-1/2 lb	Other fresh vegetables	7-1/2 lb
Variety meat	3-1/2 lb	Snapbeans, canned	2 lb
Poultry	7 lb	Green peas, canned	2 lb
Fish	2 lb	Other canned and frozen vegetables, vegetable soup	7 lb
Eggs	5 doz	Flour and mixes	12 lb
Dry beans	2-1/2 lb	Cornmeal	3 lb
Mature beans, canned	4 lb	Rice or pasta	6 lb
Peanut butter	2-1/2 lb	Ready-to-eat cereal, other cereal	8 lb
Carrots	3 lb	Bread	26 lb
Dark-green leafy vegetables	2 lb	Crackers	2-1/2 lb
Other dark-green and deep-yellow vegetables	1-1/2 lb	Other bakery products; soups, mainly rice or pasta	11-1/2 lb
Citrus fruit or juice	17 lb	Margarine, butter	5 lb
Tomatoes, tomato products	9 lb	Shortening, oil or salad dressing	5 lb
Potatoes	24 lb	Sugar	8 lb
Apples	8-1/2 lb	Other sweets	5-1/2 lb
Bananas	5 lb		
Other fresh fruit	8-1/2 lb		

Note: Provides for the average food needs (as suggested in the thrifty food plan for men, women, and children of different ages) of 4-person households receiving food stamps, National Survey of Food Stamp and Food Distribution Program Recipients, November 1973. In addition to foods listed, most families use some other foods: coffee, tea, cocoa, soft drinks, punches, ades, leavening agents, and seasonings. Approximately 5 percent above the cost of the foods on the list is allowed for purchase of these foods when costs for the plan are estimated.

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CONCLUSIONS

On the basis of all the comments received and on the foregoing analysis the following conclusions have been reached.

The analysis shows that the nutritional and economic data used to develop the thrifty food plan were the most recent reliable data available providing sufficient detail on the quantities and prices of foods used by U.S. households to permit development of a nutritionally adequate food plan. The objections of commenters to various aspects of this plan and its development are fully reviewed in the analysis and are rejected for the reasons set forth therein. Accordingly, it is determined that the cost of the thrifty food plan is adequate to provide eligible households an opportunity to obtain a nutritionally adequate diet through the food stamp program.

The comments in the foregoing analysis show that Proposals I and II were opposed by nearly all commenters. They disrupt historic benefit patterns and despite the nutritional adequacy of the individual allotments provided, would substantially reduce benefits now provided aged persons and households with small children. Administration of either proposal would be complex, expensive, and error-prone. These proposals are administratively impractical. Accordingly, they are rejected.

The analysis shows that more than 3,900 of the comments received indicated acceptance of Proposal III. Of these comments about 200 fully supported it, a far greater number than supported either Proposal I or II. The remainder of the comments indicated a preference for Proposal III over Proposals I and II but expressed some dissatisfaction with the thrifty food plan. As noted above, it has been determined that the thrifty food plan will provide eligible households with an opportunity to obtain nutritionally adequate diets and it has been adopted as the basis for household food stamp allotments. For the reasons expressed in the analysis, it is determined that Proposal III will provide substantially all eligible households with an allotment sufficient to meet the cost of the thrifty food plan and thus obtain nutritionally adequate diets. Proposal III is, therefore, adopted.

Part 271 is amended by adding an appendix as follows:

APPENDIX

MAXIMUM MONTHLY ALLOWABLE STANDARDS AND BASIS OF COUPON ISSUANCE: 48 STATES AND DISTRICT OF COLUMBIA

Notice FSP No. 1975–1.2 which was issued pursuant to a part of Subchapter C—Food Stamp Program under Title 7, Chapter II, Code of Federal Regulations, is superseded, effective January 1, 1976, by this Notice FSP No. 1976–1.1.

Section 7(a) of the Food Stamp Act, as amended, requires that the value of the coupon allotment be adjusted semi-annually by the nearest increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics.

Prior to the amendment to the Act requiring semi-annual adjustment of the value of the coupon allotment, the adjustments were made at the beginning of each fiscal year; i.e., in July based on the cost of the economy food plan in the preceding December. With the enactment of the semi-annual adjustment, the law specified that the first adjustment be made in January 1974 to reflect changes in food prices through August 1973. Similar procedures have been used for subsequent semi-annual adjustments; i.e., the July adjustment based on the cost of the food plan in the preceding February and the January adjustment based on the cost of the food plan in the preceding August, as required by the Act. The income standards and coupon allotments set forth below are based on the cost of the thrifty food plan in August 1975.

Households in which all members are included in the federally-aided public assistance grant, general assistance grant, or supplemental security income benefit shall be determined to be eligible to participate in the program while receiving such grants without regard to the income and resources of the household members.

The maximum allowable income standards for determining eligibility of all other applicant households, including those in which some members are recipients of federally-aided public assistance, general assistance, or supplemental security income benefit, in any State (other than Alaska, Hawaii, Puerto Rico, Guam, or the Virgin Islands) or in the District of Columbia shall be:

Household size:	*Maximum Allowable Monthly Income Standards—48 States and District of Columbia*
1	[1] $215
2	307
3	433
4	553
5	660
6	787
7	873
8	993
Each additional member	+127

[1] USDA Poverty Guideline.

"Income" as the term is used in the notice is as defined in paragraph (c) of § 271.3 of the Food Stamp Program Regulations.

Pursuant to sections 7 (a) and (b) of the Food Stamp Act, as amended (7 U.S.C. 2016, Public Law 91–671), the face value of the monthly coupon allotment which State agencies are authorized to issue to any household certified as eligible to participate in the Program and the amounts charged for the monthly coupon allotment in the 48 States and the District of Columbia are as follows:

Monthly coupon allotments and purchase requirements—48 States and District of Columbia

Monthly net income	For a household of—							
	1 person	2 persons	3 persons	4 persons	5 persons	6 persons	7 persons	8 persons
	The monthly coupon allotment is—							
	$50	$92	$130	$166	$198	$236	$262	$298
	And the monthly purchase requirement is—							
0 to $19.99	0	0	0	0	0	0	0	0
$20 to $29.99	1	1	0	0	0	0	0	0
$30 to $39.99	4	4	4	4	5	5	5	5
$40 to $49.99	6	7	7	7	8	8	8	8
$50 to $59.99	8	10	10	10	11	11	12	12
$60 to $69.99	10	12	13	13	14	14	15	16
$70 to $79.99	12	15	16	16	17	17	18	19
$80 to $89.99	14	18	19	19	20	21	21	22
$90 to $99.99	16	21	21	22	23	24	25	26
$100 to $109.99	18	23	24	25	26	27	28	29
$110 to $119.99	21	26	27	28	29	31	32	33
$120 to $129.99	24	29	30	31	33	34	35	36
$130 to $139.99	27	32	33	34	36	37	38	39
$140 to $149.99	30	35	36	37	39	40	41	42
$150 to $169.99	33	38	40	41	42	43	44	45
$170 to $189.99	38	44	46	47	48	49	50	51
$190 to $209.99	38	50	52	53	54	55	56	57
$210 to $229.99	40	56	58	59	60	61	62	63
$230 to $249.99		62	64	65	66	67	68	69
$250 to $269.99		68	70	71	72	73	74	75
$270 to $289.99		72	76	77	78	79	80	81
$290 to $309.99		72	82	83	84	85	86	87
$310 to $329.99			88	89	90	91	92	93
$330 to $359.99			94	95	96	97	98	99
$360 to $389.99			102	104	105	106	107	108
$390 to $419.99			111	113	114	115	116	117
$420 to $449.99			112	122	123	124	125	126
$450 to $479.99				131	132	133	134	135
$480 to $509.99				140	141	142	143	144
$510 to $539.99				142	150	151	152	153
$540 to $569.99				142	159	160	161	162
$570 to $599.99					168	169	170	171
$600 to $629.99					170	178	179	180
$630 to $659.99					170	187	188	189
$660 to $689.99					170	196	197	198
$690 to $719.99						204	206	207
$720 to $749.99						204	215	216
$750 to $779.99						204	224	225
$780 to $809.99						204	226	234
$810 to $839.99							226	243
$840 to $869.99							226	252
$870 to $899.99								258
$900 to $929.99								258
$930 to $959.99								258
$960 to $989.99								258
$990 to $1,019.99								258

For issuance to households of more than eight persons use the following formula:

A. *Value of the Total Allotment.* For each person in excess of eight, add $38 to the monthly coupon allotment for an eight-person household.

B. *Purchase Requirement.* 1. Use the purchase requirement shown for the eight-person household for households with incomes of $869.99 or less per month.

2. For households with monthly incomes of $870 or more, use the following formula: For each $30 worth of monthly income (or portion thereof) over $869.99, add $9 to the monthly purchase requirement for an eight-person household with an income of $869.99.

3. To obtain maximum monthly purchase requirements for households of more than eight persons, add $34 for each person over eight to the maximum purchase requirement shown for an eight-person household.

The total monthly coupon allotments for some households are not divisible by four. This results in total coupon allotments of uneven dollar amounts for those households which choose to purchase one-fourth or three-fourths of their coupon allotment. For such households, the State agency shall round the face value of one-fourth or three-fourths of the total coupon allotment up to the next higher whole dollar amount and shall not change the purchase requirement for such allotment.

It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with Executive Order 11821.

Effective date. The provisions of this notice shall become effective on January 1, 1976.

(78 Stat. 703, as amended; 7 U.S.C. 2011–2026) (Catalog of Federal Domestic Assistance Programs, No. 10.551, National Archives Reference Services)

Dated: November 26, 1975.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.75-32367 Filed 11-28-75;8:45 am]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 722—COTTON

1976 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas; State Reserves and County Allotments

Section 722.562 is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 *et seq.*). This section establishes the State reserves and allocation thereof among uses for the 1976 crop of extra long staple cotton. It also establishes the county allotments. Such determinations were made initially by the respective State committees and are hereby approved and made effective by the Administrator, ASCS, pursuant to delegated authority (35 FR 19798, 36 FR 6907, 37 FR 624, 3845, 22008, 40 FR 18815).

Notice that the Secretary was preparing to establish State and county allotments was published in the FEDERAL REGISTER on July 18, 1975 (40 FR 30274) in accordance with 5 U.S.C. 553. The views and recommendations received in response to such notice have been duly considered.

In order that farmers may be informed as soon as possible of 1976 farm allotments so that they may make plans accordingly, it is essential that this section be made effective as soon as possible. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest, and § 722.562 shall be effective upon filing this document with the Director, Office of the Federal Register. The material previously appearing in this section as "Subpart—1975 Crop of Extra Long Staple Cotton: Acreage Allotments and Marketing Quotas" remains in full force and effect as to the crop to which it was applicable.

Section 722.562 and the title to the subpart are amended to read as follows:

Subpart—1976 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quota

§ 722.562 State reserves and county allotments for the 1976 crop of extra long staple cotton

(a) *State reserves.* The State reserves for each State shall be established and allocated among uses for the 1976 crop of extra long staple cotton pursuant to § 722.508. It is hereby determined that no State reserve is required for trends, abnormal conditions, inequities and hardships or small farms. The amount of the State reserve held in each State and the amount of allotment in the State productivity pool resulting from productivity adjustments under § 722.529 (c) and (d) are available for inspection at each State ASCS office.

(b) *County allotments.* County allotments are established for the 1976 crop of extra long staple cotton in accordance with § 722.509. The following table sets forth the county allotments:

ARIZONA

County:	*County allotment (acres)*
Cochise	1,493.8
Gila	4.3
Graham	9,036.2
Maricopa	10,434.4
Pima	2,684.4
Pinal	7,546.3
Yuma	3,205.7
State total	34,405.1

CALIFORNIA

County:	*County allotment (acres)*
Imperial	80.0
Riverside	281.8
State total	361.8

FLORIDA

County:	*County allotment (acres)*
Alachua	36.1
Hamilton	2.6
Jefferson	1.3
Madison	21.7
Suwanee	1.8
Union	39.4
State total	102.9

GEORGIA

County:	*County allotment (acres)*
Berrien	101.5
Cook	7.8
State total	109.3

NEW MEXICO

County:	*County allotment (acres)*
Chaves	43.2
Dona Ana	15,742.9
Eddy	120.0
Hidalgo	13.2
Luna	901.4
Otero	24.9
Sierra	137.0
State total	16,982.6

TEXAS

County:	*County allotment (acres)*
Brewster	12.2
Culberson	287.4
El Paso	18,762.2
Hudspeth	2,667.2
Jeff Davis	71.9
Loving	1.8
Pecos	1,202.1
Presidio	67.3
Reeves	5,906.4
Ward	412.5
State total	29,391.0

(Secs. 344, 347, 375, 63 Stat. 670, as amended, 675, as amended, 52 Stat. 66, as amended; (7 U.S.C. 1344, 1347, 1375)).

Effective date: These amendments become effective on November 26, 1975.

Signed at Washington, D.C., on November 26, 1975.

E. J. PERSON,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.75-32366 Filed 11-26-75;12:13 pm]

PART 725—FLUE-CURED TOBACCO

Subpart—Proclamations, Determinations and Announcements of National Marketing Quotas and Referendum Results

1976 NATIONAL MARKETING QUOTA FOR FLUE-CURED TOBACCO

Basis and purpose. Section 725.2 is issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, hereinafter referred to as the "Act", to (1) determine and announce the reserve supply level and total supply for flue-cured tobacco, and (2) determine and announce for flue-cured tobacco for the marketing year beginning July 1, 1976, the amount of the national marketing quota; the national average yield goal; the national acreage allotment; the reserve for making corrections in farm acreage allotments, adjusting inequities, and for establishing acreage allotments for new farms; the national acreage factor; and the national yield factor. The material previously appearing in this section under centerhead Determinations and Announcements—1975–76 Marketing Year remains in full force and effect as to the crop to which it was applicable.

Marketing quotas on an acreage-poundage basis for the 1974–75, 1975–76, cured tobacco for the 1974–75, 1975–76, and 1976–77 marketing years (38 FR 18234). Flue-cured tobacco farmers approved marketing quotas on an acreage-poundabe basis for the 1974–75, 1975–76, and 1976–77 marketing years (38 FR 23935).

The determinations by the Secretary contained in § 725.2 have been made on the basis of the latest available statistics of the Federal Government, and after due consideration of data, views, and recommendations received from flue-cured tobacco producers and others pursuant to a notice (40 FR 37224, 44157) given in accordance with the provisions of 5 U.S.C. 553.

All respondents commenting on the amount of the reserve supply level concurred in the proposed amount of 2,983 million pounds.

Recommendations on the amount of the national marketing quota for the 1976–77 marketing year ranged from an adequate reduction from the quota in effect for the 1975–76 marketing year to maintain supplies in line with demand, to the maximum reduction authorized by legislation. The preponderance of the recommendations were that the 1975–76 quota be reduced by 15 percent. The national marketing quota of 1,268 million pounds for the 1976–77 marketing year as herein determined is 15 percent less than the quota for the 1975–76 marketing year.

All respondents commenting on the amount of the national average yield goal recommended that it be continued at 1,854 pounds per acre. Two respondents commented regarding the acreage to be reserved for making corrections in farm acreage allotments, adjusting inequities and for establishing allotments for new farms. One recommended 400 acres and the other recommended 15 percent less than the reserve for the 1974–75 marketing year (800 acres). It is determined that a reserve of 350 acres is adequate for the 1976–77 marketing year. There were no recommendations for the implementation of the provision relating to N2 or other grades of tobacco not eligible for price support.

Since farmers are now making their plans for 1976 production of flue-cured tobacco and need to know the acreage allotments and marketing quotas for their farms for the 1976–77 marketing year, in order to be able to make definite decisions, it is hereby found that compliance with the 30-day effective date provision of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, the determinations and announcements shall become effective on November 28, 1975.

Section 317(a)(1) provides, in part, that for flue-cured tobacco, the national marketing quota for a marketing year is the amount of flue-cured tobacco produced in the United States which the Secretary estimates will be utilized during the marketing year in the United States and will be exported during the marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. The Act further provides that any such downward adjustment shall not exceed 15 percentum of such estimated utilization and exports.

The reserve supply level is defined in the Act as 105 percent of the normal supply. The normal supply is defined in the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports. A normal year's domestic consumption is defined in the Act as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined in the Act as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The yearly average domestic consumption during the 10 marketing years preceding the 1975–76 marketing year was 677 million pounds, and the yearly average exports during such period amounted to 528 million pounds. After adjustments for trends, a normal year's domestic consumption of 685 million pounds and a normal year's exports of 580 million pounds appear reasonable, and result in a reserve supply level of 2,983 million pounds.

Total supply is defined as the carryover at the beginning of the marketing year (July 1) plus the estimated production in the United States during the calendar year in which the marketing year begins. The carryover of flue-cured tobacco in the inventories of manufacturers and dealers (including CCC loan stocks) on July 1, 1975 amounted to 1,652 million pounds, farm sales weight. The 1975 crop, plus producer carryover from the 1974 crop marketed during the 1975–76 marketing year is currently estimated at 1,421 million pounds. The sum of these, 3,073 million pounds, represents the total supply of flue-cured tobacco for the 1975–76 marketing year, an amount which exceeds the reserve supply level by 90 million pounds.

It is estimated that 745 million pounds of flue-cured tobacco will be utilized in the United States during the 1976–77 marketing year and 550 million pounds will be exported. Because it is deemed desirable to effect an orderly reduction of supplies to the reserve supply level, the sum of these amounts, 1,295 million pounds, is adjusted downward by 27 million pounds in establishing the quota. This reduction is less than the maximum reduction of 15 percent permitted by the Act, and is the reduction which is deemed desirable under the present supply-demand situation. Accordingly, the national marketing quota for flue-cured tobacco for the marketing year beginning July 1, 1976 is determined to be 1,268 million pounds.

The "national average yield goal" has been determined to be 1,854 pounds per acre. It has been determined that this yield will improve or insure the usability of flue-cured tobacco and increase the net return per pound to the growers. In making this determination, consideration was given to research data of the Agricultural Research Service of the Department and one of the land-grant colleges in the flue-cured tobacco area.

The community average yields have been determined for flue-cured tobacco and published in the FEDERAL REGISTER, § 724.34u (30 FR 6207, 9875, 14487).

The national acreage allotment is 684,-034.52 acres, determined in accordance with provisions of the Act by dividing the national marketing quota by the national average yield goal.

In accordance with the Act, a national reserve, from the national acreage allotment, is established in the amount of 350 acres for making corrections in farm acreage allotments, adjusting inequities and establishing allotments for new farms. It is determined that the reserve acreage will be adequate.

It has been determined that types 11, 12, 13 and 14 constitute one kind of tobacco for the 1976–77 marketing year (39 FR 18233). It has been determined also that no substantial difference exists in the usage or market outlets for any one or more of the types of flue-cured tobacco (30 FR 6144). Therefore, no action is being taken under section 313(i) of the Act for the 1976–77 marketing year.

Part 725 of Title 7 is amended by revising § 725.2 and the proceeding centerhead to read as follows:

DETERMINATIONS AND ANNOUNCEMENTS—1976–77 MARKETING YEAR

§ 725.2 Flue-cured tobacco.

For flue-cured tobacco for the marketing year beginning July 1, 1976:

(a) *Reserve supply level.* The reserve supply level is determined and announced to be 2,983 million pounds, calculated as provided in the Act, from a normal year's domestic consumption of 685 million pounds and a normal year's exports of 580 million pounds.

(b) *National marketing quota.* A national marketing quota on an acreage-poundage basis for the marketing year, is hereby determined and announced to be 1,268 million pounds. This quota is based on estimated utilization in the United States in such marketing year of 745 million pounds and estimated exports in such marketing year of 550 million pounds, with a downward adjustment of 27 million pounds which is determined to be desirable for the purpose of effecting an orderly reduction of supplies to the reserve supply level.

(c) *National average yield goal.* The national average yield goal is determined and announced to be 1,854 pounds. This goal is based on the yield per acre which

on a national average basis it is determined will improve or insure the usability of flue-cured tobacco and increase the net return per pound to growers.

(d) *National acreage allotment.* The national acreage allotment on an acreage-poundage basis is determined and announced to be 684,034.52 acres. This allotment was determined by dividing the national marketing quota of 1,268 million pounds by the national average yield goal of 1,854 pounds.

(e) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms is determined and announced to be 350 acres.

(f) *National acreage factor.* The national acreage factor is determined and announced to be 0.85.

(g) *National yield factor.* The national yield factor is determined and announced to be .9312.

(Secs. 301, 313, 317, 375, 52 Stat. 38, 47, 66, as amended, 79 Stat. 66; (7 U.S.C. 1301, 1313, 1314c, 1375))

Effective date: November 28, 1975.

Signed at Washington, D.C., on November 25, 1975.

E. J. PERSON,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.75-32301 Filed 11-28-75;8:45 am]

PART 729—PEANUTS

Subpart—1976 Crop of Peanuts: Acreage Allotments and Marketing Quotas

Basis and purpose. The provisions of § 729.100 to 729.103 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.) with respect to the 1976 crop of peanuts. The purposes of § 729.100 to 729.103 are to proclaim a national marketing quota, establish the national acreage allotment and apportion such allotment to the States for the 1976 crop of peanuts in accordance with section 358 of the act (7 U.S.C. 1358). The findings and determinations made with respect to these matters are based on the latest available statistics of the Federal Government.

Notice that the Secretary was preparing to determine the acreage allotments and marketing quota for the 1976 crop of peanuts was published in the FEDERAL REGISTER on November 11, 1975 (40 FR 52613). No submissions were received in response to such notice.

In order that peanut farmers may be notified as soon as possible of farm allotments for the 1976 crop of peanuts, it is essential that § 729.100 to 729.103 be made effective as soon as possible. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest and § 729.100 to 729.103 shall be effective upon filing of this document with the Director, Office of the Federal Register. The material previously appearing in this subpart in § 729.100 to 729.103 remains in full force and effect as to the crops to which it was applicable.

Accordingly, the regulations in § 729.100 to 729.103 are revised as follows:

Sec.
729.100 Proclamation of national marketing quota for the 1976 crop of peanuts.
729.101 National acreage allotment for the 1976 crop of peanuts.
729.102 Reserved.
729.103 Apportionment to States.

AUTHORITY: Secs. 301, 358, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 52 Stat. 66, as amended (7 U.S.C. 1301, 1358, 1375).

§ 729.100 Proclamation of national marketing quota for the 1976 crop of peanuts.

(a) *Statutory requirements.* Section 358(a) of the Agricultural Adjustment Act of 1938, as amended, provides that between July 1 and December 1 of each calendar year the Secretary shall proclaim a national marketing quota for the crop of peanuts to be produced in the next succeeding calendar year. The quota for such crop shall be the quantity of peanuts which will make available for marketing a supply equal to the average quantity of peanuts harvested for nuts during the immediately preceding 5 years, adjusted for current trends and prospective demand conditions. The minimum quota shall be a quantity of peanuts sufficient to provide a national acreage allotment of not less than 1,610,000 acres.

(b) *Findings and determinations.* The following findings and determinations under section 358(a) of the act are hereby made:

(1) Average quantity of peanuts harvested for nuts during the 5 year period 1970–1974, adjusted for current trends and prospective demand conditions—1,640,078 tons;

(2) Normal yield per acre of peanuts for the United States on the basis of the average yield per acre of peanuts in the 5 year period 1970–1974, adjusted for trends in yields and abnormal conditions of production affecting yields—2,490 pounds;

(3) Conversion of the quantity of peanuts determined under paragraph (b)(1) of this section into acres on the basis of the normal yield amounts to 1,317,332 acres;

(4) Conversion of the minimum national acreage allotment of 1,610,000 acres into tons of quota on the basis of the normal yield—2,004,400 tons.

(c) *National marketing quota.* The national marketing quota for the 1976 crop of peanuts is hereby proclaimed to be 2,004,400 tons on the basis of the minimum national acreage allotment determined under paragraph (b)(4) of this section since such amount of quota would not be obtained by the smaller amount determined under paragraph (b)(3) of this section.

§ 729.101 National acreage allotment for the 1976 crop of peanuts.

The national acreage allotment for the 1976 crop of peanuts based on the national marketing quota under paragraph (c) of this section is hereby established at 1,610,000 acres.

§ 729.102 [Reserved.]

§ 729.103 Apportionment to States.

The national acreage allotment for the 1976 crop of peanuts of 1,610,000 acres is hereby apportioned to the States on the basis of their share of the national acreage allotment for 1975 as provided under section 358(c)(1) of the act:

State:	*State acreage allotment*
Alabama	216,638
Arizona	761
Arkansas	4,238
California	930
Florida	55,559
Georgia	529,900
Louisiana	1,945
Mississippi	7,492
Missouri	247
New Mexico	5,787
North Carolina	167,878
Oklahoma	138,348
South Carolina	13,891
Tennessee	3,552
Texas	358,005
Virginia	104,829
Total	1,610,000

Effective Date: November 28, 1975.

Signed at Washington, D.C., on November 26, 1975.

E. J. PERSON,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.75-32353 Filed 11-28-75;8:45 am]

proposed rules

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 160d]

CAREER EDUCATION PROGRAM

Proposed Rulemaking

Pursuant to the authority contained in Section 402 (the Special Projects Act) and section 406(f) (1) and (2) of the Education Amendments of 1974, Pub. L. 93-380 (20 U.S.C. 1851-1853 and 1865), the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to establish the following regulations for the Career Education Program.

(a) *Program purpose.* Paragraph f(1) of section 406, Pub. L. 93-380 authorizes the Commissioner of Education to make grants to State and local educational agencies, institutions of higher education, and other nonprofit agencies and organizations to demonstrate the most effective methods and techniques in career education and to develop exemplary career education models (including models in which handicapped children reecive approriate career education either by participation in regular or modified programs with nonhandicapped children or where necessary in specially designed programs for handicapped children whose handicaps are of such severity that they cannot benefit from regular or modified programs). Funds which are appropriated pursuant to this authority to carry out the Career Education Program will be utilized to make grants and assistance contracts to eligible applicants for the purpose of improving the implementation of career education within the United States. Grants and assistance contracts will be awarded for any one of the following purposes:

(1) Activities designed to effect incremental improvements in K-12 career education through one or a series of exemplary projects;

(2) Activities designed to demonstrate the most effective methods and techniques in career education in such settings as the senior high school, the community college, adult and community education agencies, or in institutions of higher education;

(3) Activities designed to demonstrate the most effective methods and techniques in career education for such special segments of the population as handicapped, gifted and talented, minority, or low income youth, or to reduce sex stereotyping in career choices;

(4) Activities designed to demonstrate the most effective methods and techniques for the training and retraining of persons for conducting career education programs; and

(5) Activities designed to communicate career education philosophy, methods, program activities, and evaluation results to career education practitioners and to the general public.

Paragraph f(2) of section 406, Pub. L. 93-380 authorizes the Commissioner of Education to make grants to State educational agencies to enable them to develop State plans for the development and implementation of career education programs in the local educational agencies of the States. Funds which are appropriated pursuant to this authority to carry out the Career Education Program will be utilized to make grants and assistance contracts to eligible applicants to enable them to prepare such plans. Awards will be made on a competitive basis. Awards of Federal funds to allow for the implementation of the completed State plans are not authorized under paragraph f(2) of section 406 of Pub. L. 93-380.

(b) *Citations of legal authority.* As required by section 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)), a citation of statutory or other legal authority for each section of the regulations has been placed in parentheses on the line following the text of the section.

On occasion, a citation appears at the end of a subdivision of the section. In that case, the citation applies to all that appears in that section between the citation and the next preceding citation. When the citation appears only at the end of the section it applies to the entire section.

(c) *General provisions regulations.* The proposed regulations do not contain provisions relating to general fiscal and administrative matters. Requirements of this nature are covered by the Office of Education's General Provisions Regulations (30 FR 30654, November 6, 1973, 45 CFR Parts 100 and 100a). (Reference is made in particular to 45 CFR Part 100a, which contains general provisions for discretionary programs, including the Career Education Program.) The program is also subject to the regulations for the Special Projects Act, 45 CFR Part 160.

(d) *Written comments.* Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulations to the Office of Career Education, U.S. Office of Education, 7th and D Streets, SW., Room 3100, Regional Office Building Three, Washington, D.C. 20202.

Comments received in response to these regulations will be available for public inspection at the above office on Mondays through Fridays of each week between 8:30 a.m. and 4:00 p.m.

All relevant material must be received not later than December 31, 1975, unless December 31, 1975, is a Saturday, Sunday, or Federal holiday, in which case such material must be received by the next following business day.

(Catalog of Federal Domestic Assistance No. 13.554, Career Education Program)

Dated: September 22, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: November 19, 1975.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

PART 160d—CAREER EDUCATION PROGRAM

Subpart A—General

AUTHORITY: Secs. 402, 406, Education Amendments of 1974, Pub. L. 93-380 (20 U.S.C. 1851-1853, 1865).

Subpart A—General

§ 160d.1 Applicability.

This part applies to grants and assistance contracts made by the U.S. Commissioner of Education for projects to demonstrate the most effective methods and techniques in career education, for projects to develop exemplary career education models, and for projects to enable State educational agencies to develop State plans for career education.

(20 U.S.C. 1851-1853, 1865(f) (1) and (2))

§ 160d.2 Definitions.

As used in these regulations, "Career education" means an education process designed to:

(a) Increase the relationship between schools and society as a whole;

(b) Provide opportunities for counseling, guidance and career development for all children;

(c) Relate the subject matter of the curricula of schools to the needs of persons to function fully in society;

(d) Extend the concept of the education process beyond the school into the area of employment and the community;

(e) Foster flexibility in attitudes, skills, and knowledge in order to enable persons to cope with accelerating change and obsolescence;

(f) Make education more relevant to employment and functioning in society; and

(g) Eliminate any distinction between education for vocational purposes and general or academic education.

(20 U.S.C. 1865(d))

"Handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services.

(20 U.S.C. 1401)

An "incremental improvement" means a gain in the quality and/or quantity of career education in a school or school system, reflecting the fact that the implementation of career education is a gradual process which proceeds in small steps from little or no career education to a fully integrated and successful program.

(20 U.S.C. 1865)

"Institution of higher education" or "institution" means an educational institution in any State which meets the requirements set forth in section 1201(a) of the Higher Education Act of 1963 as amended.

(20 U.S.C. 1141(a))

"Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. The term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(20 U.S.C. 1141(g))

"State educational agency" means the State Board of Education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools; or, if there is no such agency or officer, an agency or officer designated by the Governor or by State Law.

(20 U.S.C. 1141(h))

Subpart B—Special Projects

§ 160d.3 Scope.

This subpart governs the selection of applications from State and local educational agencies, institutions of higher education, and other nonprofit agencies and organizations for purposes of carrying out activities designed to improve the implementation of career education.

(20 U.S.C. 1865)

§ 160d.4 Eligible applicants.

The following categories of agencies and organizations are eligible for grants and assistance contracts pursuant to this subpart:

(a) State educational agencies;

(b) Local educational agencies;

(c) Institutions of higher education; and

(d) Other nonprofit agencies and organizations.

(20 U.S.C. 1865(f)(1))

§ 160d.5 Project purposes.

Projects funded pursuant to this subpart must be designed to contribute to one of the following purposes, to:

(a) Effect incremental improvements in K–12 career education through one or a series of exemplary projects;

(b) Demonstrate the most effective methods and techniques in career education in such settings as the senior high school, the community college, adult and community education agencies, or in institutions of higher education;

(c) Demonstrate the most effective methods and techniques in career education for such special segments of the population as handicapped, gifted and talented, minority or low income youth, or to reduce sex stereotyping in career choices;

(d) Demonstrate the most effective methods and techniques for the training and retraining of persons for conducting career education programs; and

(e) Communicate career education philosophy, methods, program activities, and evaluation results to career education practioners and to the general public.

(20 U.S.C. 1865)

§ 160d.6 Required application data.

Each application for assistance under this subpart must set forth a detailed plan which includes:

(a) Identification of the purpose in § 160d.5 (a)–(e) to which the application is addressed. If the applicant chooses to participate in more than one of these listed purposes, a separate application must be submitted for each purpose. For purposes in § 160d.5 (b) and (c) a single application may address no more than one special setting or one special population. Applicants wishing to address more than one setting or population through separate programs must submit a separate application for each such setting or population addressed;

(b) An operational plan describing, in detail, exactly how the applicant proposes to achieve the specific purpose addressed in the application and explaining the exemplary nature of the proposed procedures. This operational plan shall include, as a minimum:

(1) The process and learner outcome objectives of the proposed project stated in measurable terms;

(2) Evidence that each objective is based on documented needs of:

(i) Participants to be served in the specific geographic location of the proposed project; and

(ii) Similar participants in other locations across the nation;

(3) The tasks and strategies to be used to accomplish the stated objectives, including a description of career education processes, techniques, and materials developed in previous projects supported under the Office of Career Eduction, under the National Institute of Education, under Parts C, D, and I of the Vocational Education Act, and under other appropriate sources, which the applicant proposes to utilize in this proposed project; and a description of the measures to be undertaken to insure a high level of interaction between the world of education and the world of work in implementing the project;

(4) Description of the manner in which the proposed objectives, tasks, and strategies will comprise a comprehensive approach to career education for the participants to be involved; and

(5) A set of milestones and dates by which to monitor accomplishment of the proposed tasks;

(c) Specification of prior career education activities, if any, which the applicant has carried out, including data bearing on evaluation of the effectiveness of such prior activities;

(d) A specific plan to be utilized in evaluating the accomplishment of each of the process and learner outcome objectives listed pursuant to § 160d.6(b)(1), including:

(1) The criterion of success for evaluating each objective;

(2) The evaluation design to be used for each objective;

(3) The data collection instruments or other techniques to be used for each objective;

(4) The data analysis to be conducted for each objective;

(5) The dates by which data on the various objectives will be available; and

(6) The evaluation resources of personnel and budget that will be utilized;

(e) A description of applicant or other additional resources, if any, to be contributed to the proposed activities to supplement funds received under this subpart;

(f) A plan for disseminating information to others during the course of the project and at the conclusion of the project funding period;

(g) Identification of all proposed staff, their duties, and a description of the qualifications possessed by all proposed professional staff; and

(h) Identification of the individuals and groups who participated in the preparation of the application, the extent of their participation, and evidence of their commitment to implement the proposed activities.

(1) Each application for assistance under this subpart must contain on a single page, as the first page of the narrative, the following information:

(i) Identification of the purpose from § 160d.5(a)–(e) to which the application is addressed;

(ii) A brief abstract of the proposed project; and

(iii) A statement that a copy of the application has been submitted to the State Career Education Coordinator of the State within which the application originated.

(20 U.S.C. 1865)

§ 160d.7 Application review criteria.

Criteria will be utilized by the reviewers in reviewing formally transmitted applications. Segments or a segment of the application must address each criterion area. Each criterion is weighted and includes the maximum score that can be given to a segment of an application in relation to the criteria. Criteria weights total 100 points. The criteria and maximum weight for each criterion are as follows:

Criteria:	Maximum score
(a) *Evidence of need.* The application clearly demonstrates the need for its proposed activities in terms of the purpose it seeks to attain and the population(s) it seeks to serve	5
(b) *Objectives.* The objectives of the proposed project are sharply defined, clearly stated, capable of being atttained by the proposed procedures, and capable of being measured	10
(c) *Operational plan.* (1) Utilization of prior activities of applicant and others: The application clearly describes the prior career education activities which the applicant has carried out, if any and presents evidence describing the effectiveness of these activities. The application describes relevant career education processes, techniques, and materials developed in previous projects supported by the Office of Career Education, the National Institute of Education and other agencies and sources, and explains how this prior work will be utilized in implementing the proposed project	8
(2) Proposed activities: A specific description is provided of the activities proposed for each major step in the project. The time required for each activity, and the period of the project it covers, is clearly charted in the operational plan	17
(d) *Interaction and involvement.* Specific measures are described for achieving a high level of interaction between the world of education and the world of work in implementing the proposed project	10
(e) *Evaluation plan.* Provision is made for adequate evaluation of the effectiveness of the project and for determining the extent to which the objectives are accomplished	20
Criteria—Continued	Maximum score
(f) *Exemplary nature of project.* The plan clearly calls for a comprehensive career education model that, if successfully attained, holds high promise of serving as one that others could profit by emulating. The activities hold promise of being useful in other career education projects or programs for similar educational purposes	15
(g) *Personnel.* The personnel with committed major responsibilities for the proposed activities have the necessary qualifications and experience to assure successful completion of the activities. Evidence presented shows the commitment necessary from individuals and groups whose assistance is needed to accomplish the proposed objectives	10
(h) *Budget.* The size, scope, and duration of the project are reasonable and the estimated cost is reasonable in relation to anticipated results	5

(20 U.S.C. 1865)

§ 160d.8 Allowable costs.

(a) Allowable costs under grants and assistance contracts awarded under this subpart shall be determined in accordance with cost principles set forth in Appendix B, C, or D (as applicable) to Subchapter A of Title 45 Code of Federal Regulations (the Office of Education's General Provisions Regulations).

(b) It is expected that grants and assistance contracts under this subpart will generally not exceed $200,000, although each application will be judged on the basis of the proposed activities.

(20 U.S.C. 1865)

§ 160d.9 Project duration.

(a) Projects will normally be one year in duration. However, applicants should make a realistic estimate of the amount of time needed to implement the proposed project activities. Where this estimate indicates that more or less than one year is necessary, the operational plan and budget should reflect this.

(b) With respect to applicaitons requesting more than one year of funding, it is anticipated that generally an initial grant or assistance contract will be awarded for the first year of the project. In order to be considered for funding for any remaining time period, the grantee or assistance contractor will be required to submit a new application upon announcement of subsequent competition for funding. This new application will be judged on the basis of the published evaluation criteria in competition with other applications received in such subsequent competition.

(20 U.S.C. 1865)

§ 160d.10 State review and comment.

States may submit advice and comment on any application originating within their States. In order to allow for this, an applicant must provide a copy of its application to the State educational agency of the State within which the applicant is located. This copy must be submitted to the State Coordinator of Career Education, as designated by the Chief State School Officer, concurrently with the submission of the application to the Commissioner.

(20 U.S.C. 1865)

Subpart C—State Plans

§ 160d.11 Scope.

This subpart governs the selection of applications from State educational agencies for the purpose of enabling them to develop State plans for the development and implementation of career education programs in the local educational agencies of the States. Awards will be made on a competitive basis. Awards of Federal funds to allow for the implementation of the completed State plans are not authorized under paragraph f(2) of section 406 of Pub. L. 93–380.

(20 U.S.C. 1865(f)(2))

§ 160d.12 Eligible applicants.

State educational agencies are the only applicants eligible for funding under this subpart.

(20 U.S.C. 1865(f)(2))

§ 160d.13 Requirements of completed State plan.

Projects funded under this subpart must be designed to develop a comprehensive State plan for implementing career education in the elementary and secondary schools of the State. This plan (which must be submitted upon completion of activities funded pursuant to this subpart) must set forth at least the following:

(a) The State educational agency's definition of career education and the conceptual base upon which career education within the State rests;

(b) The need for career education within the State;

(c) Career education efforts and accomplishments to date to meet identified needs within the State, including an assessment of existing programs, practices, and materials;

(d) The objectives for the short range (one year) and long range (five years) implementation of career education within the State (the one year objectives and plan must cover school year 1977–1978 and the five year objectives and plan must cover school year 1977–1978 through school year 1981–1982 inclusive);

(e) The strategies, activities, and resources to be utilized in implementing the short- and long-range plan in the following areas:

(1) Curriculum changes, including experiential learning outside of the school building and changes in vocational education;

(2) Career counseling, career guidance, career placement and follow-up;

(3) Meeting the career education needs of special groups, including the handicapped and other educationally disadvantaged students, and eliminating the stereotyping of career opportunities by race or by sex;

(4) Involving the business-labor-industry-professional-government community in career education;

(5) Involving the some and family structure in career education; and

(6) Training and retraining, both pre- and in-service, for personnel to enable them to implement career education;

(f) Plans for evaluating the effectiveness of career education inputs, processes, and outcomes in local educational agencies and personnel training programs;

(g) Plans for disseminating information about career education, career education practices and products, and the results of career education efforts to interested persons within the State;

(h) The funding that will be needed to implement the various components of the one year and five year plans and the sources of the necessary funding, where these sources are available;

(i) The relationship of the State plan for career education to career education activities being carried out and contemplated in postsecondary and adult education settings; and

(j) The manner in which the plan is to be implemented and administered by the State educational agency, including allocation of resources, management of activities, provision of assistance to others within the State, staffing for career education within the State educational agency, and the relationship of the career education plan to other planning efforts at the State level (e.g. Vocational Education State Plan, Title III State Plan, etc.).

(20 U.S.C. 1865)

§ 160d.14 Required application data.

Each application for assistance under this subpart must set forth a detailed proposal which includes at least the items listed below. In the event that the applicant has already initiated or completed any of the following activities, the application will describe fully the procedures used and the results obtained. The remainder of the application will then deal with the activities proposed as necessary to complete or update work already underway on a State plan. The application shall include:

(a) Provisions for the establishment and use of a career education advisory group to provide advice and assistance during the development of the State plan. This group shall contain members representing at least the following groups:

(1) Major units of the State educational agency and, where these are separate organizations, the State Board of Vocational Education and the State system of higher education;

(2) Other State governmental units whose assistance is considered necessary in implementing career education;

(3) Business and industry;

(4) Labor;

(5) Institutions of higher education with educational personnel preparation programs;

(6) School administrators;

(7) Counselors;

(8) Teachers;

(9) Vocational education personnel;

(10) Parents; and

(11) Students.

(b) Provisions for assessing the career education needs of all students in the elementary, middle/junior high, and senior high schools of the State, including the special needs of handicapped and other educationally disadvantaged students;

(c) Provisions for assessing the need for the training and retraining of educational personnel to serve in career education programs;

(d) Provisions for identifying existing and potential resources from across the United States that could be used to develop and implement career education within the State, including at least the following types of resources:

(1) Career education instructional materials;

(2) Educational facilities;

(3) Educational personnel;

(4) Career education programs and practices with potential for use within the State;

(5) Business, labor, industry, professional, government, and other community resources; and

(6) Funding sources and funds.

(e) Provisions for developing both a short-range (one year—school year 1977–1978) and long-range (five years—school years 1977–1978 through 1981–1982 inclusive) plan for the development and implementation of career education, including procedures to be used in:

(1) Setting goals;

(2) Specifying performance objectives;

(3) Determining strategies, activities, and resources to be used; and

(4) Determining the process to be used to administer, monitor, and update the implementation of the plan;

(f) A statement of the manner in which the applicant will manage the preparation of the plan, including the names and qualifications of proposed staff, their reporting relationships within the State educational agency, any proposed subcontracts, a management plan, including tasks and timelines, for completing the plan in the time period specified in the application; and

(g) A statement by the Chief State School Officer of the State educational agency endorsing the submission of the application for funding under this subpart.

(20 U.S.C. 1865(f)(2))

§ 160d.15 Application review criteria.

Criteria will be utilized by reviewers in reviewing formally transmitted applications. Segments or a segment of the application must address each criterion area. Each criterion is weighted and includes the maximum score that can be given to a segment of an application in relation to the criterion. Criterion weights total 100 points. The criteria and maximum weights for each criterion are as follows:

Criteria:	Maximum score
(a) *Evidence of need.* The application demonstrates an understanding of career education and justifies the State's need for a comprehensive State plan for the development and implementation of career education. Any prior State plan efforts and their results are fully described and it is clear that the proposed activities will build upon these prior efforts. Evidence is presented which demonstrates the State's commitment to implement the plan that is developed, including endorsement of the application by the Chief State School Officer	10
(b) *Advisory group.* The application fully describes the present or planned advisory group to be used in the development of the plan. The types of constituents to be represented and the names and titles of members are presented. The group is broadly representative of the constituencies to be involved in the implementation of career education and procedures are described for effective use of the group	10
(c) *Needs assessment.* The application fully describes the procedures to be used and the areas to be covered in conducting the needs assessment. Survey techniques planned are described in detail. The procedures will assure identification of the career education needs of all children within the State. If a career education needs assessment has already been initiated, the data are sufficient, of high quality, and support the conclusions drawn	25
(d) *Resource identification.* The application fully describes the procedures to be used to survey existing and potential resources for use in the development and implementation of career education within the State. The process assures the surveying of resources from across the nation. If resource identification has already been initiated, the results are sufficient, of high quality, and support the conclusions drawn	15
(e) *Development of plan.* The application clearly describes the process to be used to develop both the 1-year and the 5-year plans	20
(f) *Personnel and management.* The application clearly identifies the staff to be used in developing the plan and their qualifications match the tasks to be accomplished. The management plan for the proposed activities presents tasks and timelines which assure that the plan will be developed effectively and in a timely manner	15
(g) *Budget.* The size, scope, and duration of the project are reasonable and the estimated cost is reasonable in relation to anticipated results	5

(20 U.S.C. 1865)

§ 160d.16 Allowable costs.

(a) Allowable costs under grants and assistance contracts pursuant to this subpart shall be determined in accordance with cost principles set forth in Appendix B to Subchapter A of Title 45 Code of Federal Regulations (the Office of Education's General Provisions Regulations).

(b) It is expected that grants for any single year of activity under this subpart will generally not exceed $50,000 although each application will be judged on the basis of the proposed activities.

(20 U.S.C. 1865(f)(2))

§ 160d.17 Project duration.

(a) Projects will normally be one year in duration. However, applicants should make a realistic estimate of the amount of time needed to implement the proposed project activities. The exact funding period requested should be based on the extent of planning which remains to be accomplished to develop the plan required by this subpart. It is expected that States which have already engaged in career education planning efforts will not be funded for more than one year unless this is strongly justified.

(b) With respect to applications requesting more than one year of funding, it is anticipated that generally an initial grant or assistance contract will be awarded for the first year of the project. In order to be considered for funding for any remaining time period, the grantee or assistance contractor will be required to submit a new application upon announcement of subsequent competition for funding. This new application will be judged on the basis of the published evaluation criteria in competition with other applications received in such subsequent competition.

(20 U.S.C. 1865)

[FR Doc.75-32251 Filed 11-28-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Part 10]

[CGD 73-272]

FIRST AID CERTIFICATES

Supplemental Proposal

In the April 2, 1974, issue of the FEDERAL REGISTER (39 FR 12033), the Coast Guard published a Notice of Proposed Rule Making proposing amendments to the merchant marine officers licensing regulations to provide for the acceptance of a First Aid Certificate other than those issued by the United States Public Health Service.

One of the requirements that an applicant for an original license as a deck, engineering, or radio officer must meet is that he produce a certificate from the United States Public Health Service indicating that he has satisfactorily passed an examination based on the contents of "The Ship's Medicine Chest and First Aid at Sea." Due to reductions in the United States Public Health Service, it has become increasingly difficult to comply with this requirement.

The proposal, designed to deal with the problem, provided for the acceptance of the American National Red Cross course "Advanced First Aid and Emergency Care" completion certificate as an alternative to the certificate issued by the United States Public Health Service. However, public comment on this proposal indicated several major areas of concern.

Several commentors felt that the forty-plus hours of classroom instruction required for the completion of the Advanced Red Cross course would create a hardship for many applicants because of lost wages and lost job opportunities. It was also felt that academies and other training institutions would find it difficult to work over forty classroom hours into their schedules.

The Coast Guard is proposing to accept the American National Red Cross course "Standard First Aid and Personal Safety" in lieu of the advanced course. The reduced number of classroom hours required for completion of this course would make it more available for use while still providing the basic first aid skills desired.

Other commentors indicated that a first aid course primarily designed for use by persons on land would neglect those problems unique to a ship at sea. The aspects of first aid unique to ships will be covered in objective type multiple-choice questions included in the standard officers licensing examinations.

The Coast Guard is also proposing that an applicant for a license present a completion certificate from either the American National Red Cross or the American Heart Association Cardiopulmonary Resuscitation Basic Life Support course. This would provide that the applicant obtain a higher degree of knowledge regarding cardiopulmonary resuscitation and basic life support.

Interested persons or organizations may participate in this proposed rulemaking by submitting written data, views, or arguments to the Commandant (G-CMC-/81), U.S. Coast Guard, Washington, D.C. 20590. Each person or organization submitting a comment should include their name and address, identify this notice (CGD 73-272), and give reasons for any recommendations made.

Comments received before January 16, 1976, will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination in room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, SW, Washington, D.C. This proposal may be changed in light of comments received.

No hearing is contemplated, but one may be held at a time and place set out in a later notice in the FEDERAL REGISTER, if requested by a person or organization desiring to comment orally at a public hearing and raising a genuine issue.

In view of the foregoing, the Coast Guard proposes to amend Part 10 of Title 46 of the Code of Federal Regulations as follows:

1. By revising § 10.02-5(f) to read:

§ 10.02-5 Requirements for original license.

* * * * *

(f) *First Aid Certificate.* No candidate for original license shall be examined until—

(1) he presents a currently valid certificate of the "Cardiopulmonary Resuscitation Basic Life Support" course from—

(i) the American National Red Cross; or

(ii) the American Heart Association; and

(2) he presents a certificate from—

(i) the United States Public Health Service indicating that he has passed an examination based on the contents of "The Ship's Medicine Chest and First Aid at Sea", or another manual arranged for and approved by the Public Health Service; or

(ii) the American National Red Cross indicating completion of its "Standard First Aid and Personal Safety" course.

* * * * *

2. By revising § 10.13-13(a) to read:

§ 10.13-13 General requirements for original licenses.

(a) *First Aid Certificate.* No candidate for original license shall be qualified until—

(1) he presents a currently valid certificate of the "Cardiopulmonary Resuscitation Basic Life Support" course from—

(i) the American National Red Cross; or

(ii) the American Heart Association; and

(2) he presents a certificate from—

(i) the United States Public Health Service indicating that he has passed an examination based on the contents of "The Ship's Medicine Chest and First Aid at Sea", or another manual arranged for and approved by the Public Health Service; or

(ii) the American National Red Cross indicating completion of its "Standard First Aid and Personal Safety" course.

* * * * *

3. By revising § 10.16-31(b) to read:

§ 10.16-31 Knowledge requirements.

* * * * *

(b) * * *

(1) hold—

(i) a currently valid certificate of completion of the "Cardiopulmonary Resuscitation Basic Life Support" course from—

(A) the American National Red Cross; or

(B) the American Heart Association; and

(ii) a currently valid—

(A) first aid certificate issued by the United States Public Health Service; or

(B) certificate of completion of the American National Red Cross course;

"Standard First Aid and Personal Safety".

* * * * *

(Sec. 1, 86 Stat. 423, as amended (46 U.S.C. 405), 60 Stat. 1097 (46 U.S.C. 224, 224a, 229).)

Dated: November 21, 1975.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc.75-32294 Filed 11-28-75;8:45 am]

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 75-GL-65]

CELINA, OHIO

Alteration of Transition Area

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulatons so as to alter the transition area at Celina, Ohio.

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 Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Illinois 60018. All communications received on or before December 31, 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, 2300 East Devon, Des Plaines, Illinois 60018.

A new instrument approach procedure has been developed for the Lakefield Airport, Celina, Ohio.

Revision of the present controlled airspace is required to protect this procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (40 F.R. 441), the following transition area is amended to read:

CELINA, OHIO

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Lakefield Airport (latitude 40°29'03" N., longitude 84°33'37" W.); excluding that portion overlying the Wapakoneta, Ohio transition area.

(Section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of Section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].)

Issued in Des Plaines, Illinois, on November 14, 1975.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.75-32212 Filed 11-28-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-GL-66]

COSHOCTON, OHIO

Alteration of Transition Area

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Coshocton, Ohio.

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 Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Illinois 60018. All communications received on or before December 31, 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, 2300 East Devon, Des Plaines, Illinois 60018.

A new approach procedure has been developed for the Tri-City Airport, West Lafayette, Ohio.

Controlled airspace is required to protect this procedure. It is proposed to add the required airspace to that presently designated at Coshocton, Ohio.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In Section 71.181 (40 FR 441), the following transition area is amended to read:

COSHOCTON, OHIO

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Richard Downing Airport (latitude 40°18'37" N., longitude 81°51'17" W.); and within a 7-mile radius of the Tri-City Airport (latitude 40°15'45" N., longitude 81°44'35" W.).

(Section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of Section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].)

Issued in Des Plaines, Illinois, on November 12, 1975.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.75-32209 Filed 11-28-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-SO-122]

SOUTHPORT, N.C.

Designation of Transition Area

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Southport, N.C., transition area.

Interested persons may submit such written data, views or arguments as they desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before December 31, 1975 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. 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 light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 645, 3400 Whipple Street, East Point, Ga.

The Southport transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Brunswick County Airport (latitude 33° 55'44" N., longitude 78°04'33" W.); within 3 miles each side of the 315° bearing from the Waupon RBN (latitude 33°55'39" N., longitude 78°04'31" W.), extending from the 5-mile radius area to 8.5 miles northwest of the RBN.

The proposed designation is required to provide controlled airspace protection for IFR operations at Brunswick County Airport. A prescribed instrument approach procedure to this airport, utilizing the Waupon (Private) Nondirectional Radio Beacon, is proposed in conjunction with the designation of this transition area.

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

Issued in East Point, Ga., on November 19, 1975.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.75-32208 Filed 11-28-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-SO-148]

SYLACAUGA, ALABAMA

Designation of Transition Area

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Sylacauga, Ala., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before December 31, 1975 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. 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 light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 645, 3400 Whipple Street, East Point, Ga.

The Sylacauga transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of Lee Merkle Airport (latitude 33°10'14" N., longitude 86°18'12" W.).

The proposed designation is required to provide controlled airspace for IFR operations at Lee Merkle Airport. A prescribed instrument approach procedure to the airport, utilizing the Sylacauga (private) NDB, is proposed in conjunction with designation of the transition area.

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

Issued in East Point, Ga., on November 19, 1975.

PHILLIP M. SWATEK,
Director,
Southern Region.

[FR Doc.75-32210 Filed 11-28-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-SO-150]

RIPLEY, MISSISSIPPI

Designation of Transition Area

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Ripley, Miss., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before December 31, 1975 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. 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 light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 645, 3400 Whipple Street, East Point, Ga.

The Ripley transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Ripley Airport (Lat. 34°43'25" N., Long. 89°00'49" W.).

The proposed designation is required to provide controlled airspace for IFR operations at Ripley Airport. A prescribed instrument approach procedure to the airport, utilizing the Holly Springs VORTAC, is proposed in conjunction with designation of the transition area. If the proposed designation is acceptable, the airport operating authorization will be changed from VFR to IFR.

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

Issued in East Point, Ga., on November 17, 1975.

PHILLIP M. SWATEK,
Director,
Southern Region.

[FR Doc.75-32207 Filed 11-28-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-GL-61]

KEWANEE, ILLINOIS

Withdrawal of Designation of Transition Area

On page 45846 of the FEDERAL REGISTER dated October 3, 1975, the Federal Aviation Administration published a notice of proposed rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area, at Kewanee, Illinois.

The proposed instrument approach procedure to Kewanee Airport has been cancelled to wait for the development of a new runway and a procedure to this runway; therefore, the proposed controlled airspace is no longer required, and the proposed designation is withdrawn.

Issued in Des Plaines, Illinois, on November 12, 1975.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.75-32211 Filed 11-28-75;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Parts 567, 568, 571]

[Docket No. 75-28; Notice 2]

VEHICLES MANUFACTURED IN TWO OR MORE STAGES

Extension of Time for Comments

A notice of proposed rulemaking that would amend 49 CFR Part 567, *Certification*, Part 568, *Vehicles Manufactured in Two or More Stages*, and Part 571, *Federal Motor Vehicle Safety Regulations*, was published on October 3, 1975, (40 FR 45847; Notice 1) with a closing date for comments of December 2, 1975. The Motor Vehicle Manufacturers Association has petitioned for an extension of the time for comments in order to allow its member companies to review the complex history of the regulation of multistage vehicles and to submit more useful comments. In response to this request, the closing date for comments is hereby extended to January 16, 1976.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.51 and 49 CFR 501.8.)

Issued on November 26, 1975.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.75-32346 Filed 11-26-75;10:17 am]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 253, 399]

[EDR-290; PSDR-44 Docket No. 28460]

COMMISSIONS AND OTHER FORMS OF COMPENSATION AND STATEMENTS OF GENERAL POLICY

Proposed Rulemaking

Correction

In FR Doc. 75-31391 appearing in the issue of Thursday, November 20, 1975, the following changes should be made:

1. The docket number should read as set forth above.

2. The following sentence should be added as the last sentence to footnote 3 on page 54008:

"IATA resolutions 810a (USA) in effect until May 3, 1975, provided for the payment of 7% for sales of most international air transportation, 10% for tours, 5% for charter transportation, and 3% for in-plant ticketing."

3. The fifth line of the authority citation on page 54010 should be corrected to read "867), 757, 758 (as amended by 74 Stat. 445), 766 (as amended by 83 Stat. 1037,".

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 12]

COMMODITY EXCHANGE ACT

Reparation Proceedings

The Commodity Futures Trading Commission proposes to adopt rules to implement the reparation provisions of section 14 of the Commodity Exchange Act, as amended, 7 U.S.C. 18, which becomes effective on January 23, 1976. If adopted, the rules will comprise a new Part 12 of Title 17 of the Code of Federal Regulations. Although the Commission is not required by the Administrative Procedure Act to seek comment from the public prior to the adoption of these rules, which relate to agency procedure and practice, see 5 U.S.C. 553(b), in order to assure the fullest practicable public participation in its decision-making processes and because the procedure under section 14 will directly affect the interests of members of the public, the Commission considers it desirable to afford an opportunity for public comment.

The rules as set forth below incorporate, either textually or by reference, various sections of the general rules of practice and the rules with respect to appearance and practice of attorneys and other professionals before the Commission that the Commission is considering for adoption within the next few weeks.[1] Although the Commission is seeking comments on all of the proposed rules, it is primarily interested in receiving comments with respect to those provisions which will be applicable solely to reparation proceedings. They are contained in Subpart B of the rules (initial procedure with respect to reparation complaints); Subpart C (investigation of complaints and institution of formal adjudicatory proceedings); Subpart D (formal adjudicatory proceedings); Subpart F (hearings); Subpart G (summary proceedings where the damages claimed do not exceed $2,500); and Subpart H (Commission review of initial decisions in reparation proceedings).

The proposed rules would establish procedures for persons with complaints against floor brokers, futures commission merchants, commodity trading advisors, commodity pool operators, and all other persons required under the Act to register with the Commission, to get just, speedy and inexpensive adjudication of their claims. The proposed rules are designed to protect fully the rights of all interested parties. It is the intention of the Commission to eliminate all unnecessary formalities in the processes of reaching settlement of the claims; no party to a reparation proceeding should be prejudiced by a technical and inadvertent violation of these rules which does not prejudice the interest of any other party. These reparation rules provide the procedures by which a claimant may pursue one of the remedies the law will permit for the recovery of claims. The other available remedies are arbitration and the filing of a lawsuit in an appropriate state or federal court.

Reparation procedures allow any person to complain of any violation of any provision of the Act by a registered individual or corporation within two years after the violation occurs.[2] Such person may apply to the Commission for reparation of a specific amount. The Commission is establishing simple procedures to allow the complaint to be made, to conduct the appropriate hearing and, in the event it is warranted, to set the amount of reparations due to the injured party.

The Commission intends to publish a pamphlet which will explain the procedures so the public can understand its rights in reparation matters and so persons registered with the Commission may understand their commensurate responsibility.

SUMMARY OF THE PROVISIONS OF THE PROPOSED RULES

THE GENERAL INFORMATION SECTIONS

Subpart A of the proposed reparations rules contains general information, describing the scope and purpose of the rules (§ 12.1), restricting their application to reparation proceedings (§ 12.2), defining various terms used in the proposed rules (§ 12.3), and noting the address and business hours of the Commission (§ 12.4). Provision is expressly made for waiver of the rules in particular cases to prevent undue hardship or for other good cause (§ 12.5); and it is provided that periods of time prescribed by the rules may be modified when appropriate (§ 12.7). In addition, inappropriate *ex parte* communications are forbidden (§ 12.9), and separation of judicial and prosecutorial functions among Commission staff members is established (§12.10). Periods of time set forth in the rules are to be computed in accordance with § 12.6 and a method is set forth for determining the date upon which an order shall be deemed to have been entered (§ 12.8).

Section 12.11 contains provisions concerning appearance and practice before the Commission. Under its terms a complainant or respondent may appear *pro se* (on his own behalf) or be represented by an attorney (§ 12.11(a)), but an attorney or other professional or expert who has been suspended or disbarred from appearance or practice before the Commission in accordance with standards and procedures that will be set forth in a separate Part of Title 17 of the Code of Federal Regulation may not appear before the Commission in a reparation proceeding (§12.11(b)).

INITIAL PROCEDURE WITH RESPECT TO REPARATION COMPLAINTS

Section 14(a) of the Commodity Exchange Act, 7 U.S.C. 18(a), provides that any person who wishes to complain of a violation of any provision of that Act or of any rule, regulation or order thereunder by any person registered with the Commission as a floor broker, futures commission merchant, person associated with a futures commission merchant or with agents thereof, commodity trading advisor or commodity pool operator may, within two years after the cause of action accrues, apply to the Commission for a reparation award. Subpart B of the proposed rules §§ 12.21 through 12.26—establishes the initial steps to be followed by any person seeking to invoke this reparation procedure; the steps that the Commission may take, when appropriate, to bring a complaint to the attention of the persons against whom the reparation award is sought; and the steps those persons may take either to satisfy or to answer the complaint.

Proposed § 12.21(a) prescribes the form that a complaint should take. It generally requires that the complaint briefly state the facts claimed to constitute a violation in a way that will permit each alleged fact to be admitted or denied by the respondent. Certain matters which should be included—such as the names and addresses of the complainant and the persons against whom recovery is sought—are listed.[3]

In order to deter baseless allegations, the Commission proposes to require, in § 12.21(b), that the complaint be personally signed and sworn to by the complainant and that it be accompanied by copies of documents available to the complainant which support the claims made. A complaint will be able to be filled in person or by mail at the Commission's principal office in Washington, D.C. (§ 12.21(c)).[4]

Pursuant to proposed § 12.22, upon receipt of a reparation complaint the Commission will evaluate whether the facts set forth in the complaint, if true, demonstrate a violation of any provision of the Act or of any rule, regulation or order thereunder and show that the complainant has suffered damages as a result of the alleged violation. If so, the

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[1] The general rules of practice will be set forth in Part 10 and the rules with respect to appearance and practice before the Commission of attorneys and other professionals will be set forth in Part 14.

[2] Only claims arising on or after January 23, 1975, however, may be heard.

[3] Although formal requirements are prescribed, the Commission will not, of course, apply those requirements uncritically to deny access to the reparation procedure to persons having an apparent basis for their claims. It may be necessary however, to require a complaint to be resubmitted in a proper form if it should be so poorly prepared that it would be difficult for the respondent to respond to its allegations of wrongdoing and injury.

[4] If the complainant is a non-resident of the United States, he must file a bond in accordance with section 14(d) of the Act; that requirement is reiterated in § 12.21(d) of the proposed rules.

complaint will be forwarded to the respondent for satisfaction or answer.[5]

The respondent will have 30 days in which either to satisfy the complaint or to answer it in writing (§ 12.23). If the complaint should be satisfied, the complainant would be required, under § 12.23(a), to file a notice of satisfaction and withdrawal, after which Commission consideration of the reparation proceeding would terminate.

An answer to the complaint will be required to conform to the requirements of § 12.23(b) of the proposed rules, and either admit or deny each factual allegation of the complaint.[6] Similar to the complaint, an answer will be required to be personally signed and sworn to by the respondent, and to be accompanied by documents evidencing the respondent's view of the facts. Counterclaims will be permitted against the complainant, under § 12.23(b)(2) of the proposed rules, but only if the facts set forth as a counterclaim allege a violation which would be a proper subject of a reparation complaint.

The Commission recognizes that the scope of counterclaims under this proposal would be extremely narrow; in fact, the complainant as well as the original respondent would have to be a registrant under the Act in order for a counterclaim to be permitted. But there appears to be a substantial question whether the Commission has been authorized by section 14(a) to permit any "reparation award" to be based on matters other than alleged violations by a registrant, and whether jurisdiction has been granted, under that section or otherwise, to enter any money-damage award on any other basis. The Commission would particularly appreciate comments concerning these issues and all views concerning what other types of counterclaims, if any, it is believed may and should be allowed in reparation proceedings.

In the event that an answer contains a counterclaim the complainant will be afforded an opportunity to file a reply which is to be confined to those matters alleged in the counterclaim (§ 12.24). A reply, like the complaint and answer, will be required to be personally signed and sworn to, and be accompanied by all relevant documents.

In addition, the Commission is considering the manner in which it may limit the amount of a reparation award based upon a claim that the respondent has against the complainant, which might be applied as a set-off. The Commission would appreciate the expression of views concerning whether and to what extent this approach to the question of damages would be appropriate.

If the respondent should fail to file an answer within the period allowed by the rules (or if the complainant should fail to file a reply to a counterclaim within the time allowed), that failure would be treated as an admission of the allegations of the undisputed complaint (or counterclaim) and would constitute a waiver of hearing on the facts alleged in the complaint (or counterclaim). (Section 12.26(a)). Based upon such a default, the complaining party may file a motion requesting the Presiding Officer to enter findings and conclusions concerning the questions of violation and damages and the Presiding Officer may enter an appropriate reparation award. If the facts treated as admitted are considered by the Presiding Officer to be insufficient to support the amount of reparations sought, however, he may direct that the proceeding continue on the question of damages (*ibid.*).

In the event a default has been entered against a party pursuant to § 12.26(a), the party may file a motion requesting the Commission to set the default aside. Such a motion must be filed within a reasonable time after the default has been entered and will only be granted in order to prevent injustice (§ 12.26(b)).

COMMISSION INVESTIGATION OF COMPLAINT; INSTITUTION AND SETTLEMENT OF FORMAL ADJUDICATORY PROCEEDINGS

Section 12.31 of the proposed rules, consistent with section 14(b) of the Act, 7 U.S.C. 18(b), recognizes that the Commission may investigate a reparation complaint to the extent and in a manner that it deems appropriate if, in its opinion, there appears to be reasonable grounds to investigate the complaint.[7] If an investigation should be initiated, the Commission will be able for that reason to delay the institution of a formal adjudicatory proceeding with respect to the complaint (*ibid.*).

A formal adjudicatory proceeding may be instituted with respect to a reparation complaint if, in the Commission's opinion, the facts warrant such action (§ 12.32). If a formal proceeding is to be commenced, the complaint will formally be served on the respondent. As provided in section 14(b) of the Act, § 12.32 provides that in matters where the amount claimed as damages exceeds $2,500, the complaint will be accompanied by a notice that an opportunity will be afforded for a hearing before an Administrative Law Judge; the hearing will be held at a place in which the respondent is engaged in business that is the most convenient to the complainant.[8] Where the damages claimed are less than $2,500, the rules provide, in accordance with section 14(b), that no oral hearing will be held but that the respondent will instead be notified that the summary procedure embodied in Subpart G of the proposed rules—permitting facts to be resolved through deposition and other sworn statements rather than at an oral hearing—shall be applicable.[9]

If the Commission should determine not to institute a formal adjudicatory proceeding the reparation proceeding will, of course, terminate. Section 12.33 emphasizes, however, that the termination will be without prejudice to the right of the complainant to pursue alternative forms of relief available to him. Thus, since his rights have not been adjudicated on the merits, the complainant might, for example, institute an action for damages in an appropriate court[10] or alternatively, the complainant might utilize the arbitration procedure of an appropriate contract market.

It may frequently occur that after the proceeding has been formally initiated the parties will settle the case to their mutual satisfaction. Accordingly, § 12.35 provides for the filing of statements of satisfaction and discontinuance of proceedings at any time prior to a final determination of the proceeding. Upon the filing of a statement of satisfaction the proceeding will be discontinued.

FORMAL ADJUDICATORY PROCEEDINGS

After the complaint has been formally served, a docket number will be assigned

[5] Section 12.22 also makes clear that if the Commission should determine not to forward the complaint, its action, while terminating procedures before the Commission, will be without prejudice to the right of the complainant to seek such other forms of relief as may be available.

Section 12.22 also provides that a registrant under the Act may designate with the Commission an office to which all reparation complaints filed with the Commission against it shall be forwarded. In the absence of such a designation the reparation complaints will be forwarded to the registrant's principal place of business as shown in the records of the Commission.

[6] An answer might admit liability for some but not all of the amount claimed as damages, § 12.23(b)(1), in which case, consistent with the provisions of section 14(e), the matter will proceed as to the amount that remains in dispute, after a reparation award has been entered for the admitted amount (§ 12.25).

[7] Of course, the fact that a complaint alleges—or even substantially demonstrates—a violation of law will not, by itself, cause an investigation to be undertaken. The Commission will not be able to divert its limited resources in an attempt primarily to remedy private injuries, particularly where the injured party has shown a willingness to assert his own rights by pressing for a reparation award. Rather, a decision whether to investigate will be made in light of a broader public interest that would apparently be served by devoting the time of enforcement and compliance personnel to a particular matter.

[8] Of course, if the parties should agree to a hearing in another location the Administrative Law Judge could so order.

[9] The Commission may, of course, direct that a hearing be held even with respect to matters involving less than $2,500. (Section 12.71(2)).

[10] The courts have repeatedly recognized that a person injured by acts in violation of the Commodity Exchange Act, as amended, has a cause of action for damages. See, e.g., Deaktor v. L.D. Schreiber & Co., 479 F. 2d 529 (7th Cir. 1973); Booth v. Peavey Company Commodity Services, 430 F. 2d 132 (8th Cir. 1970); Case & Co., Inc. v. Board of Trade of the City of Chicago, CCH Commodity Futures L. Rep. ¶20,079 (7th Cir. September 12, 1975). The fact that Congress has provided an additional remedy through reparation procedures does not affect the right of an injured party to obtain relief before the courts.

(§ 12.41) and a Presiding Officer will be designated (§ 12.42), who will be responsible for the fair and orderly conduct of the proceeding. Among other things, the Presiding Officer will issue subpoenas at the request of the parties and regulate the course of the hearing (§ 12.43). Most significantly, the Presiding Officer will be required to make an initial decision on the merits of the case, which might become the final administrative decision in the matter if review by the Commission is not sought or if the Commission should decline to grant review of the matter (see §§ 12.84 and 12.95). Under the proposed rules a Presiding Officer may withdraw from any proceeding if he believes himself to be disqualified, and any party may request that he disqualify himself (§ 12.44).

The Presiding Officer may allow amendments to the pleadings and the filing of supplemental pleadings in accordance with the provisions of § 12.45. In addition, he will consider and rule upon all motions made in the course of the proceeding, which must be presented and answered in the manner prescribed in proposed § 12.46. Ordinarily, the Presiding Officer's ruling on a motion made in the course of a proceeding will be reviewed by the Commission, if at all, only at the same time that the Commission reviews the final disposition of the matter by the Presiding Officer. In certain extraordinary circumstances, which are set forth in § 12.47(a), however, an interlocutory appeal to the Commission—an appeal concerning one issue while the proceeding otherwise continues—may be permitted in accordance with procedures set forth in § 12.47(b).

The remainder of Subpart D of the proposed rules prescribe the procedure to be followed with respect to the service of motions, petitions and applications (§ 12.48) and of decisions and orders made in the course of the proceeding (§ 12.49); the designation of persons who may receive service on behalf of parties (§ 12.50); and provisions concerning the filing of documents with the Hearing Clerk (§ 12.51), including the formalities of filing documents (§ 12.52) and the manner in which documents must be signed (§ 12.53).

PREHEARING CONFERENCES AND DISCOVERY

Under proposed Subpart E, § 12.61 authorizes the Presiding Officer to direct the holding of prehearing conferences to clarify the issues and take other steps to facilitate the proceeding and promote a fair and expeditious hearing.

At the present time the Commission is considering whether or to what extent the Commission's general rules of practice should provide for discovery in administrative proceedings before the Commission. Discovery would provide a procedure by which all parties may seek to obtain all relevant evidence from other parties and from witnesses in advance of the hearing. While there are obvious advantages to this procedure, it is often time-consuming and costly to the participants and the Commission must weigh these competing considerations most carefully. Since the resolution of this issue will affect whether or to what extent discovery will be permitted in connection with reparation proceedings, the Commission has determined to defer publication of any proposed discovery provisions at this time. Section 12.62 and subsequent sections have been reserved for possible implementation of discovery procedures.

The Commission would welcome comments concerning the extent to which it is believed that discovery should be permitted in reparation proceedings and would also welcome suggestions as to the type of discovery procedures it is believed the Commission should adopt.

HEARINGS

Subpart F of proposed Part 12 contains provisions governing oral hearings held before an Administrative Law Judge. As set forth in § 12.71 of the proposed rules, an oral hearing will normally be held in proceedings where the damage claimed is in excess of $2,500 and the parties have not waived their right to an oral hearing. In all other cases §§ 12.71(a)(2) and 12.71(a)(3) requires that the summary proceeding set forth in Subpart G, discussed below, will be followed. The effect of a party's failure to appear at a hearing is set forth in proposed § 12.71(c); which provides that he will be considered to have waived the right to an oral hearing in the proceeding. And, paragraph (d) of § 12.71 will require, as provided in section 14(b) of the Act, 7 U.S.C. 18(b), that the hearing be held at a place where the respondent is engaged in business but provides further that it be that place where the respondent does business that is most convenient to the complainant.[11]

Section 12.72 provides for the consolidation of proceedings in two situations. Pursuant to paragraph (a) a reparation proceeding may be joined for hearing or consolidation with a proceeding instituted by the Division of Enforcement only upon motion of the Division of Enforcement and only where the respondent in both proceedings is the same person or entity.[12] Under paragraph (b) of § 12.72 the Chief Administrative Law Judge may order consolidation of two or more reparation proceedings based upon complaints alleging similar activities by a respondent affecting the several complainants. In either event, the Administrative Law Judge may enter appropriate orders to avoid unnecessary costs or delay (§ 12.72(c)), and any party to a reparation proceeding which has been consolidated with another may seek interlocutory review by the Commission of the consolidation order (§ 12.72(d)).

Pursuant to § 12.73 all reparation hearings shall generally be public. A party or an affected witness may, however, make an application to the Administrative Law Judge for an order directing that specific testimony or documents be received and retained non-publicly in order to prevent the unwarranted disclosure of trade secrets or sensitive commercial or financial information or to prevent an unwarranted invasion of personal privacy.[13]

In order to compel the attendance of witnesses at a reparation proceeding and to compel the production of documentary evidence, § 12.74 (a) and (b) provide for the issuance of subpoenas at the request of any party. Standards for the issuance of subpoenas are set forth in paragraph (c) and the basis upon which an application may be denied is set forth in paragraph (d). Attendance and mileage fees are to be the same as are paid to witnesses in United States courts (§ 12.74(e)). Provision is also made for applications requesting the Commission to quash subpoenas and the proposed rules establish the basis upon which such an application will be decided (§ 12.75).

Subpoenas must be served in the manner prescribed in § 12.76. If any person should fail to comply with a subpoena, § 12.77 will permit the affected party to apply to the Commission to have the Commission seek judicial enforcement of the subpoena.

Section 12.78(a) requires that all reparation hearings be recorded and transcribed into written form by a reporter employed by the Commission, that the transcript will be part of the record, and that copies of hearing transcripts will be available from the reporter at rates not to exceed the maximum rates fixed by the contract between the Commission and the reporter. A procedure for the correction of transcripts is afforded in § 12.78(b).

In accordance with the provisions of § 12.79, hearings are to be conducted as expeditiously as possible consistent with the protection of the rights of the parties. With respect to the parties' rights, paragraph (b) of § 12.79 would assure all parties sufficient notice of the hearing, the right to be represented by counsel, to cross-examine witnesses, present oral and documentary evidence, raise objections, make arguments and move for any and all appropriate relief.

All witnesses will testify under oath or affirmation and may be examined and cross-examined as to all matters relevant to the issues in the reparation proceeding (§ 12.79(c)).

Under the proposed rules, all relevant, material and reliable evidence will be admitted at the hearing, subject to the exclusion only of unduly repetitious evidence (§ 12.80(a)). Official notice may be taken of certain matters, as set forth

[11] This may, however, be altered by an agreement between the parties, in which case the Administrative Law Judge shall be notified of the change and he will file with the Hearing Clerk a notice of the change.

[12] Various provisions of the Act authorize the Commission to conduct administrative proceedings in order to determine, among other things, whether to revoke the registration with the Commission of futures commission merchants and associated persons, floor brokers, commodity trading advisors and commodity pool operators based upon alleged violation of the Commodity Exchange Act or of rules, regulations or orders thereunder.

[13] The Freedom of Information Act permits the Commission to withhold records of the proceeding from public disclosure for these limited purposes. See 5 U.S.C. 552(b)(4) and 552(b)(6).

in § 12.80(b), and objections by a party to the introduction of evidence will be required to be timely and accompanied by a brief statement of the grounds relied upon (§ 12.80(c)). Pursuant to § 12.80(d), no formal exception to an adverse ruling would be required; it will be sufficient if a party makes known to the Administrative Law Judge, at the time the ruling is sought or entered, his objections to the action being taken and his grounds for so objecting. With respect to excluded evidence, § 12.80(e) will permit a party to state what he intended to prove by the excluded evidence and the Administrative Law Judge is authorized to received (although he will not consider) the excluded evidence to complete the record for possible appeal. With respect to specific types of evidence, § 12.80 (f) through (i) provide that affidavits may be admitted in some circumstances and that stipulations, official government records and entries in the regular course of business will generally be admissible.

Pursuant to proposed § 12.81, the reporter is required to transmit to the Hearing Clerk the transcript of the testimony and the exhibits introduced as soon as practicable after the close of the hearing; it will be the responsibility of the Hearing Clerk to advise all parties of the date upon which the transcript was filed. Thereafter, in accordance with the procedure set forth in § 12.82 or in accordance with such alternative procedures as the Administrative Law Judge may prescribe, the parties will be afforded the opportunity to serve and file proposed findings of fact and conclusions of law, and briefs in support of their position.[14] Requirements with respect to the form and content of briefs and of proposed findings and conclusions are set forth in paragraphs (c) and (d) of § 12.82. Pursuant to § 12.83 the Administrative Law Judge would be permitted—but not required—to allow oral argument prior to the filing of his initial decision.

The Administrative Law Judge would make an initial decision in each reparation proceeding in which an oral hearing has been held (§ 12.84(a)).[15] In his decision he will be required to determine whether a party has violated any provision of the Act, or any rule, regulations or order thereunder. If a violation is found to have occurred, he will also be required to determine the amount of damage to which a party is entitled and enter an appropriate order directing payment (§ 12.84(b)).

[14] Pursuant to § 12.82(a) the complainant would normally be required to serve and file proposed findings, conclusions and an initial brief within 45 days after the close of the hearings. Respondent's proposed findings, conclusions and answering brief would be required within 30 days after service of the complainant's initial submissions. Thereafter the complainant could serve and file a reply brief within 15 days.

[15] Where an oral hearing has been held, the initial decision will be made in accordance with the summary proceedings set forth in Subpart G, discussed below.

Pursuant to § 12.84(c), the initial decision would be filed with the Hearing Clerk and a copy served on each party within 30 days after the final date allowed for the submission of proposed findings, conclusions and briefs. The initial decision and order will become the final decision and order of the Commission within 30 days after service, unless the Commission, on motion of a party or on its own motion, determines to review the proceeding, in which event the decision will not be final as to affected parties until after the Commission has completed its review (§ 12.84(d)).

SUMMARY PROCEEDINGS

The Summary Proceedings set forth in Subpart G of proposed Part 12 will be employed in all cases where the amount of damage claimed in a complaint (or counterclaim) does not exceed $2,500 and an oral hearing is determined by the Commission not to be necessary for the adjudication of the complaint (or counterclaim). It may also be employed where the parties have waived the opportunity for an oral hearing before an Administrative Law Judge. No oral hearing will be held in proceedings conducted pursuant to Subpart G; rather, as contemplated by section 14(b) of the Act, 7 U.S.C. 18(b), proof in support of the complaint and answer may be supplied in the form of depositions or other verified statements of fact (§ 12.91).

Pursuant to proposed § 12.93 the parties would be required to serve and file with the Commission copies of all depositions or other verified statements upon which they rely in support of their pleadings. Thereafter, the parties will be entitled to respond to evidence to which they have not previously responded.[16] In addition, the parties will be afforded the opportunity to file proposed findings and conclusions as well as briefs supporting the allegations contained in their pleadings in the same manner and to the same extent as will be permitted in proceedings involving a hearing (§ 12.94).

To ensure the speedy determination of Summary Proceedings, the Presiding Officer is required to file, within thirty (30) days after the final date allowed for filing proposed findings of fact and briefs, an initial decision and order which shall set forth the basis for his determination and the amount of damages, if any, to which a party is entitled if a violation of the Act or any rule, regulation or order thereunder is found to have occurred (§ 12.95). The initial decision and order will be filed with the Hearing Clerk, who will serve copies on the parties (§ 12.95(c)).

Thereafter the initial decision and order of the Presiding Officer will become the final decision of the Commission unless the Commission, on motion of a party or on its own motion, determines to review the initial decision, in which event the decision will not be final as to affected parties until after the Commission has completed its review (§ 12.95 (d)).

REVIEW OF INITIAL DECISIONS BY THE COMMISSION

Subpart H of the proposed rules, §§ 12.101 and 12.102, sets forth the procedures by which the Commission may review an initial decision in a reparation proceeding. Under § 12.101, the Commission may, in its discretion, grant review of an initial decision in a reparation proceeding either upon its own motion or upon application for review by any party. An application for review will be required to be served and filed within fifteen days after the initial decision was served upon the parties (§ 12.101(a)(1)), and will be required, among other things, to present specific issues sought to be reviewed and set forth reasons why review by the Commission is necessary or appropriate to resolve one or more important issues of law or public policy (§ 12.101(a)(2)). After the time has run in which a response may be filed (§ 12.101(a)(3)), the Commission will decide whether to grant review, based upon the application and response, without oral argument or further written presentation, unless the Commission should otherwise direct (§ 12.101(a)(5)). Pursuant to § 12.101 (b), if review should be granted, the Hearing Clerk will serve a copy of the order granting review on each of the parties.

Unless the Commission should otherwise direct, only the issues presented in the application, and all subsidiary questions fairly subsumed therein, will be considered by the Commission (§ 12.101 (b)). Briefs will be filed in accordance with general provisions contained in the Commission's rules of practice, except that the brief of the party who sought review will be required to be filed within thirty (30) days after service of notice that the initial decision will be reviewed. If the Commission decides on its own motion to grant review, the complainant will be the party who will file the initial brief within that period.

Whether oral argument will be permitted is a matter that will rest in the sole discretion of the Commission; if oral argument is permitted, it will be conducted in the manner that the general rules of practice prescribe.

When the Commission determines to review an initial decision, the record of

[16] The Commission has reserved § 12.92 to implement such discovery procedures, if any, as it may find appropriate for use in Summary Proceedings. If the Commission should permit discovery, the provision of § 12.93 will be amended to take the existence of those procedures into account. The Commission appreciates that section 14(b) of the Act states that depositions as well as other verified statements of fact may be filed in support of a claim to be resolved through the summary procedure. It does not believe that use of the term in that context necessarily connotes the type of deposition that may be compiled through discovery procedures. To the contrary, if Congress had intended to involved discovery procedures it would not have done so in such an indirect and obscure manner.

the proceeding will be made available to the Commission pursuant to § 12.102. For this purpose the record will include all documents filed in the proceeding from the time the complaint was originally filed; all briefs and memoranda that were submitted; the transcript of testimony (if any) and exhibits; and all orders entered in the course of the proceeding, as well as the initial decision.

The full text of the proposed rules relating to Reparation Proceedings is as follows:

PART 12—RULES RELATING TO REPARATION PROCEEDINGS

Subpart A—General Information

Subpart B—Initial Procedure With Respect to Reparation Complaints

Subpart C—Investigation of Complaint; Institution and Settlement of Formal Adjudicatory Proceeding

Subpart D—Formal Adjudicatory Proceeding

Subpart E—Prehearing Conferences and Discovery

Subpart F—Hearings

Subpart G—Summary Proceedings

Subpart H—Commission Review of Initial Decisions in Reparation Proceedings

Subpart A—General Information

§ 12.1 Scope and applicability of rules of practice relating to reparation proceedings.

These rules of practice are applicable to reparation proceedings pursuant to section 14 of the Commodity Exchange Act, as amended, 7 U.S.C. 18. The rules in this part shall be construed liberally so as to secure the just, speedy and inexpensive determination of the issues presented with full protection for the rights of all parties to the proceedings envisioned by the Commodity Exchange Act, as amended.

§ 12.2 Applicability of other rules of practice promulgated under the Commodity Futures Trading Commission Act.

Unless specifically made applicable, other rules of practice promulgated under the Commodity Exchange Act, as amended, shall not apply to reparation proceedings.

§ 12.3 Definitions.

For purposes of this part:

(a) "Act" means the Commodity Exchange Act, as amended, 7 U.S.C. 1, et seq.;

(b) "Administrative Law Judge" means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) "Administrative Procedure Act" means those provisions of the Administrative Procedure Act, as codified, which are contained in 5 U.S.C. 551 through 559.

(d) "Commission" means the Commodity Futures Trading Commission;

(e) "complainant" means a person who has applied to the Commission seeking a reparation award pursuant to section 14 of the Act, 7 U.S.C. 18;

(f) "complaint" means any document initiating a reparation proceeding pursuant to section 14(a) of the Act, 7 U.S.C. 18(a), whether designated a complaint or petition or otherwise;

(g) "Division of Enforcement" means that office in the Commission which, among other things, prosecutes adjudicatory proceedings based on violations of the Act;

(h) "Federal Register" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500, as amended, 44 U.S.C. 301–314) and Acts supplementary thereto and amendatory thereof;

(i) "Hearing" means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission;

(j) "Hearing Clerk" means that member of the Commission's staff designated as such in the Commision's Office of Hearings and Appeals;

(k) "order" means the whole or any part of a final procedural or substantive disposition of a reparation proceeding by the Commission or by the Presiding Officer;

(l) "party" includes a complainant, respondent and any other person or agency named or admitted as a party to a reparation proceeding;

(m) "Person" includes an individual, partnership, corporation, association, exchange or other entity or organization;

(n) "Petition" means any document initiating a reparation proceeding pursuant to section 14(a) of the Act, 7 U.S.C. 18(a), whether designated a petition or complaint or otherwise;

(o) "Pleading" means the complaint, the answer to the complaint, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(p) "Presiding Officer" means (a) an Administrative Law Judge in all matters where the amount of damages claimed exceeds $2,500, and all cases where the amount of damages claimed is less than $2,500 but where the Commission has determined that a hearing is necessary; and (b) a member of the Commission, an Administrative Law Judge, or such other Commission employee as may be designated by the Commission to conduct the proceeding in all other matters where the amount of damages claimed in the complaint is less than $2,500.

(q) "Proceeding" includes any reparation proceeding and any proceeding conducted pursuant to the rules of practice set forth in Part 10 of this chapter;

(r) "Respondent" means any person against whom a complainant seeks a reparation award pursuant to section 14 of the Act, 7 U.S.C. § 18;

(s) "Reparation award" refers to the amount of damages a respondent may be ordered to pay as provided in section 14(e) of the Act, 7 U.S.C. 18(e).

(t) "Reparation proceeding" means a proceeding pursuant to which a complainant seeks a reparation award against one or more respondents in accordance with section 14 of the Act, 7 U.S.C. 18;

(u) "Rule" means the whole or a part of a Commission statement of general or particular applicability and future effect designed to implement, interpret or

prescribe law or policy or to describe the organization, procedure, or practice requirements of the Commission;

(v) "Secretary" means the Director of the Office of the Secretariat of the Commission;

§ 12.4 Business address; hours.

The principal office of the Commission, at 1120 Connecticut Avenue, NW., Washington, D.C. 20036, telephone: (202) 254–3031, is open each day, except Saturdays, Sundays and legal public holidays from 8:15 a.m., to at least 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, D.C.; Commission personnel are generally at the Commission's principal office beyond that hour and will normally be available to accept documents for filing and otherwise serve the public. Legal holidays include New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other legal holidays recognized by the Federal Government.

§ 12.5 Suspension, amendment, revocation and waiver of rules.

(a) These rules may, from time to time, be suspended, amended or revoked in whole or in part. Notice of such action will be published in the FEDERAL REGISTER.

(b) In the interest of expediting decision or to prevent undue hardship on any party or for other good cause the Commission may waive any rule in Subparts D through H of this part and the Presiding Officer may waive any rule in Subpart D through G of this part, in a particular case, upon application of a party or on its or his own motion, and may order proceedings in accordance with its or his direction.

§ 12.6 Computation of time.

In computing any perid of time prescribed by these rules or allowed by the Commission, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation only when the period of time prescribed or allowed is less than seven (7) days.

§ 12.7 Extension of time; adjournments; postponements.

Except as otherwise provided by law or by these rules, for good cause shown, the Commission, or the Presiding Officer (at any time prior to the filing of his initial decision or, if no initial decision is to be filed, at any time prior to the closing of the record) on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by the rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken in a proceeding, the Commission or the Presiding Officer may set a time limit for that action.

§ 12.8 Date of entry of orders.

In computing any period of time involving the date of the entry of an order the date of entry shall be the date the order is filed with the Hearing Clerk. Where orders are not filed with the Hearing Clerk, the date of entry shall be (a) the date of the adoption of the order by the Commission, as reflected in the official minutes of Commission action or (b) in the case of orders reflecting action taken pursuant to delegated authority, the date when such action is taken as reflected in the caption of the order. The order shall be available for inspection by the public from and after the date of entry.

§ 12.9 Ex Parte Communications in reparation proceedings.

(a) Except as authorized by law, or specifically permitted in these rules, the Presiding Officer shall not consult with any person or any party upon any fact in issue except upon notice and opportunity for all parties to participate.

(b) A written or oral communication involving any substantive or procedural issue in the proceeding shall be deemed an ex parte communication, and shall not be considered a part of any record or the basis for any official decision unless the communication is made with due notice to all other parties in accordance with these rules. Any ex parte communication in writing shall be made public by placing it in the correspondence file of the docket, which is available for public inspection. If the ex parte communication is received orally, a memorandum setting forth the substance of the communication shall be made and filed in the correspondence section of the docket. In either case, notice of such communication will be given to the parties.

§ 12.10 Separation of functions.

(a) A Presiding Officer will not be responsible to or subject to the supervision or direction of any officer, employee, or agent of the Commission engaged in the performance of investigative or prosecutorial functions for the Commission.

(b) As provided in the Administrative Procedure Act, no officer, employee, or agent of the Federal Government engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of the Presiding Officer, except as a witness or counsel in the proceeding, without the express written consent of the respondents in the proceeding. This provision shall not apply to the Commission or a member or members of the Commission.

§ 12.11 Appearance and practice before the Commission.

(a) *Appearance.*—(1) *By non-attorneys.* An individual may appear pro se (in his own behalf), a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest Court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with provisions of Part 14 of this chapter, may represent parties as an attorney in proceedings before the Commission.

(b) *Practice before the Commission.* Any person may practice before the Commission in connection with a reparation proceeding who has not been suspended or disbarred from appearance or practice before the Commission in accordance with provisions of Part 14 of this chapter.

(c) *Debarment of Counsel or Representative by Presiding Officer during the course of a proceeding.* (1) Whenever while a proceeding is pending before him, the Presiding Officer finds that a person acting as counsel or representative for any party to the proceeding is guilty of unethical or unprofessional conduct, the Presiding Officer may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Commission may be taken from any such order, pursuant to the provisions of § 12.47, but the proceeding shall not be delayed or superseded pending disposition of the appeal: *Provided*, That the Presiding Officer may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(2) In case the Presiding Officer has issued an order precluding a person from further acting as counsel or representative in the proceeding, the Presiding Officer, within a reasonable time thereafter, shall submit to the Commission a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Commission should take respecting the appearance of such person as counsel or representative in other proceedings before the Commission.

Subpart B—Initial Procedure With Respect to Reparation Complaints

§ 12.21 Complaint.

Any person complaining of any violation of any provision of the Act or any rule, regulation, or order thereunder by any person registered with the Commission as a futures commission merchant, floor broker, person associated with a futures commission merchant or agents thereof, commodity trading advisor or commodity pool operator may, at any time within two years after the cause of

action accrues, apply to the Commission for a reparation award, by petitioning the Commission to determine the amount of damage, if any, to which the complainant is entitled as a result of the violation and to issue an order directing the offender to pay that amount to the complainant on or before a date fixed by the order.

(a) *Form of complaint.* A complaint submitted to the Commission pursuant to this section shall briefly state the facts that are claimed to constitute a violation of any provision of the Act or any rule, regulation or order thereunder. The facts should be set forth in a manner that will permit each fact to be admitted or denied, as the case may be, by the person or persons alleged to have committed the violations. Each complaint shall include:

(1) The name and residence address of the complainant;

(2) The name and address, if known, of each person alleged in the complaint to have violated the Act or any rule, regulation or order thereunder;

(3) If possible, the specific provisions of the Act, rule, regulation or order claimed to have been violated;

(4) All relevant facts concerning each and every act or omission which it is claimed constitute a violation, including the date and place of each alleged act or omission;

(5) Facts showing the manner in which it is claimed the complainant was injured by the alleged violations; and

(6) The amount of damages the complainant claims to have suffered and the method by which those damages have been computed.

(b) *Subscription and verification of the complaint; exhibits.* Each complaint shall be signed personally by an individual complainant or by a duly authorized officer or agent of a complainant who is not a natural person. His signature shall be given under oath attesting either that he knows the facts set forth in the complaint to be true, or that he believes the facts set forth to be true, in which event the information upon which he formed that belief shall be set forth with particularity. A true copy of each and every document possessed by or available to the complainant which evidences the facts set forth in the complaint shall be annexed to the complaint.

(c) *Time and place of filing of complaint.* A complaint shall be filed by delivering a copy thereof, in proper form, to the Commission at its principal offices in Washington, D.C., addressed to the attention of the Reparations Section. The complaint may be filed in person, during normal business hours, or by mail.

(d) *Bond required if complainant is non-resident.* If a petition for reparations is filed by a non-resident of the United States, the complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of (1) costs, including reasonable attorney's fees, for the respondent if the respondent shall prevail; and (2) any reparation award that may be issued by the Commission against the complainant on any counterclaim asserted by respondent: *Provided*, That the furnishing of a bond may be waived if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

§ 12.22 Notification of respondent.

If, in the opinion of the Commission, the facts set forth in a complaint warrant such action, a copy of the complaint, together with any attachments thereto, shall be forwarded by mail by the Commission to each respondent named therein at an office previously designated with the Commission by the respondent for receipt of reparation complaints or, if no such designation has been filed with the Commission, at the respondent's principal place of business as shown in the records of the Commission and, if different, at the address given for that respondent in the verified complaint. The complaint shall not be forwarded if it appears, in the opinion of the Commission, that the alleged facts, even if true, do not evidence a violation of the Act or any rule or regulation or order thereunder or do not show that the complainant suffered damages as a result of the alleged violation. If the Commission should determine not to forward the complaint to the respondent in accordance with this section, no proceeding shall be held thereon and the complainant shall be notified to that effect, but this decision shall be without prejudice to the right of the complainant to seek such alternate forms of relief as may be available.

§ 12.23 Response to complaint.

Within thirty (30) days after the complaint was mailed to the respondent, or within such further time as the Commission may permit, each respondent shall either satisfy the complaint or answer it in writing.

(a) *Satisfaction of complaint.* A respondent may satisfy the complaint by paying to the complainant either the amount to which the complainant claims to be entitled as set forth in the complaint or such other amount as the complainant will accept in satisfaction of his claim. If a complaint is satisfied, a notice of satisfaction and withdrawal of the complaint as to that respondent, duly executed by the complainant before a notary public, shall be filed with the Commission in substantially the following form:

(Caption)

Respondent ---------- (Name)

having satisfied the reparation complaint filed against him on ----------, by (Date) ----------, that complaint (Name) is hereby withdrawn.

---------- (Complainant)

(Jurat)

If the complainant should fail or refuse to execute a notice of satisfaction and withdrawal of the complaint after the respondent has paid the complainant the amount to which the complainant has claimed to be entitled, the respondent may serve upon the complainant and file with the Commission an affidavit of satisfaction setting forth facts showing that the payment has been made. Upon the filing of a notice of satisfaction and withdrawal of the complaint as to a respondent, the proceeding shall be discontinued as to that respondent and no reparation award shall thereafter be entered against that respondent in favor of that complainant based upon the violations alleged in that complaint. In the absence of objection thereto by the complainant, an affidavit of satisfaction shall have the same effect as a notice of satisfaction and withdrawal of the complaint.

(b) *Answer*—(1) *Form and content.* The answer shall contain a precise and detailed statement of the facts which constitute the grounds for defense, and shall specifically admit, deny, or explain each of the allegations of the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state, and this will have the effect of a denial. An answer may state that the respondent admits all of the allegations of the complaint, or admits liability for a portion, but not all, of the amount claimed as damages. Each answer shall be signed personally by an individual respondent or by a duly authorized officer or agent of the respondent (who has knowledge of the matters set forth in the complaint) if the respondent is not a natural person. His signature shall be given under oath attesting that he has read the answer; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. Where a complainant alleges facts tending to prove that one or more employees or agents of a respondent have participated in the alleged violations, they shall each separately subscribe to and verify the answer or state under oath, in a document appended to the answer, why they have not done so. To the extent that the pleading is not based upon his personal knowledge he shall set forth with particularity the information upon which he believes there is good ground to support the answer. A true copy of each and every document possessed by or available to the respondent, which support the denials or other matters of defense set forth in the answer, shall be annexed to the answer unless they have been annexed to the complaint.

(2) *Counterclaims.* An answer may set forth as a counterclaim facts alleging a violation and a request for a reparation

award that would be a proper subject for a complaint under § 12.21.

(3) *Affidavit of service.* The respondent shall file with his answer an affidavit showing that he has served a true copy of the answer upon the complainant, either personally or by mail addressed to the complainant at the address set forth in the complaint.

§ 12.24 Reply.

If the answer asserts a counterclaim, the complainant shall file a reply to the counterclaim with the Commission within thirty (30) days after service of the answer. The reply shall be strictly confined to the matters alleged in the counterclaim, and shall in all respects conform to the requirements set forth in § 12.23(b) with respect to the form and content and other requirements concerning an answer. A complainant may satisfy a counterclaim, as if it were a complaint, in the manner set forth in § 12.23(a).

§ 12.25 Admissions of partial liability.

If in the answer the respondent admits liability for a portion, but not all of the amount claimed as damage, and the answer does not assert a counterclaim, the Commission may, unless the respondent has already made reparation, issue an order directing the respondent to pay the undisputed amount on or before a date fixed in the order. Thereafter liability with respect to the remaining disputed amount shall be determined in accordance with the procedure that would have been followed if no order had been issued by the Commission with respect to the undisputed sum.

§ 12.26 Effect of failure to file answer or reply; default.

(a) *Findings and conclusions.* Failure timely to file an answer to a complaint or a reply to a counterclaim shall be treated as an admission of the allegations of the complaint or counterclaim and shall constitute a waiver of hearing on the facts set forth in the complaint or counterclaim. When a party has failed to file an answer or reply the complaining party may move the Presiding Officer to enter findings and conclusions concerning the questions of violation and damages; and the Presiding Officer may enter an appropriate reparation award. If the facts which are treated as admitted are considered insufficient to support the amount of reparations sought, the proceeding may continue on the question of damages only.

(b) *Setting aside of default.* In order to prevent injustice and on such conditions as may be appropriate, the Commission may at any time for good cause set aside a default obtained under paragraph (a) of this § 12.26. Any motion to set aside a default shall be made within a reasonable time, and shall state the reasons for the failure to file and specify the nature of the proposed defense in the proceeding.

Subpart C—Investigation of Complaint; Institution and Settlement of Formal Adjudicatory Proceeding

§ 12.31 Investigation of complaint.

If there appears to be, in the opinion of the Commission, any reasonable grounds for investigating any complaint made in accordance with § 12.21 the Commission may investigate such complaint to the extent and in such manner as it, in its sole discretion, may deem appropriate. If an investigation is undertaken the Commission may, in its discretion, for that reason delay institution of a formal reparation proceeding.

§ 12.32 Institution of formal adjudicatory proceeding.

If in the Commission's opinion the facts warrant such action, the Commission may, in its discretion, in the manner prescribed in § 12.48, have the complaint served upon the respondent by registered or by certified mail or otherwise, together with a notice that the respondent shall have an opportunity for hearing thereon before an Administrative Law Judge designated by the Commission in the city in which the respondent is engaged in business that is the most convenient to the complainant: *Provided,* That in complaints wherein the amount claimed as damages does not exceed the sum of $2,500, a hearing need not be held and proof in support of the complaint and in support of the respondent's answer may be supplied in the form of depositions or verified statements of fact in accordance with the summary procedures set forth in §§ 12.91 through 12.95 below and notice of the summary procedure will be given in lieu of notice of an opportunity for hearing. A formal reparation proceeding is commenced when a complaint is served in the manner prescribed in this section.

§ 12.33 Discontinuance of proceeding.

If the Commission should determine not to proceed in the manner set forth in § 12.32 above, the reparation proceeding shall terminate without prejudice to the right of the complainant to seek such alternative forms of relief as may be available to him.

§ 12.34 Notification to complainant.

If the Commission shall serve the complaint upon the respondent and give the respondent notice for an opportunity for hearing thereon in accordance with § 12.32 above, a copy of the notice of hearing shall also be served upon the complainant at the same time and in the same manner. If the proceeding should be discontinued as set forth in § 12.22 or § 12.33, the Commission shall promptly give notice to that effect to the complainant by registered or certified mail.

§ 12.35 Settlement—statements of satisfaction and discontinuance of proceedings.

If, at any time before there has been a final determination by the Commission, the respondent satisfies the complaint, or the complainant and respondent reach an accord as to amount of damages that will satisfy the complaint and any counterclaim set forth in the respondent's answer, the complainant and respondent shall file with the Commission a signed statement of satisfaction and discontinuance of proceeding. The proceeding will thereafter be discontinued. The statement of satisfaction and discontinuance of proceeding shall be filed with the Commission in substantially one of the following forms:

(Caption)
Respondent _____
(Name)
having satisfied the reparation complaint filed against him on _____,
(Date)
by _____, that complaint
(Name)
is hereby withdrawn.

_____
(Complainant)

_____
(Respondent)

(Jurat)

—or—

(Caption)
Respondent _____
(Name)
having satisfied the reparation complaint filed against him on _____,
(Date)
by _____, and the complainant _____ having
(Name) (Name)
satisfied the counterclaim asserted against him in respondent's answer filed with the Commission on _____, the complaint
(Date)
and counterclaim are hereby withdrawn.

_____
(Complainant)

_____
(Respondent)

(Jurat)

If after satisfaction of the complaint or counterclaim the complaining party refuses to sign a Statement of Satisfaction and Discontinuance, a party who has satisfied a claim against him may file with the Commission and serve on the other party a motion for discontinuance to be accompanied by an affidavit setting forth in detail the facts surrounding the satisfaction or a copy of any stipulation entered into by the parties evidencing satisfaction of the complaint or counterclaim. If the motion is uncontested the proceeding will be ordered discontinued.

Subpart D—Formal Adjudicatory Proceeding

§ 12.41 Docketing of Proceeding.

Immediately following service of the complaint, as set forth in § 12.32, the Commission's Reparations Section shall transmit to the Hearing Clerk the complaint, the answer, any reply and any exhibits or other papers annexed to any of the foregoing, who shall assign a docket number to the proceeding and maintain the official docket. Thereafter the proceeding may be identified by such number.

§ 12.42 Assignment to Presiding Officer.

Immediately following docketing of the proceeding, the proceeding shall be assigned to a Presiding Officer. To the extent permitted by law, the powers hereinafter conferred upon the Presiding Officer shall be applicable to the Commission.

§ 12.43 Functions and responsibilities of the Presiding Officer.

The Presiding Officer shall be responsible for the fair and orderly conduct of the proceeding and shall have the authority to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas;

(c) Rule on offers of proof;

(d) Receive relevant evidence;

(e) Take depositions or permit depositions to be taken;

(f) Examine witnesses;

(g) Regulate the course of the hearing;

(h) Hold prehearing conferences;

(i) Consider and rule upon all motions;

(j) Make decisions in accordance with §§ 12.84 and 12.95;

(k) Certify interlocutory matters to the Commission for its determination in accordance with the procedure set forth in § 12.47(a)(4);

(l) Take any other action required to give effect to these rules relating to reparation proceedings, including but not limited to requesting the parties to file briefs and statements of position with respect to any issue in the proceeding, or to give effect to the provisions of the Administrative Procedure Act.

§ 12.44 Disqualification of Presiding Officer.

(a) A Presiding Officer may withdraw from any proceeding when he considers himself to be disqualified. In such event he shall immediately notify the Commission of his withdrawal and of his reason for such action.

(b) Any party may request a Presiding Officer to disqualify himself on the grounds of personal bias or other bases. The person or party seeking disqualification may seek interlocutory review by the Commission of an adverse ruling by the Presiding Officer on this matter in accordance with the procedures set forth in § 12.47(b).

§ 12.45 Amendments and supplemental pleadings.

(a) *Amendments.* At any time prior to the close of the hearing in a reparation proceeding, the Presiding Officer may allow amendments of the pleadings either upon written consent of the parties or for good cause shown.

(b) *Supplemental pleadings.* Upon reasonable notice, and upon such terms as are just, the Presiding Officer may, upon the motion of a party, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleadings sought to be supplemented and which are relevant to any of the issues involved.

(c) *Response to amendments and supplements.* Any party may file a response to any amendment or supplement to a pleading within ten (10) days after date of service upon him of the amendment or supplement.

(d) *Pleadings to conform to the evidence.* When issues not raised by the pleadings but reasonably within the scope of a reparation proceeding initiated by the complaint are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

(e) *Subscription and verification.* All amendments and supplemental pleadings shall be subscribed and verified in the same manner as the pleadings they are amending or supplementing.

§ 12.46 Motions.

(a) *Presentation.* An application for a form of relief not otherwise specifically provided for in these rules shall be made by a motion, which shall be in writing unless made on the record during a hearing. The motion shall state: (1) The relief sought; (2)the basis for relief; and (3) the authority relied upon. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion.

(b) *Answer to motions.* Any party may serve and file a written response to a motion within ten (10) days after service of the motion upon him or within such longer or shorter period as the Presiding Officer may direct. Any party who does not file a response to a motion shall be deemed to have consented to the relief sought by the motion.

(c) *Motions for procedural orders.* Motions for procedural orders, including motions for extension of time, may be ruled on at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

(d) *Dilatory motions.* Repetitive or numerous motions dealing with the same subject matter shall not be permitted.

§ 12.47 Interlocutory review by the Commission.

Interlocutory review by the Commission of a ruling on a motion by a Presiding Officer may be sought in accordance with the following procedure:

(a) *Scope of review.* The Commission will not review a ruling of the Presiding Officer prior to the Commission's consideration of the proceeding in the absence of extraordinary circumstances. An interlocutory appeal may be permitted, in the discretion of the Commission, under the following circumstances:

(1) Appeal from a ruling pursuant to § 12.44 on a motion to disqualify a Presiding Officer.

(2) Appeal from a ruling pursuant to § 12.11 suspending an attorney from participation in a reparation proceeding.

(3) Appeal from a ruling pursuant to § 12.72 ordering consolidation of proceedings.

(4) Upon a determination by the Presiding Officer certified to the Commission either in writing or on the record, that (i) a ruling sought to be appealed involves a controlling question of law or policy, (ii) substantial basis exists for a difference of opinion on the question, (iii) an immediate appeal may materially advance the ultimate resolution of the issues in the proceeding.

(b) *Procedure to obtain Interlocutory review.* (1) An application for interlocutory review may be served and filed within five (5) days after notice of the Presiding Officer's ruling on a matter described in § 12.47(a) (1), (2) or (3) or within five (5) days after a determination is made by a Presiding Officer in the manner described in § 12.47(a)(4).

(2) An application for review shall (i) specify the person or party seeking review; (ii) designate the ruling or part thereof from which appeal is being taken; (iii) present the points of fact and law relied upon in support of the position taken; and (iv) not exceed 15 pages.

(3) Any party that opposes the application may file a response, not to exceed 15 pages, within five (5) days after service of the application.

(4) The Commission will determine whether to grant a review based upon the application for review and the response thereto, without oral argument or further written presentation, unless the Commission shall otherwise direct. If review is permitted, the Commission will generally review the ruling of the Presiding Officer based upon the application for review, the response thereto and the moving and opposing documents and oral arguments, if any, upon which the Presiding Officer's ruling was based, as well as the application for review and the response thereto. The Commission may, in its discretion, permit or require further written or oral presentation.

(c) *Proceedings not stayed.* The filing of an application for review and the grant of review shall not stay proceedings before a Presiding Officer unless the Presiding Officer or the Commission shall so order.

§ 12.48 Service.

(a) *Number of copies; when required.* Two copies of all motions, petitions or applications made in the course of a proceeding (unless made orally during a hearing), all proposed findings and conclusions, all petitions for review of any initial decision, and all briefs shall be served by the party upon all parties to the proceeding.

(b) *How service is made.* Service shall be made either by personal service or by first-class mail. Service shall be complete at the time of personal service or upon deposit in the mails of a properly addressed and post-paid document. Where a party effects service by mail, the time within which the person served may respond thereto shall be increased by three (3) days.

(c) *Proof of service.* Proof of service of a document shall be made by filing with the Hearing Clerk, simultaneously with the filing of the required number of copies of the document, an affidavit of service executed by any person 18 years of

age or older or a certificate of service executed by an attorney-at-law qualified to practice before the Commission. The proof of service shall identify the persons served, state that service has been made, set forth the date of service, and recite the manner of service.

§ 12.49 Service of decisions and orders.

A copy of all rulings, opinions and orders of the Presiding Officer shall be served by the Hearing Clerk on each of the parties.

§ 12.50 Designation of person to receive service.

The first document filed in a proceeding by or on behalf of any party subsequent to formal review of the complaint shall state on the first page thereof the name and post office address of the person who is authorized to receive service for him of all documents filed in the formal proceeding. Thereafter, service of documents shall be made upon the person authorized unless service on the party himself is ordered by the Presiding Officer, or unless no person authorized to receive service can be found or unless the persons authorized is changed by the party upon due notice to all other parties.

§ 12.51 Filing of documents with the Hearing Clerk.

All documents which are required to be served upon a party shall be filed concurrently with the Hearing Clerk. A document shall be filed by delivering it in person or by mail to the Hearing Clerk, Office of Hearings and Appeals, Commodity Futures Trading Commission at its principal office in Washington, D.C. To be timely filed a document must be received by the Hearing Clerk within the time prescribed for filing.

§ 12.52 Formalities of filing.

(a) *Number of copies.* Unless otherwise specifically provided, an original and five conformed copies of all documents shall be filed with the Hearing Clerk.

(b) *Title page.* All documents filed with the Hearing Clerk must include at the head thereof, or on a title page, the name of the Commission, the docket number and title of the proceeding, the subject of the particular document and the name of the person in whose behalf the document is being filed. In the complaint the title of the action shall include the names of all the complainants and respondents, but in documents subsequently filed it is sufficient to state the name of the first complainant and first respondent named in the complaint with an appropriate indication of other parties.

(c) *Paper, spacing, type.* All documents filed under this Part shall be typewritten, mimeographed, printed, or otherwise reproduced by a process that produces permanent and plainly legible copies, shall be on one grade of good unglazed white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 14 inches long, with a left-hand margin 1½ inches wide, and shall be bound on the left hand side only. They shall be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced. If printed, the documents shall be in either 10- or 12-point type with double-leaded text and single-leaded quotations and footnotes.

(d) *Signatures.* The original copy of all papers must be signed in ink by the person filing the same or by his duly authorized agent or attorney.

(e) *Length and form of briefs.* All briefs filed with the Hearing Clerk or with a Presiding Officer containing more than 10 pages shall include an index and a table of cases and other authorities cited. The date of each brief must appear on its front cover or title page and on its signature page. No brief shall exceed 60 pages in length, except with the permission of the Presiding Officer.

§ 12.53 Subscription.

(a) *By whom.* Motions and answers thereto, briefs and other documents filed with the Commission shall be subscribed:

(1) By the person or persons on whose behalf they are tendered for filing;

(2) By a partner, officer or director of a partnership, corporation, association, or other legal entity; or

(3) By an attorney-at-law having authority with respect thereto.

The Hearing Clerk may require appropriate evidence of the authority of a person subscribing a document on behalf of another person.

(b) *Effect.* The signature on any document not verified by affidavit of any person acting either for himself or as attorney or agent for another constitutes certification by him that:

(1) He has read the document subscribed and knows the contents thereof;

(2) If executed in any representative capacity, it was done with full power and authority to do so;

(3) To the best of his knowledge, information and belief, every statement contained in the document is true and not misleading; and

(4) The document is not being interposed for delay.

(c) *Sham documents.* If a document is not signed or is signed with an intent to defeat the purpose of this rule, it may be stricken as sham and false. For a willful violation of this rule an attorney or representative for any party may be subjected to apropriate disciplinary action pursuant to § 12.11. Similar action may be taken if scandalous matter is inserted.

Subpart E—Prehearing Conferences and Discovery

§ 12.61 Conferences; procedural matters.

The Administrative Judge may direct that one or more conferences be held for the purpose of:

(a) Clarifying issues;

(b) Examining the possibility of obtaining stipulations, admissions of fact and of authenticity of contents of documents;

(c) Discussing matters of which official notice may be taken;

(e) Exchanging proposed exhibits;

(f) Discussing amendments to pleadings;

(g) Identifying and limiting the number of witnesses;

(h) Promoting a fair and expeditious hearing.

At or following the conclusion of a prehearing conference, the Administrative Law Judge shall serve a prehearing memorandum containing agreements reached and any procedural determinations made by him, unless the conference shall have been recorded and transcribed in written form and a copy of the transcript has been made available to each party.

§ 12.62 Discovery [Reserved]

Subpart F—Hearings

§ 12.71 Oral hearings.

(a) *When required.* (1) Where the amount of damages claimed, either in the complaint or in a counterclaim, is in excess of $2,500, a hearing shall be held in accordance with the procedure set forth in this sectionunless all the parties have waived their right to a hearing.

(2) Where the amount of damages claimed, either in the complaint or in a counterclaim, does not exceed $2,500, an oral hearing shall not be held, unless ordered by the Commission either on its own motion or upon application by a party setting forth the particular circumstances making an oral hearing necessary for a proper resolution of the issues.

(3) In all cases in which a hearing is not held the procedures set forth in § 12.91 through 12.95 shall apply.

(b) *Who may appear.* The parties may appear in person, by counsel or by other representatives of their choosing, subject to the provisions of § 12.11, dealing with appearance and practice before the Commission.

(c) *Effect of failure to appear.* (1) If any party to the proceeding, after filing an answer fails to appear at the hearing or any part thereof, he shall to that extent be deemed to have waived the right to an oral hearing in the proceeding. In the event that a party appears for the opposing side, the party who is present may present his evidence, in whole or in part, in the form of affidavits or by oral testimony, before the Administrative Law Judge.

(2) A failure to appear at a hearing shall not constitute a waiver of a party's right to propose findings of fact based on the record in the proceeding, to propose conclusions of law or to submit briefs, in the manner provided in § 12.82, if the non-appearing party submits prior to the scheduled hearing or within three (3) days thereafter, a Notice of Appearance indicating his intent to continue to participate in the proceeding. Otherwise, his failure to appear will constitute a default.

(d) *Time and place.* If and when the proceeding has reached the stage of oral hearing, the Administrative Law Judge,

giving careful consideration to the convenience of the parties, shall set a time for hearing and shall file with the Hearing Clerk a notice stating the time and place of a hearing. Unless the parties otherwise agree, the place of hearing shall be in the city in which the respondent is engaged in business that is the most convenient to the complainant. If any change in the time or place of the hearing becomes necessary, it shall be made by the Administrative Law Judge, who, in such event, shall file with the Hearing Clerk a notice of the change. Such notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

§ 12.72 Consolidations.

(a) Upon motion by the Division of Enforcement, and only upon the motion by the Division, a proceeding brought by the Division against a person who is a respondent in a reparation proceeding may be joined with the reparation proceeding for hearing of any or all the matters in issue or may be consolidated with the reparation proceeding by order of the Administrative Law Judge in the reparation proceeding if the two proceedings involve common question of fact or law. In the event of consolidation the provisions of either these rules or the rules of practice (Part 10 of this chapter) shall be applied as may be appropriate with respect to particular matters.

(b) Where two or more reparation proceedings are based upon complaints alleging substantially similar activities by a respondent affecting the several complainants, the Chief Administrative Law Judge may upon application of any party to any of the proceedings join those proceedings for hearing of any or all the matters in issue or may consolidate those proceedings.

(c) Where joinder or consolidation has been ordered, the Administrative Law Judge may make such rulings concerning the conduct of the proceedings as may be necessary to avoid unnecessary costs or delay or prejudice to the participants to the reparation proceeding.

(d) Any party to a reparation proceeding which is consolidated pursuant to this section may seek interlocutory review by the Commission of the order of consolidation in accordance with the procedure set forth in § 12.47(b).

§ 12.73 Public hearings.

All hearings shall be public except that upon application of a respondent or affected witness the Administrative Law Judge may direct that specific documents or testimony be received and retained non-publicly in order to prevent unwarranted disclosure of trade secrets or sensitive commercial or financial information or an unwarranted invasion of personal privacy.

§ 12.74 Subpoenas.

(a) *Application for subpoena ad testificandum.* An application for a subpoena requiring a person to appear and testify at a reparation hearing may be made without notice by any party to the Presiding Officer or in the event that the Presiding Officer is not available, to the Chief Administrative Law Judge or to the Commission. Subject to the provisions of § 12.74(d) a subpoena shall be issued upon request of any interested party upon tender of an original and two copies of such subpoena. A subpoena for attendance at a hearing shall be issued upon oral application at any time. A record of the issuance of a subpoena shall be entered in the docket.

(b) *Application for subpoena duces tecum.* An application in duplicate for a subpoena requiring a person to appear and testify and to produce specified documentary or tangible evidence at a reparation hearing shall be in writing except that for good cause shown it may be made during the course of a hearing on the record to the Presiding Officer. Such application need not be served upon all parties. All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought and shall be accompanied by an original and two copies of the subpoena sought which shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible.

(c) *Standards for issuance of subpoena duces tecum.* The Presiding Officer considering any application for a subpoena duces tecum shall issue the subpoena requested if he is satisfied the application complies with this section and the request is not unreasonable oppressive, excessive in scope or unduly burdensome. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpena duces tecum and no detailed or burdensome showing shall be required as a condition to the issuance of any subpena.

(d) *Denial of application.* In the event the Presiding Officer determines that a requested subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena, or may issue it only upon such conditions as he determines fairness requires.

(e) *Attendance and mileage fees.* Persons summoned to testify at a hearing under requirement of subpoenas are entitled to the same fees and mileage as are paid to witnesses in the courts of the United States. Fees and mileage shall be paid by the party at whose instance the persons are called.

§ 12.75 Motions to quash subpoena.

(a) *Application.* Any person upon whom a subpoena has been served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpoena with the Presiding Office who issued the subpoena, and serve a copy of such motion upon the party requesting the subpoena. The application shall be accompanied by a brief statement of the reasons therefor. If the Presiding Officer to whom the motion has been directed has not acted upon the motion by the return date, the subpoena date shall be stayed pending his final action.

(b) *Disposition.* After due notice to the person upon whose request the subpoena was issued, and after opportunity for response by that person, the Presiding Officer may (1) quash or modify the subpoena, or (2) condition denial of the application to quash or modify the subpoena upon just and reasonable terms, including, in the case of a subpoena duces tecum, a requirement that the person in whose behalf the subpoena was issued shall advance the reasonable cost of producing documentary or other tangible evidence.

§ 12.76 Service of subpoenas.

(a) *How effected.* Service of a subpoena upon a party shall be made in accordance with § 12.48 except that only one copy of a subpoena need be served. Service of a subpoena upon any other person shall be made by delivering a copy of the subpoena to him as provided in paragraph (b) or (c) of this section and by tendering to him the fees for one day's attendance and the mileage as specified in § 12.74(e). When the subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service.

(b) *Service upon a natural person.* Delivery of a copy of a subpoena and tender of fees and mileage to a natural person may be effected by (1) handling them to the person; (2) leaving them at his office with the person in charge thereof or, if there is no one in charge, by leaving them in a conspicuous place therein; (3) leaving them at his dwelling place or usual place of abode with some persons of suitable age and discretion then residing therein; (4) mailing them by registered or certified mail to him at his last known address; or (5) any other method whereby actual notice is given to him and the fees and mileage are timely made available.

(c) *Service upon other persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees and mileage may be effected by (1) handing them to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; (2) mailing them by registered or certified mail to any such representative at his last known address; or (3) any other method whereby actual notice is given to any such representative and the fees and mileage are timely made available.

§ 12.77 Enforcement of subpoenas.

Upon failure of any person to comply with a subpoena issued at the request of a party, that party may petition the Commission in its discretion to institute an action in an appropriate United States District Court for enforcement of that subpoena.

§ 12.78 Record of hearing.

(a) *Reporting and transcription.* Hearings for the purpose of taking evidence shall be recorded and shall be transcribed

in written form under the supervision of the Administrative Law Judge by a reporter employed by the Commission for that purpose. The original transcript shall be a part of the record and shall be the sole official transcript. Copies of transcripts, except those portions granted non-public treatment, shall be available from the reporter at rates not to exceed the maximum rates fixed by the contract between the Commission and the reporter.

(b) *Corrections.* Any party may submit a timely request to the Administrative Law Judge to correct the transcript. Corrections may be submitted to the Administrative Law Judge by stipulation of the parties, or by motion by any party, and upon notice to all parties to the proceeding, the Administrative Law Judge may specify corrections of the transcript. A copy of such specification shall be furnished to all parties and made a part of the record. Corrections shall be made by the official reporter, who shall furnish substitute pages of the transcript, under the usual certificate of the reporter, for insertion in the official record. The original uncorrected pages shall be retained in the files of the Hearing Clerk.

§ 12.79 Conduct of the hearing.

(a) *Expedition.* Hearings shall proceed expeditiously and insofar as practicable hearings shall be held at one place and shall continue, without suspension, until concluded.

(b) *Rights of parties.* Every party shall be entitled to due notice of hearings, the right to be represented by counsel, the right to cross-examine witnesses, present oral and documentary evidence, raise objections, make arguments and move for appropriate relief.

(c) *Examination of witnesses.* All witnesses at a hearing for the purpose of taking evidence shall testify under oath or affirmation, which shall be administered by the Administrative Law Judge. A witness may be cross-examined by each adverse party and, in the discretion of the Administrative Law Judge, may be cross-examined, without regard to the scope of direct examination, as to any matter which is relevant to the issues in the proceeding.

(d) *Exhibits.* The original of each exhibit introduced in evidence or marked for identification shall be filed and retained in the docket of the proceeding. A copy of each exhibit introduced by a party or marked for identification at his request shall be supplied by him to the Administrative Law Judge and to each other party to the proceeding.

§ 12.80 Evidence.

(a) *Admissibility.* Relevant, material and reliable evidence shall be admitted, except that unduly repetitious evidence shall be excluded.

(b) *Official notice.* (1) Official notice may be taken of:

(i) Any material fact which might be judicially noticed by a district court of the United States; or

(ii) Any matter in the public official records of the Commission.

(2) If official notice is requested or taken of a material fact, any party, upon timely request, shall be afforded an opportunity to establish the contrary.

(c) *Objections.* A party shall timely and briefly state the grounds relied upon for any objection made to the introduction of evidence. If a party has had no opportunity to object to a ruling at the time it is made, he shall not thereafter be prejudiced by the absence of an objection.

(d) *Exceptions.* Formal exception to an adverse ruling is not required. It shall be sufficient that a party, at the time the ruling is sought or entered, makes known to the Administrative Law Judge the action he wishes the Administrative Law Judge to take or his objection to the action being taken and his grounds therefor.

(e) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness, or the Administrative Law Judge may, in his discretion, receive the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

(f) *Affidavits.* Except as otherwise provided in this subpart, affidavits may be admitted by the Administrative Law Judge only if the evidence is otherwise admissible and the parties agree that affidavits may be used.

(g) *Stipulations.* Stipulations may be received in evidence at a hearing and when received in evidence shall be binding on the parties thereto.

(h) *Official Government records.* An official government record or any entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record or by his deputy, accompanied by a certificate that such officer has custody. If the office in which the record is kept is within the United States the certificate may be made by a judge of a court of record in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by any officer in the Foreign Service of the United States stationed in the foreign state or country in which the record is kept and authenticated by the seal of his office. A written statement signed by an officer having custody of an official record or by his deputy, that after diligent search, no record or entry dealing with a specific matter is found to exist, accompanied by a certificate as provided above, is admissible as evidence that the records of his officer contain no such record or entry.

(i) *Entries in the regular course of business.* Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it shall appear that it was made in the regular course of business by a person who had a duty to report or record them.

§ 12.81 Filing the transcript of evidence.

As soon as practicable after the close of the hearing, the reporter shall transmit to the Hearing Clerk the transcript of the testimony and the exhibits introduced in evidence at the hearing, except such portions of the transcript and exhibits as shall have been delivered to the Administrative Law Judge. The Hearing Clerk will advise each party to the proceeding as to the date on which the transcript was filed.

§ 12.82 Proposed findings and conclusions; briefs.

In any proceeding involving a hearing or an opportunity for hearing, the parties may file written proposed findings and conclusions. Proposed findings of fact shall indicate the basis therefor by appropriate citation to the record. Briefs may be filed in support of proposed findings either as part of the same document or in a separate document. Any proposed finding or conclusion not briefed may be regarded as waived.

(a) *Proposed findings and briefs; time for filing.* Where the parties file proposed findings and briefs, the following schedule shall apply, unless otherwise determined by the Administrative Law Judge:

(1) *Initial submission.* Proposed findings, conclusions and an initial brief shall be served and filed by the complainant within forty-five (45) days of the close of the hearing;

(2) *Answering submission.* Proposed findings, conclusions, and an answering brief shall be served and filed by the respondents within thirty (30) days after service of the initial conclusions and brief upon the respondents;

(3) *Reply.* A reply brief may be filed by the complainant within fifteen (15) days after filing of the answering brief.

(b) *Alternative procedures for submissions.* In his discretion the Administrative Law Judge may lengthen or shorten the periods for the filing of submissions, may direct simultaneous filings, may direct that respondents make the first filing, or may otherwise modify the procedures set forth in paragraph (a) of this § 12.82 for purpose of a particular proceeding.

(c) *Briefs.* (1) the initial brief should include:

(i) A short, clear and concise statement of the case;

(ii) Specification of the questions intended to be urged; and

(iii) The argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question.

(2) The answering brief shall generally follow the same style as prescribed for the initial brief but may omit a statement of the case if the party does not dispute the statement of the case contained in the initial brief;

(3) Reply briefs should be limited to rebuttal of matters in the prior briefs.

(d) *Content and form of proposed findings and conclusions.* (1) The findings of fact shall be confined to the material issues of fact presented on the record, with exact citations to the transcripts of record and exhibits in support of each proposed finding.

(2) The proposed findings and conclusions of the party filing initially shall be set forth in consecutively numbered paragraphs and all counterstatement of proposed findings and conclusions shall, in addition to any other matter, indicate which paragraphs of the initial proposals are not disputed.

§ 12.83 Oral arguments.

In his discretion the Administrative Law Judge may hear oral arguments by the parties any time before he files his initial decision with the Secretary of the Commission. Such argument shall be recorded and transcribed in written form.

§ 12.84 Initial decision.

(a) *When initial decision is required.* The Administrative Law Judge shall make an initial decision in each reparation proceeding in which a hearing has been conducted.

(b) *Content of initial decision.* In his initial decision the Administrative Law Judge shall determine whether or not the respondent has violated any provision of the Act or any rule, regulation or order thereunder. If after a hearing, or upon failure of a respondent to appear at a hearing after being duly notified, the Administrative Law Judge determines that the respondent has violated any provision of the Act, or any rule, regulation, or order thereunder, the Administrative Law Judge shall, unless the respondent has already made reparation to the complainant, determine the amount of damage, if any, to which the complainant is entitled as a result of such violation and shall make an order directing the respondent to pay to the complainant such amount on or before a date fixed in the order.

(c) *Filing of initial decision and order.* The Administrative Law Judge within thirty (30) days after the final date allowed for filing proposed findings of fact and briefs, or such other time as may be allowed by the Chief Administrative Law Judge, or by the Commission, shall prepare upon the basis of the record and shall file with the Hearing Clerk his decision and order, a copy of which shall be served by the Hearing Clerk upon each of the parties.

(d) *Effect of initial decision.* The initial decision and order shall become the final decision and order of the Commission thirty (30) days after service thereof, except:

(1) The initial decision shall not become final as to a party who shall have filed an application for review in accordance with § 12.101, pending Commission disposition of the application or, if the application is granted, pending the final decision by the Commission upon review of the initial decision.

(2) The initial decision shall not become final as to any party to the proceeding if, within thirty (30) days after the initial decision, the Commission itself shall have placed the case on its own docket for review or stayed the effective date of the initial decision.

In the event that the initial decision becomes the final decision of the Commission with respect to a party, that party shall be duly notified thereof by the Hearing Clerk. The notice shall state that the time for filing an application for review by the party has expired, that the Commisison has determined not to review the initial decision on its own initiative and shall specify the date on which a final order in the proceeding shall become effective as against that party.

Subpart G—Summary Proceedings

§ 12.91 Presiding officer; evidence.

In all cases in which a hearing is not held, as provided in § 12.71:

(a) A Presiding Officer shall be appointed who is a member of the Commission, an Administrative Law Judge, or such other Commission employee as may be appointed by the Commission to conduct the proceeding; and

(b) Proof in support of the complaint and in support of the respondent's answers may be found in those verified documents and may also be supplied in the form of depositions or other verified statements of fact.

§ 12.92 Discovery. [Reserved]

§ 12.93 Submission of evidence.

Each party shall serve and file those depositions and other verified statements of fact upon which he relies in support of his pleadings. Thereafter, the parties shall have fifteen (15) days to file replies to such submitted affidavits or verified statements of fact to which they have not previously replied. All such replies shall be confined to the matters set forth in the affidavits and verified statements of fact to which they are responsive.

§ 12.94 Proposed findings and conclusions; briefs.

The parties may file written proposed findings and conclusions and may file briefs under the same conditions as are set forth in § 12.82 with respect to proceedings involving a hearing or an opportunity for hearing.

§ 12.95 Initial decision.

(a) *When initial decision is required.* The Presiding Officer shall make an initial decision in each reparation proceeding not involving a hearing or an opportunity for hearing.

(b) *Content of initial decision.* In his initial decision the Presiding Officer shall determine whether or not the respondents have violated any provision of the Act or any rule, regulation or order thereunder. If on the basis of the verified pleadings, depositions and other verified documents designated by the parties, the Presiding Officer determines that the respondent has violated any provision of the Act, or any rule, regulation, or order thereunder, the Presiding Officer shall, unless the respondent has already made reparation to the complainant, determine the amount of damage, if any, to which the complainant is entitled as a result of such violation and shall make an order directing the respondent to pay to the complainant such amount on or before a date fixed in the order.

(c) *Filing of initial decision and order.* The Presiding Officer within thirty (30) days after the final date allowed for filing proposed findings of fact and briefs, or such other time as may be allowed by the Chief Administrative Law Judge, or by the Commission, shall prepare upon the basis of the record and shall file with the Hearing Clerk his decision and order, a copy of which shall be served by the Hearing Clerk upon each of the parties.

(d) *Effect of initial decision.* The initial decision and order shall become the final decision and order of the Commission thirty (30) days after service thereof, except:

(1) The initial decision shall not become final as to a party who shall have filed an application for review in accordance with § 12.101, pending Commission disposition of the application or, if the application is granted, pending the final decision by the Commission upon review of the initial decision.

(2) The initial decision shall not become final as to any party to the proceeding if, within thirty (30) days after the initial decision, the Commission itself shall have placed the case on its own docket for review or stayed the effective date of the initial decision.

In the event that the initial decision becomes the final decision of the Commission with respect to a party, that party shall be duly notified thereof by the Hearing Clerk. The notice shall state that the time for filing an application for review by the party has expired, that the Commission has determined not to review the initial decision on its own initiative and shall specify the date on which a final order in the proceeding shall become effective as against that party.

Subpart H—Commission Review of Initial Decisions in Reparation Proceedings

§ 12.101 Application for Commission review.

Upon application for review by any party or upon its own motion the Commission may, in its discretion, grant review of an initial decision.

(a) *Applications and responses.* (1) An application for Commission review of an initial decision must be served and filed in accordance with §§ 12.48 and 12.51 within fifteen (15) days after service upon the parties of the initial decision;

(2) An application for review shall (i) identify the party seeking review; (ii) specify the issues presented for review; (iii) identify those provisons of the Act or any rule, regulation or order thereunder that are relevant to the stated issues; (iv) set forth a concise statement of the facts material to the consideration of the stated issues; and (v) present a concise argument setting forth the reasons why review by the Commission is necessary or appropriate to re-

solve an important issue of law or public policy.

(3) Any party opposing the application may serve and file a response within fifteen (15) days after service of the application.

(4) An application shall not exceed 30 pages and a response shall not exceed 25 pages, without leave expressly granted by the Presiding Officer;

(5) After the time for the filing of a repsonse has expired the Commission will determine whether to grant a review, based upon the application for review and the response thereto, without oral argument or further written presentation, unless the Commission shall otherwise direct.

(b) *Notice of review.* If the Commission should determine to review an initial decision, the Hearing Clerk shall serve a copy of its order granting review upon each of the parties.

(c) *Scope of review.* Unless the Commission shall otherwise direct, only the issues presented for review as set forth in the application, and all subsidiary issues fairly subsumed therein, will be considered by the Commission.

(d) *Briefs.* In the event the Commission should determine to review the initial decision, the parties shall file briefs with the Commission in accordance with the procedures set forth in § 10.155 of the Commissions rules of practice: *Provided,* That in reparation proceedings the brief of the party who sought review (or if no party sought review, the brief of the complainant) shall be filed within thirty (30) days after service upon the parties of the Commission's order granting review of the initial decision.

(e) *Oral argument.* Any party may request, in writing and within the time provided for filing the initial briefs, the opportunity to present oral argument before the Commssion, which the Commission may in its discretion grant or deny. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument shall be in accordance with the provisions of § 10.156 of this chapter.

§ 12.102 The record of proceeding.

If the Commission grants an application for review of an initial decision or the Commission decides on its own initiative to review an initial decison, the record of the proceedings shall be made available to the Commission. The record of the proceeding shall include: The pleadings; motions and requests filed, and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed therein; any statements or stipulations filed under the summary procedure; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions, and orders and briefs as may have been permitted to be field in connection with the hearing; such statements of objections, and briefs in support thereof, as may have been filed in the proceedings; and the initial decision.

All interested persons desiring to comment on the proposed rules relating to reparation proceedings should submit such comments in written form to the Commodity Futures Trading Commission, 1120 Connecticut Avenue, NW., Washington, D.C. 20036, Attn: CCU. Since it is proposed to make the proposed rules effective January 23, 1976, comments should be submitted to the Commission by December 19, 1975, in order to assure full consideration, although comments received after December 19, 1975, will nevertheless be fully evaluated. All comments submitted to the Commission will be available for public inspection.

Issued in Washington, D.C. on November 25, 1975.

By the Commission.

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

[FR Doc.75-32296 Filed 11-28-75;8:45 am]

MARINE MAMMAL COMMISSION

[50 CFR Part 510]

FEDERAL ADVISORY COMMITTEE ACT

Proposed Implementation

Notice is hereby given that the Marine Mammal Commission (the "Commission") proposes to adopt a new Part 510 of 50 CFR consisting of the Regulations set forth below, to establish administrative guidelines and management controls for advisory committees that report to the Commission. At present, the only committee to which these Regulations shall apply is the Committee of Scientific Advisors on Marine Mammals (the "Committee").

Section 8(a) of the Federal Advisory Committee Act (the "Act") provides that guidelines and controls for advisory committees shall be established, consistent with directives of the Office of Management and Budget. Those directives, contained for the most part in sections 5 through 8 and in section 11 of Circular No. A-63, as amended, address the creation, termination, renewal, and operation of advisory committees, and specify uniform pay guidelines for members and staff of, and consultants to those committees.

These proposed Regulations govern the calling of, notice of, public participation at, closing of, and minutes of meetings of the Committee. The Marine Mammal Protection Act of 1972 (the "MMPA"), 16 U.S.C. 1361 *et seq.*, prescribes the establishment and duration of the Committee, and addresses the rate of compensation for its members, staff, and consultants. Section 510.9 sets forth provisions consistent with sections 203 (b) and 206 of the MMPA, 16 U.S.C. 1403(b), 1406.

The Chairman of the Commission has delegated all responsibilities prescribed by the Act to be performed by the "agency head," and those to be performed by a "designated officer or employee of the Federal Government," to the Executive Director of the Commission. Those responsibilities include the approval of requests by the Committee to hold meetings, attendance at all meetings, adjournment of any meeting when in the public interest, determinations to close meetings, or portions of meetings, publication of meeting notices, approval of agenda for meetings, conduct of an annual comprehensive review of the Committee, issuance of all appropriate reports, and such other steps as are necessary to implement the letter and the spirit of the Act on behalf of the Agency. In addition, the Executive Director has been designated as Advisory Committee Management Officer for the Commission and, as such, shall exercise control and supervision over the procedures and accomplishments of the Committee, assemble and maintain the reports, records and other papers of the Committee, and carry out provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to such reports, records, and other papers.

Interested persons may submit any written comments regarding this notice to the Executive Director, Marine Mammal Commission, 1625 I Street, N.W., Room 307, Washington, D.C. 20006, for consideration by the Commission. Submissions received on or before January 15, 1976 will be considered by the Commission. All submissions will be available for inspection at the Commission offices during normal business hours.

Dated: November 24, 1975.

JOHN R. TWISS, Jr.,
Executive Director.

It is proposed to amend Chapter V, Marine Mammal Commission, of 50 CFR by adding a new part 510 as follows:

PART 510—IMPLEMENTATION OF THE FEDERAL ADVISORY COMMITTEE ACT

Sec.
510.1 Purpose.
510.2 Scope.
510.3 Definitions.
510.4 Calling of meetings.
510.5 Notice of meetings.
510.6 Public participation.
510.7 Closed meetings.
510.8 Minutes.
510.9 Uniform pay guidelines.

AUTHORITY: Sec. 203(b) and 206 Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 et seq.

§ 510.1 Purpose.

The regulations prescribed in this part set forth the administrative guidelines and management controls for advisory committees reporting to the Marine Mammal Commission. These regulations are authorized by Section 8(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I. Guidelines and controls are prescribed for calling of meetings, notice of meetings, public participation, closing of meetings, keeping of minutes, and compensation of committee members, their staff and consultants.

§ 510.2 Scope.

These regulations shall apply to the operation of advisory committees reporting to the agency.

§ 510.3 Definitions.

For the purposes of this part,

(a) The term "Act" means the Federal Advisory Committee Act, 5 U.S.C. App. I;

(b) The term "Chairperson" means each person selected to chair an advisory committee established by the Commission;

(c) The term "Commission" means the Marine Mammal Commission, established by 16 U.S.C. 1401(a);

(d) The term "committee" means any advisory committee reporting to the Commission; and

(e) The term "Designee" means the agency official designated by the Chairman of the Commission (1) to perform those functions specified by sections 10 (e) and (f) of the Act, and (2) to perform such other responsibilities as are required by the Act and applicable regulations to be performed by the "agency head."

§ 510.4 Calling of meetings.

(a) No committee shall hold any meeting except with the advance approval of the Designee. Requests for approval may be made, and approval to hold meetings may be given orally or in writing, but if approval is given orally, the fact that approval has been given shall be stated in the public notice published pursuant to Section 510.5 of these regulations.

(b) An agenda shall be submitted to, and must be approved by, the Designee in advance of each committee meeting, and that meeting shall be conducted in accordance with the approved agenda. The agenda shall list all matters to be considered at the meeting, and shall indicate when any part of the meeting will be closed to the public on the authority of exemptions contained in the Freedom of Information Act, 5 U.S.C. 552(b).

§ 510.5 Notice of meetings.

(a) Notice of each committee meeting shall be timely published in the FEDERAL REGISTER. Publication shall be considered timely if made at least 15 days before the date of the meeting, except that shorter notice may be provided in emergency situations.

(b) The notice shall state the time, place, schedule and purposes of the committee meeting, and shall include, whenever it is available, a summary of the agenda. The notice shall indicate the approximate times at which any portion of the meeting will be closed to the public and shall include an explanation for the closing of any portion of the meeting pursuant to Section 510.7 of these regulations.

§ 510.6 Public participation.

(a) All committee meetings, or portions of meetings, that are open to the public shall be held at a reasonable time and at a place that is reasonably accessible to the public. A meeting room shall be selected which, within the bounds of the resources and facilities available, affords space to accommodate all members of the public who reasonably could be expected to attend.

(b) Any member of the public shall be permitted to file a written statement with the committee, either by personally delivering a copy to the Chairperson, or by submitting the statement by mail to the Marine Mammal Commission offices at the address indicated in the notice of meeting. Such statements should be received at least one week in advance of the scheduled meeting at which they are expected to be considered by the committee.

(c) Opportunities will ordinarily be afforded to interested persons to speak to agenda items during that portion of the open meeting during which that item is to be considered by the committee, subject to such reasonable time limits as the committee may establish, and consideration of the extent to which the committee has received the benefit of comments by interested persons, the complexity and the importance of the subject, the time constraints under which the meeting is to be conducted, the number of persons who wish to speak during the meeting, and the extent to which the statement provides the committee with information which has not previously been available and is relevant to its decision or other action on that subject. Interested persons may be required to serve reasonable notice of their intentions to speak so that the committee may assess whether procedures and scheduling for the meeting can be adjusted to accommodate large numbers of participants.

§ 510.7 Closed meetings.

(a) Whenever the committee seeks to have all or a portion of a meeting closed to the public on the basis of an exemption provided in U.S.C. 552(b), the Chairperson shall notify the Designee at least 30 days before the scheduled date of the meeting. The notification shall be in writing and shall specify all the reasons for closing any part of the meeting.

(b) If, after consultation with the General Counsel of the Commission, the Designee finds the request to be warranted and in accordance with the policy of the Act, the request shall be granted. The determination of the Designee to grant any such request shall be in writing and shall state the specific reasons for closing all or a part of the meeting. Copies of the determination shall be made available to the public upon request.

§ 510.8 Minutes.

Detailed minutes shall be kept of each portion of each committee meeting. The minutes shall include: the time and place of the meeting; a list of the committee members and staff in attendance; a complete summary of matters discussed and conclusions reached; copies of all reports received, issued, or approved by the committee; a description of the extent to which the meeting was open to the public; and a description of public participation, including a list of members of the public who presented oral or written statements and an estimate of the number of members of the public who attended the open sessions. The Chairperson shall certify to the accuracy of the minutes.

§ 510.9 Uniform pay guidelines.

(a) Compensation of members and staff of, and consultants to the Committee of Scientific Advisors on Marine Mammals is fixed in accordance with 16 U.S.C. 1401(e), 1403(b), and 1406.

(b) Compensation for members and staff of, and consultants to all advisory committees reporting to the Commission except the Committee of Scientific Advisors on Marine Mammals shall be fixed in accordance with guidelines established by the Director of the Office of Management and Budget pursuant to section 7(d) of the Act, 5 U.S.C. App. I.

[FR Doc.75-32192 Filed 11-28-75;8:45 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Definition of Small Business Government Subcontractors

Notice is hereby given that the Small Business Administration proposes to amend § 121.3-12 of the Small Business Size Standards Regulation (Part 121, Chapter I, Title 13 of the Code of Federal Regulations).

Section 121.3-12, *Definitions of small business Government subcontractor*, currently provides one definition of a small business Government subcontractor for the purpose of Government subcontracts of $2,500 or less, and another definition for the purpose of Government subcontracts exceeding $2,500. The $2,500 figure was taken from the $2,500 annual receipts figure set forth in various laws, such as Section 302(c)(3) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252 (c)(3)), providing for the use of simplified procedures in the procurement of property and services by the Government where the amount involved does not exceed the prescribed amount.

In Pub. L. 93-356, 93rd Congrss, S. 311, July 25, 1974, the $2,500 figure in such legislation was changed to $10,000 and, accordingly, it is proposed to amend § 121.3-12 to read as follows:

§ 121.3-12 Definition of small business Government subcontractors.

(a) Any concern in connection with subcontracts of $10,000 or less which relate to Government procurements will be considered a small business concern if, including its affiliates, its number of employees does not exceed 500 persons.

(b) Any concern in connection with subcontracts exceeding $10,000 which relate to Government procurements will be considered a small business concern if it qualifies as such under § 121.3-8: Provided, however, That a nonmanufacturer is considered as small business for the purpose of Government subcontracting if, including its affiliates, its number of employees does not exceed 500 persons.

Interested parties may file with the Small Business Administration on or before December 31, 1975, written statements of facts, opinions, or arguments concerning the proposal.

All correspondence shall be addressed to:

William L. Pellington, Director, Size Standards Division, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.009, Procurement Assistance to Small Businesses).

Dated: November 20, 1975.

LOUIS F. LAUN,
Acting Administrator.

[FR Doc.75-32195 Filed 11-28-75;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

Office of the Secretary

ADVISORY COMMITTEE ON REFORM OF THE INTERNATIONAL MONETARY SYSTEM

Meeting

Notice is hereby given that the Advisory Committee on Reform of the International Monetary System will meet at the Treasury Department in Washington, D.C., on December 16, 1975.

The meeting is called for the purpose of obtaining the full and frank opinions of the participants concerning the basic issues involved in and related to the present, sensitive stage of international negotiations for the reform of the international monetary system.

Consequently, a determination as required by section 10(d) of the Federal Advisory Committee Act (Public Law 92-463) has been made that this meeting is for the purpose of considering matters falling within the exemptions to public disclosure set forth in 5 U.S.C. 552 (b)(1) and (5), and that the public interest requires such meeting be closed to public participations.

Dated: November 28, 1975.

WARREN F. BRECHT,
Assistant Secretary of the Treasury.

[FR Doc.75-32520 Filed 11-28-75;11:38 am]

DEPARTMENT OF DEFENSE

Department of the Army

ARMED FORCES EPIDEMIOLOGICAL BOARD

Cancellation of Meeting

The scheduled meeting of the Armed Forces Epidemiological Board which was to be held on 5 December 1975 has been cancelled. The date for the rescheduled meeting will receive timely notice in the FEDERAL REGISTER when determined.

DUANE G. ERICKSON,
LTC, MSC, USA,
Executive Secretary.

NOVEMBER 24, 1975.

[FR Doc.75-32187 Filed 11-28-75;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

IDAHO DISTRICT MANAGERS

Redelegation of Authority

1. Pursuant to the authority delegated to the State Director in Bureau Order 701, as amended, Part 1, Section 1.2(a) all Idaho District Managers or Acting District Managers, are hereby authorized to administer oaths to entrymen and their witnesses in connection with the taking of testimony on final proofs for Homestead and Desert Land Entries.

2. The District Managers or Acting District Managers, may redelegate this authority to any qualified employee under their jurisdiction.

WM. L. MATHEWS,
State Director.

Approved: November 24, 1975.

GEORGE L. TURCOTT,
Associate Director.

[FR Doc.75-32189 Filed 11-28-75;8:45 am]

Fish and Wildlife Service

CALIFORNIA DEPARTMENT OF FISH AND GAME

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 (Pub. L. 93-205).

Applicant: California Department of Fish and Game, 1416 Ninth Street, Sacramento, California 95814. Mr. E. C. Fullerton, *Director.*

OMB NO. 42-R1370

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: Authorization for Department employees to take endangered and threatened species for conservation purposes, including protection of human life, to aid injured or sick endangered animals and to dispose of diseased animals or dead specimens. Authority given State to issue permits to individuals and institutions to pursue scientific studies of endangered species.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Mr. E. C. Fullerton, Director
California Department of Fish and Game
1416 - 9th Street
Sacramento, California 95814
PH: 916-445-3535

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
California Department of Fish Game

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT
California Department of Fish and Game

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
E.C. Fullerton, Director
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Statewide

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 jurisdiction and type of document)

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
November 1, 1975

11. DURATION NEEDED

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

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) E C Fullerton
E. C. Fullerton, Director
DATE Nov. 1, 1975

9-200
16/740

APPLICATION FOR ENDANGERED SPECIES PERMIT
CALIFORNIA DEPARTMENT OF FISH AND GAME

1. The applicant's name, mailing address and phone number are Mr. E. C. Fullerton, Director, California Department of Fish and Game, 1416 Ninth Street, Sacramento, California 95814, phone number 916–445–3535.

2. This application is to provide authorization to employees of the California Department of Fish and Game to take endangered and threatened species for conservation purposes, including protection of human life, to aid injured or sick endangered animals, or to dispose of diseased animals or dead specimens. In addition, the Department through its permit system may issue a permit to individuals or other agencies authorizing them to take endangered or threatened species for conservation purposes in accordance with the procedures for the issuance of permits pursuant to Section 10(a) of the Act.

3. The name and address of the principal officer is Mr. E. C. Fullerton, Director, California Department of Fish and Game, 1416 Ninth Street, Sacramento, California 95814.

4. N/A (not applicable).

5. California Department of Fish and Game.

6. The Department's endangered species program is statewide. A description of the State's endangered species program, including program narratives for all federally-designated endangered and threatened species, has been submitted pursuant to the State's request for a Cooperative Agreement under Section 6(c) of the Endangered Species Act of 1973.

7. N/A.

8. N/A.

9. N/A.

10. The desired effective date of the permit to be November 1, 1975.

11. Duration of the permit be for 1 year and be pursuant to the annual review and approval of the Cooperative Agreement negotiated between the Director, U.S. Fish and Wildlife Service and Director, California Department of Fish and Game.

12. 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 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 permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to criminal penalties of 18 U.S.C. 1001.

13. Species information relevant to processing the application to fulfill requirements of 50 CFR 17, Subsection 17.23(a) follows:

(1) The common and scientific names of the species sought to be covered and the actions sought to be authorized.

(a) Mohave chub (*Siphateles mohavensis*); (b) Tecopa pupfish (*Cyprinodon*); (c) Colorado River squawfish (*Ptychocheilus lucius*); (d) San Francisco garter snake (*Thamnophis sirtalis tetrataenia*); (e) Aleutian Canada goose (*Branta canadensis leucopareia*); (f) California clapper rail (*Rallus longirostris obsoletus*); (g) Light-footed clapper rail (*Rallus longirostris levipes*); (h) Yuma clapper rail (*Rallus longirostris yumanensis*); (i) California least tern (*Sterna albifrons browni*); (j) Salt marsh harvest mouse (*Reithrodontomys raviventris*); (k) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*). Ongoing programs of habitat and population surveillance, enforcement, public education, and habitat protection, including review of environmental impact statements and federal compliance reports will be carried forth by the Department. (l) Owens River pupfish (*Cyprinodon radiosus*). Ongoing programs of habitat and population surveillance, enforcement, public education, and habitat protection, including review of environmental impact statements and federal compliance reports will be carried forth by the Department.

A "Memorandum of Understanding by and between Department of Animal Physiology, University of California at Davis and Department of Fish and Game Relating to a Study of Owens Pupfish" exists. James M. Boda, Chairman, Department of Animal Physiology, is authorized to collect and possess not in excess of 20 pairs of adult Owens pupfish for basic physiological study and captive breeding. The fish are kept at the University of California at Davis and all fish produced in excess of study needs shall be made available for return to the Department.

(m) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*). Ongoing programs of habitat and population surveillance, enforcement, public education, and habitat protection, including review of environmental impact statements and federal compliance reports will be carried forth by the Department.

A "Memorandum of Understanding by and between Department of Biological Sciences, California State Polytechnic University, Pomona, and Department of Fish and Game Relating to a Study of the Unarmored Threespine Stickleback" exists. Jerome E. Dimitman, Chairman, Department of Biological Sciences, is authorized to collect and possess not in excess of 50 pairs of adult unarmored threespine sticklebacks for studies of breeding biology, genetics, and mechanisms of inheritance. The fish are kept at the California State Polytechnic University at Pomona and all fish produced in excess of study needs shall be made available for return to the Department.

(n) Blunt-nosed leopard lizard (*Crotaphytus silus*). Ongoing programs of habitat and population surveillance, enforcement, public education, and habitat protection, including review of environmental impact statements and federal compliance reports will be carried forth by the Department.

A "Memorandum of Understanding by and between Institute of Environmental Studies, California State College, Bakersfield Foundation, and Department of Fish and Game Relating to a Study of the Blunt-Nosed Leopard Lizard" exists. F. Duane Blume, Director, Institute of Environmental Studies, is authorized to collect not more than 3 individuals from any one locality for studies on the status and life history of the blunt-nosed leopard lizard. All specimens collected shall be properly labeled and deposited in the Institute collection.

A "Memorandum of Understanding by and between Museum of Vertebrate Zoology, University of California, Berkeley, and Department of Fish and Game Relating to a Study of the Blunt-nosed Leopard Lizard" exists. Robert C. Stebbins, Curator of Herpetology, is authorized to collect not in excess of 6 adult blunt-nosed leopard lizards for study of breeding and other aspects of behavior. These lizards are to be kept at the Museum or other designated location and are to be returned to the area of capture upon termination of behavioral studies.

(o) Desert slender salamander (*Batrachoseps aridus*). Ongoing programs of habitat and population surveillance, enforcement, public education, and habitat protection, including review of environmental impact statements and federal compliance reports will be carried forth by the Department.

A "Memorandum of Understanding by and between Museum of Vertebrate Zoology, University of California, Berkeley, and Department of Fish and Game Relating to a Study of Salamanders" exists. David B. Wake, Museum of Vertebrate Zoology, is authorized to collect not in excess of 6 individuals of each species from any one locality for taxonomic and behavior studies. Upon termination of laboratory studies the salamanders are to be returned to the area of capture or deposited in the Museum collections.

A "Memorandum of Understanding by and between County of Los Angeles, Museum of Natural History, and Department of Fish and Game Relating to a Study of Slender Salamanders" exists. Giles Mead, Museum of Natural History, is authorized to collect and retain not more than 5 slender salamanders from any one locality for the purpose of verifying new or unreported localities. All preserved salamanders shall be properly labeled and deposited in the Museum collections.

(p) Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*). Ongoing programs of habitat and population surveillance, enforcement, public education, and habitat protection, including review of environmental impact statements and federal compliance reports will be carried forth by the Department.

A "Memorandum of Understanding by and between Museum of Vertebrate Zoology, University of California, Berkeley, and Department of Fish and Game Relating to a Study of Amphibians and Reptiles" exists. Robert Stebbins, Museum of Vertebrate Zoology, is authorized to collect not in excess of 6 Santa Cruz long-toed salamanders for life history studies.

(q) California condor (*Gymnogyps californianus*). Ongoing programs of habitat and population surveillance, enforcement, public education, and habitat protection, including review of environmental impact statements and federal compliance reports will be carried forth by the Department.

Permission is granted by the Department of Fish and Game for Director, Los Angeles Zoo, 5333 Zoo Drive, Los Angeles, California 90027 to possess 1 California condor. The permittee shall not sell, barter, exchange or transfer possession of the California condor without written permission from California Department of Fish and Game. The condor, unsuited for release to the wild, is maintained for scientific study.

(r) Southern bald eagle (*HaHaeetus leucocephalus*). Ongoing programs of habitat and population surveillance, enforcement, public education, and habitat protection, including review of environmental impact statements and federal compliance reports will be carried forth by the Department.

A "Memorandum of Understanding by and between the Regents of the University of California, Davis, Department of Avian Sciences and Department of Fish and Game Relating to Possession of Raptors for Scientific Study" exists. Richard Grau, Chairman, Department of Avian Sciences is authorized to possess raptors for care and rehabilitation, and for physiological and biological studies. The birds are kept at the University of California, Davis, California.

(s) American peregrine falcon (*Falco peregrinus anatum*). Ongoing programs of habitat and population surveillance, enforcement, public education, and habitat protection, including review of environmental impact statements and federal compliance reports will be carried forth by the Department.

The California Fish and Game Commission has authorized James Adamson, 5665 Val Verde Road, Loomis, California to possess 2 adult peregrine falcons for raptor breeding research. The permittee is not authorized to take peregrine falcons in California or to sell, exchange, barter, or otherwise dispose of peregrines without prior approval of the California Department of Fish and Game.

The California Fish and Game Commission has authorized Gary A. Beeman, 777 Moraga Road, Lafayette, California 94549, to possess 4 peregrine falcons for captive raptor breeding purposes. The permittee is not authorized to take peregrine falcons in California and shall not transfer ownership or possession without first obtaining written permission from the California Department of Fish and Game.

The California Fish and Game Commission has authorized James C. Roush, Applied Science Building, University of California, Santa Cruz, California 95064, to possess 7 pair of peregrine falcons for captive raptor breeding and scientific study. The permittee is not authorized to take peregrine falcons in California and shall not transfer or acquire possession of any peregrine without first obtaining written permission from the California Department of Fish and Game.

The California Fish and Game Commission has authorized Fidele de la Torre, 1760 Fremont Boulevard, Seaside, California 93955, to possess 10 peregrine falcons for captive breeding research. The permittee is not authorized to take peregrine falcons in California and shall not transfer or acquire any peregrine without first obtaining written permission from the California Department of Fish and Game.

The names and addresses of all persons possessing banded peregrine falcons in California legally possessed under California Fish and Game Commission regulations are attached.

(t) Brown pelican (*Pelecanus occidentalis*). On going programs of habitat and population surveillance, enforcement, pubic education, and habitat protection, including review of environmental impact statements and federal compliance reports will be carried forth by the Department.

A "Memorandum of Understanding by and between Sea World and California Department of Fish and Game Relating to the Possession and Rehabilitation of California Brown Pelicans" exists. George Millay, President of Sea World, is given authority to care for and rehabilitate sick and injured brown pelicans. Pelicans are kept at Sea World, San Diego and can only be released or disposed of upon approval of the California Department of Fish and Game. (Sea World, 1720 South Shores Road, San Diego, California 92109.)

A "Memorandum of Understanding by and between Alexander Lindsay Jr. Museum and California Department of Fish and Game Relating to the Possession and Rehabilitation of Endangered, Rare and Fully Protected Animals" exists. Gary Bogue, Museum Curator, is given authority to care for and rehabilitate sick and injured endangered, rare and fully protected animals. These animals are kept at 1901 First Avenue, Walnut Creek, California 94596, and can only be released or disposed of upon approval of the California Department of Fish and Game.

A "Memorandum of Understanding by and between Louise A. Boyd Marin Museum of Science and California Department of Fish and Game Relating to the Possession and Rehabilitation of Endangered, Rare and Fully Protected Animals" exists. Bruce Blake, Executive Director, Marin Museum of Sciences is given authority to care for and rehabilitate sick and injured endangered, rare or fully protected animals. The animals are kept at 76 Albert Park Lane, San Rafael, California 94901, and can only be released or disposed of upon approval of the California Department of Fish and Game.

A "Memorandum of Understanding by and International Bird Rescue Research Center and the California Department of Fish and Game Relating to the Possession and Rehabilitation of Endangered Rails, Pelicans, and Terns" exists. Alice B. Berkner, Executive Director, International Bird Rescue Research Center, is given authority to care for and rehabilitate sick and injured endangered rails, terns, and pelicans. The animals are kept at Aquatic Park, Berkeley, California 94710, and can only be released or disposed of upon approval of the California Department of Fish and Game.

(u) San Joaquin kit fox (*Vulpes macrotis mutica*). Ongoing programs of habitat and population surveillance, enforcement, public education, and habitat protection, including review of environmental impact statements and federal compliance reports will be carried forth by the Department.

A "Memorandum of Understanding by and between Roeding Park Zoo and California Department of Fish and Game Relating to Possession of San Joaquin Kit Fox for Rehabilitation and Scientific Study" exists. Paul S. Chaffee, Director, Roeding Zoo is given authority to care for and rehabilitate sick and injured San Joaquin kit foxes. The animals are kept at the Roeding Park Zoo and can only be released or disposed of upon approval of the California Department of Fish and Game.

A "Memorandum of Understanding by and between Dr. Aryan I. Roest and the Department of Fish and Game Relating to Possession of San Joaquin Kit Foxes for Taxonomic Study" exists. Dr. Roest is given authority to possess remains of kit foxes for taxonomic study. The specimens are retained at California Polytechnic State University in suitable storage cabinets until or unless otherwise requested in writing by the Department of Fish and Game.

(2) In addition to the above memorandums of understanding involving the take and possession of endangered species, there exists memorandums of understanding between the Department and the following Federal agencies:

(a) U.S. Fish and Wildlife Service. R. Kahler Martinson, Regional Director, U.S. Fish and Wildlife Service, is given authority to use the services of employees, universities and colleges, students or graduate students to perform field and laboratory studies on endangered and rare species. Such activities are limited to observation, feeding, trapping, marketing, banding and releasing of live specimens.

(b) Bureau of Land Management. James Ruch, Acting State Director, Bureau of Land Management, is given authority to use the services of employees, universities and colleges, students or graduate students to perform field and laboratory studies on endangered and rare species. Such activities are limited to observation, feeding, trapping, marking, banding and releasing of live specimens.

(c) U.S. Forest Service. Douglas R. Leisz is given authority to use the services of employees, universities and colleges, students or graduate students to perform field and laboratory studies on endangered and rare species. Such activities are limited to observation, feeding, trapping, marking, banding and releasing of live specimens.

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, NW., 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 31, 1975.

Dated: November 24, 1975.

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

[FR Doc.75-32291 Filed 11-28-75;8:45 am]

FEATHER'S FANCY AVIARYS

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 (Pub. L. 93-205).

Applicant: Feather's Fancy Aviarys, 2304 Tucker Lane, Dickeyville, Maryland 21207. Mr. Shon Ross.

OMB NO. 42-R1670

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.
Breeding, Maintaining, Sale of Rothschild's Mynahs (Leucopsar rothschildi)

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Feather's Fancy
AVIARYS
2304 TUCKER LANE
DICKEYVILLE, MD. 21207
(301)448-4277/669-0303

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☒ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 5'-7" WEIGHT: 155.Lbs
DATE OF BIRTH: 11/18/42
COLOR HAIR: Brown COLOR EYES: Hazel
PHONE NUMBER WHERE EMPLOYED: 669-0303 (301)
SOCIAL SECURITY NUMBER: 215-42-0579
OCCUPATION: Bird shop owner/Draftsman SHA
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT
Shon Ross, Feather's Fancy Aviarys

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
Pet Shop / but to be breeded as/and in owners own hobby.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
2304 Tucker La.
Baltimore, Maryland 21207

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

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)
N/A

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: 8/30/75
11. DURATION NEEDED: Life

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

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) Shon Ross DATE 7/15/75

3-200
10/74

Shon Ross

AUGUST 20, 1975.

DIRECTOR,
FISH AND WILDLIFE SERVICE,
Law Enforcement Division,
U.S. Department of Interior,
Washington, D.C. 20240.

DEAR SIR: The undersigned hereby applies for a permit under Section 10(a) of the Endangered Species Act of 1973. We submit the following information pursuant to Sections 13-12 and 17.23 of Volume 39, No. 3, Part III of the FEDERAL REGISTER.

Section 17.23: (1) Common Name Rothschild's Mynahs Scientific Name (Leucopsar rothschildi) Number and description one Male, one Female.

(2) N/A.

(3) The birds for which this permit is sought were hatched and reared from eggs laid in captivity at the National Zoo, Washington, D.C. U.S.A.

(4) The Feather's Fancy Aviarys consists of many large flights. Several 4' x 8' x 7' where we plan to breed the Rothschild's Mynahs and to house them in winter in 3' x 4' x 6'.

(5) The Two (2) Rothschild's Mynahs were hatched in captivity at the National Zoo.

(6) Not applicable. No birds will be taken from the wild.

(7) (I) The birds will be housed in planted aviarys outside and in cage of the sizes Ref. (4) above. The birds will be protected from wind and weather if necessary. When more than one pair is formed, adequate additional pen space will be added.

(7) (II) Medical Care for the birds will be under the direct supervision of The Feather's Fancy Aviarys and D.V.M. Robert Wagers, 1845 Reistertown Rd., Baltimore, Md.

(7) (III) As the birds breed, full and complete records will be kept. Genetic. Bloodline interchanges will be sought. We will actively participate in maintenance of a studbook.

(7) (IV) Not applicable as we plan to transport by auto Vi. of BWPK.

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 the application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to criminal penalties of the 18 U.S.C. 1001.

Very truly yours,

SHON ROSS,
2304 Tucker La.,
Dickeyville, Md. 21207.

OCTOBER 18, 1975.

UNITED STATES DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
Washington, D.C. 20240.
(Attention: C. R. Bavin).

DEAR MR. C. R. BAVIN: In Re: to request of Aug. 20, 1975, for Endangered Species permit (Leucopsar rothschildi).

Please be advised that we have bred: Silver THroated Tanager (Tangara icterocephala), Mrs. Wilson's or Golden Masked (Tangara nigrocincta), Violet Euphonias (Tangara Violaced), Cordon Bleu (Uraeginthus bengalus), and many more not noted here.

Please advise if more technical information is needed (as soon as possible).

Sincerely yours,

SHON ROSS.

P.S.: We have also maintained Sunbirds, Honeycreepers, Wood-hopoes, and Hummingbirds.

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, NW., 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 31, 1975.

Dated: November 24, 1975.

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

[FR Doc.75-32290 Filed 11-28-75;8:45 am]

JAMES F. SMITH

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 (Pub. L. 93-205).

Applicant: Mr. James F. Smith, RR #2, Winfield, Kansas 67156.

OMB NO. 43-R1636

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.
I WANT TO SHIP TO MY ADDRESS 1 PAIR OF MIKADO PHEASANTS & 1 PAIR OF HUMES BARTAILED PHEASANTS FROM WISCONSIN FOR BREEDING AND PROPAGATION PURPOSES

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
JAMES F. SMITH
RR#2 WINFIELD, KANSAS 67156
TELE-AC. 316-221-2960

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☒ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 6.01 WEIGHT: 210
DATE OF BIRTH: 10-12-39 COLOR HAIR: BROWN COLOR EYES: BLUE
PHONE NUMBER WHERE EMPLOYED: 221-4050 SOCIAL SECURITY NUMBER: 510-38-7975
OCCUPATION: WELDER FOR SMITH-MOON STEEL CO
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
WEST OF WINFIELD, KANSAS ON 160 HIGHWAY 2 MILES, 10LK NORTH + BACK WEST 1½ BLKS ON NORTH SIDE OF ROAD

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

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 document(s))
NOT REQUIRED

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: DEC 1, 1975

11. DURATION NEEDED: 60 DAYS

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13 and Part 17 that MUST BE ATTACHED) IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
17.22 - # 1-2-3-4-5-6-0(ii)(iii) (iv) (v)-7-8(i) (ii) (iii)(iv)

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): James F Smith
DATE: Oct 3, 1975

3-200
(8/74)

DIRECTOR,
FISH AND WILDLIFE SERVICE,
Washington, D.C.

SEPTEMBER 12, 1975.

DEAR SIR: This is a request for a permit to obtain one pair of MIKADO PHEASANTS and one pair of HUME'S BAR-TAILED PHEASANTS for breeding and propagation purposes from Arthur G. Paul, Jr., of Spencer, Wisconsin.

Sincerely yours,

JAMES F. SMITH,
R. R. #2,
Winfield, Kansas 67156.

Pheasants: Bar-tailed (*Syrmaticus humiae*). One male; one female—1975 hatch. Mikado (*Syrmaticus mikado*). One male; one female—1975 hatch.

For propagation purposes.

If this permit is issued to me I will purchase these birds from a reputable dealer in Wisconsin.

I am located two miles west of Winfield, Kansas.

These birds were born in captivity.

Pen will be of poultry netting 6' high, 10' wide, 20' long, with shelter at north end with ⅓ of top boarded for weather and sun protection. Bottom 4 inches deep sand.

I have raised Blue-eared and Impayans, Elliott's, Swinhoe, Reeves, Silver, Golden, Lady Amherst, and Ring-necked pheasants for the last 15 years. I have a Kansas permit—No. 67, for raising game birds.

I will cooperate in any way with your department or other breeders to allow propagation of these birds.

The Wisconsin supplier has always shipped birds (not on the endangered species list) in wire crates with water and feed containers permanently attached. They always had feed and water 16" x 2' x 16" high. I called him on the telephone. We are acquainted from previous dealings.

I have sucessfully raised Swinhoe's (eleven young out of one pair this year), and other birds. We want to see if we can raise a more delicate and distinctive bird in our climate area and with our experience.

We will handle these birds, breed and propagate same, and try to do our part in getting them established again.

We will try to do our part to get these species off the endangered list.

If we raise birds out of these pairs we will want to ship interstate, likewise.

DIRECTOR,
FISH AND WILDLIFE SERVICE,
Washington, D.C.

OCTOBER 22, 1975.

DEAR SIR: In answer to your questions:

The Hume's Bar-tailed pheasants and the Mikado pheasants will be shipped air express from Wisconsin to Wichita, Kansas. I will be notified immediately and will pick them up.

The housing facilities include a 4' x 4' shed all enclosed except for a place for them to go into. Also, will have an outside pen made of 1-inch poultry netting 10' x 18' x 6' tall.

I have been raising birds as a hobby since 1957. I have my own incubator, sufficient brooders, and the know-how to raise these birds. I have successfully raised Blue-eared, Swinhoe, Reeves, Golden, Lady Amherst, Elliott's, White-crested Kalij, Impayans, and Ring-necked pheasants.

Thank you,

JAMES F. SMITH.

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, NW., 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 31, 1975.

Dated: November 24, 1975.

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

[FR Doc.75-32289 Filed 11-28-75;8:45 am]

NATIONAL FISH AND WILDLIFE LABORATORY, GAINESVILLE FIELD STATION, FLORIDA. HOWARD W. CAMPBELL, PH. D., CHIEF

Notice of Receipt of Application for Additional Amendments to Marine Mammal and Endangered Species Permit

A permit authorizing capture, tagging, holding, transport and release of no more than twelve WEST INDIAN MANATEES (*Trichechus manatus*) was issued to the National Fish and Wildlife Laboratory, Gainesville Field Station, Florida, on September 25, 1975, pursuant to the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973. A notice containing the application for the permit was published in the FEDERAL REGISTER on August 1, 1975 (40 FR 32366-67), soliciting public comments for a period of 30 days. A notice of the issuance of the permit was published on October 8, 1975 (40 FR 47161).

Dr. Howard W. Campbell, Chief, Gainesville Field Station, National Fish and Wildlife Laboratory, Gainesville, Florida, submitted significant amendments to the permit on August 26, 1975. These were published in the FEDERAL REGISTER on November 13, 1975 (40 FR

52871–72–73), with a comment period to December 15, 1975, and included a copy of the permit issued September 25, 1975, and Amendment No. 1, issued on October 1, 1975.

Under date of November 11, 1975, Dr. Campbell submitted an additional request for amendments to the permit. Published herewith is that request. It, too, is being considered pursuant to § 13.23, Title 50 Code of Federal Regulations (see 39 FR 1162).

November 11, 1975.

MR. C. R. BAVIN,
Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

DEAR MR. BAVIN: The purpose of this letter is to request an amendment to our permit #PRT 9-25-C, which allows to capture, transport, tag and release West Indian manatees, *Trichechus manatus*, for the purpose of developing suitable tagging techniques. Our first experience, in October of 1975, indicates that field observation of the suitability of the tagging methods may be unsatisfactory due to poor water visibility. Consequently, we wish to amend our permit appropriately so we may study the results of our efforts under more controlled conditions.

We wish to amend our permit in the following way:

Pg. 5, Holding Facilities Section, Par. 1: Omit the last sentence, "If possible ------", Add:

One or more animals will be transported to an approved shore based holding facility with underwater viewing capabilities at Marineland of Florida, Marineland, Florida. The animals will be held there for up to six months while tag attachment methods are studied. A captive manatee in the same tank at Marineland will serve as a behavioral control for comparison of responses of the wild manatees to their tags.

When released, the manatees held under this permit will be returned to their point of capture.

Pg. 5, #4, line 2: Change 21 days to six months.

Pg. 6, line 2, Add:

Manatees held at Marineland will be fed appropriate amounts as determined by food requirements of the manatee held there for the last 3+ years.

As you know, the manatee we tagged in October died for unknown reasons. The autopsy failed to document any relationship between the tagging and the animal's death, but we still feel it prudent to fully explore the reactions of manatees to tagging under more strictly controlled conditions.

This amendment should have no bearing on another amendment application dated August 26, 1975, which is still pending.

Any action you can take to expedite processing of this request and of our August 26 request will be greatly appreciated.

Sincerely,

HOWARD W. CAMPBELL,
Chief,
Gainesville Field Station, NFWL.

(From pages 5 and 6 of the original permit application of June 5, 1975, from Dr. Campbell, with the requested amendments of November 11, 1975.)

Holding Facilities:

A dredged area, approximately 25 m x 40 m is located at the extreme northern end of the Banana River, Merritt Island, Florida, on the NASA Base. Groups of manatee are seen to move in and around this area almost daily. We intend to enclose one or more animals in that area. They will be separated with flexible fencing in pens at least 8 m x 13 m x 2 m deep. During tag application, the animals will be netted and stranded with the aid of either a portable crane or a floatable squeeze box-type device. If possible, tags will be applied in such a way that they can be observed without requiring recapture.

Omit the last sentence, "If possible . . .", *Add:*

One or more animals will be transported to an approved shore based holding facility with underwater viewing capabilities at Marineland of Florida, Marineland, Florida. The animals will be held there for up to six months while tag attachment methods are studied. A captive manatee in the same tank at Marineland will serve as a behavioral control for comparison of responses of the wild manatees to their tags.

When released, the manatees, held under this permit will be returned to their point of capture.

(4) During tag testing, each manatee will be confined for not more than 21 days (see above).

Change: 21 days to six months.

During that period each animal will be provided with at least 75 lbs. of aquatic vegetation or lettuce if they will eat it. Note: Lettuce is the most common staple of captive manatee diets.

Add: Manatees held at Marineland will be fed appropriate amounts as determined by food requirements of the manatee held there for the last 3+ years.

In keeping with the spirit of the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973, this Notice is being published to allow public comment on the request for amendments. Interested persons may comment on these amendments 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 31, 1975.

Dated: November 24, 1975.

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

[FR Doc.75-32293 Filed 11-28-75;8:45 am]

TOM J. CADE

Endangered Species Permit; Notice of Receipt of Applications

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

Applicant: Dr. Tom J. Cade, Cornell University Laboratory of Ornithology, 159 Sapsucker Woods Road, Ithaca, New York 14850.

OMB NO. 43-R1670

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.
Importation from Canada of live specimens of Peregrine Falcons, domestically produced individuals only, total of six.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Dr. Tom J. Cade
Cornell University Laboratory of Ornithology
159 Sapsucker Woods Road
Ithaca, N. Y. 14850

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
XX MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 5'8" WEIGHT: 150 lbs.
DATE OF BIRTH: 10 Jan. 1928 COLOR HAIR: brown COLOR EYES: brown
PHONE NUMBER WHERE EMPLOYED: (607) 256-5056 SOCIAL SECURITY NUMBER: 449-30-6789
OCCUPATION: Professor of ornithology
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT
New York State College of Agriculture and Life Sciences
Cornell University
Ithaca, N. Y. 14853

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Cornell University
159 Sapsucker Woods Road
Ithaca, N. Y. 14850

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? XX YES ☐ NO
(If yes, list license or permit number(s))
Bird-banding no. 7252
Special Purpose no. 5-SP-565

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? XX YES ☐ NO
(If yes, list jurisdictions and type of documents)
CWS documents pending
NYS permit SC-1326

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: as soon as p.

11. DURATION NEEDED: 30 days

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 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 17.23

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: Tom J. Cade DATE: 22 Oct 75

3-200
(6/70)

T. J. Cade, Permit Application: Attachment—Specific Information Required Under 50 CFR 17.23.

1. Common and Scientific Name: Peregrine Falcon, *Falco peregrinus*.

2. Name and Address of Sender: Richard Fyfe, Canadian Wildlife Service, Room 1110, 10025 Jasper Avenue, Edmonton, Alberta T5J 1S6.

3. Justification: The purpose for *importing* these falcons is to increase the genetic diversity of our captive breeding stock at Cornell, in order to prevent the deleterious effects of inbreeding and to produce the best possible Peregrines for release to the wild.

4. Location: Behavioral Ecology Building, Cornell University, 159 Sapsucker Woods Road, Ithaca, N.Y. 14850.

5. These birds are all presently held in captivity at the Canadian Wildlife Service falcon breeding station at Fort Wainwright, Alberta. None will be removed from the wild to accommodate our request for an exchange of birds.

6. Not appropriate.

7. Description of Facility: An exploded view of a breeding chamber is depicted in the accompanying diagram. (ii) Experience: We have been keeping and breeding Peregrines and other falcons in captivity for five years and have raised 68 Peregrines, about 70 Prairie Falcons, about 25 Lanners, and five Gyrfalcons, not to mention kestrels and some other species. Our staff consists of four full time personnel, in addition to the director of the program, and from three to four graduate student assistants. (iii) We are willing and have been participating in a cooperative breeding program for some years and have been helping to develop a studbook for domestically propagated birds of prey. (iv) Transport: The falcons will be transported in suitable, enclosed, boxlike containers that we have designed and found to be best for shipping birds of prey. They will be personally accompanied by one or more of our staff, and they will be transported in a private airplane. They will *not* be shipped by common carrier. The port of entry will be Pimbina, North Dakota.

TOM J. CADE,
October 22 1975.

OMB NO. 42-R1570

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.
Exportation to Canada of live specimens of Peregrine Falcons, domestically produced individuals only, total of six.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Dr. Tom J. Cade
Cornell University Laboratory of Ornithology
159 Sapsucker Woods Road
Ithaca, N. Y. 14850 (607) 256-5056

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☒ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 5'8" WEIGHT: 150 lbs
DATE OF BIRTH: 10 Jan. 1928
COLOR HAIR: brown COLOR EYES: brown
PHONE NUMBER WHERE EMPLOYED: (607) 256-5056
SOCIAL SECURITY NUMBER: 449-30-6789
OCCUPATION: Professor of ornithology
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:
New York State College of Agriculture and Life Sciences
Cornell University
Ithaca, N. Y. 14853

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OF KIND OF BUSINESS, AGENCY, OR INSTITUTION
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Cornell University
159 Sapsucker Woods Road
Ithaca, N. Y. 14850

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL, FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit number(s))
Bird-banding no. 7252
Special Purpose no. 5-SP-565

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)
CWS documents pending
NYS permit SC-1326

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: as soon as p.

11. DURATION NEEDED: 30 days

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (see 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 CFR 17.23

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 (Sign only in ink): Tom J. Cade
DATE: 22 Oct 75

3-200
(6-74)

T. J. Cade, Permit Application: Attachment—Specific Information Required Under 50 CFR 17.23

1. Common and Scientific Name: Peregrine Falcon, *Falco peregrinus.*

2. Name and Address of Receiver: Richard Fyfe, Canadian Wildlife Service, Room 1110, 10025 Jasper Avenue, Edmonton, Alberta T5J 1S6.

3. Justification: The purpose for *exporting* these birds is to increase the genetic diversity of the breeding stock at the CWS facility at Fort Wainwright, Alberta, in order to prevent the deleterious effects of inbreeding and to produce the best possible Peregrines for release in the wild.

4. Location: These birds will be kept at the Canadian Wildlife Service falcon breeding facility at Fort Wainwright, Alberta.

5. These birds are all domestically produced individuals from parents held in captivity at the Behavioral Ecology Building, Cornell University, Ithaca, N.Y. 14850. None will be removed from the wild to accommodate our request for an exchange of birds.

6. Not appropriate.

7. Description of Facility: The CWS facility consists of a series of large, outdoor enclosures similar in size and design to those in use for birds of prey at the Patuxent Wildlife Research Center in Maryland. (ii) Experience: The Canadian program has been under way for about five years. It produced eighteen Peregrines in 1975, and it has also produced a large number of Prairie Falcons, several Merlins, and some Gyrfalcons. A thoroughly competent staff runs the program. (iii) The Canadians are perfectly willing to participate in a cooperative breeding program and have done so for some years within their own country. The main purpose of this permit application, in fact, is to establish an international cooperative breeding program. (iv) Transport: The falcons will be transported in suitable, enclosed, boxlike containers that we have designed and found to be best for shipping birds of prey. They will be personally accompanied by one or more of our Cornell staff, and they will be transported in a private airplane. They will *not* be shipped by common carrier. The port of exit from the United States will be Pimbina, North Dakota.

TOM J. CADE,
October 22, 1975.

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

Interested persons may comment on these applications 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 31, 1975.

Dated: November 24, 1975.

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

[FR Doc.75-32292 Filed 11-28-75;8:45 am]

Office of Hearings and Appeals

[Docket No. M 76-22]

ALABAMA BY-PRODUCTS CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Alabama By-Products Corporation has filed a petition to modify the application of 30 CFR 75.1704 to its Mary Lee No. 1 Mine, Walker County, Alabama.

30 CFR 75.1704 provides:

Except as provided in §§ 75.1705 and 75.-1706, at least two separate and distinct travelable passageways which are maintained to insure passage at all times of any person, including disabled persons, and which are to be designated as escapeways, at least one of which is ventilated within intake air, shall be provided from each working section continuous to the surface escape drift opening, or continuous to the escape shaft or slope facilities to the surface, as appropriate, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground area of the mine of surface fires, fumes, smoke, and floodwater. Escape facilities approved by the Secretary or his authorized representative, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in the event of an emergency.

In support of its petition, Petitioner states:

(1) Mining is accomplished by conventional equipment, that is cutting machines, loading machines, shuttle cars, rock and coal drills, etc., and continuous mining equipment. The mined coal from each operating section is transported by belt conveyors to a raw coal storage pile on the surface which is adjacent to the coal preparation plant.

(2) The designated escapeways currently in use in this mine are the intake and the return airways. In the past, mine management submitted a plan designating the intake airways and the belt neutrals as the designated escapeways. However, MESA rejected the use of belt neutrals as a designated escapeway and required that the second designated escapeway be the return airways.

(3) Petitioner contends that section 317(f)(1) of the Act and 30 CFR 75.1704 of the Departmental regulations do not prohibit use of the belt neutral airway as a designated escapeway, nevertheless since MESA has placed this interpretation upon these sections of the Act and Regulations, Petitioner and the union safety committee at the mine suggest an alternative method will achieve a greater measure of protection to miners than that provided by MESA's 30 CFR 75.1704.

(4) A large portion of this mine is comprised of coal 40 inches and less in thickness. As mining progresses daily, the distances to surface escape facilities increase. In low coal seams of 40 inches or less, miners are unable to walk. They would be required to crawl to safety. While crawling, the hazard they are trying to escape would likely overtake them.

(5) Petitioner submits that the application of the foregoing regulation and interpretation, as applied to Petitioner's mine results in a diminution of safety. Beyond this, however, in order to better achieve the purposes sought to be achieved by the Act and regulations and thus to provide a standard which provides a better measure of protection to the miners in said mine, Petitioner proposes an alternate method, as set forth hereinafter.

(6) *Alternate Method.* (a) Petitioner proposes that it be allowed to designate its belt neutral airways as the second designated escapeway. These belt neutrals are ventilated almost entirely by a separate split of air from the intake escapeway. The majority of the air (87 percent; 154,000 cfm) ventilating the belt neutral intakes through the material and belt slope while a small portion (13 percent; 22,750 cfm) intakes through the intake shafts. Exhibit A[1] shows the area where this air mixes.

(b) The belt neutrals are bushed (additional height taken) to the point where miners can walk instead of crawl to safety. Main line belt neutrals have track which further provides the possibility of transportation for quicker escape. In addition the miners will be going toward fresh (intake) air instead of having the contaminated air following them as it would in the return airways. This would eliminate the danger of smoke overtaking the miners as they crawled in low coal.

(c) Mine management and the local union safety committee are of the opinion that the use of belt neutrals as escapeways provides a greater degree of safety than does the use of return airways for yet another reason. 30 CFR 75.1704-2(e) requires that practice escapeway drills be conducted with all miners to keep them informed of the route of escape. The purpose of this requirement is to train miners to properly react in the event of an emergency. Two hundred employees (50 percent of the work force) are people who have no prior mining experience. These employees are being trained to follow what Petitioner and the union safety committee feel is a "less safe" route of escape—the return escapeway. MESA representatives have stated that even though the return is one of the designated escapeways, employees were not required to use them, but could use the belt neutral. However, Petitioner is of the opinion that miners should be trained to use the safety escape ways (the belt neutral and the intake) so that when and if a hazardous condition occurs, they will react and move to safety through the best possible escapeways. To train miners to use the return escapeway when it is not as safe an escapeway as a belt neutral is to train miners to react in a manner which does not provide the greatest degree of safety.

(d) If the alternative method of using belt neutrals as designated escapeways is accepted, mine management will substitute the belt neutrals as designated escapeways in place of the return escapeways. Petitioner will continue to comply with 30 CFR 75.1704-2(e), training miners to use intake escapeways and belt neutral escapeways.

Exhibit B[2] is a drawing of a mine section showing the present designated escapeways (intake and return) and the proposed alternative method (belt neutral escapeways).

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 31, 1975. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of Hearings and Appeals.

NOVEMBER 18, 1975.

[FR Doc.75-32190 Filed 11-28-75;8:45 am]

[Docket No. M 76-24]

LACO, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Laco, Inc. has filed a petition to modify the application of 30 CFR 77.1605(k) to its No. 1 Mine, Oliver Springs, Tennessee.

30 CFR 77.1605(k) provides:

> Berms or guards shall be provided on the outer bank of elevated roadways.

In support of its petition, Petitioner states: (1) The roadway in question is gravel surface, 18 to 20 feet wide, with numerous passing zones. The roadway has a total length of two (2) miles from petitioner's mining operation to the county road.

(2) Where steep portions of roadway are sloped, they are sloped toward the bank and away from the lower side of the roadway. Some locations have had berms constructed; however, no guardrails have been installed.

(3) Installation of guardrails and berms, except where needed, would take away portions of the usable driving surface and would thereby render the roadways more dangerous than if berms and guardrails were installed.

(4) Installation of berms on the side of the level portions of said roadway would be particularly harmful to the roadway in that it would interfere with drainage. Such construction would present more of a danger to persons using the roadway than now exist.

(5) Where steep portions do not have berms, their installation would occupy such a large portion of the existing usable roadway as to greatly diminish the road's usefulness for hauling. Widening the roadway would entail blasting the existing stable rock highwall. Guardrails would have to be installed on the fill materials and it would be very difficult to make them substantial so as to provide a reasonable degree of safety.

(6) Petitioner has installed traffic control signs along the entire length of the roadway.

(7) Petitioner has an excellent safety record in its hauling and traveling over said roadway which record results from proper maintenance, supervised traffic system, and the condition of vehicles using the roadway.

(8) Petitioner is now in the process of phasing out this operation and consequently the use of this roadway.

(9) The installation of berms and guardrails in this particular situation would involve great expense and for the reasons stated in the foregoing paragraphs would not provide additional safety for the operation.

Petitioners believes that the precautions already taken, and the maintenance and traffic systems presently being used, will afford a higher degree of protection for truck drivers and other persons using said roadway than will be afforded by the installation of berms and guardrails as required by the Departmental regulations.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 31, 1975. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

[1] Exhibit A is available for inspection at the address contained in the last paragraph of the notice.

[2] Exhibit B is available for inspection at the address contained in the last paragraph of the notice.

Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of Hearings and Appeals.

NOVEMBER 17, 1975.

[FR Doc.75-32191 Filed 11-28-75;8:45 am]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

ARKANSAS ELECTRIC COOPERATIVE CORP., LITTLE ROCK, ARK.

Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Draft Environmental Impact Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a proposed loan application from Arkansas Electric Cooperative Corporation, P.O. Box 9469, Little Rock, Arkansas 72209. This proposed loan application, together with funds from other sources, will provide AECC with the necessary financing required to participate with Southwestern Electric Power Company for a 550 MW coal-fired unit called the Flint Creek Power Plant, located in northwestern Arkansas.

Additional information may be secured by request submitted to the Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the REA Draft Environmental Impact Statement have been sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality Guidelines. The Draft Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C., Room 4310, or at the borrower's address indicated above.

Comments concerning the environmental impact of the construction proposed should be addressed to the Assistant Administrator-Electric, at the address given above. Comments must be received on or before February 2, 1976, to be considered in connection with the proposed action.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 20th day of November 1975.

RICHARD F. RICHTER,
Acting Administrator, Rural Electrification Administration.

[FR Doc.75-32300 Filed 11-28-75;8:45 am]

BROOKVILLE TELEPHONE CO., BROOKVILLE, PA.

Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 320-22, "Guarantee of Loans for Telephone Facilities," dated February 4, 1975, published in proposed form in the FEDERAL REGISTER, September 16, 1974 (Vol. 39, No. 180, pages 33228-33229) notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $10,500,000 to the Brookville Telephone Company, Brookville, Pennsylvania. The loan funds will be used to finance the construction of facilities to extend telephone service to new subscribers, and improve telephone service for existing subscribers.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information and details of the proposed project from Mr. Harold G. Payne, President, Brookville Telephone Company, c/o T.U.P., Inc., P.O. Box E Export, Pennsylvania 15632.

To assure consideration, proposals must be submitted on or before December 31, 1975, to Mr. Harold G. Payne. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Brookville Telephone Company and REA deem appropriate. Prospective lenders are advised that it is anticipated that financing for this project will be available from the Federal Financing Bank under a standing loan commitment agreement with the Rural Electrification Administration.

Copies of REA Bulletin 320-22 are available from the Director, Information Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C., this 21 day of November 1975.

DAVID H. ASKEGAARD,
Acting Administrator, Rural Electrification Administration.

[FR Doc.75-32298 Filed 11-28-75;8:45 am]

Soil Conservation Service

UPPER NEW RIVER WATERSHED PROJECT, SOUTH CAROLINA

Availability of Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; Part 1500 of the Council on Environmental Quality Guidelines (38 FR 20550, August 1, 1973); and Part 650 of the Soil Conservation Service Guidelines (39 FR 19650, June 3, 1974); the Soil Conservation Service, U.S. Department of Agriculture, has prepared a final environmental impact statement (EIS) for the Upper New River Watershed Project, Beaufort and Jasper Counties, South Carolina, USDA-SCS-EIS-WS-(ADM)-75-1-(F)-SC.

The EIS concerns a plan for watershed protection, flood prevention, and drainage. The planned works of improvement provide for conservation land treatment and 28 miles of multiple-purpose flood prevention and drainage channels. The channel work will involve 7 miles previously modified by man and 21 miles where there is no or practically no existing channel. Of the 28 miles of channel work, 19 miles have ephemeral flow and 9 mlies are intermittent.

The final EIS has been filed with the Council on Environmental Quality.

A limited supply is available at the following location to fill single copy requests: Soil Conservation Service, USDA, One Greystone West, Suite 200, 240 Stoneridge Drive, Columbia, SC 29210.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services.)

Dated: November 18, 1975.

JOSEPH W. HAAS,
Deputy Administrator for Water Resources Soil Conservation Service.

[FR Doc.75-32188 Filed 11-28-75;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

HOWARD UNIVERSITY HOSPITAL, ET AL.

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before December 22, 1975.

Amended regulations issued under cited Act, (40 FR 12253 et seq, 15 CFR 701, 1975) prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00177-39-43780. Applicant: Howard University Hospital, 2041 Georgia Avenue, N.W., Washington, D.C. 20001. Article: OCCC Electric Elbow, Model 056. Manufacturer: Variety Village Electro-Limb Production Center, Canada. Intended use of article: The article is intended to be used in a hybrid prosthesis which will also utilize an electric hook in an effort to provide improved function for children with upper extremity amelia (without arms) or severe phocomelia (seal like arms). After fitting with the devices, an assessment will be made to determine proficiency in terms of manual dexterity and activities of daily living. This combination will be tested with respect to feasibility of combining the two battery powered systems in one prosthesis. Application received by Commissioner of Customs: October 22, 1975.

Docket Number: 76-00200-00-77040. Applicant: Cornell University, Department of Chemistry, Baker Laboratory, Ithaca, New York 14853. Article: Electrostatic Analyzer, Faraday Cup Collector, Oxygen leak system and Immersion Lens, for Ion Microanalyzer. Manufacturer: Cameca, France. Intended use of article: The articles are accessories to an existing IMS-300 Ion Microanalyzer System being used in research to study the application of secondary ion mass spectrometry to surface analysis of samples from solid state systems for the characterizations of new materials. Problems to be investigated involve the study of surface transport properties, interphase and grain boundaries; surface structure, thin films, and chemical reactions at surfaces. A parallel program of research on the technique will involve the study of direct images of surfaces and novel methods of computerized data processing and interpretation of these images. Application received by Commissioner of Customs: November 10, 1975.

Docket Number: 76-00201-33-43400. Applicant: University of California, Purchasing Department, 1156 High Street, Santa Cruz, CA. 95064. Article: Micromanipulator, Model SM-20 and accessory, Model SM-19 electrode carrier. Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Intended use of article: The article is intended to be used for studies of the neural mechanisms of choice (and learning) in *Pleurobranchaea Californica*. The aim of the study is an understanding of a simple form of choice behavior, a behavior common to almost every animal, in terms of single neurons and their interconnections. Application received by Commissioner of Customs: November 10, 1975.

Docket Number: 76-00202-33-90000. Applicant: The Medical Center, P.O. Box 951, Columbus, Georgia 31902. Article: EMI Brain Scanner System with Magnetic Tape System and Diagnostic Display Console. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used to scan the brains of patients who are clinically suspected of central nervous system disease. Patients will be studied in order to confirm or exclude the presence of brain tumor, aneurysm, brain hemorrhage, or congenital malformations. The brain abnormalities demonstrated on computerized axial tomography will be compared with findings of other methods, such as isotope scan, cerebral angiography, and pneumoencephalography. The article is also intended to be used in short courses for neuroradiologists and general radiologists in the area of diagnosis of brain disease by computerized axial tomography. Application received by Commissioner of Customs: November 10, 1975.

Docket Number: 76-00203-33-46040. Applicant: University of Nebraska-Lincoln, School of Life Sciences, Lincoln, Nebraska 68588. Article: Electron Microscope, Model 201C. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for multiple research purposes which will include the following:

1. High resolution autoradiography of melanogenesis in cultured chick embryo cells.

2. Relationship of microfilaments and/or microtubules to pigment dispersal and transfer in mutant melanocytes.

3. The effects of hormonal and tumorigenic regimens upon mouse mammary glands in vitro.

4. Cell surface alterations in normal irradiated, and irradiated-transplanted mouse spleens.

5. Macrophage responses to different species and strains of leishmania and leishmania-like organisms.

6. The effects of plant hormones upon ribosomal configurations.

7. Studies of membrane transport.

8. Fine structural studies of viruses.

In addition, the article is to be used for educational purposes in the following courses:

(1) Life Sciences 915, Transmission Electron Microscopy, in which students are taught the elements of transmission electron microscopy.

(2) Life Sciences 999, Doctoral Disertation and Life Sciences 899, Master Thesis for graduate students.

(3) Zoology 399H Honors Course for outstanding undergraduates participating in research. Application received by Commissioner of Customs: November 10, 1975.

Docket Number: 76-00204-01-19000. Applicant: University of Missouri—Rolla, General Services Building, Purchasing Department, Rolla, Missouri 65401. Article: Vibrating Densimeter for Fluids, Model 01D. Manufacturer: Sodev, Inc., Canada. Intended use of article: The article is intended to be used for studies of pure liquids and multicomponent liquid solutions. Measurements will be made of the densities of these liquids and solutions with parts-per-million sensitivity. These measurements will be used to determine apparent partial molar volumes of solutes as a function of solvent composition and temperature. Application received by Commissioner of Customs: November 10, 1975.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.32270 Filed 11-28-75;8:45 am]

NATIONAL INSTITUTES OF HEALTH, BETHESDA, MD.

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (40 FR 12253 et seq., 15 CFR 701, 1975).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00123-33-90000. Applicant: National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014. Article: X-ray Diffractometer, GX-6 (Rotating Anode), and accessories. Manufacturer: Elliot, United Kingdom. Intended use of article: The article is intended to be used for studies of structure and function of biological membranes and proteins.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a focused spot of minimal size (0.2 x 2.0 mm) and a rotating target for maximum x-ray beam intensity. The National Bureau of Standards (NBS) advises in its memorandum dated November 12, 1975 that the capabilities described above are pertinent to the purposes for which the article is intended to be used. NBS also advised that it knows of no domestic instrument of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.75-32266 Filed 11-28-75;8:45 am]

TEXAS SOUTHERN UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of

the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (40 FR 12253 et seq, 15 CFR 701, 1975).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00036-33-46500. Applicant: Texas Southern University, 3201 Wheeler Avenue, Houston, Texas 77004. Article: Ultramicrotome LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to prepare specimens of biological materials, mainly mammalian tissues derived from experimental animals, that exhibit both normal and abnormal (pathologic) structure. Investigations will be conducted to identify and localize antigenic molecules in normal and adnormal cells at various stages of developmental processes.

Comments: No comments have been received with respect to this application. Decision: Application aproved. No instruments or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: Examination of the applicant's thin sections under the electron microcsope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen geing sectioned (e.g., hardness, consistency, toughness etc.), the properties of the embedding media and the geometry of the block. In connection with prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting, (among such [other] factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speesd and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm/sec). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm/sec. We are advised by the National Bureau of Standards in its mmeorandum of November 5, 1975 that cutting speeds in the excess of 4 mm/sec. are pertinent to the applicant's research studies.

We therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.75-32268 Filed 11-28-75;8:45 am]

UNIVERSITY OF ALASKA

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (40 FR 12253 et seq., 15 CFR 701, 1975).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 75-00557-50-70000. Applicant: University of Alaska, Geophysical Institute, Fairbanks, Alaska 99701. Article: Radiometers (4 each). Manufacturer: Middleton & Co., Australia. Intended use of article: The article is intended to be used to measure fluxes of incoming radiation from the sun and sky at the surface of the pack ice in the Beaufort Sea as well as outgoing fluxes from the same surface to determine a radiation climatology for the Beaufort Sea.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or aparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides the specification of convertibility to a hemispheric device. The National Bureau of Standards (NBS) advises in its memorandum dated November 12, 1975 that the specification cited above is pertinent to the applicant's intended purposes. NBS also advise that it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.75-32269 Filed 11-28-75;8:45 am]

HARVARD UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (40 FR 12253 et seq., 15 CFR Part 701, 1975).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00031-33-46040. Applicant: Harvard University, Purchasing Department, 75 Mt. Auburn Street, Cambridge, Mass. 02138. Article: Electron Microscope, Model EM 10A. Manufacturer: Car Zeiss, West Germany. Intended use of article: The article is intended to be used in research to detect and interpret changes in cellular ultrastructure induced by mutations through study of the soil round worm, *Caenorhabditis elegans*. Other research will include the following: (1) Studies of the structure of chromosomes; (2) Studies of DNA replications apparatus in E. *coli*, SV40 and mammalian cells; (3) Analysis of restriction endonuclease cleaved DNAs; and (4) Studies of hormonally induced fine structural changes in the silk gland of the silk moth *Bombyx mori*. The article will also be used in training graduate students in electron microscopy techniques. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (June 2, 1975). Reasons: The foreign article provides distortion free micrographs over a magnification range 100 to 200,000x without a pole-piece change and a guaranteed resolution of 3.5 Angstroms point to point (Å pt.) The most closely comparable domestic instrument available at the time the foreign article was ordered was the Model EMU-4C electron microscope currently supplied by the Adam David Company (Adam David).

The Model EMU–4C with its standard pole-piece, had a specified range from 1,400 to 240,000 magnifications. For survey and scanning, the lower end of this range could be reduced to 200 magnifications or less. But the continued reduction of magnification induced an increasingly greater distortion. The domestic manufacturer suggests in its literature on the Model EMU–4C that for highest quality, low magnification electron micrographs, an optional low magnification pole-piece providing 500–70,000x should be used. It is noted that changing the pole-piece on the Model EMU–4C requires a break in the vacuum of the column that induces the danger of contamination which would very likely lead to the failure of the experiment. The EMU–4C provided a guaranteed resolution of 5Å pt. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated November 5, 1975 that distortion free micrographs at low magnifications (100x) immediately followed by high magnification examinations at 200,000X without a pole-piece change and the additional resolution of the article are pertinent to the applicant's intended purposes. HEW also advises that the magnification range without pole-piece change and the guaranteed resolution of the domestic Model EMU–4C was not scientifically equivalent to that of the foreign article for the applicant's intended use at the time the article was ordered. We, therefore, find that the Model EMU–4C was not of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used at the time the article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.75-32307 Filed 11-28-75;8:45 am]

NEW YORK STATE DEPARTMENT OF HEALTH ET AL.

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Imporation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (40 FR 12253 et seq., 15 CFR Part 701, 1975). (See especially § 301.11 (e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00032-33-46040. Applicant: New York State Dept. of Health, New Scotland Avenue, Division of Laboratories and Research, Albany, New York 12201. Article: Electron Microscope, Elmiskop 102. Manufacturer: Siemens AG, West Germany. Intended use of article: The article is intended to be used for the following research: (1) Investigation of the detailed ultrastructure of clinical as well as the identification or ultrastructural characteristics of virus-like agents obtained from intestinal tract and other organs of cases of Reyes syndrome; (2) Examination of the matrix, protein organization and the membrane of mitochondria of liver and central nervous system; (3) Examination of the disruption of nucleic acids within the nucleus and nucleolar of pancreatic acinar cells; (4) Examination of a variety of cell types infected with virus-like material obtained from clinical cases to determine the effects on relationship of nascent RNA molecules to the DNA; (5) Association of protein with elongating nascent RNA moecules in the synthesis of early viral proteins; (6) Determination of the relationship of structural features of "aflatoxin-induced Reye's syndrome" to Reye's syndrome as it occurs in the United States; and (7) Relationship of disease induced in primate animal model systems to the clinical syndrome. Application received by Commissioner of Customs: July 16, 1975. Advice submitted by the Department of Health, Education, and Welfare on: November 5, 1975. Article ordered: November 14, 1975.

Docket Number: 76-00034-33-46040. Applicant: New York State Dept. of Health, New Scotland Avenue, Division of Laboratories and Research, Albany, New York 12201. Article: Electron Microscope, Model EM 301. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use of article: The article is intended to be used for the investigation of phenomena related to the production of metastatic disease in animal model systems. Structural features of both natural host and tumor cells will be examined for basic clues to the transport of malignant cells from the site of origin to the malignancy. Experiments will be conducted in congenic responder and nonresponder mouse strains. In vitro experiments with human pathologic tissue will also be undertaken to determine the responsiveness to plant lections. Effects of immunosuppression and immune enhancement on the relationship of high and low affinity antibodies to tumor cells will also be studied in mouse systems. Application received by Commissioner of Customs: July 16, 1975. Advice submitted by the Department of Health, Education, and Welfare on: November 5, 1975. Article ordered: September 5, 1975.

Comments: No comments have been received in regard to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, was being manufactured in the United States at the time the articles were ordered. Reasons: Each foreign article has a specified resolving capability of 3.0 Angstroms. The most closely comparable domestic instrument available at the time the articles were ordered was the Model EMU–4C electron microscope which is currently supplied by Adam David Company. The Model EMU–4C had a specified resolving capability of five Angstroms. (Resolving capability bears an inverse relationship to its numerical rating in Angstrom units, i.e., the lower the rating, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare in the respectively cited memoranda, that the additional resolving cabability of the foreign articles is pertinent to the purposes for which each of the foreign articles to which the foregoing applications relate is intended to be used. We, therefore, find that the Model EMU–4C was not of equivalent scientific value to any of the articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, at the time the articles were ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States at the time the articles were ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.75-32316 Filed 11-28-75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

PUBLIC ADVISORY COMMITTEE

Request for Nomination of Members

The Commissioner of Food and Drugs requests nominations for membership on the Science Advisory Board of the National Center for Toxicological Research at Jefferson, Arkansas. Six vacancies will occur on the Board as of June 30, 1976.

The function of the Science Advisory Board is to advise the Director, National Center for Toxicological Research (NCTR) in establishing and implementing a research program that will assist the Commissioner and the Administrator of the Environmental Protection Agency in fulfilling their regulatory responsibilities. The Board provides the extra-agency review to assure that research programs and methodology de-

velopment at NCTR are scentifically sound and pertinent to environmental problems.

Terms of office are 3 years. Members shall have diversified experience in biomedical research and be recognized experts in at least one discipline directly related to carcinogenesis, mutagensis, or teratogenesis. Current needs are in pathology, food technology, immunology, biochemistry, pharmacology, teratology, and endocrinology.

Any interested person may nominate one or more qualified persons for membership. A complete curriculum vitae of the nominee shall be included. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the Board, and appears to have no conflict of interest that would preclude committee membership.

Nominations should be submitted to the Executive Secretary, Science Advisory Board, National Center for Toxicological Research, Jefferson, AR 72079, no later than January 15, 1976.

Dated: November 24, 1975.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.75-32246 Filed 11-28-8:45 am]

SCIENCE ADVISORY BOARD TO THE NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH

Request for Nominations for Nonvoting Consumer Representative

The Commissioner of Food and Drugs is requesting nominations for a nonvoting consumer representative on the Science Advisory Board to the National Center for Toxicological Research (NCTR). Nominations must be received no later than December 31, 1975.

The function of the NCTR is to provide a national and international resource for developing toxicological methodologies for safety evaluation of chemical substances found in man's environment.

The Science Advisory Board advises the Director of the NCTR in establishing and implementing a research program that will assist the Commissioner of Food and Drugs and the Administrator of the Environmental Protection Agency in fulfilling their regulatory responsibilities. The Board provides the extra-agency review to assure that research programs and methodology development at the NCTR are scientifically sound and pertinent to environmental problems.

Any interested person or consumer organization may nominate one or more qualified persons to serve as a nonvoting consumer representative on the Science Advisory Board.

Nominations must state that the nominee is aware of the nomination, is willing to serve as a nonvoting consumer representative, and appears to have no conflict of interest that would preclude committee membership. A complete curriculum vitae is also required.

All nominations for consumer representatives must be submitted in writing to the Director, Office of Consumer Programs (HFG-1), Office of Professional and Consumer Programs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

After the time for receipt of nominations has expired, the curriculum vitae for each of the nominees, together with a ballot that must be filled out and returned to the address listed above within 30 days, will be sent to organizations listed as having been deemed eligible to vote for consumer representatives by the Office of Consumer Programs. The selection of the consumer representative will be determined from the ballots submitted.

Dated: November 24, 1975.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.75-32247 Filed 11-28-75;8:45 am]

Health Services Administration

ASSISTANT SECRETARY FOR HEALTH; COMPREHENSIVE DIAGNOSTIC AND TREATMENT CENTERS

Delegation of Authority

Notice is hereby given that the following delegation and redelegation, with authority for further redelegation, have been made under section 1131 of the Public Health Service Act, as added by section 606 of Pub. L. 94-63 providing for projects for the establishment of comprehensive hemophilia diagnostic and treatment centers:

1. Delegation from the Secretary to the Assistant Secretary for Health to perform all of the authorities vested in the Secretary for Health, Education, and Welfare, by section 1131 of the Public Health Service Act, as added by section 606 of Pub. L. 94-63, with the exception of authority to issue regulations.

2. Redelegation from the Assistant Secretary for Health to the Administrator, Health Services Administration to perform all of the authorities delegated to the Assistant Secretary for Health regarding section 1131 of the Public Health Service Act, as added by section 606 of Pub. L. 94-63.

The above delegation and redelegation were effective on November 10, 1975.

Dated: November 18, 1975.

JOHN OTTINA,
Assistant Secretary for Administration and Management.

[FR Doc.75-32248 Filed 11-28-75;8:45 am]

Office of Education

FEDERAL PROGRAMS EVALUATION COMMITTEE OF THE NATIONAL ADVISORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

Public Meeting

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, that a meeting of the Federal Programs Evaluation Committee of the National Advisory Council on Extension and Continuing Education will be held on December 16, 1975, in the Council Office, 425 13th St., NW., Suite 529, Washington, D.C. The meeting will begin at 9:00 a.m. and adjourn at 4:30 p.m.

The National Advisory Council on Extension and Continuing Education is authorized under Pub. L. 89-329. The Council is directed to advise the Commissioner of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Title I, and to report annually to the President on the administration and effectiveness of all federally supported extension and continuing education programs, including community service programs.

The meeting of the Federal Programs Evaluation Committee will be open to the public, but because of the limited space available in the Council office, anyone wishing to attend the meeting should inform the Council's staff office (376-8888) no later than December 11, 1975. The purpose of the meeting will be to review all Office of Education programs having extension and community service components. All records of Council proceedings are available for public inspection at the Council's staff office, located in Suite 529, 425 13th St., NW., Washington, D.C.

RICHARD F. MCCARTHY,
Associate Director.

NOVEMBER 24, 1975.

[FR Doc.75-32395 Filed 11-28-75;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[FDAA-487-DR; NFD-312]

NEW YORK

Amendment to Notice of Major Disaster

Notice of Major Disaster for the State of New York, dated October 2, 1975, and amended October 14, 1975, and October 20, 1975, and October 30, 1975, is hereby further amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 2, 1975:

The County of: Cortland.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

Dated: November 20, 1975.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.75-32309 Filed 11-28-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. EX76-1; Notice 1]

JET INDUSTRIES LTD.

Petition for Temporary Exemption From Motor Vehicle Safety Standards

Jet Industries Ltd. of New York City, New York, has applied for a 2-year exemption from certain safety standards on the basis that exemption would facilitate the development and field evaluation of a low-emission motor vehicle.

Jet intends to import the Subaru 360 van, manufactured by Fuji Heavy Industries of Japan. The vehicle is not marketed in the United States and therefore is not certified as conforming to the Federal motor vehicle safety standards. Upon arrival in the United States these vehicles will have their gasoline-powered engines removed and electric motors substituted. It will be marketed as a truck under the name "Electro Van." The officers of the company have been engaged in experiments with and development of electric vehicles since the early 1960's. It asks for a 2-year exemption and will not import more than 2,500 vehicles during any 12-month period that the exemption is in effect. The following is a list of Federal standards or portions thereof for which exemption is requested:

No. 101 Control location, identification and illumination. § 4.3—control identification for headlamps, hazard warning, and windshield wiper switcher will not be illuminated.

No. 103 Windshield defrosting and defogging systems. Vehicle is furnished with systems but petitioner is unsure if performance requirements are met.

No. 104 Windshield wiping and washing systems. Wiping system has one speed only, with a frequency of 50 cycles per minute.

No. 108 Lamps, reflective devices, and associated equipment. Petitioner believes that stop, turn signal, and side marker lamps are not of a size required by the standard.

No. 119 New pneumatic tires for vehicles other than passenger cars. Vehicle is equipped with 5.00 x 10 tires, a size which, to petitioner's knowledge, is unavailable domestically.

No. 205 Glazing materials. Side and rear windows are marked AS1; "windshield of shatter-proof glass, but may not meet necessary standards."

No. 206 Door locks and door retention components. "Only limited tests as prescribed have been made at this time."

No. 207 Seating systems. "Only limited tests as prescribed have been made at this time."

The company argues that the exemptions will not unreasonably degrade the safety of the vehicle because of its low operating speeds and intended urban use. It also argues that an exemption would facilitate the development and study of electric vehicles "under different conditions of terrain and climate."

This notice of receipt of a petition for a temporary exemption is published in accordance with the NHTSA regulations on this subject (49 CFR 555.7), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Interested persons are invited to submit comments on the petition for exemption of Jet Industries. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed and will be considered to the extent practicable. Notice of final action on the petition will be published in the FEDERAL REGISTER.

Comment closing date: December 31, 1975.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.51, 49 CFR 501.8)

Issued on November 25, 1975.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.75-32308 Filed 11-28-75;8:45 am]

NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE

Joint Meeting of the Vehicle and Highway Environment Subcommittees

On Friday, November 21, 1975 in Federal Register Vol. 40, No. 226, page 54285 notice of an open meeting of the Vehicle and Highway Environment Subcommittees of the National Highway Safety Advisory Committee was published. The agenda items for this meeting are as follows:

On Monday, December 8 at 8:30 a.m. in room 2232 the following items are scheduled:

NHTSA Update of Information on Heavy Truck Accidents.

Final Report: Fatal Tractor Trailer Crashes.

Fatality Rates for Trucking and Other Surface Freight Transportation Modes.

DOT's Proposed Deregulation of Trucking Industry.

Personal Observations on Compliance with Highway Construction Standards.

Roadside Hazards on the Federal-Aid Highway System.

Status of FHWA's Highway Safety Emphasis Program: Accident Data Collection, Analysis & Application, Division Safety Coordinators.

On December 9, Tuesday, at 8:30 a.m. in room 4234 the following items are scheduled:

Railroad Grade Crossing Program Status.

Highway Trust Fund and Proposed Changes.

Cost Impact of Heavier Trucks on Maintenance and Completion of Interstate Highway System.

Status of FMVSS 121 (Air Brake Standard)—Its Effect Upon Safety of Heavier Truck Safety.

Impact of Heavier Trucks on Deteriorating Highway Bridge Situation.

Uniform National Standards for Truck Size, Weight and Length.

New Business/Old Business.

The above meetings will take place in the DOT Headquarters Building, 400 Seventh Street SW., Washington, D.C. This meeting is subject to the approval of the Secretary of Transportation.

The National Highway Safety Advisory Committee is composed of 35 members appointed by the President in accordance with the Highway Safety Act of 1966 (23 U.S.C. 401 et seq.). The Committee consists of representatives of State and local governments, State legislatures, public and private interests contributing to, affected by, or concerned with highway safety, other public and private agencies, organizations, and groups demonstrating an active interest in highway safety, and research scientists and other experts in highway safety.

The Advisory Committee advises, consults with, and makes recommendations to the Secretary of Transportation on matters relating to the activities of the Department in the field of highway safety. The Committee is specifically authorized (1) to review research projects or programs, and (2) to review, prior to issuance, standards proposed to be issued by the Secretary under the national highway safety program.

For further information contact the NHTSA Executive Secretary, Room 5215, 400 Seventh Street, SW., Washington, D.C. 20590, 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: November 26, 1975.

CRAIG L. MILLER,
Acting Executive Secretary.

[FR Doc.75-32345 Filed 11-26-75;10:17 am]

CIVIL AERONAUTICS BOARD

ADVISORY COMMITTEE ON PROCEDURAL REFORMS

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a two-day meeting of the Civil Aeronautics Board Advisory Committee on Procedural Reforms will be held commencing at 9:30 a.m. on Saturday, December 13, 1975, in Room 1027 of the Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C. The meeting will reconvene at the same time and place on Sunday, December 14.

The Advisory Committee was established to study the procedural aspects of Civil Aeronautics Board regulation, and to recommend changes designed to reduce cost and delay.

The members of the Advisory Committee are:

Elroy H. Wolff, *Chairman*	Reuben B. Robertson, III
Richard J. Barber	J. Kerwin Rooney
Emory N. Ellis, Jr.	Kelly Rueck
Marvin H. Kosters	Walter D. Scott
Monte Lazarus	Jerrold Scoutt, Jr.
Richard S. Maurer	Robert B. Shapiro
Adrian M. McDonough	James Lawrence Smith
Gerard R. Moran	John M. Steadman
Paul S. Quinn	Frank M. Wozencraft
Bert W. Rein	

The Committee will undertake a detailed review of a draft of its final report.

The meeting will be open to the public. Any member of the public may file written statements concerning the matters to be discussed. Oral presentations should be requested in advance.

Persons wishing further information, or wishing to make written or oral presentations should contact Edmund W. Kitch, Executive Director, Civil Aeronautics Board Advisory Committee on Procedural Reforms, Civil Aeronautics Board, Washington, D.C. 20428, telephone 202-382-3216 or 382-7263 (ask for Mr. Campbell).

Minutes of the meeting will be available for public inspection by December 22, 1975, in Room 425 of the Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C.

[SEAL] EDWIN Z. HOLLAND,
Secretary,
Civil Aeronautics Board.

[FR Doc.75-32302 Filed 11-28-75;8:45 am]

[Docket Nos. 28464, 22859; Order 75-11-86]

FLYING TIGER LINE INC.

Order of Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of November 1975.

Specific commodity rate on cloth from New York/Newark to Los Angeles proposed by the Flying Tiger Line Inc., Docket 28464, Domestic air freight rate investigation, Docket 22859.

By tariff revision[1] issued October 24 and scheduled to become effective November 23, 1975, the Flying Tiger Line Inc. (Tiger) proposes to introduce a bulk specific commodity rate on cloth from New York/Newark to Los Angeles. The proposed rate, which is subject to a minimum weight of 4,600 pounds, represents a 41 percent discount from the applicable 3,000-pound general commodity rate. The proposal bears an expiry date of December 31, 1976.

Tiger asserts that the proposed rate is designed to replace LD-7 general commodity container rates made unavailable by the carrier's cancellation of widebodied freighter service in the New York-Los Angeles market; that the proposed rate is equal to the rate for LD-7 containers on a per-hundredweight basis; and that it would recover 100 percent of noncapacity costs plus 62 percent of fully allocated capacity costs.

A complaint requesting suspension and investigation of the proposed rate has been submitted by American Airlines, Inc. (American). The complaint contends that, *inter alia*, contrary to its assertion, Tiger has never offered widebodied freighter service in this market; that LD-7 containers may be carried on the main deck of conventional freighter aircraft; that the LD-7 rate, which the new rate is purportedly replacing, was restricted to daytime tender only; that Tiger gives no estimates of revenue dilution or diversion; and that Tiger does not even claim that the proposal will generate new traffic. American further asserts that it is currently carrying 3.7 million pounds of cloth annually from Boston and New York to Los Angeles in Type A containers at general commodity rates; that its principal Boston shipper, originating 1.7 million pounds of traffic annually, has informed American that it will be forced to truck to New York to take advantage of Tiger's rate; and that, even if it retains all its current Boston traffic through New York, American will suffer $400,000 annual revenue dilution if forced to meet Tiger's rate.

The proposed rate comes within the scope of the "Domestic Air Freight Rate Investigation" (DAFRI), Docket 22859, and its lawfulness will be determined in that proceeding. The issue now before the Board is whether to suspend it, or to permit it to become effective pending final decision in DAFRI.

We note the complaint of Tiger requesting suspension of a proposal by Trans World Airlines, Inc. (TWA) to establish a specific commodity LD-7 container rate for cloth, N.E.S. to become effective December 7, 1975 in the New York-Los Angeles market. Tiger asserts it must match TWA's proposal resulting in a destructive downward spiral of freight rates, at a time when freighter losses should compel an upward adjustment of rates.

Upon consideration of all relevant factors, the Board concludes that Tiger's proposal should be suspended so that it may be considered with that of TWA since both appear interrelated and aimed at the same transcontinental market for movement of cloth. The Board will reach a determination on the suspension request on both matters prior to December 7, 1975.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That: 1. Pending hearing and decision by the Board, the rate stated to apply on SCR NO. 2200000 (Cloth, N.E.S.) from New York/Newark to Los Angeles, subject to a minimum weight of 4600 pounds, on 33rd and 34th Revised Pages 628-a of Tariff C.A.B. No. 169, issued by Airline Tariff Publishing Company, Agent, is suspended and its use deferred to and including February 20, 1976, unless otherwise ordered by the Board, and that no change be made therein during the period of suspension except by order or special permission of the Board; and

2. Copies of this order shall be filed with the tariff.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-32304 Filed 11-28-75;8:45 am]

[1] Revision to Airline Tariff Publishing Company, Agent, Tariff C.A.B. No. 169.

[Docket No. 26494; Order 75-11-97]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Passenger-Fare Matters

Adopted by the Civil Aeronautics Board at its office in Washintgon, D.C., on the 25th day of November 1975.

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreements were adopted at the composite passenger conference held in Nice during October 1975.

Agreement C.A.B. 25524 would amend North Atlantic, North/Central Pacific and South Pacific proportional fares used for construction of through international fares to U.S. interior points, and reflects a recent three percent increase in U.S. domestic fares. Agreement C.A.B. 25501 would permit North and Mid-Atlantic transportation to/from certain African points over the higher, intermediate point of Capetown at the fares established for direct routings between the actual origin and destination points. Agreement C.A.B. 25503 would establish a five percent currency-related discount on fares for Mid-Atlantic transportation originating in Norway, in accordance with the existing provisions of an IATA resolution previously approved by the Board. Finally, Agreement C.A.B. 25512 would amend existing currency-related discounts on fares between foreign points, which have no direct application in air transportation as defined by the Act.

Pursuant to the Federal Aviation Act of 1958 and particularly sections 102, 204(a) and 412 thereof, it is not found that the following resolutions, incorporated in the agreements indicated, are adverse to the public interest or in violation of the Act; *Provided*, That approval is subject, where applicable, to conditions previously imposed by the Board:

Agreement CAB	IATA No.	Title	Application
25501:			
R-1	003o	Expedited JT12 (Mid-Atlantic) Normal and Special Fares Resolutions	1/2.
R-2	003v	Expedited JT12 (North Atlantic) Normal and Special Fares Resolutions	1/2.
25503	022y	Expedited JT12 (Mid-Atlantic) Special Rules for Sales of Passenger Air Transportation From TC2 to TC1 (Amending).	1/2.
25512	022v	Expedited JT23/123 Special Rules for Sales of Passenger Air Transportation from TC2 to TC3 (Amending).	2/3; 1/2/3.
25524:			
R-1	015	North Atlantic Proportional Fares North American (Amending)	1/2.
R-2	015a	South Pacific Proportional Fares—North American (Amending)	3/1.
R-3	015b	North and Central Pacific Proportional Fares—North American (Amending).	3/1.

Accordingly, it is ordered, That: 1. Agreements C.A.B. 25501, R–1 and R–2, C.A.B. 25503, C.A.B. 25512, and C.A.B. 25524, R–1 through R–3, be and hereby are approved subject, where applicable, to conditions previously imposed by the Board; and

2. Tariffs implementing Agreement C.A.B. 25524, R–1 through R–3, may be filed on not less than one day's notice for effectiveness not earlier than December 10, 1975. The authority in this paragraph expires January 9, 1976.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-32305 Filed 11-28-75;8:45 am]

[Docket Nos. 24339; Order 75-11-92]

VARIOUS AIR CARRIERS

Order Granting Partial Stay Regarding Acceptance and Transport of Hazardous Materials

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 24th day of November 1975.

In the matter of acceptance and transport of Hazardous Materials by various air carriers, Dockets 24339, 27090, 27148, 27380, 27382, 27428, 27488, 27494, 27495, 27509, 27518, 27519, 27520, 27521, 27527, 27537, 27545, 27546, 27549, 27554, 27560, 27588, 27655, 27806, 27956, 28180.

By Order 75–11–31, adopted November 11, 1975, the Board acted on a number of matters relating to the refusal of various air carriers to accept and transport hazardous materials. Among other things, Order 75–11–31 in effect dissolves a stay of the effectiveness of Order 75–4–75 (April 15, 1975) by which, *inter alia*, the Board rejected various tariff provisions refusing acceptance of hazardous materials. At that time the U.S. Court of Appeals for the Second Circuit had issued a broad interlocutory stay in review proceedings involving a related matter,[1] and accordingly the effectiveness of Order 75–4–75 was stayed by its own terms pending the Second Circuit's decision. On May 27, 1975 the Second Circuit affirmed the Board order under review in that case (516 F.2d 1269), and the court's mandate issued in mid-July, 1975.[2]

In the meantime, Order 75–4–75 was challenged by four carriers in review proceedings in the U.S. Court of Appeals for the District of Columbia Circuit. "Delta Air Lines, et al. v. C.A.B.", Nos. 74–1984, et al.[3] That case has been fully briefed and is awaiting assignment for oral argument.

Delta and Eastern have filed a motion for a partial stay of Order 75–11–31 until 15 days after entry of the D.C. Circuit's mandate in the Delta case, supra.[4] In view of time constraints, the Board will proceed to consideration of the carrier's motion.[5]

We have decided to grant a stay of Order 75–11–31 insofar as it requires cancellation and revision of tariffs relating to the acceptance and transportation of hazardous materials. In light of (1) the lapse of time since the Board was free to put Order 75–4–75 into effect, i.e., since issuance of the Second Circuit's mandate in July, and (2) the advanced procedural posture of the proceedings for review of that order in the D.C. Circuit, we are persuaded that the better course is not to disturb the status quo now.

Accordingly, it is ordered, That Ordering Paragraph 5 of Order 75–11–31 be, and it hereby is, stayed until 15 days after issuance by the United States Court of Appeals for the District of Columbia Circuit of its mandate in "Delta Air Lines, et al. v. Civil Aeronautics Board," Nos. 74–1984, et al.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-32303 Filed 11-28-75;8:45 am]

[1] Air Line Pilots Ass'n v. C.A.B., No. 75–4049.

[2] As of then, therefore, the Board was free to put Order 75–4–75 into effect.

[3] The four carriers are Delta, Eastern, Frontier, and Alegheny. The petitions challenge, in addition to Order 75–4–75, a number of earlier Board orders.

[4] The Board's Office of General Counsel has been advised that American Airlines also intends to file for a stay of Order 75–11–31 on this date.

[5] Under Order 75–11–31, the carriers must file tariff revisions by November 26, 1975.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

ESTABLISHMENT OF NEW LEVELS OF RESTRAINT FOR CERTAIN COTTON AND MAN-MADE FIBER TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN THE REPUBLIC OF THE PHILIPPINES

Entry or Withdrawal from Warehouse for Consumption

NOVEMBER 26, 1975.

On December 16, 1974, there was published in the FEDERAL REGISTER (39 FR 43577), a letter dated December 11, 1974 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, establishing levels of restraint applicable to certain specified categories of cotton textiles and cotton textile products, produced or manufactured in the Philippines and exported to the United States during the twelve-month period which began on January 1, 1975. These levels of restraint were established to implement certain provisions of the Bilateral Cotton Textile Agreement of September 21, 1967, as amended and extended, between the Governments of the United States and the Republic of the Philippines.

On October 15, 1975, in furtherance of the objectives of, and under the terms of, the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, the Governments of the United States and the Republic of the Philippines concluded a new comprehensive bilateral cotton, wool, and man-made fiber textile agreement concerning exports of cotton, wool, and man-made fiber textile products from the Philippines to the United States over a period of three years beginning on October 1, 1975 and extending through September 30, 1978. Among the provisions of the new agreement are those establishing specific export limitations for cotton textile products in Categories 39, 45/46/47, 49, 50, and 51, and man-made fiber textile products in Categories 214, 219, 224 (excluding infants' garments in sizes zero through 6X, inclusive), 225, 229, 235, and 237 for the agreement year which began on October 1, 1975.

There is published below a letter of November 26, 1975, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs cancelling the letter of December 11, 1974 and directing that the amounts of cotton, and man-made fiber textile products in the foregoing categories, produced or manufactured in the Philippines, which may be entered or withdrawn from warehouse for consumption in the United States during the twelve-month period beginning on October 1, 1975 and extending through September 30, 1976, be limited to the designated levels. The levels of restraint have not been adjusted to reflect any entries made after September 30, 1975. Adjustments will be made

to account for all such entries after September 30, 1975 and through November 30, 1975.

This letter and the actions taken pursuant thereto are not designed to implement all of the provisions of the new bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Effective date: December 1, 1975.

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Policy—DIBA, Director, Bureau of Resources, U.S. Department of Commerce.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

NOVEMBER 26, 1975.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive cancels and supersedes the directive issued to you on December 11, 1974 by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry of cotton textiles and cotton textile products in certain specified categories, produced or manufactured in the Philippines and exported to the United States during the twelve-month period beginning on January 1, 1975.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 15, 1975, between the Governments of the United States and the Republic of the Philippines, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on December 1, 1975, and for the twelve-month period beginning on October 1, 1975 and extending through September 30, 1976, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 39, 45/46/47, 49, 50, and 51, and man-made fiber textile products in Categories 214, 219, 224 (pt.), 225, 229, 235, and 237, produced or manufactured in the Philippines and exported after September 30, 1975, in excess of the following levels of restraint:

Category	12-month level of restraint[1]
39 dozen pairs	386,952
45/46/47 square yards equivalent	3,500,000
49 dozen	40,000
50 do	100,000
51 do	100,000
315 dozen pairs	1,000,000
219 dozen	326,110
224 (only T.S.U.S.A. Nos. 380.0420 and 380.8143) pounds	100,000
224 (only T.S.U.S.A. Nos. 380.0402 and 380.8103 pounds	100,000
225 dozen	2,500,000
229 do	200,000
235 do	30,000
237 numbers	180,000

[1] The levels of restraint have not been adjusted to account for entries made during the period October 1, 1975 through November 30, 1975.

Entries of cotton and man-made fiber textile products, produced or manufactured in the Philippines, which have been exported to the United States before October 1, 1975, shall not be subject to this directive.

Cotton textile products in Categories 47 and 49 and man-made fiber textile products in Categories 214, 219, 224 (pt.), 225, 229, 235, and 237 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) before December 1, 1975, shall not be denied entry under this directive.

The levels of restraint set forth above are subject to possible future adjustment pursuant to the provisions of the bilateral agreement of October 15, 1975 between the Governments of the United States and the Republic of the Philippines which provide, in part, that: (1) within the group limits, specific levels of restraint may be exceeded by 7 percent in any agreement year; (2) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the receiving year's applicable limits; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Appropriate adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A detailed description of the categories and rates of conversion into square yards equivalent was published in the FEDERAL REGISTER on February 3, 1975 (40 F.R. 5010).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton and man-made fiber textile products from the Philippines have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Policy—DIBA, Director, Bureau of Resources, U.S. Department of Commerce.

[FR Doc.75-32442 Filed 11-28-75;8:45 am]

COMMODITY FUTURES TRADING COMMISSION

ADVISORY COMMITTEE ON DEFINITION AND REGULATION OF MARKET INSTRUMENTS FUTURES, FORWARD AND LEVERAGE CONTRACTS SUBCOMMITTEE

Notice of Advisory Committee Meeting

Notice is hereby given, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a), that the Commodity Futures Trading Commission Advisory Committee on Definition and Regulation of Market Instruments ("Advisory Committee on Market Instruments"), Futures, Forward and Leverage Contracts Subcommittee, will conduct a public meeting on December 16, 1975, at 1120 Connecticut Avenue, NW., Washington, D.C., in Room 925, beginning at 10:00 a.m. The objectives and scope of activities of the Advisory Committee on Market Instruments will be to consider and submit reports and recommendations to the Commission on the following subjects:

(1) Appropriate standards to be utilized by the Commission in regulating forms of transactions that are subject to the Commodity Exchange Act, as amended, including consideration of such matters as:

(i) Appropriate standards to be utilized by the Commodity Futures Trading Commission regarding the definition of commodity futures contracts; and

(ii) Appropriate restrictions or prohibitions for options relating to commodity transactions and margin or leverage transactions subject to Section 217 of the CFTC Act.

(2) Responsibilities of the Commission over cash commodity markets. This will include consideration of such matters as:

(i) Contracts for forward delivery;

(ii) Cash markets manipulations; and

(iii) Data and reporting needs for cash markets.

The summarized agenda for the meeting is as follows:

(1) Discussion of what are the essential and distinguishing legal and economic elements of a futures contract, a contract for the forward delivery of a cash commodity, and a leverage contract; and

(2) Discussion of what considerations should be used by the Commission in developing rules and regulations designed to insure financial integrity and/or prevent manipulation and fraud in leverage transactions.

In the event the committee does not complete its consideration of the items on the agenda on December 16, 1975, the meeting may be continued on the following day or until the agenda is completed.

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public that wishes to file a written statement with the committee should mail a copy of the statement to Margaret Harrison, The Advisory Committee on Market Instruments, Futures, Forward and Leverage Contracts Subcommittee, Commodity Futures Trading Commission, 1120 Connecticut Avenue, NW., Washington, D.C. 20036, at least five days before the meeting. Members of the public that wish to make oral statements should inform Margaret Harrison, telephone (202) 254-8955, at least five days before the meeting, and reasonable provision will be made for their appearance on the agenda.

The Commission is maintaining a list of persons interested in the operations of this advisory committee and will mail notice of the meetings to those persons. Interested persons may have their names placed on this list by writing DeVan L. Shumway, Director, Office of Public In-

formation, Commodity Futures Trading Commission, 1120 Connecticut Avenue, NW., Washington, D.C. 20036.

Dated: November 26, 1975.

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

[FR Doc.75-32351 Filed 11-28-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This policy provides that EPA will, upon receipt of every application for registration, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available for examination at the Environmental Protection Agency, Room EB-31, East Tower, 401 M Street, SW., Washington, D.C. 20460.

On or before January 30, 1976, any person who (a) is or has been an applicant, (b) believe that data he developed and submitted to EPA on or after October 21, 1972, is being used to support an application described in this notice, (c) desires to assert a claim for compensation under section 3(c)(1)(D) for such use of data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data, must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Information Coordination Section, Technical Services Division (WH-569), Office of Pesticide Programs, 401 M Street, SW., Washington, D.C. 20460. Every such claimant must include, at a minimum, the information listed in the interim policy of November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy will be processed to completion in accordance with existing procedures. Applications submitted under 2(c) of the interim policy cannot be made final until the 60 day period has expired. If no claims are received within the 60 day period, the 2(c) application will be processed according to normal procedure. However, if claims are received within the 60 day period, the applicants against whom the claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after January 30, 1976.

Dated: November 20, 1975.

MARTIN H. ROGOFF,
Associate Director, Acting Director, Registration Division.

APPLICATIONS RECEIVED (OPP-33000/340)

EPA Reg. No. 264-263. Amchem Products, Inc., Brookside Ave., Ambler PA 19002. FLOREL PLANT GROWTH REGULATOR. Ethephon [(2-chloroethyl) phosphonic acid] 3.9%. Method of Support: Application proceeds under 2(a) of interim policy. PM25

EPA Reg. No. 475-158. Boyle-Midway Inc., South Ave. & Hale St., New York NY 10017. BLACK FLAG WASP-BEE AND HORNET KILLER FORMULA "A". Active Ingredients: o-Isopropoxyphenyl methylcarbamate 0.50%; (2,2-dichlorovinyl dimethyl phosphate 0.186% and 0.014% related compounds); Petroleum Distillates 83.02%. Method of Support: Application proceeds under 2(a) of interim policy. PM13

EPA Reg. No. 239-2429. Chevron Chemical Company—Ortho Div., 940 Hensley St., Richmond CA 94804. HI-POWER ORTHO INDOOR INSECT FOGGER. Active Ingredients: Pyrethins 0.50%; Piperonyl Butoxide 1.00%; N-octyl bicycloheptene dicarboximide 1.67%; Petroleum distillate 11.83%. Method of Support: Application proceeds under 2(a) of interim policy. PM17

EPA Reg. No. 100-523. Ciba-Geigy Corp., Agricultural Div., PO Box 11422, Greensboro NC 27409. TOLBAN 4E. Active Ingredients: Profluralin [N-(cyclopropylmethyl)-α,α,α-trifluoro-2,6-dinitro-N-propyl-p-toluidine] 43.6%; Related Compounds 1.9%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Amended label claims. PM24

EPA Reg. No. 352-342. E. I. DuPont De Nemours & Co. (Inc.), 6054 DuPont Bldg., Wilmington DE 19898. LANNATE METHOMYL INSECTICIDE. Active Ingredients: S-methyl N-[(methyl-carbamoyl)oxy]thioacetimidate 90%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added Use. PM12

EPA Reg. No. 352-370. E. I. DuPont De Nemours & Co. (Inc.), 6054 DuPont Bldg., Wilmington DE 19898. LANNATE L METHOMYL INSECTICIDE. Active Ingredients: S-methyl N-[(methylcarbamoyl)oxy]thioacetimidate 24%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM12

EPA Reg. No. 1021-88. McLaughlin Gormley King Co., 8810 Tenth Ave., Minneapolis MN 55414. MGK 264 INSECTICIDE SYNERGIST. Active Ingredients: N-octyl bicycloheptene dicarboximide 98%. Method of Support: Republished—Application proceeds under 2(a) rather than 2(c) of interim policy. PM17

EPA Reg. No. 1021-910. McLaughlin Gormley King Co., 8810 Tenth Ave. N, Minneapolis MN 55414. PYROCIDE INTERMEDIATE 6781. Active Ingredients: Pyrethrins 5.00%; Piperonyl butoxide, technical 10.00%; N-octyl bicycloheptene dicarboximide 16.67%; Petroleum distillate 68.33%. Method of Support: Application proceeds under 2(a) of interim policy. PM17

CORRECTED ITEMS

The following are corrections to the list of applications received previously published in the FEDERAL REGISTER.

EPA File Symbol 37785-R. Ray W. Hawksley Co., Inc., 220 Cutting Blvd., Richmond CA 94804. BIOCIDE SERIES 323. Active Ingredients: Disodium cyanodithioimidocarbonate 7.35% (originally published as 10.15%); Potassium N-methyl-dithiocarbamate 10.15%. Method of Support: Application proceeds under 2(b) of interim policy. PM33 (40 FR 52435)

EPA File Symbol 37785-A. Ray W. Hawksley Co., Inc., BIOCIDE SERIES 323. Active Ingredients: Disodium cyanodithioimidocarbonate 4.90% (originally published as 7.35%); Potassium N-methyldithioimidocarbamate 6.76%. Method of Support: Application proceeds under 2(b) of interim policy. PM33 (40 FR 52435)

APPLICATIONS RECEIVED (OPP—33000/341)

EPA File Symbol 7299-RT. The Brenco Corp., 704 N. First St., St. Louis MO 63102. BRENCO #573 WATER TREATMENT MICROBIOCIDE. Active Ingredients: Didecyl dimethyl ammonium chloride 16.4%; Isopropyl alcohol 6.6%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 1677-IN. Economics Laboratory, Inc., Osborn Bldg., St. Paul MN 55102. SOILAX LAUNDRY BACTERIOSTAT-SANITIZER. Active Ingredients: Octyl decyl dimethyl ammonium chloride 5.0%; Dioctyl dimethyl ammonium chloride 2.5%; Didecyl dimethyl ammonium chloride 2.5%; Isopropyl alcohol 4.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 7774-U. Erny Supply Co., 5406 N. 59th St., Tampa FL 33610. ESCO QUAT. Active Ingredients: n-Alkyl (60% C14; 30% C16, 5% C12, 5% C18) dimethylbenzyl ammonium chlorides 8.25%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 6.25%; Tetrasodium ethylenediamine tetraacetate 3.60%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 7245-RL. Hi-Brett Chemical Co., Inc., 26 West Inman Ave., Rahway NJ 07065. FORMULA 8732 CONCENTRATED DETERGENT SANITIZER, FUNGICIDE, DISINFECTANT DEODORIZER. Active Ingredients: n-alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 4.5%; n-alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 4.5%; Tetrasodium ethylenediamine tetraacetate 2.0%; Sodium Carbonate 4.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 7245-RU. Hi-Brett Chemical Co., Inc., 26 West Inman Ave., Rahway NJ 07065. FORMULA DCS MULTI-PURPOSE CLEANER SANITIZER FOR THE DAIRY INDUSTRY. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5.0%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 5.0%; Phosphoric Acid 30.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 37365-R. Milmark Research Inc., RD#1, Bernville PA 19506. SANITIZING UDDER WASH. Active Ingredients: Didecyl, dimethyl ammonium chloride 5%; Isopropanol 2%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 13680-EG. Ozark Chemical Co., 1500 Murphy Dr., Maumelle New Town, North Little Rock AR 72118. QUEST 256. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 6.25%; n-Alkyl (68%

C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 6.25%. Tetrasodium ethylenediamine tetraacete 3.60%; Sodium Carbonate 3.00%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 33772-R. Pioneer Chemical Works, Inc., Box 237, Route #73, Maple Shade NJ 08052. PIOCIDE C-30. Active Ingredients: Sodium Dimethyldithiocarbamate 15%; Nabam (Disodium Ethylene Bisdithiocarbamate) 15%. Method of Support: Application proceeds under 2(c) of interim policy. PM33

EPA File Symbol 17217-A. Spectrowax Corp., 77 Dorchester Ave., South Boston MA 02127. GERM-ASIDE DISINFECTANT-DEODORIZER-SANITIZER. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 5%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 9279-U. Santimine Div., Texas Gulf Industries, 2912 Pulaski Hwy., Baltimore MD 21224. DETEX. Active Ingredients: Octyl Decyl Dimethyl Ammonium Chloride 4.50%; Dioctyl Dimethyl Ammonium Chloride 2.25%; Didecyl Dimethyl Ammonium Chloride 2.25%; Tetrasodium Ethylene diamine Tetraacetate 2.40%; Isopropyl Alcohol 3.60%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

[FR Doc.75-32049 Filed 11-28-75;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. E-9408]

AMERICAN ELECTRIC POWER SERVICE CORP.

Postponement of Prehearing Conference and Further Extension of Procedural Dates

NOVEMBER 18, 1975.

Notice is hereby given that the prehearing conference, set by order issued November 14, 1975, in the above-designated proceeding is postponed from November 18, 1975 to November 24, 1975, at 10:00 a.m. in the offices of the Federal Power Commission.

The procedural dates in the above matter are modified as follows:[2]

Service of Intervenor Testimony, November 28, 1975.

Service of Staff Testimony, December 12, 1975.

Service of American Electric Power Rebuttal, December 29, 1975.

Hearing, January 16, 1976 (10:00 a.m., e.s.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32216 Filed 11-28-75;8:45 am]

[Docket No. RI76-61, etc.]

BELCO PETROLEUM CORP., 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 19, 1975.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A below.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

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 Ch. 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 § 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 Commisison.

[SEAL] KENNETH F. PLUMB,
Secretary.

[2] The Procedural dates were previously extended by notice issued September 22, 1975.

[1] Does not consolidate for hearing or dispose of the several matters herein.

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[4]		Rate in effect subject to refund in dockets No.
									Rate in effect	Proposed increased rate	
RI76-61	Belco Petroleum Corp	1	43	Northwest Pipeline Corp. (Wyoming, Rocky Mountain).	(3)	10-20-75	1-1-76	(6)	[5] 54.189	[5] 55.251	
	do			do	(3)	10-20-75		6-1-76	[5] 43.003	[5] 44.17	RI75-83
	do	2	31	do	(3)	10-20-75	1-1-76	(6)	[5] 54.189	[5] 55.251	
	do			do		10-20-75		6-1-76	[5] 43.003	[5] 44.17	RI75-83
	do	3	29	do	(3)	10-20-75	1-1-76	(6)	[5] 54.189	[5] 55.251	
	do			do	(3)	10-20-75		6-1-76	[5] 43.003	[5] 44.17	RI75-83
	do	5	17	do	(3)	10-20-75	1-1-76	(6)	[5] 54.189	[5] 55.251	
	do			do	(3)	10-20-75		6-1-76	[5] 43.003	[5] 44.17	RI75-83
	do	6	27	do	(3)	10-20-75	1-1-76	(6)	[5] 54.189	[5] 55.251	
	do			do	(3)	10-20-75		6-1-76	[5] 43.003	[5] 44.17	
RI76-62	Texaco, Inc	396	10	Colorado Interstate Gas Co. (Wyoming, Rocky Mountain).	$300	10-20-75		4-20-76	26.4083	26.4068	
RI76-63	Amoco Production Co	363	47	El Paso Natural Gas Co. (New Mexico, Rocky Mountain).	103,000	10-23-75		6-1-76	29.823	30.235	RI75-81
	do			do	3,397	10-23-75		6-16-76	32.2601	34.978	(7)
	do			do	6,854	10-23-75	1-1-76	(6)	[5] 60.84	[5] 62.032	

[3] Unless otherwise stated, pressure base is 15.025 lb/in²a.

[4] Unless otherwise stated, rate shown is total rate, inclusive of any applicable British thermal unit adjustment and tax.

[5] Subject to British thermal unit adjustment.

[6] Not stated.

[7] Accepted effective as of the date shown in the "Effective date unless suspended" column.

[8] Pressure base is 14.73 lb/in²a.

[9] Underlying rate is suspended until Jan. 16, 1976 in docket No. RI76-15.

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 expiration of the thirty day statutory notice period or the contractual effective date, whichever is later.

[FR Doc.75-32230. Filed 11-28-75;8:45 am]

[Docket No. ER76-238]

BOSTON EDISON CO.

Notice of Rate Schedule Filing and Request for a Waiver

NOVEMBER 21, 1975.

Take notice that on November 3, 1975, Boston Edison Company (Edison), tendered for filing an agreement dated as of October 3, 1973 between Edison and New England Power Company (NEPCO) (the Agreement) for support by NEPCO of 115 kV terminal facilities installed by Edison at Edison's Station #150, Weymouth, Massachusetts, in order to serve NEPCO's two 115 kV pipe type cables, Lines 517-532 and 517-533.

Edison requests a waiver under Section 35.11 of the Commission Rules and Regulations to permit the Agreement to become effective March 15, 1973.

Edison states that copies of this filing have been sent to NEPCO.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 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.75-32285 Filed 11-28-75;8:45 am]

[Docket No. RI76-51]

CITIES SERVICE OIL CO.

Application for Certificate of Public Convenience and Necessity and Petition for Special Relief

NOVEMBER 20, 1975.

Take notice that on October 31, 1975, Cities Service Oil Company (applicant), P.O. Box 300, Tulsa, Oklahoma 74102, filed in Docket No RI76-51 an application for a certificate of public convenience and necessity covering a proposed sale of gas to Tennessee Gas Pipeline Company (Tennessee). Sales volumes are estimated by applicant to be 550,000 Mcf per month from 100 percent of applicant's ⅓ gross working interest in gas from the subsea surface down to the base of the RD sand, or its correlative equivalent, from approximately 2500 acres in West Cameron Block 69 (North Half), Offshore Louisiana. Applicant states that a total of seven wells have been drilled on the property committed to this proposed sale; that three were completed at depths greater than 15,000 feet; that two were completed at depths less; and that two wells drilled to depths greater than 15,000 feet, were dry holes.

Applicant seeks a rate in excess of the area rate (51¢ at 14.73 psia, plus production taxes, gathering, and Btu adjustment) by way of special relief under 18 CFR 2.56a(g). The contract rate is the highest of $1.60 per Mcf at 15.025 psia, excluding production taxes; such rate as may be determined in this proceeding; or such rate as may be determined in a future area rate proceeding. Applicant seeks temporary authorization to commence this sale of gas and has expressed its willingness to accept, subject to refund upon Commission determination of the rate applicable thereto, a rate of $1.33 per Mcf.

Applicant has received a $2,500,000 advance payment from Tennessee.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 28, 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32217 Filed 11-28-75;8:45 am]

[Docket No. ES76-24]

CLIFFS ELECTRIC SERVICE CO.

Notice of Application for Authority To Acquire Securities

NOVEMBER 21, 1975.

Take notice that on October 21, 1975, Cliffs Electric Service Company ("Applicant"), filed an application with the Federal Power Commission seeking authority, pursuant to section 203 of the Federal Power Act, to purchase up to 3,500,000 additional shares of Common Stock of Upper Peninsula Generating Company.

The Applicant is incorporated under the laws of the State of Michigan with its principal business office at Ishpeming, Michigan. Applicant is a wholly owned subsidiary of The Cleveland-Cliffs Iron Company and operates certain electric facilities in the upper peninsula of Michigan. Energy from those facilities is sold principally to iron mines and related mining facilities which are operated by the parent company.

Upper Peninsula Generating Company ("Generating Company") is engaged in the generation of electric energy for sale to its owners, the Applicant and Upper Peninsula Power Company. Applicant is the owner of record of 1,797,695 shares of Generating Company's Common Stock. Power Company is the owner record of 422,905 shares of Generating Company's Common Stock. The Applicant proposes to make an additional investment in Generating Company for the purpose of financing the construction of various generating units and providing necessary working capital for Generating Company in order that anticipated increased demands for electric energy will be adequately met.

The current construction program of Generating Company calls for the addition of two units with net capability of 80,000 kw, and the modification of certain equipment at its existing generating units.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 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.75-32279 Filed 11-28-75;8:45 am]

[Docket No. RP75-112]

COLORADO INTERSTATE GAS CO.

Filing of Rate Schedule

NOVEMBER 19, 1975.

Take notice that on November 10, 1975, Colorado Interstate Gas Company (CIG) tendered for filing certain tariff sheets containing its Rate Schedule X-54, to be inserted in its FPC Gas Tariff, Third Revised Volume No. 2. CIG states that these tariff sheets were filed as part of its FPC Gas Tariff, Second Revised Volume No. 2 and were approved by order issued October 30, 1975.

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 December 5, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make pro-

testants 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.75-32231 Filed 11-28-75;8:45 am]

[Docket No. RP72-89]

COLUMBIA GAS TRANSMISSION CORP.

Compliance Filing

NOVEMBER 20, 1975.

Take notice that on November 10, 1975, Columbia Gas Transmission Corporation (Columbia) submitted for filing certain revised tariff sheets to its FPC Gas Tariff, Original Volume No. 1, to be effective November 1, 1975 through March 31, 1976 and thereafter, subject to further order of the Commission, in compliance with the Commission's order issued October 31, 1975 in the above-captioned proceeding. The sole purpose of Columbia's filing is to place in effect on an interim basis the three-priority settlement curtailment plan, Exhibit No. 22 in this proceeding, as modified by the aforesaid order.

Copies of the filing were served upon Columbia's jurisdictional customers and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal 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 and 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. Persons that have previously filed a notice or petition for intervention in this proceeding need not file additional notices or petitions to become parties with respect to the instant filing. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32218 Filed 11-28-75;8:45 am]

[Rate Schedule Nos. 7, etc.]

CRA INTERNATIONAL LTD., ET AL.

Rate Change Filings

NOVEMBER 19, 1975.

Take notice that the producers listed in the Appendix attached below have filed proposed increased rates to the applicable new gas national ceiling based on the interpretation of vintaging concepts set forth by the Commission in its Opinion No. 699-H, issued December 4, 1974. Pursuant to Opinion No. 699-H the rates, if accepted, will become effective as of the date of filing.

The information relevant to each of these sales is listed in the Appendix below.

Any person desiring to be heard or to make any protest with reference to said filings should on or before November 26, 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). A protest will not serve to make the protestant a party to the proceeding. Any party wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

APPENDIX

Filing date	Producer	Rate schedule No.	Buyer	Area
Oct. 29, 1975	CRA International Ltd., P.O. Box 2329, Tulsa, Okla. 74101.	7	Natural Gas Pipe Line Co. of America.	Hugoton-Anadarko.
Oct. 31, 1975	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	7	Northern Natural Gas Co.	Do.
Nov. 6, 1975	Sohio Petroleum Co., 1100 Penn Tower, Oklahoma City, Okla. 73118.	28	Texas Eastern Transmission Corp.	Texas Gulf Coast.

[FR Doc.75-32219 Filed 11-28-75;8:45 am]

[Docket No. ID-1619]

DONALD C. SWITZER

Supplemental Application

NOVEMBER 20, 1975.

Take notice that on October 16, 1975, Donald C. Switzer (Applicant) filed a supplemental application with the Federal Power Commission. Pursuant to section 305(B) of the Federal Power Act, Applicant seeks authority to hold the following positions:

Executive Vice President, The Connecticut Light and Power Company, Public Utility.
Executive Vice President, The Hartford Electric Light Company, Public Utility.
Executive Vice President, Western Massachusetts Electric Company, Public Utility.
Executive Vice President, Holyoke Water Power Company, Public Utility.
Executive Vice President, Holyoke Power and Electric Company, Public Utility.

The Connecticut Light and Power Company has its principal place of business at Selden Street, Berlin, Connecticut, and is engaged in the production, purchase, transmission, distribution and sale of electricity, at wholesale and retail, and the production, purchase, distribution and sale of gas at retail within the State of Connecticut.

The Hartford Electric Light Company has its principal place of business at 176 Cumberland Avenue and is engaged principally in the production, purchase, transmission, distribution and sale of electricity, at wholesale and retail, and the production, purchase, distribution and sale of Gas at retail within the State of Connecticut.

Western Massachusetts Electric Company has its principal place of business at 174 Brush Hill Ave., West Springfield, Massachusetts, and is engaged in the production, purchase, transmission, distribution and sale of electricity at wholesale and retail in a substantial portion of Western Massachusetts.

Holyoke Water Power Company has its principal place of business at One Canal Street, Holyoke, Massachusetts, and is engaged principally in the manufacture, purchase, transmission, distribution and sale of electricity to industrial, municipal and wholesale customers in the cities of Holyoke and Chicopee and the Town of South Hadley in Western Massachusetts.

Holyoke Power and Electric Company has its principal place of business at One Canal Street, Holyoke, Massachusetts, and is a wholly-owned subsidiary of Holyoke Water Power Company which conducts certain of that Company's Electric Operations.

Any person desiring to be heard or to make any protest with reference to said application 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 party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32220 Filed 11-28-75;8:45 am]

[Docket No. ER76-222]

DUKE POWER CO.

Notice of Filing

NOVEMBER 21, 1975.

Take notice that on November 5, 1975, Duke Power Company (the Company) tendered for filing a supplement to the Company's Electric Power Contract with Blue Ridge Electric Cooperative, Inc. This contract has been designated Duke Power Company Rate Schedule FPC No. 142.

Eleven documents are submitted with this filing. They are as follows:

Document No.					
1	Exhibit A-4, Dated May 2, 1974.	Delivery	Point	No.	1,
2	Exhibit A-4, Dated May 2, 1974.	Delivery	Point	No.	2,
3	Exhibit A-2, Dated May 2, 1974.	Delivery	Point	No.	3,
4	Exhibit A-3, Dated May 2, 1974.	Delivery	Point	No.	4,
5	Exhibit A-4, Dated May 2, 1974.	Delivery	Point	No.	5,
6	Exhibit A-4, Dated May 2, 1974.	Delivery	Point	No.	7,
7	Exhibit A-3, Dated May 22, 1974.	Delivery	Point	No.	10,
8	Exhibit A-4, Dated May 22, 1974.	Delivery	Point	No.	11,
9	Exhibit A-3, Dated May 2, 1974.	Delivery	Point	No.	12,
10	Exhibit A-3, Dated May 2, 1974.	Delivery	Point	No.	13,
11	Exhibit A-3, Dated May 2, 1974.	Delivery	Point	No.	14,

The Company states that the contract with the Rural Electric Cooperatives provides by Exhibits A attached to the contract, for service at all delivery points plus any new delivery points to be added in the future. This contract contains an "all requirements" provision, and there is no Contract Demand at any delivery point. Exhibit A therefore shows only "designated kilowatts", "location" and other pertinent information. When the character of the service changes at a given Delivery Point, Exhibit A superseded by A-1, A-2, etc.

The dated on which these documents are to become effective is December 19, 1975.

The Company states that copies of the Exhibits have been mailed.

The Company further states that to provide service for Delivery Points Nos. 2, 3, and 5, it proposes to increase its metering equipment capacity. Delivery Point No. 1 will require increased substation capacity. The Company alleges that its facilities are adequate to serve the increased designated kilowatts for Delivery Points Nos. 4, 7, 10, 11, 12, 13, and 14.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). 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.75-32288 Filed 11-28-75;8:45 am]

[Docket No. ID-1771]

EDWIN L. JOHNSON

Application

NOVEMBER 19, 1975.

Take notice that on October 24, 1975, Edwin L. Johnson (Applicant) filed an application with the Federal Power Commission. Pursuant to section 305(b) of the Federal Power Act, Applicant seeks authority to hold the following positions:

Vice President, The Connecticut Light & Power Company, Public Utility.
Vice President, The Hartford Electric Light Company, Public Utility.

The Connecticut Light and Power Company has its principal place of business at Selden Street, Berlin, Connecticut, and is engaged primarily in the production, purchase, transmission, distribution and sale of electricity, at wholesale and retail, and the production, purchase, distribution and sale of gas at retail within the State of Connecticut.

The Hartford Electric Light Company has its principal place of business at 176 Cumberland Avenue, Wethersfield, Connecticut, and is engaged primarily in the production, purchase, transmission, distribution and sale of electricity, at wholesale and retail, and the production, purchase, distribution and sale of gas at retail within the State of Connecticut.

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, petitions to intervene or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32232 Filed 11-28-75;8:45 am]

[Docket Nos. CP75-20, CI75-116]

FLORIDA GAS TRANSMISSION CO. ET AL.

Order To Show Cause, To Cease and Desist, Setting Date for Formal Hearing, Denying Intervention, Consolidating Proceedings, and Prescribing Procedures [1]

NOVEMBER 19, 1975.

Florida Gas Transmission Company, Complainant, Docket No. CP75-20; v. Petroleum Management, Inc., and Skelly Oil Company, Defendants, Docket No. CI75-116, Petroleum Management Inc., Operator.

On July 27, 1974, Florida Gas Transmission Corporation (Florida Gas) filed pursuant to § 1.6(a) of the Commission's rules of practice and procedure, a complaint against Skelly Oil Company (Skelly) and Petroleum Management Inc. (PMI), owners and operators of natural gas wells in the East Aransos Pass Field, Aransos County, Texas. Florida Gas alleged that Skelly and PMI failed to comply with the terms of a Certificate of public convenience and necessity authorizing sales of gas to Florida Gas, and have instead sold the subject gas to other purchasers without obtaining Commission authority to abandon the sale to Florida Gas.

Specifically, Florida Gas stated that the Aransos Pass gas was dedicated to it under a 20 year contract dated June 28, 1956 as amended between Coastal Transmission Corporation (predecessor in interest to Florida Gas), and Atlantic Refining Company (predecessor in interest to PMI) and a certificate of public convenience and necessity was issued to Atlantic Refining Company in Docket No. G-11041. PMI as successor in interest received authorization to sell the subject gas to Florida Gas by Commission order on January 12, 1970 in Docket No. CI68-957. Florida Gas further alleged that PMI and Skelly ceased deliveries of gas from the East Aransos Pass Field in December 1972 or January 1973 and have continued to produce and sell the subject gas without obtaining abandonment authorization pursuant to section 7(b) of the Natural Gas Act.

On August 19, 1974, PMI filed an answer to the Florida Gas complaint and indicated that production in the subject wells had declined from 291,397 Mcf in 1972, to 251,801 Mcf in 1973, and were projected to decline to 180,500 Mcf in 1974. PMI also alleged that Florida Gas was in fact aware of the declining production, and elected not to install compression facilities which are required to physically introduce the low pressure gas into the Florida Gas system. PMI further alleged that under the original contract either party has the option to install compression facilities, but neither party is obligated to do so. Both parties have indicated they elect not to install the necessary compression facilities. PMI further stated that production from the Kring, Darby, and Atlantic Fee Gas Units have ceased production due to depletion of reserves, and as a result, the leases for these units have lapsed. Therefore, under Exhibit "A" of PMI answer, PMI filed an application pursuant to § 157.30 of the Commission's regulations for abandonment authorization of these three leases on behalf of itself and four other leasehold owners.[2]

In the same abandonment application, PMI also sought abandonment of three

[1] This order was approved before Chairman Nassikas left the Commission.

[2] The other leasehold owners include Skelly, Clinton Oil Company, Estate of J. R. Howe deceased, and Total Oil and Gas Ltd.

additional leases containing five other producing wells. With respect to four of these wells,[3] PMI in its abandonment application alleged that it sought a commitment from Florida Gas by letter dated October 13, 1971 on whether Florida Gas would exercise its option to compress the available low pressure gas at 50 psig and purchase such gas or to release such gas from the contract. PMI stated it has received no response from Florida Gas and in light of the Texas Railroad Commission's refusal to permit flaring of gas, PMI sold such low pressure gas to Lo-Vaca Gathering Company, (Lo-Vaca) an interstate pipeline purchaser, on an oral day to day basis in order to prevent the lapse and termination of the leases due to lack of production. On the fifth well[4] PMI alleges that Florida Gas was compressing the gas but removed its compression facilities, and ceased purchasing the gas from PMI. PMI is also currently selling this gas to Lo-Vaca on a day to day basis in intrastate commerce.

On September 4, 1974, Florida Gas filed a motion requesting that it be allowed to withdraw its complaint against Skelly, since Skelly advised that it had no knowledge that PMI had made sales to other purchasers other than Florida Gas without the requisite section 7(b) abandonment authority.

Skelly filed its answer to Florida Gas' complaint on September 13, 1974 (out of time) and alleged that it knew PMI was making sales to Lo-Vaca but asserted that no action was being taken contrary to Florida Gas' right under the contract since PMI was willing to resume deliveries to Florida Gas upon installation by Florida Gas of the necessary compression facilities. Skelly also requested the Commission to grant Florida Gas permission to withdraw its complaint against Skelly. The Commission on November 27, 1974 gave notice that withdrawal of the complaint was permitted.

PMI's August 19, 1974 abandonment application was noticed in Docket No. CI68-957 on September 12, 1974 with protests to be filed by October 7, 1974. On December 23, 1974 the Commission issued an Order Consolidating Proceedings Providing For Hearing and Establishing Procedures, wherein it created a new docket CI75-116) for the PMI abandonment, and consolidated it with the original Florida Gas complaint of August 8, 1974 in Docket No. CP75-20 and designated both matters for a consolidated hearing scheduled for January 23, 1975 and permitting additional new interventions. On December 27, 1974 Tennessee Gas Pipeline Company (Tennessee) filed a petition for leave to intervene within the period required for such interventions or protests (which expired on December 27, 1974). On January 9, 1974 the Office of the Secretary issued a notice of Postponement of Hearing extending the hearing date from January 23, 1975 to February 11, 1975. On February 10, 1975 the Office of the Secretary issued Notice Deferring Hearing Date of February 11, 1975 pending further Commission action in light of a filing by Florida Gas on February 7, 1975 withdrawing its complaint in the instant proceeding pursuant to § 1.11(d) of the rules of practice and procedure.

Florida Gas contended in its February 7, 1975 letter that the presently estimated recoverable reserves in the subject wells amounted to only 200,000 to 300,000 Mcf (at 14.65 psia) and that the producing pressure had declined to 150 pounds psig. Florida Gas alleged that two stages of compression would be required to deliver the subject gas into its system at 600 pounds psig at an estimated cost of $60,000. Based upon operational costs and the volumes to be received, estimated at less than 500 Mcf/d Florida Gas alleges that "further pursuance of the matter would entail the expense of a formal hearing for both Florida Gas and PMI plus the commitment of the resources of the Commission's Staff in circumstances that would appear unlikely to yield any meaningful supplies for the Florida Gas System."

The Natural Gas Act under section 7 (b) is very explicit in requiring that any natural gas company under this Commission's jurisdiction must obtain prior Commission approval prior to the abandonment of any "facilities" or "service", including the transportation and resale of that gas in interstate commerce.[5] In order to obtain this approval the natural gas company must demonstrate under section 7(b) at a formal hearing:

> that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience and necessity permit such abandonment.

It is also well established that contractual terms of any certificated sale or service remain fully subject to the paramount power of the Commission to modify them where necessary in the public interest,[6] so that there can be no cessation of service upon termination of the contract or operation of any terms of the contract without Commission approval.[7]

It is apparent that both Florida Gas and PMI/Skelly et al., are relying on the contractual terms included as part of the original certificate in Docket No. G-11041 to flagrantly disregard their responsibilities under the Natural Gas Act to take all steps necessary to maintain and insure continued service before electing to abandon the sales being made from the subject wells in interstate commerce without obtaining prior Commission approval. Reliance by each of the parties on the contractual provision that the installation and operation of compression facilities (necessary to being the low pressure gas into the Florida Gas system) is optional, does not comport with their obligations from a public interest standpoint. Therefore, this Commission is issuing an order to show cause why either Florida Gas, PMI/Skelly et al., or both are not in violation of section 7(b) of the Natural Gas Act, for failure to seek Commission approval prior to the abandonment of the facilities and service arising from the Aransas Pass Wells and whether such abandonment constituted a willful and knowing violation of the Act pursuant to section 21 thereof. Furthermore, we are requiring either Florida Gas, PMI/Skelly or both to show cause why their failure to provide the necessary compression facilities to bring the subject gas into the Florida Gas system would not be an abandonment of facilities and service under section 7(b) of the Natural Gas Act. Additionally, since PMI/Skelly is presently making day to day sales to Lo-Vaca in intrastate commerce without having first obtained the requisite Commission authority to abandon the certificated jurisdictional sales to Florida Gas, this Commission is ordering PMI/Skelly to immediately upon the issuance of this order cease and desist such sales of the subject gas to Lo-Vaca, and take all steps necessary to redeliver the subject gas to Florida Gas for transportation and resale in interstate commerce.

This Commission does, however, believe that PMI/Skelly have raised a sufficient enough factual issue with respect to the pressure problem that a formal evidentiary hearing is required on that issue so as to give PMI/Skelly an opportunity to demonstrate that the gas supply is in fact depleted on the subject wells to the extent that a discontinuance of service is warranted or, that the present or future public convenience or necessity will permit such abandonment of the gas reserves to the intrastate market.

In order to develop a complete record in this proceeding such proceeding should develop, and the parties shall be required to submit evidence and testimony concerning, inter alia, but not limited to:

1. The original gas purchase contract contained as part of the certificate in Docket No. G-11041 and amendments thereto.

2. The events and reasons surrounding the removal of pipeline compression facilities by Florida Gas.

3. A detailed evidentiary presentation regarding what additional costs would be required to maintain the flow of the remaining producible gas to the interstate market with full documentation as to the unit price at which such undertaking would be feasible.

4. A detailed analysis and presentation of the remaining reserves in all of the subject wells.

5. Why PMI/Skelly has not sought to avail itself of the relief available under

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[3] Barker Gas Unit Well No. 2, Heist Gas Unit Well Nos. 1 & 2, and the Conn Brown Oil Unit No. 2.

[4] Barker Gas Unit Well No. 1.

[5] Atlantic Refining Co. v. P.S.C.N.Y. 360 U.S. 378, 389 (1954); Sunray Mid-Continental Oil Company v. FPC 364 U.S. 137, 156 (1960); United Gas Pipeline Co. v. FPC 385 U.S. 83, 89 (1966).

[6] 364 U.S. 137, 158.

[7] Opinion No. 647 Cumberland Natural Gas Company 34 FPC 132 (1965).

§ 2.76 of the Commission's General Policy and Interpretations in order to obtain a rate above the existing applicable area rate in order to extract the subject low pressure gas.

Finally, regarding the petition to intervene of Tennessee Gas we believe that Tennessee Gas does not present sufficient good cause to permit its intervention in the instant proceeding. Tennessee Gas' only justification for intervention in this proceeding is that it has a contract containing provisions regarding delivery pressure and compression that are merely "similar" to those in issue and therefore has sought intervention in the instant proceeding. Under our rules of Practice and Procedure regarding interventions under § 1.8(b)(2), Tennessee Gas has not demonstrated on the face of its petition that its right or interest may be directly affected by the instant proceeding or that any remote interest it may have is not adequately represented by the existing parties, since Tennessee Gas would in no way be bound by any decision or order in the instant proceeding.

The Commission finds. (1) It may be that Florida Gas, PMI, and Skelly, et al., are in violation of the Natural Gas Act and the Commission's Regulations thereunder.

(2) It is necessary and proper in carrying out the provisions of the Natural Gas Act that the aforementioned dockets be consolidated for a full evidentiary hearing on the matters involved and issues presented in these proceedings as herein before described.

(3) PMI/Skelly et al., are hereby ordered pendente lite to refrain from engaging in the sale of natural gas produced from the subject wells with any party other than Florida Gas, shall take no action to terminate the subject leases as a matter of law, and take all steps necessary to restore service to Florida Gas from the subject wells.

(4) Participation by Tennessee Gas Pipeline Company is not in the public interest.

The Commission orders. (A) PMI/Skelly, et al., and Florida Gas shall show cause, if any, at a hearing directed in Paragraph (D) below why they or each of them should not be held in violation of section 7(b) of the Natural Gas Act and the Commission's regulations thereunder for not having obtained authorization before abandoning jurisdictional sales, service, and related facilities as hereinbefore described.

(B) Skelly and the other interest holders in the subject leases are hereby joined as parties to these proceedings and shall be prepared to explain at the formal hearing ordered herein among other things whether or not they aided in or acquiesced in the abandonment by PMI and Florida Gas.

(C) Pending the hearing set forth in Paragraph (D) below, and a decision in this proceeding, PMI/Skelly, et al., shall refrain from engaging in the sale of natural gas produced from the above described wells with any other party, other than Florida Gas, shall take no action to terminate the subject leases as a matter of contract law, and shall immediately take all steps necessary to reinstate service under the certificate issued in Docket No. CI68-957.

(D) Pursuant to the authority of the Natural Gas Act, particularly sections 7, 14, 15, 16, 20, and 21 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. 1), a public hearing concerning the matters involved, and the issues presented in these proceedings as hereinbefore set forth will be held in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 commencing at 10:00 a.m., (e.s.t.) on January 6, 1976. PMI/Skelly, et al., and Florida Gas shall file with the Secretary of the Commission and serve on all parties including the Commission staff, testimony and exhibits addressing the specific issues as set forth in this order as well as any other testimony and exhibits which comprise their case in chief on or before December 5, 1975.

(E) The Petition to Intervene filed on December 27, 1974 by Tennessee Gas Pipeline Company, is hereby denied.

(F) An Administrative Law Judge to be designated by the Chief Administrative Law Judge—(see Delegation of Authority 18 CFR 3.5(d))—shall preside at the hearing in this proceeding and shall prescribe all relevant procedural matters not herein provided.

[SEAL] KENNETH F. PLUMB,[*]
Secretary.

[FR Doc.75-32233 Filed 11-28-75;8:45 am]

[Docket No. RI 76-42]

GETTY OIL CO.

Application for Certificate of Public Convenience and Necessity and Petition for Special Relief

NOVEMBER 20, 1975.

Take notice that on October 6, 1975, Getty Oil Company (applicant), P.O. Box 1404, Houston, Texas 77001, filed in Docket No. RI76-42 an application for a certificate of public convenience and necessity covering a proposed sale of gas to Tennessee Gas Pipeline Company (Tennessee). Sales volumes are estimated by applicant to be 550,000 Mcf per month from 100 percent of applicant's ⅓ gross working interest in gas from the subsea surface down to the base of the RD sand, or its correlative equivalent, from approximately 2500 acres in West Cameron Block 69 (North Half), Offshore Louisiana. Applicant states that a total of seven wells have been drilled on the property committed to this proposed sale; that three were completed at depths greater than 15,000 feet; that two were completed at depths less; and that two wells drilled to depths greater than 15,000 feet, were dry holes.

Applicant seeks a rate in excess of the area rate (51¢ at 14.73 psia, plus production taxes, gathering, and Btu adjustment) by way of special relief under 18 CFR 2.56a(g). The Contract rate is the highest of $1.60 per Mcf at 15.025 psia, excluding production taxes; such rate as may be determined in this proceeding; or such rate as may be determined in a future area rate proceeding. Applicant seeks temporary authorization to commence this sale of gas and has expressed its willingness to accept, subject to refund upon Commission determination of the rate applicable thereto, a rate of $1.33 per Mcf.

Applicant has received a $5,000,000 advance payment from Tennessee.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 28, 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32221 Filed 11-28-75;8:45 am]

[Docket No. ES 76-25]

GULF STATES UTILITIES CO.

Notice of Application

NOVEMBER 21, 1975.

Take notice that on October 29, 1975, the Gulf States Utilities Company (Applicant) filed a application with the Federal Power Commission seeking authority pursuant to Section 204 of the Federal Power Act to engage in negotiations with underwriters regarding the proposed issuance and sale of "Certain Securities" via negotiated offering.

Applicant is incorporated under the laws of the State of Texas, with its principal business office at Beaumont, Texas, and is engaged in the generation, transmission, distribution and sale of electrical energy in the States of Louisiana and Texas.

Any person desiring to be heard or to make any protest with reference to this application should, on or before November 28, 1975, file with the Federal Power Commission, Washington, D.C. 20426, 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

[*] Commissioner Smith, concurring in part and dissenting in part, filed a separate statement as part of the original document.

considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32287 Filed 11-28-75;8:45 am]

[Docket No. E-8122]

IDAHO POWER CO.

Notice of Cancellation

NOVEMBER 21, 1975.

Take notice that on October 28, 1975, the Idaho Power Company (Idaho) filed its letter to the Utah Power and Light Company (Utah) acknowledging a mutual agreement between the two companies to cancel the proposed rate schedule as filed on April 10, 1973 with the Commission in Docket No. E-8122.

A copy of this letter was mailed to Utah.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 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 are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32284 Filed 11-28-75;8:45 am]

[Docket No. E-7468]

ILLINOIS POWER CO.

Notice of Fifth Supplemental Application

NOVEMBER 21, 1975.

Take notice that on November 4, 1975, Illinois Power Company (Applicant) filed a fifth supplement to its application in Docket No. E-7468 seeking a supplemental order of the Commission issued December 30, 1974 in Docket No. E-7468.

Applicant is incorporated under the laws of the State of Illinois and operates as an electric and gas public utility therein. The notes proposed to be issued pursuant to this Fifth Supplemental Application will be unsecured promissory notes with maturity dates not more than 360 days after their respective dates of issue, and in any event will be payable on or before December 31, 1977. The notes will be issued in an aggregate principal amount of not to exceed $125,000,000 outstanding at any one time, either to (1) commercial banks under the provisions of revolving credit agreements or otherwise, (2) commercial paper dealers, or (3) regular purchasers of commercial paper for their own account. With respect to such of the notes as are issued to commercial banks, the interest rate applicable to the notes shall be at the prime commercial rate of the Continental Illinois National Bank and Trust Company of Chicago in effect on the date of each borrowing and adjusted to the prime commercial rate in effect on the first date of each calendar quarter thereafter, and with respect to such notes as are issued to commercial paper dealers or to regular purchasers of commercial paper for their own account, the interest rate applicable to the notes will be the market rate (or discount rate) on the date of issuance for commercial paper of comparable quality and of the particular maturity sold.

The net proceeds from the issuance of the notes will be added to working capital for ultimate application toward the cost of gross additions to utility properties and/or to reimburse Applicant's treasury for construction expenditures. Applicant's construction program, as now scheduled, calls for expenditures of approximately $1,245,000,000 for the five-year period of 1975-79.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 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.75-32280 Filed 11-28-75;8:45 am]

LANDS WITHDRAWN IN PROJECT NOS. 263 AND 301

Order Partially Vacating Land Withdrawals

NOVEMBER 19, 1975.

By order issued November 27, 1972 (37 FR 25568, December 1, 1972), we vacated the land withdrawals for Project Nos. 263 and 301-Colorado insofar as they pertain to 11,537.30 acres within the formerly proposed Kremmling reservoir site on the Colorado River. The following described lands were inadvertently omitted from said order and should be added:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 1 N., R. 78 W.,
Sec. 7, S½ of lot 3.
Approximately 20.12 acres.

The Commission orders. The withdrawals for Project Nos. 263 and 301 insofar as they pertain to the above described lands are hereby vacated.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32234 Filed 11-28-75;8:45 am]

[Docket Nos. RP73-102, RP75-96, AP76-1]

MICHIGAN WISCONSIN PIPE LINE CO.

Filing of Revised Tariff Sheets

NOVEMBER 19, 1975.

Take notice that on October 30, 1975, Michigan Wisconsin Pipe Line Company (Mich Wis) tendered for filing Eleventh Revised Sheet No. 27F to its FPC Gas Tariff, Second Revised Volume No. 1 which reflects a 1.06¢ per Mcf increase in rates to recover the carrying charges related to additional advance payments for exploration and development in the lower 48 states and advance payments to Exxon Company, U.S.A. for exploration and development in the Prudhoe Bay Field, Alaska.

Mich Wis states its filing is made pursuant to the provisions of its Stipulation and Agreement in Docket No. RP73-102, approved by Commission order of June 26, 1974.

Mich Wis requests a waiver of the requirements of Part 154 of the Commission's regulations under the Natural Gas Act to the extent that such waiver may be necessary to permit this filing of Eleventh Revised Sheet No. 27F to be made and to become effective January 1, 1976.

Mich Wis states copies of its filing have been mailed to each of its customers as well as to the interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, 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 December 1, 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.75-32235 Filed 11-28-75;8:45 am]

[Docket Nos. CP75-278, CP75-283]

MICHIGAN WISCONSIN PIPE LINE CO. ET AL.

Order Granting Interventions, Consolidating Applications, Establishing Procedural Dates and Fixing Date for Formal Hearing

NOVEMBER 21, 1975.

On March 26, 1975, Michigan Wisconsin Pipe Line Company (Mich-Wisc) and

ANG Coal Gasification Company (ANG), an affiliate company, filed in Docket No. CP75-278 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the sale by ANG to Mich-Wisc of commingled natural gas and synthetic gas (SNG) produced from coal, and (2) the construction and operation by Mich-Wisc of pipeline and compressor facilities to enable it to receive and transport such gas to its existing customers. On June 2, 1975, Mich-Wisc supplemented its original filing by the submission of additional Exhibit I data as required by § 157.14 of our regulations, and on June 23, 1975, the original filing was further supplemented by the submittal of various contracts related to the coal gasification project. Additionally pursuant to a Commission deficiency letter, additional environmental data was filed on June 20, 1975. On March 31, 1975, Great Lakes Gas Transmission Company (Great Lakes) filed in Docket No. CP75-283 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing transportation of SNG produced from coal commingled with natural gas for the account of ANG from a point on Great Lakes' main transmission line at Thief River Falls, Minnesota, to a point of delivery to Mich-Wisc at Crystal Falls, Michigan, and second, the construction, modification and operation of certain facilities.

The subject proposals represent an effort by the Applicants to deliver SNG commingled with natural gas to Mich-Wisc's existing customers in order to help alleviate a gas supply deficiency on Mich-Wisc's system. ANG plans to build a non-jurisdictional coal gasification plant in Mercer County, North Dakota, capable of producing about 275,000 Mcf per day of high Btu SNG, utilizing the "Lurgi Process". The SNG would be transported by Great Lakes from the plant to Great Lakes' existing pipeline system near Thief River Falls, Minnesota, through a 365 mile 30-inch diameter non-jurisdictional SNG pipeline.[1] At such point SNG would be commingled with natural gas and be transported to Mich-Wisc's transmission system near Crystal Falls, Michigan. In order to effectuate such transportation, Great Lakes requests authorization to construct approximately 217.3 miles of 36-inch diameter pipeline loop, to modify seven existing compressor stations, and to shift utilization of 39.5 miles of existing loop, presently rendering transportation service to Northern Natural Gas Company, for use in the subject SNG project. At the point of delivery to Mich-Wisc, ANG would sell to Mich-Wisc quantities of commingled SNG and natural gas equivalent in heating value to the output of the coal gasification plant less operational fuel needs. Mich-Wisc requests permission to construct 27.7 miles of 30-inch pipeline loop between Crystal Falls, Michigan and its existing Mountain, Wisconsin, Compressor Station, add a 12,000 horsepower compressor unit and upgrade an existing 7,500 horsepower unit to 12,000 horsepower at the Mountain Compressor Station and install an additional 3,500 horsepower compressor unit at its existing Kewaskum, Michigan, Compressor station, in order to accept delivery of the subject gas and transport it to its market area. The cost of this project is estimated by the Applicants as follows:

(a) Jurisdictional:	
(1) Mich-Wisc pipeline loops and compressor facilities	$13,968,830
(2) Great Lakes pipeline loops and compressor modifications[1]	93,898,900
Total	107,867,730
(b) Non-jurisdictional:	
(1) Gasification plant facilities	$778,274,000
(2) Coal mine facilities	125,759,000
(3) SNG pipeline	103,400,000
Total	1,007,433,000

[1] Includes book value of $7,356,800 for existing pipeline loop to be dedicated to this service.

Great Lakes plans to finance the $86,542,100[2] of jurisdictional facilities and $103,400,000 for the non-jurisdictional SNG pipeline through the issuance of common stock by parent companies, the sale of three-year term promissory notes and sale of twenty-year term first mortgage sinking fund bonds. Mich-Wisc proposes to finance approximately $14,000,000 in jurisdictional facilities initially from treasury funds, retained earnings and other internally generated funds, together with bank borrowings under short term lines of credit as required. The construction of the gasification plant and a connected coal mine would be financed by ANG with a combination of debt, common stock equity to be furnished by Mich-Wisc's parent, American Natural Gas Company and a special surcharge discussed later herein.

Mich-Wisc plans no new or increased sales as a result of this project. It estimates that its gas supply deficiency will increase from 21,200 MMcf in 1975, to 164,671 MMcf in 1981, when the Mercer County SNG plant is scheduled to commence operations, with the assumption that Arctic gas would initially become available in 1980. Mich-Wisc expects to curtail into Priority 2 in 1978 with increasing curtailments of Priority 2 for succeeding years, and curtailment into Priority 1 commencing in 1983, even assuming the availability of the subject gas.[3]

For the transportation of the SNG from the gasification plant to Great Lakes mainline via the 365-mile non-jurisdictional pipeline, Great Lakes proposes to charge Mich-Wisc on a cost of service basis. This rate is estimated to be 24.5 cents per Mcf in the first full year of operation. For the transportation through its jurisdictional mainline, Great Lakes will charge a demand rate of $4.657 and a commodity rate of 5.614 cents, for an average rate of 22.45 cents per Mcf.

Mich-Wisc claims that the coal gasification plant of ANG cannot be financed solely on the credit of the Applicants or their affiliate—American Natural Gas Company—and therefore, has proposed certain tariff provisions designed to help obtain financing for the project. During the construction phase of the project, Mich-Wisc would pay ANG an Allowance For Funds Used During Construction (AFUDC) to cover carrying charges on debt and a 12 percent after-tax return on equity, which would be passed onto Mich-Wisc's customers as a surcharge to all gas sold during the construction period, notwithstanding its source. Mich-Wisc also proposes to pay ANG during the operational phase of the project the cost of service of the plant including a 15 percent return on equity.

Mich-Wisc estimates the initial tailgate cost of the subject SNG at $2.52 per Mcf, based upon the imposition of the AFUDC surcharge during the construction phase of the project. The surcharge is estimated to range from two cents per Mcf in 1976 to sixteen cents per Mcf in 1981. Based upon Mich-Wisc's application, the incremental cost of this gas delivered into Mich-Wisc's market area consisting of the gas purchase price with all transportation charges added thereto could equate to approximately $3.70 per Mcf. Mich-Wisc proposes to price such gas on a rolled-in basis, rather than in incremental basis.

After due notice by publication in the FEDERAL REGISTER, petitions to intervene have been filed by a number of parties in both dockets herein, as well as notices of intervention by the Public Service Commissions of Wisconsin, Iowa and Michigan. The attached Appendix details such parties.

The Commission is vitally concerned with the impact which the subject applications could have on Mich-Wisc's customers. We believe that the instant applications should be consolidated and should be subject to an evidentary hearing on all issues raised by these applications. It shall be incumbent upon the Applicants to submit up-to-date, full and complete cost data for all the elements of the subject project, from which the complete economic impact of the proposal on all parties can be adduced. Such data shall include, but not necessarily be limited to, such items as a detailed esti-

[1] The Commission has no jurisdiction over the production of SNG from coal or the transportation of SNG absent its commingling with natural gas. Alice Henry v. FPC 513 F2d 1312 (CADC 1975), issued July 28, 1975.

[2] Excludes the book value of existing pipeline loop to be used for this project ($7,356,800).

[3] For a description of these priorities see 18 CFR 2.78.

mate of total capital cost of all facilities showing cost of construction by operating units such as compressor stations, pipelines, etc. and separately stating the cost of right-of-way, damages, surveys, materials, labor, engineering and inspection, administrative overhead, fees for legal and other resources, allowance for funds used during construction, and contingencies. It should also indicate the source of information used as the basis for the estimates, such as preliminary bids or recent experienced cost data for facilities of similar character. In addition to providing testimony on the normal pre-requisites needed to establish a *prima facie* case under section 7(c) of the Natural Gas Act, the Applicants, should *inter alia*, provide testimony on the environmental impact of the entire gasification project. A recent court decision, "Alice Henry v. FPC" (see footnote 2) has said that the FPC under its responsibilities imposed by National Environmental Policy Act of 1969 must consider and evaluate the environmental consequences of issuing a certificate even into the areas where related facilities would be non-jurisdictional.

As required by the National Environmental Policy Act, full consideration will be given by the Commission to the environmental impact that may result from the construction and operation of this coal gasification project. However, in line with the "Alice Henry v. FPC" and "NRDC v. Morton" (148 U.S. App D.C. 5; 458 F 2d 827), our staff need not independently prepare its own EIS but may rely on the EIS prepared by another Federal agency. It is our understanding that the Bureau of Reclamation of the Department of Interior is currently preparing an EIS on this coal gasification project which might be adopted or modified by our staff.

The Commision finds. (1) There exists common questions of law and fact in Docket Nos. CP75-278 and CP75-283.

(2) It is necessary and appropriate that the applications in Docket Nos. CP75-278 and CP75-283 be consolidated for formal hearing and disposition.

(3) Participation by the late petitioners, as listed in the attached Appendix below, will not delay the instant proceeding and therefore good cause exists for accepting their late petitions to intervene.

(4) Participation by the petitioners in the Appendix attached below may be in the public interest.

The Commission orders. (A) Pursuant to the provisions of the Natural Gas Act particularly, Sections 7 and 15 thereof, the applications in Docket Nos. CP75-278 and CP75-283 are consolidated for hearing and disposition and a formal hearing shall be convened in this consolidated proceeding in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on January 22, 1976, at 10:00 a.m. (e.s.t.). The Presiding Administrative Law Judge for the purpose—See Delegation of Authority 18 CFR 3.5(d)—shall preside at the hearing in this proceeding and shall prescribe relevant procedural matters not herein provided.

(B) The direct case of the Applicants herein and any supporting interveners shall be filed and served on all parties of record, including the Commission Staff on or before December 22, 1975. Following the conclusion of cross-examination thereon, the Presiding Judge shall set such dates as are reasonable for the submission of answering any rebuttal cases, and the supmittal of the Commission's Staff's testimony.

(C) The petitioners listed in the attached Appendix below are permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene: *And Provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they or any one of them might be aggrieved because of any order of the Commission entered in this proceeding.

(D) The record in this proceeding shall remain open until either the submission of an environmental impact statement by the Commission Staff or the submittal of a statement of the Commission Staff adopting or modifying the environmental impact statement of another government agency concerning the subject coal gasification project, and no final decision shall be issued by the Commission until inclusion of one of the aforesaid statements in the record and appropriate consideration thereof.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX

INTERVENERS

Associated Natural Gas Company.
El Paso Natural Gas Company.
Illinois Power Company.
Iowa Electric Light and Power Company.
Iowa Southern Utilities Company.[1]
Keokuk Gas Service Company.
Madison Gas and Electric Company.
Michigan Consolidated Gas Company.
Michigan Gas Utilities Company.
Michigan Power Company.
Midwestern Gas Transmission Company.
Mobil Oil Corporation.
Natural Gas Pipeline Company of America.
North Central Public Service Co., Division of Donovan Companies, Inc.
Northern Indiana Public Service Company.
Northern Natural Gas Company.
Peoples Natural Gas, Division of Northern Natural Gas Company.
Phillips Petroleum Company.
TransCanada Pipelines Limited.[1]
Union Gas Limited.
West Ohio Gas Company.
Wisconsin Fuel and Light Company.
Wisconsin Gas Company.
Wisconsin Michigan Power Company and Wisconsin Natural Gas Company.
Wisconsin Power and Light Company.
Wisconsin Public Service Corporation.

NOTICES OF INTERVENTION

Public Service Commission of Wisconsin.[1]
Iowa State Commerce Commission.[1]
Michigan Public Service Commission.

[1] Filed late.

[FR Doc.75-32244 Filed 11-28-75;8:45 am]

[Docket No. ER76-231]

MISSISSIPPI POWER & LIGHT CO.

Notice of Cancellation

NOVEMBER 21, 1975.

Take notice that on November 7, 1975, Mississippi Power & Light Company (MP&L) tendered for filing Notice of Cancellation of the provisions of its Rate Schedule No. 35, Supplement No. 6, Letter Agreement, with Tennessee Valley Authority (TVA), TV-14459A dated August 15, 1952. MP&L states this agreement was for the delivery of power by MP&L for the account of TVA at MP&L's Como substation. MP&L further indicates that the termination was by mutual agreement of the parties.

MP&L requests an effective date of October 15, 1975, for the termination.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 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.75-32283 Filed 11-28-75;8:45 am]

[Docket No. RP74-100 (PGA 76-3)]

NATIONAL FUEL GAS SUPPLY CORP.

Proposed PGA Rate Adjustment

NOVEMBER 19, 1975.

Take notice that on November 5, 1975, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1, Third Substitute Fifth Revised Sheet No. 4, proposed to be effective December 1, 1975.

National states that the sole purpose of this revised tariff sheet is to adjust National's rates pursuant to the PGA provisions in section 17 of the General Terms and Conditions. National further states that such tariff sheet reflects an adjustment in National's rates of 1.86¢

[1] Filed late.

per MCF on Third Substitute Fifth Revised Sheet No. 4.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal 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 and 1.10). All such petitions or protests should be filed on or before December 5, 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.75-32236 Filed 11-28-75;8:45 am]

[Docket No. RP74-100 (PGA 76-3a)]

NATIONAL FUEL GAS SUPPLY CORP.

Proposed PGA Rate Adjustment

NOVEMBER 19, 1975.

Take notice that on November 10, 1975, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FPC Tariff, Original Volume No. 1, Third Substitute Fifth Revsied Sheet No. 4, proposed to be effective December 1, 1975.

National states that the sole purpose of this revised tariff sheet is to adjust National's rates pursuant to the PGA provisions in section 17 of the general terms and conditions. National further states that such tariff sheet reflects an adjustment in National's rates of 2.82¢ per MCF on Third Substitute Fifth Revised Sheet No. 4.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before December 10, 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 avaliable for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32237 Filed 11-28-75;8:45 am]

[Docket Nos. CP76-14 etc.]

NATURAL GAS PIPELINE COMPANY OF AMERICA ET AL.

Findings and Order Granting Temporary and Permanent Certificates of Public Convenience and Necessity After Statutory Hearing Amending Prior Order, Setting Hearing, Consolidating Proceedings, Granting Interventions, Accepting Rate Schedules for Filing, and Rejecting Withdrawal

NOVEMBER 21, 1975.

Natural Gas Pipeline Company of America, CP76-14; Tennessee Gas Pipeline Company, CP75-301; Kerr-McGee Corporation, CI76-6; Cabot Corporation, CI76-95; Skelly Oil Company, CI76-109; Aztec Oil and Gas Company, CI76-121; The California Company, a Division of Chevron Oil Company, CI76-122; General American Oil Co. of Texas, CI76-142; Union Texas Petroleum, a Division of Allied Chemical Corporation, CI76-161; Ocean Production Company, et al., CI76-184; Phillips Petroleum Company, CI76-218; Kerr-McGee Corporation, CI76-238; Cabot Corporation, CI76-260; Felmont Oil Corporation, CI76-265; Case-Pomeroy Oil Corporation, CI76-266; Mobil Oil Corporation, CI75-538; Valhi Inc., CS76-165; Dalco Oil Company, CS66-96; Texasgulf, Inc., CS71-383.

On October 17, 1975, in Docket No. CP76-14, Natural Gas Pipeline Company of America (Natural) filed a petition for reconsideration of the Commission's letter-order dated October 14 which denied Natural's request for temporary certificate to construct its pipeline project.[1] On July 14, 1975, Natural filed its application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate 9.6 miles of 16-inch OD pipeline in the South Addition, West Cameron Area of offshore Louisiana. The proposed facilities will extend from Block 543 to a point of interconnection with Stingray Pipeline Company's (Stingray) existing 30-inch OD facilities in Block 565 of the same area. Stingray would then transport the gas onshore through its present system and redeliver an equivalent volume to Natural near its onshore station, where Natural has pipeline facilities, located in Cameron Parish, Louisiana.

Stingray would transport the gas under its present Rate Schedule T-1. Natural states that it will transport for itself and/or others approximately 78,000 Mcf/d in the first year. The line is designed to transport 165,000 Mcf/d. Total cost of the proposed facilities is estimated to be $5,658,000. Natural has a contract to purchase gas from Kerr-McGee Corporation (K-M) from Block 543, West Cameron.

By a motion filed September 14, 1975, Natural requested temporary authorization to construct but not operate the proposed facilities. Natural estimates construction time to be about 30 days assuming normal fall weather. Natural stated that Northern Natural Gas Company (Northern) and Columbia Gulf Transmission Corporation (Columbia Gulf) are negotiating for the remaining 50 percent of the reserves on Block 543—25 percent to each company—and have indicated their desires to have Natural transport their gas from the said block as well as gas from Block 544 of the same area. Natural requested a waiver of § 2.65(a)(4) which requires the utilization of a load factor of 60 percent for rate making purposes. At the initial transportation volume of 78,000 Mcf/d the load factor would be 46 percent, therefore, below that required by the aforementioned section. However, Natural expects additional gas to become available for purchase or transportation.

By letter-order dated October 14, 1975, the Commission denied Natural's Motion because all interdependent applications had not been filed. Natural now seeks reconsideration and states that 30,000 to 35,000 Mcf/d of gas would be available from K-M's 50 percent interest in Block 543 of a total 90,000 to 100,000 Mcf/d from the Block 543 Field, which includes adjacent Blocks 544 and 522. The ownership of the Block 543 Field is as follows: In Block 543; Kerr-McGee (K-M) 50 percent; Cabot Corporation (Cabot) 25 percent; and Felmont Oil Corporation and Case-Pomeroy Oil Corporation (Felmont) 25 percent. In Block 544, a 25 percent interest is owned each by Phillips Petroleum Company (Phillips) Skelly Oil Company (Skelly), Union Texas Petroleum, and Texas Gulf Inc. (Texas Gulf). In Block 522, K-M, Cabot and Felmont own producing rights pursuant to a farm-out agreement from the SLAM Group. Felmont has not filed to sell gas from its 25 percent interest in Block 543.

Natural submits that sufficient compliance has been made as to the interdependent applications of natural gas producers and transportation agreements and that waiver of the regulation by the Commission should be permitted as in "Texas Eastern Transmisison Corporation, et al.," Docket Nos. CP63-177, et al., order issued July 18, 1975. Natural notes that in the offshore Project 281, Texaco had not filed for appropriate Commission authorization and that the Commission subsequently granted a temporary certificate to construct and operate Project 281, conditioned on producer authorization to sell gas. In view of the substantial number of producer fillings which are now before the Commission for concurrent action on a project basis, there appears to be available a sufficient supply of natural gas to support the grant of a certificate to Natural as will hereinafter be ordered, consistent with the Commission's prior action set forth in Texas Eastern, supra.

Kerr-McGee Corporation (K-M) requests a permanent certificate in Docket No. CI76-6 to initiate sales of gas to Natural Gas Pipeline Company from its 50 percent working interest in Block 543, West Cameron Area, offshore Louisiana Federal Domain, at the national rate established in Opinion No. 699-H (51.0¢

[1] Natural's filing is not properly a petition for rehearing under Section 19 of the Act as the order of October 14, is not a final order of the Commission. Natural's filing will be treated as a motion for reconsideration.

per Mcf at 14.73 psia) subject to upward and downward Btu adjustment from a base of 1,000 and a gathering allowance of 0.5¢ per Mcf in lieu of the base contract rate of $1.44 per Mcf (15.025 psia).

Cabot Corporation (Cabot) requests a permanent certificate in Docket No. CI76-95 to initiate sales of gas from its 25 percent working interest in West Cameron Block 543 to Northern Natural Gas Company (Northern) at the national rate in lieu of the base contract rate of $1.40 per Mcf (14.65 psia). The remaining 25 percent working interest in West Cameron Block 543 is owned by Felmont Oil Corporation and Case-Pomeroy Oil Corporation (Felmont). To date, neither Felmont nor Case-Pomeray has filed for authorization to make sales from their working interest.

Skelly Oil Company (Skelly) requests a temporary certificate in Docket No. CI76-109 and Union Texas Petroleum A Division of Allied Chemical Corporation (Union Texas) and Phillips Petroleum Company (Phillips) requests permanent certificates in Docket Nos. CI76-161 and CI76-218, respectively, to initiate sales of gas from Block 544, West Cameron Area, offshore Louisiana Federal Domain, to Columbia Gas Transmission Corporation (Columbia) at the national rate in lieu of the base contract rate of $1.05 (15.025 psia). Skelly, Phillips and Union Texas each own a 25 percent working interest in Block 544. The remaining 25 percent working interest is owned by Texasgulf Inc., holder of a small producer certificate in Docket No. CS71-383. Texasgulf's interest is dedicated to a contract with Columbia.

The contracts submitted by Skelly, Union Texas and Phillips limit the dedication to gas produced from the Lent 1 Sand and provide that upon written notice to the buyer, sellers may exercise an option to receive up to 25 percent of the average daily quantity of gas produced. The contract submitted by Cabot provides that Cabot has the right, upon 6 months written notice to the buyer, to have up to 20 percent of the gas returned to Cabot at an onshore point in South Louisiana. K-M's contract limits the dedication to all depths down to a true vertical depth of 12,305 feet, provides for a term of 15 years and permits K-M to withdraw for its own use up to 25 percent of the gas upon at least 6 months prior written notice to Natural.

By telegram filed October 15, 1975, K-M advised that it would amend its contract to relinquish its option to reserve gas and to extend the term from 15 to 20 years if the following occur on or before November 13, 1975: (1) The issuance of a permanent certificate to Natural to construct and operate its proposed facilities; (2) The issuance of a permanent certificate to K-M for its proposed sale; and (3) The construction of Natural's proposed facilities. In addition, K-M's contract provides that Natural will transport liquids for K-M free of charge unless Natural is required to allocate and bear costs for such liquid transportation or pay third parties for such liquid transportation. Cabot's contract provides that Cabot will pay Northern 20.0 cents per barrel for transporting or causing the transportation of liquids for Cabot.

K-M on October 28, 1975, in Docket No. CI76-238 filed an application for a certificate for the sale of gas from Block 522 of the Block 543 Field, West Cameron Area, Offshore Louisiana, in the Federal Domain. K-M proposes to initiate the sale of gas to Texas Eastern Transmission Corporation (Texas Eastern) from its interest in Block 522 at the national rate established in Opinion No. 699-H, in lieu of the contract rate of $1.44 per Mcf. K-M's contract provides for a term of 20-years and commits all gas produced from the surface down to the base of the deepest hydrocarbon bearing reservoir or its correlative zone encountered as of the contract date. The leasehold interest in Block 522 owned by SLAM (Burmah Oil and Gas Company, Louisiana Land and Exploration Company, Amerada Hess Corporation and Marathon Oil Company, hereinafter Burmah, et al.) was farmed out to K-M, Cabot and Felmont. Cabot in Docket No. CI76-260, Felmont in Docket No. CI76-265 and C-P in Docket No. CI76-266 have filed application to sell the other 50 percent farmout interest in Block 522 to Texas Eastern on the same basis as set forth above in K-M's sale. In view of the lack of notice of the applications and opportunity for protest and intervention, the omission will grant K-M, Cabot, Felmont and C-P temporary certificates.

Natural has made advance payments to K-M; Columbia has made advance payments to Phillips, Skelly and Union Texas; and Northern Natural has made advance payments to Cabot.

Tennessee Gas Pipeline (TGP) proposes in CP75-301 to construct and operate 33.7 miles of offshore transmission pipeline, and related facilities, extending from a production platform of Chevron Oil Company in Block 249, South Marsh Island area, offshore Louisiana, Federal Domain, northwesterly to a point of connection onshore with the Pecan Island processing plant, Vermilion Parish, Louisiana, and then to the Blue Water Project pipeline system jointly owned by Tennessee and Columbia Gulf Transmission Company. Tennessee will receive and transport to its mainline system, volumes of gas to be purchased from Chevron and other producers in Blocks 249 and 250, South Marsh Island area offshore Louisiana. Tennessee has made advance payments of $55 million covering the South Marsh Island area, Blocks 249 and 250, with each of several producers owning interests therein.

The California Company, a Division of Chevron Oil Company, (Chevron) and General American Oil Company of Texas (GAOCT) request permanent certificates in Docket Nos. CI76-122 and CI76-142, respectively, and Aztec Oil & Gas Company (Aztec) and Ocean Production Company, et al. (Ocean), (the "et al." parties are Ocean Oil & Gas Company and Murphy Oil Corporation) request temporary certificates in Docket Nos. CI76-121 and CI76-184, respectively, to initiate sales of gas to Tennessee from Blocks 249 and 250, South Marsh Island Area, offshore Louisiana (Federal Domain) at the national rate established in Opinion No. 699-H (51.0¢ per Mcf at 14.73 psia subject to upward and downward Btu adjustment from a base of 1,000 and a gathering allowance of 0.5¢ per Mcf) in lieu of the contract rates of $1.63 (15.025 psia). Each related contract dedicates only those reserves found in specified reservoirs. In addition, the contracts submitted by Chevron, Ocean and GAOCT also permit the reservation of a portion of the gas in the dedicated reservoirs for the producer's own use. Ocean has not reserved gas for its own use. Murphy Oil Corporation, an "et al." party to Ocean's application, has reserved gas for its own use. Chevron's contract with TGP is for a term of 10 years and year to year thereafter unless cancelled by either party and the contracts submitted by Aztec, GAOCT and Ocean provide for a primary term of 10-years and year-to-year thereafter unless cancelled by either party, although it is understood that TGP has a continuing right to purchase gas for 20-years. The advance payment agreement with Chevron provides that the contract term will be 20-years and the advance payment agreements with Aztec, GAOCT and Ocean provide that the contract term will be 20-years unless the Commission is currently accepting contracts with lesser terms; but in any event, not less than five years. In the event Chevron, Aztec, GAOCT and Ocean accept temporary certificates and have their applications set for hearing as hereafter scheduled, they shall show cause by their evidence why the term of their contracts should not be amended to be equivalent to the term prescribed (20 years) in its advance payment agreements.

Chevron's July 24, 1975, contract dedicates only 75 percent of the reserves in the specified reservoirs; the remaining 25 percent has been reserved by Chevron for its own use. GAOCT has reserved the right to reserve a total volume of 25,550,000 Mcf for its own use from various blocks (South Marsh Island Blocks 170, 249, 250, and 258 and East Cameron Block 251) subject to advance payment agreements with Tennessee: *Provided*, Such volume does not exceed 20 percent of the total recoverable reserves attributable to GAOCT's interest in such blocks. Murphy has reserved the right to reserve 54,750,000 Mcf for its own use from various blocks (South Marsh Island Blocks 170, 249, 250, and 258; East Cameron Block 351; and West Delta Block 124) subject to advance payment agreements with Tennessee, provided such volume doesn't exceed 20 percent of Murphy's interest in the recoverable reserves underlying such blocks.

The subject application with TGP cover 77.5 percent of the working interests in Block 249 and 70.0 percent of the working interests in Block 250. The Superior Oil Company and Canadian Superior Oil (U.S.) Company own a 13.0 percent and 7 percent working interest, respectively, in Blocks 249 and 250. No application has been received from either producer. Dalco Oil Company owns the

remaining 2.5 percent working interest in Block 249 and a 2.0 percent working interest in Block 250; Dalco has a small producer certificate in Docket No. CS66–96. Its interest is committed by contract to TGP. The remaining 8.0 percent working interest in Block 250 is owned by Valhi, Incorporated. On September 24, 1975, Valhi filed for a small producer certificate in Docket No. CS76–165, TGP has filed a contract for Valhi's sale.

A parallel situation involves the TGP Project Block 249, South Marsh Island, as Natural's Block 543 project previously described and the Commission will extend the same treatment to Tennessee's project and issue it a similar certificate.

The contracts submitted by GAOCT and Aztec contain the following provision:

> If at any time, and from time to time, after the date of this Agreement the price per Mcf authorized to be paid by Buyer for gas purchased from any gas producer whomsoever in fields located within the Southern Louisiana and Offshore Area shall be greater than the price per Mcf of gas purchased under this Agreement, Buyer will increase the price per Mcf payable to Seller for gas delivered under this Agreement to equal such higher price.

Such provision constitutes a favored-nation clause which is impremissible in contracts dated after April 3, 1961, pursuant to § 154.93 of the regulations. The authorization granted herein to GAOCT and Aztec, either temporary or permanent, is conditioned on removal of said provision within 30 days herefrom.

Chevron's contract provides that Tennessee will transport liquids for Chevron and charge the rate prescribed by any FPC order for such transportation service. The contracts submitted by Aztec, Ocean and GAOCT also provide that Tennessee will transport liquids for the producers at no charge unless the FPC requires that a transportation charge be paid. TGP, Natural and Stingray will be directed to file a liquids transportation rate schedule 30 days prior to initiation of said service for natural gas producers, together with a supporting cost of service exhibit, as a condition to issuance of a certificate.

This order involves three separate and distinct pipeline projects in the Gulf of Mexico, offshore Louisiana in the Federal Domain wherein interstate pipeline companies subject to the jurisdiction of the Commission under the Natural Gas Act seek to attach new supplies of natural gas to be produced from Federal leases owned by natural gas producers. Natural gas producers seek Commission approval of contracts which limit the dedication of gas to specified producing formations, reserve specific portions of gas for their own use, or limit the sale of gas to specified percentages of available reserves and limit the term of their contracts for the sale of gas. In view of the national shortage of natural gas and the declining gas reserves of interstate pipelines, the Commission by order issued June 3, 1975, in Getty Oil Company, et al., in Docket No. CI75–319, et al., directed that a formal hearing be held to resolve similar issues of depth limitations and limitation on the term of the sale.

The order of June 3, 1975, in Docket No. CI75–319 et al. (p. 1) states:

> This proceeding involves issues of limitations in gas sales contracts, between independent producers and an interstate pipeline, for natural gas to be produced and sold from leases in the Federal Domain in the Gulf of Mexico, proposed to be certificated by the Federal Power Commisssion and accepted for filing.
>
> The producer gas sales contracts would limit dedications to the base of defined producing formations for a limited term. In view of the national shortage of natural gas and the declining gas reserves of interstate pipelines, the Commission directs a formal hearing on these issues. Applicants shall, *inter alia*, in their evidence address the question of whether the dedication of gas reserves to be connected from Federal Domain leases should not include all of the commercially producible gas reserves from the surface to the limit of the well bore.

Producers herein have proposed contracts limiting the term of the sale contract, reserving volumes of gas or percentages of total reserves or options to do so at their unilateral discretion, and containing depth limits.

In Docket No. CI75–538, Mobil Oil Corporation (Mobil) has on file an application to sell gas to Trunkline Gas Company (Trunkline) from Block 95 Field, Grand Isle Area, offshore Louisiana in the Federal Domain. Trunkline Gas Company has a pending application in Docket No. CP75–273 to construct and operate facilities from the Block 95 Field to its existing offshore pipeline system.

Mobil's contract commits only 75 percent of the reserves in producing formations found between the top of the 4,500 Foot Sand (between 5,225 and 5,284 feet) and the base of the CN–10 Sand (between 10,175 and 10,102 feet) underlying specified portions of Blocks 93, 94, 95, and 96. The remaining 25 percent of the reserves in the dedicated depths is reserved for Mobil's own use. The term of the contract is 10 years.

On August 15, 1975, the Commission issued an order in Trunkline Gas Company and Mobil Oil Corporation, Docket Nos. CP75–273 and CI75–538, granting temporary certificates of public convenience and necessity and setting Mobil's application for hearing. The Commission found that in view of the National shortage of natural gas and the declining reserves of interstate pipelines, it was necessary that formal hearings be held to resolve similar issues of reservations, depth limitation and limitations on the term of the sale in Getty Oil Company, et al., Docket No. CI75–319, et al. Mobil rejected the temporary certificate and sought reconsideration. On September 10, 1975, the Commission issued an order which, *inter alia*, granted in part Mobil's application for reconsideration. The Commission's order further granted a permanent certificate with conditions to Mobil, and severed its application from the applications of the other producers. The permanent certificate stated that within 30 days after acceptance of the permanent certificate Mobil was required to file an amendment to its gas sales contract with Trunkline to delete any reservation of gas for Mobil's own use, to delete all depth limitations and to delete or amend the provision relating to the term of Mobil's proposed rate schedule. The order directed that Mobil's permanent certification was conditioned on substitution of either a 20-year term in the contract amendment or deletion of the delivery term entirely, and substitution therefor of a life-of-the-lease, or equivalent term, whichever is preferable to the parties (p. 8).

By letter filed October 9, 1975, Mobil notified the Commission that it was rejecting the certificate, withdrawing the proposed amendment contained in its application for rehearing and gave notice to the Commission of its withdrawal of its application for a certificate. The Commission in the order issuing a permanent certificate on September 10, 1975, identified the ten year term of the Mobil's contract as an issue requiring resolution on permanent certification, because Trunkline shows gas supply available from this field for eighteen years based on proven and probable reserves, and 20 years based on proven, probable or potential reserves.

On October 9, 1975, Trunkline requested an extension of the period within which to formally accept the certificate tendered by the Commission for a 120 day period, because Trunkline's certificate is dependent upon the availability of gas from Mobil, and that Trunkline's proposal to construct and operate these facilities will continue regardless of the response from Mobil as Mobil's interest in the Block 95 Field remains committed to Trunkline under its Advance Payment Agreement. By Notice issued October 17, 1975, the Secretary extended to December 10, 1975, the date within which Trunkline must accept the certificate in Docket No. CP75–273. It is thus apparent to the Commission that the rejection of certificates by Mobil and its purported withdrawal of its application has not terminated the proposal.

In order to expedite further consideration of all of these related matters, the Commission has determined that it is necessary and desirable in the public interest to reject Mobil's notice of withdrawal. The combination of facts, namely the acquisition by Mobil of Federal leases, the acceptance of large sums of advance payments from Trunkline, and the National shortage of natural gas compel further inquiry by the Commission as opposed to a summary grant of the requested withdrawal.

Mobil's application filed on August 22, 1975, states that it is prepared to accept a certificate unlimited as to duration, in support of Commission acceptance of a term of 10 years in Mobil's contract with Trunkline. On further consideration, the Commission finds that a certificate so conditioned should issue, based on the

following considerations. Cases [2] decided under the Natural Gas Act, lead to the finding that when the Commission certificates a sale by a producer, and the gas begins to flow under the certificated authority, the certificated service authority is binding on both seller and buyer until such time as the Commission authorizes a change in the certificated srevice. The authorized service integrates the duty to continue to make the sale regardless of any contractual provision to the contrary. Moreover, the contract between Trunkline and Mobil was entered into on March 4, 1975, substantially before the issuance of Commission Order No. 529, in Docket No. RM75–6, which provides that advance payment agreements executed after June 17, 1975, shall, *inter alia*, require long-term contracts for a minimum initial term computed on the lesser of 15 years or the life of the reserve in the field. The Commission will, therefore, amend the order of September 10, 1975, to permit the filing of the contract amendment without deletion of the 10-year term. However, this should not be construed as constituting any change in our policy stated in Order No. 529. Natural gas producers in the Natural Block 543 and TGP Blocks 249–50 projects will be accorded treatment consistent with the aforesaid.

In order to accommodate the various applicants involved in these offshore projects, the Commission will tender to the natural gas producers, in the alternative temporary or permanent certificates. Where the producers accept permanent authorization pursuant to the certificates hereinafter issued, specific conditions will eliminate all controversial issues. This can be accomplished by the filing by each producer of a contract amendment consistent with these requirements.

The alternative tendered to each natural gas producer is a temporary certificate which sets the application of the independent producer for hearing and decision and permits gas sales to commence as the Commission has previously permitted in the Getty Oil Company, et al., Docket No. CI75–319, et al. Each natural gas producer therefore has the option of accepting a temporary certificate to commence operations and proceed to formal hearing on the issues raised by its contract for the sale of gas, or in the alternative accept a permanent certificate as conditioned and conclude action on its application.

[2] City of Detroit v. Panhandle Eastern Pipeline Company, 6 FPC 196, 204, affirmed, 143 F.2d 488, (8th Cir. 1944), affirmed, 342 U.S. 635 (1945); Sunray Mid-Continent Oil Company v. FPC 364 U.S. 137, 156 (1960); Hunt v. FPC 306 F.2d 334, 342 (5th Cir. 1962); Panhandle Eastern Pipeline Company v. FPC, 177 F.2d 94, 945 (6th Cir. 1949); Michigan Consolidated Gas Company v. Panhandle Eastern Pipeline Company, 173 F.2d 784, 789 (6th Cir. 1949); Continental Oil Company, 31 FPC 1079, 1083, affirmed, 385 U.S. 83 (1966); Cities Service Gas Company, 38 FPC 364, 378 (1967); Blair-Vreeland, Opinion Nos. 724 and 724–A (1975; Mitchell Energy Corporation, Opinion No. 733 (1975); El Paso Natural Gas Company, et al., Opinion No. 737 (1975).

By subsequent notice, the Secretary of the Commission will designate the applicants and Docket Nos. which will be the subject of the hereinafter scheduled hearing. Natural gas producers which accept neither permanent nor temporary authorization pursuant to this order will have their application set for hearing as part of the consolidated proceeding.

Natural will be required to file applications and received authorization to transport gas for Texas Eastern, Northern Natural, Columbia Gas and any other party seeking to have its purchased gas transported through the subject facilities prior to the actual transportation of gas for such parties.

Felmont, Superior, and Canadian Superior have not filed an application for the sale of gas representing their interest in these gas fields. Consistent with the Commission's action in Marathon Oil Co., CI75–641, et al., order issued July 24, 1975, Texas Eastern, supra, each of these companies will be directed to file with the Commission, a written statement within 10 days of this order advising the Commission of its intention with regard to its interest.

K–M and Chevron will submit copies of all operating agreements affecting working interests in these fields. This requirement will be effective only so long as certificates are not issued and accepted by Felmont, Superior and Canadian Superiod, as applicable to their respective field operations.

Petitions to intervene have been filed by:

Tennessee Gas Pipeline Company.
Interstate Power Company.
Northern Illinois Gas Company.
Northern Indiana Public Service Company.
Illinois Power Company.
Iowa Southern Utilities Company.
Iowa Power and Light Company.
Mississippi River Transmission Corporation.
Iowa-Illinois Gas and Electric Company.
The Peoples Gas Light and Coke Company and North Shore Gas Company.
Columbia Gas Transmission Corporation.
Central Illinois Public Service Company.
Northern Natural Gas Company.
Peoples Natural Gas Division of Northern Natural Gas Company.
Iowa Electric Light and Power Company.

At a hearing held on November 19, 1975, the Commission on its own motion received and made a part of the record in these dockets all evidence, including the applications, as supplemented and amended, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds. (1) Each Applicant here is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sale of natural gas hereinbefore described, as more fully described in the application will be made in interstate commerce subject to the jurisdiction of the Commission; and such sale by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the FPC gas rate schedule related to the authorizations hereinafter granted should be accepted for filing.

(4) Participation by petitioners to intervene may be in the public interest in the proceedings in which they have filed petitions.

(5) The sales of natural gas hereinbefore described and as more fully described in the applications of natural gas producers in these dockets will be made in commerce subject to the jurisdiction of the Commission, and such sales by said persons, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary, therefore, are subject to the requirements of subsection (c) and (e) of section 7 of the Natural Gas Act.

(6) The transportation and sale of natural gas by applicants Natural Gas Pipeline Company and Tennessee Gas Pipeline Company, and the construction and operation of facilities will be subject to the jurisdiction of the Commission, are subject to the requirements of subsection (c) and (e) of section 7 of the Natural Gas Act.

(7) The order of September 19, 1975, in Docket No. CI75–358 should be amended as to ordering paragraph (I) to remove the requirement for elimination of the 10-year term.

The Commission orders. (A) Temporary certificates are issued to Applicants, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Natural Gas Pipeline Company of America to construct and operate the subject facilities as hereinbefore described, all as more fully described in the applications, as amended and supplemented. The temporary certificates are conditioned upon each producer-applicant herein receiving and accepting permanent or temporary Commission authorization to sell gas to Tennessee, Natural, Columbia, Northern or Texas Eastern, as applicable to each pipeline project. This authorization is without prejudice to such ultimate disposition of the applications, as amended and supplemented, as the record may require.

(B) The certificates issued in paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission regu'ations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(1), (c)(3), (c)(4), (e), (f) and (g) of § 157.20 of such Regulations. The construction authorized shall be completed within one year from the date of this order in accordance with paragraph (b) of § 157.20 of the regulations.

(C) The authorizations granted herein are conditioned upon the related producers who have filed for appropriate Commission authorization receiving and accepting permanent or temporary Commission authorization to sell natural gas to pipelines purchasers.

(D) All petitioners to intervene are permitted to intervene in all the proceedings in which they have filed petitions to intervene subject to the rules and regulations of the Commission: *Provided, however,* That participation by such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene: *And, provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in these proceeding.

(E) Permanent certificates of public convenience and necessity are issued upon the terms and conditions of this order authorizing the sale by natural gas producer applicants, herein of natural gas in interstate commerce for resale for ultimate public consumption, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, subject to Opinion No. 699, as amended, and any further orders issued thereunder, conditioned to the lesser of the contract rate or the national base rate of 51.0 cents per Mcf (14.73 psia), subject to upward and downward Btu adjustment from a base of 1,000 Btu per cubic foot, plus a 0.5 cent per Mcf gathering allowance, all as hereinbefore described and as more fully described in the applications in said dockets, subject to the following conditions.

(F) The certificates issued in paragraph (E) and (K) shall be void and without force or effect unless accepted in writing by Applicants within 30 days from the issue date of the order issuing such certificates: *Provided, however,* That if an application for rehearing of such order is filed in accordance with section 19 of the Natural Gas Act, such acceptance shall be filed within 30 days from the issue date of the order of the Commission upon the application for rehearing or within 30 days from the date on which such application may be deemed to have been denied when the Commission has not acted on such application within 30 days after it has been filed: *Provided, further,* That if petition for review is filed in accordance with the provisions of section 19 of the Natural Gas Act, such acceptance shall be filed within 30 days after final disposition of the judicial review proceedings thus initiated.

(G) The certificates issued in paragraph (E) and (K) above and the rights granted thereunder are not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission.

(H) The grant of the certificates issued in paragraph (E) and (K) shall not be construed as a waiver of the requirements of section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's regulations thereunder and is without prejudice to any findings or orders which have been or which may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicants. Further, our action in this proceeding shall not foreclose or prejudice any future proceedings relating to the operation of any price or related provisions in the gas purchase contracts herein involved. The grant of the certificates herein for service to the particular customers involved shall not imply approval of all of the terms of the contracts, particularly as to the cessation of service upon termination of said contracts as provided by Section 7(b) of the Natural Gas Act. The grant of the certificates herein shall not be construed to preclude the imposition of any sanctions pursuant to provisions or the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificates.

(I) Producer-Applicants, upon acceptance of a permanent certificate in paragraph (E) above shall within 30 days of said acceptance file with the Commission an amendment to its gas sale contract to delete any reservation of gas for its own use and to delete all depth limitations. Applicants having advance payment agreements calling for 20-year contracts must delete or amend, where necessary, the provision relating to the term of its proposed rate schedule by either substitution of a 20-year term or deletion of a delivery term entirely and substitution of life-of-lease (or equivalent) term, whichever is preferable to the parties.

(J) Section 154.93 of the regulations under the Natural Gas Act is hereby waived to permit the inclusion in Applicants rate schedules of the contractual provision for rate increases to a higher area rate found to be proper by hearing, rulemaking or a Commission approved settlement and the reimbursement by buyer of any excess royalty payments. Such waiver should not be construed as meaning that any rate increase based on such pricing provision would be accepted for filing without suspension.

(K) Based upon the allegations presented upon the need for additional natural gas supplies, the Commission finds that an emergency exists and temporary certificates are hereby issued to natural gas producer Applicants herein pursuant to section 7 of the Natural Gas Act authorizing the sale by Applicants in these dockets of natural gas in interstate commerce for resale for ultimate public consumption, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, subject to Opinion No. 699, as amended, and any further orders issued thereunder, conditioned to the lesser of the contract rate or the national base rate of 51.0 cents per Mcf (14.73 psia), subject to upward and downward Btu adjustment from a base of 1,000 Btu per cubic foot, plus a 0.5 cent per Mcf gathering allowance, subject to conditions stated above and hereafter.

(L) Applicants acceptance or rejection of the temporary certificates shall be filed within 30 days of the date hereof. If accepted, the temporary certificate shall be effective upon the date of receipt of the acceptance by the Secretary. Service under the temporary certificate shall commence within 30 days from the date of completion of the facilities by the purchaser transporter. Such service may not be discontinued without permission of the Commission issued pursuant to the provisions of section 7(b) of the Natural Gas Act whether the contract term has expired or not. The issuance of temporary certificate and the acceptance of the rate schedule are without prejudice to such final disposition of the application for certificate as the record may require.

(M) The applications in Docket Nos. CP76–14, CP75–301, CI76–6, CI76–95, CI76–218, CI76–109, CI76–161, CS71–383, CS66–96, CS76–165, CI76–121, CI76–122, CI76–142, CI76–238, CI76–260, CI76–265, CI76–266, and CI75–538 are hereby consolidated for hearing and decision. By subsequent notice, the Secretary of the Commission will delete herefrom each application which is concluded by acceptance of a permanent certificate issued by paragraph (E) above.

(N) On or before January 22, 1976, Applicants and all persons in support shall each file their prepared testimony and exhibits comprising their case-in-chief upon all parties to the proceeding, the Office of the Administrative Law Judges, the Commission Staff and all parties to the consolidated proceeding.

(O) The Chief Presiding Administrative Law Judge shall designate a presiding officer to preside at the hearing hereinafter ordered. Subsequent to the date set for hearing by this order, or any subsequent order or notice amending said hearing date, the delegated Administrative Law Judge shall control further proceedings consistent with the Rules and Regulations of the Commission and in compliance with this order.

(P) Pursuant to the authority of the Natural Gas Act particularly sections 7, 14, 15, 16 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held commencing February 17, 1976, at 10:00 a.m. (e.s.t.) in a hearing room at the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, concerning the matters in these consolidated dockets.

(Q) The Secretary of the Commission is directed to serve a copy of this order on Felmont Oil Corp., Case-Pomeroy Oil Corp., Superior Oil Company and Canadian Superior Oil Co.

(R) Each natural gas producer shall present as part of its prepared evidence in the consolidated hearing supporting data to show the volumes of natural gas to be produced and sold from each field in which it has an interest during the term of its contract from contractually specified formations; the estimated gross and net recoverable natural gas reserves in each formations in each field; the estimated gross and net recoverable natural gas reserves commercially producible from the surface to the limit of the well bore; and deliverability schedules related to each of the reserve estimates called for above. Each natural gas producer shall

also present a schedule of payments received and anticipated to be received from the interstate pipeline company proposing to purchase gas from the field. In order to reduce the volume of evidence submitted, a natural gas producer having an undivided interest in the Field may adopt the evidence of another producer as showing its reserves and deliverability.

(S) Felmont Oil Corp., Case-Pomeroy Oil Corp., Superior Oil Company and Canadian Superior Oil Company shall file a written statement within 10 days of the date of this order advising the Commission of its intentions with regard to its interest in Federal Domain Blocks 543 West Cameron area, and Blocks 249–250 South Marsh Island offshore Louisiana.

(T) The rate schedules and rate schedule supplements related to the authorizations granted herein are accepted for filing to become effective on the date of initial delivery. Applicants shall advise the Commission of said date within 10 days thereof.

The rate schedules have been designated as follows:

Description	*Designation*
Contract Sept. 1, 1975, agreement Oct. 24, 1975	Kerr-McKee Corp., rate schedule No. 133 and supplement No. 1 thereto.
Contract July 3, 1975	Kerr-McKee Corp., rate schedule No. 132.
Contract July 16, 1975	Cabot Corp., rate schedule No. 115.
Contract Sept. 1, 1975	Cabot Corp., rate schedule 116.
Contract Sept. 1, 1975, agreement Oct. 31, 1975	Felmont Oil Corp., rate schedule 23 and supplement No. 1.
Contract Sept. 1, 1975	Case-Pomeroy Oil Corp., rate schedule No. 6 and supplement No. 1.
Contract July 10, 1975	Skelly Oil Co., rate schedule 280.
Contract July 9, 1975	Union Texas Petroleum, a Division of Allied Chemical Corp., rate schedule 134.
Contract Aug. 20, 1975, agreement Mar. 23, 1973	Ocean Production Co. et al., rate schedule 13 and supplement No. 1, thereto.
Contract July 25, 1975, agreement May 4, 1973	General American Oil Co. of Texas, rate schedule 101 and supplement No. 1.
Contract July 24, 1975	California Co., a Division of Chevron, rate schedule 90.
Contract Aug. 6, 1975	Aztec Oil & Gas Co., rate schedule 40.
Contract Aug. 4, 1975	Phillips Petroleum Co., rate schedule No. 579.

(U) Acceptance of the rate schedules of Applicants herein pursuant to temporary authorization in paragraph (K) does not constitute Commission approval of the contractual reservations or limitations involved pending resolution of the matter on the merits after hearing and decision.

(V) Appropriate authorization from the Commission is required by any pipeline to transport any gas which the producers may be permitted to reserve.

(W) Within 30 days from the date of this order, producer-applicant in CI76–142 shall file three copies of a written statement demonstrating the applicability of the rate, terms and conditions of Opinion No. 699–H. If such statement is filed with the Secretary within 30 days, the rate may be made effective as of the date of initial delivery.

(X) The Motion for rehearing of Natural Gas Pipeline filed October 17 in Docket No. CP76–14 is hereby denied to the extent not granted above.

(Y) The certificate authorization to Natural to construct facilities is conditioned on the cost of such facilities not becoming part of Natural's rate base until such time as these facilities are operational and the producers proposing to sell gas to the pipeline companies from the Block 543 Field have accepted authorization to sell gas. Natural's request for waiver of § 2.65(a)(4) will be considered at such future time as the Commission acts on the application by Natural for issuance of permanent certification. Natural is further directed to file applications for transportation of gas for other pipeline purchasers and receive such authorizations prior to the initiation of any such transportation service from the Block 543 Field, Stingray, Natural and Tennessee shall file appropriate rate schedules 30 days prior to the initiation of any transportation service for natural gas producers for the transportation of liquids from these Fields, together with a supporting cost-of-service exhibit.

(Z) The Secretary of the Commission shall serve a copy of this order on the Secretary of the Interior inviting his participation in this proceeding, to notify the Department of the status of these Federal leases, and to permit the Secretary to take whatever action he deems necessary in the circumstances.

(AA) Applicants GAOCT and Aztec shall file a contract amendment deleting the favored-nations clause from their contracts within 30 days from the date of this order.

(BB) Within 30 days from the date of this order, applicants in Docket Nos. CI76–6, CI76–95, and CI76–101 shall file the written statement demonstrating the applicability of the rate, terms and conditions of Opinion No. 699–H, including the written waiver required by § 2.56a(i) of the rules. If such statement is filed with the Secretary within 30 days, the rate may be made effective as of the date of initial delivery.

(CC) Within 30 days from the date of this order, applicants in Docket Nos. CI76–109, CI76–218, CI76–260, CI76–265, and CI76–266 shall file the written waiver required by § 2.56a(i) of the rules. If such waiver is filed within 30 days, the rate may be made effective as of the date of initial delivery.

(DD) Within 30 days from the date of the order, applicants in Docket Nos. CI76–109, CI76–121, CI76–142, CI76–218, CI76–265 and C76–266 and CI76–238 shall file three copies of a revised billing statement which clearly reflects the components of the authorized rate, namely, base rate, Btu adjustment and gathering allowance.

(EE) Applicant in Docket Nos. CI76–238, CI76–260, CI76–265 and CI76–266 shall obtain Commission authorization before reserves may be substituted pursuant to Section 5 of Article III of the related gas sales contract.

(FF) Chevron, GAOCT and Ocean shall show cause in the hearing ordered (where these applicants accept temporary certificates) by their evidence why the term of their contracts for sale of gas should not be amended to be equivalent to the term (20 years) prescribed in the advance payment agreements with TGP. This condition shall be void where each of these applicants accepts a permanent certificate.

(GG) Chevron and K-M shall file copies of all operating agreements in these Fields so long as certificates are not issued and accepted by Felmont, Superior, Canadian Superior, as applicable to their respective field operations herein.

(HH) Applicant natural gas company's attention is directed to Commission Order No. 539, issued October 14, 1975, FR ____, and to the provisions of § 2.83 General Policy and Interpretations, 18 CFR 2.83. Moreover, issuance of this certificate authorization is conditioned to require Applicant, within 30 days of the initial reserve determination or any subsequent redetermination thereof, to report the results of each such initial or redetermination study to the Commission. The certificated minimum daily delivery obligation of the seller (1) shall be determined in accordance with applicable provisions specifically set forth in seller's contract unless otherwise changed by the certificate authorization; (2) shall be without regard to any contractual reservations contrary to the certificate authorization; (3) and shall remain in full force and effect unless and until changed by appropriate certificate authorization amendment based upon Applicant's full documentation of, *inter alia*, the reasons for any such proposed amendment, the sales production history, the amount of remaining connected reserves of Applicant dedicated under the contract and the status of Applicant's nondeveloped reserves dedicated under the contract. The certificate authorization is further conditioned to require that Applicant, if it has not secured an appropriate certificate amendment and there are circumstances resulting in the delivery of a lesser quantity of natural gas than any certificated delivery obligation, Applicant shall file for each contract year quarter, a verified report setting out the circumstances of such

lesser deliveries and the corrective actions which Applicant proposes to undertake in order to meet any experienced delivery deficiency, such verified reports to be filed within 10 calendar days after expiration of each contract year quarter.

(II) Certificates issued by this order to natural gas producers and gas begins to flow under such authority makes the certificated service authority binding on both seller and buyer until such time as the Commission authorizes a change in the certificated service regardless of any contractual provision to the contrary.

(JJ) Trunkline, Natural and TGP shall file within 45 days after service commences under the certificates issued herein, a verified statement showing *pro forma* Form 15 gas reserves and deliverability schedules for these fields, and representations of reserves controlled which will be made to stockholders, or contained in a prospectus or registration statement in connection with financing or financial reporting.

By the Commission.*

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-32245 Filed 11-28-75;8:45 am]

[Docket No. ER76-228]

NEVADA POWER CO.

Change in Rate Schedule

NOVEMBER 18, 1975.

Take notice that on November 6, 1975, the Nevada Power Company (NPC) tendered for filing a change in rate schedule for the California-Pacific Utilities (CPUC) at Henderson, Nevada. Nevada states that the change in CPUC's rates will consist of an increase in the demand component of $1.94 per Kw per month to CPUC at Henderson. The net increase in the energy component is 1.03 mills per Kwh.

The filing is the same as that previously submitted in Docket No. ER76-40 but which was rejected by the Commission in its order of October 15, 1975. The basis for the rejection has now been cured by the passage of time. NPC has requested that this filing be consolidated with Docket No. ER76-40 with suspension to the same date, i.e., March 17, 1976.

NPC states that this rate relief is urgent due to their financial emergency. NPC further states that their return on common stock equity for the first five months of the year has been under 5 percent and for the month of May, 1975 their return was negative.

NPC states that copies of this filing have been mailed to CPUC, Public Service Commission of Nevada, Public Utilities Commission of California, and the Federal Power Commission, San Francisco.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 5, 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.75-32226 Filed 11-28-75;8:45 am]

[Docket No. ER76-232]

NORTHEAST UTILITIES SERVICE CO.

Notice of Filing of Notice of Termination

NOVEMBER 21, 1975.

Take notice that Northeast Utilities Service Company on November 7, 1975, tendered for filing a notice of termination of the following rate schedules with Vermont Electric Power Company (VELCO):

	Rate Schedule FPC No.
The Connecticut Light and Power Co.	78
The Hartford Electric Light Co.	62
Western Massachusetts Electric Co.	81

The Notice of termination indicated that the rate schedules were terminated by their own terms effective October 31, 1972.

The filing indicates that a copy of the notice of termination was served upon VELCO.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 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 inspecton.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-32286 Filed 11-28-75;8:45 am]

[Docket No. CP76-148]

NORTHERN NATURAL GAS CO.

Application

NOVEMBER 18, 1975.

Take notice that on October 28, 1975, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP76-148 an application pursuant to section 7 (c) of the Natural Gas Act, as implemented by § 157.7(b) of the regulations thereunder (18 CFR 157.7(b)), for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1976, and operation of certain natural gas purchase facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment its ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally coextensive with Applicant's system or other pipelines authorized to transport gas for or exchange gas with Applicant.

The total cost of the proposed facilities would not exceed $12,000,000, the cost of a single onshore project would not exceed $1,500,000, and the cost of a single offshore project would not exceed $2,500,000, which costs Applicant states would be financed from cash on hand and from revenue generated through operations.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 9, 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-32227 Filed 11-28-75;8:45 am]

*Commissioner Smith, dissenting in part and concurring in part, filed a separate statement as part of the original document.

[Docket No. RP76-26]

ORANGE AND ROCKLAND UTILITIES, INC., AND ALGONQUIN GAS TRANSMISSION CO.

Complaint

NOVEMBER 18, 1975.

Take notice that on October 15, 1975, Orange and Rockland Utilities, Inc. (Complainant), 75 West Route 59, Spring Valley, New York 10977, filed in Docket No. RP76-26 a complaint against Algonquin Gas Transmission Company (Respondent), 1284 Soldiers Field Road, Boston, Massachusetts 02135, alleging violation of section 4(b) of the Natural Gas Act through discriminatory and preferential implementation by Respondent of its curtailment plan.

The complaint states that the year ended April 30, 1973 has been designated by Respondent as the base period for implementing curtailment on its system during the period from September 1, 1975 to August 31, 1976. The complaint asserts that during July and August 1972, Complainant accepted an offer by Respondent to sell to Complainant on an interruptible basis a volume of surplus gas designated as "I-1" gas. As a result of its purchase of the additional gas, Complainant's total purchases from Respondent for the year ending April 30, 1973 exceeded its annual contract entitlement of 1,372,500 Mcf by 692,548 Mcf. The complaint alleges that Respondent has improperly included such excess purchases by Complainant during 1972 in Complainant's end-use profile for the curtailment base period. It is further alleged that this will result in a complete denial of gas service by Respondent to Complainant in August 1976 and an improper reduction in gas service to Complainant in July 1976. Complainant asserts that during the same month that it will be curtailed through Priority 1 by Respondent, other customers of Respondent will be permitted to purchase gas to serve Priorities 1 through 8. It is alleged that this discriminates against Complainant and its customers. Complainant requests that the Commission order Respondent to remove from its base-period end-use data the 692,548 Mcf of surplus gas purchased in 1972.

Complainant states that a copy of the complaint has been served on the Respondent.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before December 5, 1975 file with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. The complaint is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32228 Filed 11-28-75;8:45 am]

[Docket No. ER76-239]

PACIFIC POWER & LIGHT CO.

Modification of Rate Schedule

NOVEMBER 21, 1975.

Take notice that Pacific Power & Light Company (Pacific) on November 10, 1975, tendered for filing, in accordance with Section 35.13 of the Commission's Regulations, a new rate schedule for power and energy sales to the Town of Basin, Wyoming (Town). This rate schedule supersedes Pacific's existing rate schedule designated FPC No. 56.

The proposed rate schedule provides for a change in structure of the rate charged Town by Pacific. Pacific states that this proposed change in rate structure is to conform to the high voltage rate charged to other resale customers in the State of Wyoming. A use-of-facilities charge is included for the use of Pacific's transmission and transformation facilities.

Pacific requests waiver of the Commission's notice requirements to permit the new rate schedule to become effective October 19, 1975, which it claims is the date of commencement of service.

A copy of the filing was supplied to the Town of Basin.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with 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 application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32278 Filed 11-28-75;8:45 am]

[Docket No. RI76-8, RI76-10]

PENNZOIL PRODUCING CO. AND SHELL OIL CO.

Order Granting Late Intervention

NOVEMBER 19, 1975.

On July 1, 1975, and July 18, 1975, Pennzoil and Shell respectively, filed petitions for special relief from the just and reasonable rates under Opinion Nos. 598 and 699, as amended. The petitions for rate increases were based upon demands for increased royalty payments by Williams, Inc. et al., the royalty owners. In the alternative, the petitions requested authorization to abandon the royalty share of gas. A public hearing on these issues was held on September 23, 1975. Initial briefs by the parties were mailed on October 21, 1975.

A late petition to intervene was filed on October 9, 1975, by Mobil Oil Corporation.

Upon consideration of the late petition to intervene, we find good cause exists to grant such petition.

The Commission finds. Participation by the above-named petitioner in these proceedings may be in the public interest and good cause exists for permitting such intervention.

The Commission orders. (A) The above-named petitioner is hereby permitted to intervene in these proceedings as hereinbefore discussed, subject to the rules and regulations of the Commission; *Provided, however,* That the participation of such intervenors shall be limited to matters affecting rights and interests specifically set forth in the petition to intervene; *Provided, further,* That the admission of such intervenor shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders issued by the Commission in these proceedings.

(B) The intervention granted herein shall not be the basis for delaying or deferring any procedural schedules heretofore established for the orderly and expeditious disposition of these proceedings.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32238 Filed 11-28-75;8:45 am]

[Docket No. ER76-233]

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Notice of Filing of Agreement

NOVEMBER 21, 1975.

Take notice that Public Service Company of New Hampshire (PSNH) on November 7, 1975, tendered for filing as an initial rate schedule a Transmission Contract with Long Island Lighting Company (Long Island).

Under the Contract, PSNH will transmit through its system an entitlement of power which Long Island will be purchasing from Vermont Electric Power Company, Inc.

PSNH requests that the Commission waive the normal 30-day notice requirement and permit the rate schedule to be effective as of November 1, 1975.

According to PSNH, a copy of the filing was served upon Long Island.

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.75-32282 Filed 11-28-75;8:45 am]

[Docket No. E-9530]

PYRAMID LAKE PAIUTE TRIBE OF INDIANS AND SIERRA PACIFIC POWER CO.

Extension of Time

NOVEMBER 19, 1975.

On October 29, 1975, The Pyramid Lake Paiute Tribe of Idians (the Tribe) filed a motion to extend the time within which to answer Sierra Pacific Power Company's Motion to Dismiss Complaint and Answer, filed on October 14, 1975 in the above-indicated proceeding.

On November 5, 1975, Sierra Pacific Power Company filed an answer to The Tribe's motion of October 29, 1975, indicating that it did not oppose the motion.

Notice is hereby given that the time for answering Sierra Pacific Power Company's Motion to Dismiss Complaint and Answer is extended for all parties to and including November 28, 1975.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32222 Filed 11-28-75;8:45 am]

[Docket No. E-8514]

SOUTHERN SERVICES, INC.

Postponement of Hearing Date

NOVEMBER 19, 1975.

On November 6, 1975, Southern Services, Inc. filed a motion to postpone the hearing date fixed by order issued May 8, 1974, as most recently modified by notice issued September 2, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the hearing date in the above proceeding is postponed from December 29, 1975 to January 5, 1976.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32239 Filed 11-28-75;8:45 am]

[Rate Schedule Nos. 267, etc.]

SUN OIL CO., ET AL.

Rate Change Filings

NOVEMBER 19, 1975.

Take notice that the producers listed in the Appendix attached below have filed proposed increased rates to the applicable new gas national ceiling based on the interpretation of vintaging concepts set forth by the Commission in its Opinion No. 699-H, issued December 4, 1974. Pursuant to Opinion No. 699-H the rates, if accepted, will become effective as of the date of filing.

The information relevant to each of these sales is listed in the Appendix below.

Any person desiring to be heard or to make any protest with reference to said filings should on or before November 26, 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). A protest will not serve to make the protestant a party to the proceeding. Any party wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

APPENDIX

Filing date	Producer	Rate schedule No.	Buyer	Area
Oct. 16, 1975	Sun Oil Co., Southland Center, P.O. Box 2880, Dallas, Tex. 75221.	267	National Fuel Gas Supply Corp.	Texas Gulf Coast.
Oct. 20, 1975	Texaco, Inc., P.O. Box 2420, Tulsa, Okla. 74102.	142	Panhandle Eastern Pipe Line Co.	Hugoton-Anadarko.
Do	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	95	Arkansas Louisiana Gas Co.	Other Southwest.
Oct. 23, 1975	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	127	Cities Service Gas Co.	Hugoton-Anadarko.
Do	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	3	El Paso Natural Gas Co.	Permian Basin.

[FR Doc.75-32223 Filed 11-28-75;8:45 am]

[Docket No. RP76-29]

TEXAS EASTERN TRANSMISSION CORP. ET AL.

Notice of Petition For Approving Gas Advance Payment Agreement and Authorizing Appropriate Rate Base Treatment of Advance Payments Made and To Be Made Thereunder

NOVEMBER 21, 1975.

Take notice that on October 20, 1975, Texas Eastern Transmission Corporation (Texas Eastern) and Transwestern Pipeline Company (Transwestern) filed a petition with the Federal Power Commission (Commission) for an Order approving the Gas Advance Payment Agreement of June 30, 1975, between Texas Eastern and Atlantic Richfield Company (Arco), the partial assignment of 25% of Texas Eastern's rights and obligations thereunder to its subsidiary, Transwestern, and authorizing Texas Eastern and Transwestern to include in their respective rate bases all amounts heretofore and hereafter paid pursuant to such agreement and to track the cost of service effect of such payments in their rates without suspension.

Texas Eastern and Transwestern state that under the Advance Payment Agreement Texas Eastern and Arco agree that subject to agreement on certain further terms and conditions they will execute a gas purchase contract for the purchase of an undivided 20% of Arco's working interest in the gas to be produced from the Prudhoe Bay Field, Alaska, which after giving effect to the partial assignment to Transwestern, gives Texas Eastern and Transwestern the right to purchase an undivided 15% and 5%, respectively, of Arco's gas working interest in Prudhoe Bay gas. Current estimates of the gas reserves attributable to Arco's working interest, without giving any effect to royalty gas, indicate that a total of approximately 1.4 trillion cubic feet of gas will be available to Texas Eastern and Transwestern.

Texas Eastern and Transwestern state that under the Advance Payment Agreement they have agreed to make initial and semiannual advance payments to Arco equivalent to 20% of Arco's costs in relation to the exploration, development, and production of natural gas in the Prudhoe Bay Field, Alaska, but not more than $150 million. On September 30, 1975, the first advance payment of $16.4 million was made under the agreement with Texas Eastern paying $12.3 million and Transwestern $4.1 million. The next payment is due January 1, 1976. The Advance Payment Agreement also contemplates that at the time negotiations for the gas purchase contract begin, the parties will negotiate for the sale and transfer to Texas Eastern and Transwestern of 20% of Arco's ownership and obligations with respect to the construction and operation of gas handling, gathering, compression, and conditioning facilities upon provisions and principles set forth therein. The agreement also contemplates that Texas Eastern and Transwestern will construct, maintain, and operate, gas conditioning facilities to meet pipeline quality specifications.

Texas Eastern and Transwestern state that the advance payments to Arco are conditioned upon receiving satisfactory FPC rate and accounting authorizations for such payments. They have requested the Commission to issue promptly an Order granting the relief set forth in the petition.

Any person desiring to be heard or to protest said petition 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 petition are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32281 Filed 11-28-75;8:45 am]

[Docket No. RP76-33]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Extension of Time

NOVEMBER 19, 1975.

On November 7, 1975, Transcontinental Gas Pipe Line Corporation (Transco) filed a motion to extend the time for filing Statement P in Docket No. RP76-33.

Notice is hereby given that the time for filing Statement P in Docket No. RP76-33 is extended from November 14, 1975 to 15 days after Commission action on the settlement proposal filed in Docket No. RP75-75.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32224 Filed 11-28-75;8:45 am]

[Project No. 459]

UNION ELECTRIC CO.

Application for New Major License

NOVEMBER 19, 1975.

Public notice is hereby given that an application was filed on February 20, 1973, and supplemented on October 16, 1975, under the Federal Power Act (16 U.S.C. 791a-825r) by Union Electric Company (Correspondence to: Mr. George R. Murray, Secretary, Union Electric Company, PO Box 149, St. Louis, Missouri 63166; Mr. Stewart W. Smith, Jr., Vice President and General Counsel, Union Electric Company, PO Box 149, St. Louis, Missouri 63166; and Mr. William E. Jaudes, Attorney, Union Electric Company, PO Box 149, St. Louis, Missouri 63166) for a new major license for the constructed Osage Project No. 459, located in Benton, Camden, Miller, and Morgan Counties, Missouri, on the Osage River, a navigable waterway of the United States, and affecting public lands of the United States.

The Osage Project consists of: (1) A concrete gravity dam approximately 2,543 feet long with a maximum height of about 148 feet, consisting of a 511-foot section with an integral power station, a 520-foot spillway section with a crest elevation of 638 feet U.S.G.S., and two nonoverflow retaining structures adjacent to the river banks, and supporting a concrete highway structure along its entire length; (2) a reservoir, known as Lake of the Ozarks, with a surface area of 55,342 acres at elevation 660 feet (this will be the size of the reservoir following completion of the Harry S. Truman pumped storage project by the U.S. Department of the Army, Corps of Engineers); (3) an integral powerhouse containing eight main generating units with a total capacity of 171,994 kW and two auxiliary generating units with a combined capacity of 4,200 kW; and (4) appurtenant facilities.

The power generated at Project No. 459 is used by Applicant for public utility purposes in Missouri, Illinois, and Iowa. Lake of the Ozarks, the project reservoir, is projected to be used as the lower reservoir for the above-mentioned Harry S. Truman pumped storage project, to be constructed by the Corps of Engineers.

Applicant estimates a net investment in the project of $20,000,000 as of February 24, 1976; this figure is less than the estimated fair value of the project. The severance damages in the event the project is taken over pursuant to sections 14 and 15 of the Federal Power Act (16 U.S.C. 807, 808) are estimated by Applicant to be in excess of $40,000,000. Applicant estimates its property taxes on the project to be $400,000 annually.

Recreation facilities within the boundary of the Osage Project or on adjacent lands are owned and operated either by private entrepreneurs or by governmental agencies. These facilities include reservoir access facilities, boat ramps, canoe portages, fishing piers and barges, bathing areas, marinas, hiking and riding trails, playgrounds, picnic areas, and camping areas. A visitors center is provided by Applicant at the project power plant.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 2, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32240 Filed 11-28-75;8:45 am]

[Docket No. CP74-94]

UNITED GAS PIPE LINE CO. ET AL.

Extension of Time

NOVEMBER 18, 1975.

Opinion No. 740-A issued November 7, 1975, in the above-designated matter required, among other things, that Billy J. McCombs, R. James Stillings d/b/a Gastil Company, David A. Onsgard, Basin Petroleum Corporation, Louis H. Haring, Jr., National Exploration Company, E. I. du Pont de Nemours & Company, and Bill Forney (McCombs Group) comply with ordering paragraph (A) of Opinion No. 740, issued August 20, 1975, within 15 days, or not later than November 22, 1975.

On November 17, 1975, the McCombs Group filed a motion for a stay of Opinion 740-A in the Court of Appeals for the Tenth Circuit, to which the Commission must respond within ten days. In order to allow time for the Commission to respond to the McCombs Group's motion, it is appropriate to extend the time to and including December 1, 1975, within which the McCombs Group shall comply with ordering paragraph (A) of Opinion No. 740-A.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32229 Filed 11-28-75;8:45 am]

[Docket No. E-9145]

UTAH POWER AND LIGHT CO.

Further Extension of Procedural Dates

NOVEMBER 19, 1975.

On November 11, 1975, Staff Counsel filed a motion to extend the procedural dates fixed by order issued April 29, 1975, as most recently modified by notice issued October 20, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Staff Testimony, December 15, 1975.
Service of Intervenor Testimony, December 29, 1975.
Service of Company Rebuttal, January 12, 1976.
Hearing, February 3, 1976 (10:00 a.m. e.s.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-32241 Filed 11-28-75;8:45 am]

[Docket No. RP73-94, (PGA76-1)]

VALLEY GAS TRANSMISSION, INC.

Purchased Gas Cost Adjustment Filing

NOVEMBER 19, 1975.

Take notice that Valley Gas Transmission, Inc. (Valley), on November 14, 1975, tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1 its proposed "Fifth Revised Sheet No. 2A." The proposed effective date is January 1, 1976.

Valley states that this tariff sheet is filed pursuant to its Purchased Gas Cost Adjustment Provision. The proposed adjustments are supported by calculations of purchased gas costs and volumes attached to the filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in

accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 8, 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.75-32242 Filed 11-28-75;8:45 am]

[Docket No. ER76-225]

WESTERN MASSACHUSETTS ELECTRIC CO. ET AL.

Termination

NOVEMBER 19, 1975.

Take notice that on November 6, 1975, Western Massachusetts Electric Company (WMECO) filed with the Commission on behalf of itself and the Hartford Electric Company (HELCO), Holyoke Water Power Company (HWPCO) and The Connecticut Light and Power Company (CL&P) a notice that the following rate schedules effective June 6, 1968, were terms on April 25, 1970:

Rate Schedule FPC Nos. CL&P 28 and 29;
Rate Schedule FPC Nos. HELCO 24 and 25;
Rate Schedule FPC Nos. WMECO 39 and 40; and
Rate Schedule FPC Nos. HWPCO 14 and 15.

Notice of the proposed termination has been served upon the following:

Consolidated Edison Company of New York, Inc.;
The United Illuminating Company;
New England Power Company;
Boston Edison Company;
New Bedford Gas and Edison Light Company;
Cambridge Electric Light Company;
Montaup Electric Company;
Public Service Company of New Hampshire;
Central Maine Power Company;
Central Vermont Public Service Company;
Green Mountain Power Corporation;
Vermont Electric Power Company, Inc.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 1, 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. PLUM,
Secretary.

[FR Doc.75-32243 Filed 11-28-75;8:45 am]

FEDERAL RESERVE SYSTEM

AMERICAN BANCORPORATION

Acquisition of Bank

American Bancorporation, Columbus, Ohio, has amended its application dated April 30, 1974 (39 FR 21089) for the Board's approval under 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire up to 91 per cent of the voting shares of The Eastern Ohio Bank, Union Township, Ohio (formerly The Morristown 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, as amended, may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 24, 1975.

Board of Governors of the Federal Reserve System, November 24, 1975.

[SEAL] GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.75-32260 Filed 11-28-75;8:45 am]

ANNAWAN INVESTMENT CO.

Order Approving Formation of Bank Holding Company and Acquisition of Permissible General Insurance Agency Activities

Annawan Investment Company, Annawan, Illinois, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)), of formation of a bank holding company through the acquisition of 80.04 percent of the voting shares of The State Bank of Annawan, Annawan, Illinois ("Bank"). Applicant has also applied, pursuant to Section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to engage in general insurance agency activities through the acquisition of a general insurance agency in the town of Annawan, Illinois, a community with a population of less than 5,000. The operation by a bank holding company of a general insurance agency in a community with a population not exceeding 5,000 persons is an activity that the Board has previously determined to be closely related to banking (12 CFR 225.4(a)(9)(iii)(a)).

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with Sections 3 and 4 of the Act. The time for filing comments and views has expired, and the Federal Reserve Bank of Chicago has considered the applications and all comments received in light of the factors set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)) and the considerations specified in Section 4(c)(8) of the Act.

Applicant, an Illinois corporation, was recently organized for the purpose of acquiring the assets and assuming the liabilities of Annawan Investment Company, an Iowa corporation and a registered bank holding company, which presently owns 80.04 percent of the voting shares of Bank. Upon consummation herein, the Iowa corporation would be dissolved and Applicant would directly acquire 80.04 percent of the voting shares of Bank ($13.7 million of deposits).[1] Bank is the only bank in Annawan, an agriculturally oriented area located approximately 60 miles northwest of Peoria, Illinois. Bank is the second largest of seven banks in the relevant banking market[2] and holds 15.7 percent of the total commercial bank deposits therein. Upon acquisition of Bank, Applicant would control the 574th largest bank in Illinois, with approximately .02 percent of total deposits in commercial banks in the State. Inasmuch as the proposal is essentially a corporate reorganization in which the ownership of Bank will be transferred from an Iowa corporation to a successor Illinois corporation with the same stockholders, consummation of this proposal would not eliminate existing or potential competition nor have an adverse effect on any bank in the relevant area. Accordingly, it is concluded that competitive considerations are consistent with approval of the application to acquire Bank.

The financial and managerial resources and future prospects of Applicant and Bank are regarded as being generally satisfactory. It appears that this proposal would provide Applicant with sufficient revenue to service debt assumed from its predecessor company without impairing the financial condition of Bank. Therefore, banking factors are consistent with approval of the application. Although consummation of the proposal would have no immediate effect on the banking services offered by Bank, considerations relating to the convenience and needs of the community to be served are consistent with approval of the application to acquire Bank. It is this Reserve Bank's judgment that consummation of the proposal to form a bank holding company would be consistent with the public interest and that the application should be approved.

In connection with the application to become a bank holding company, Applicant also proposes to acquire the assets of an insurance agency presently conducted by Bank's chief operating officer from the premises of Bank and thereby engage in the activities of a general insurance agency pursuant to § 225.4(a)(9)(iii)(a) of Regulation Y. Approval of this application would ensure the residents of Annawan a continued convenient source of insurance services, a result

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[1] All banking data are as of December 31, 1974.

[2] The relevant banking market is approximated by portions of Henry and Bureau counties.

viewed as being in the public interest. Furthermore, 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 on the public interest.

Based on the foregoing and other considerations reflected in the record, it has been determined, in accordance with the provisions of Section 4(c)(8) of the Act, that consummation of this proposal can reasonably be expected to produce benefits to the public that outweigh possible adverse effects and the application to acquire the assets of the insurance agency should be approved.

Accordingly, the Federal Reserve Bank of Chicago approves the applications for the reasons summarized above. The acquisition of Bank shall not be made before the thirtieth calendar day following the effective date of this Order. The acquisition of Bank and the insurance agency shall not 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 this Federal Reserve Bank pursuant to delegated authority. The determination as to Applicant's insurance activities is subject to the conditions set forth in § 225.4(c) of Regulation Y and to 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 a bank holding company 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.

By order of the Federal Reserve Bank of Chicago, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, effective November 17, 1975.

[SEAL] DANIEL M. DOYLE,
First Vice President.

[FR Doc.75-32257 Filed 11-28-75;8:45 am]

APPLICATION OF MELLON NATIONAL CORPORATION FOR PRIOR APPROVAL OF THE BOARD OF GOVERNORS TO ACQUIRE LOCAL LOAN COMPANY

Order Denying Special Permission To Appeal

By Order of July 28, 1975, the Board directed that a public hearing be held on the application of Mellon National Corporation, Pittsburgh, Pennsylvania, to acquire Local Loan Company, Chicago, Illinois, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (40 FR 33072). The Board directed that the hearing be conducted in accordance with its Rules of Practice for Formal Hearings, 12 CFR Part 263. By Order of August 22, 1975, the Board designated the Honorable James W. Mast, Administrative Law Judge, to serve as presiding officer at the aforesaid hearing (40 FR 39943).

Mr. Anthony R. Martin-Trigona, a participant in the aforesaid hearing, has submitted a "Petition to the Board", seeking special permission of the Board, pursuant to 12 CFR 263.10(e), to appeal to the Board "from the ruling or refusal of the Administrative Law Judge to continue the hearings to the week of December 8, 1975".

The rulings of a presiding officer on any motion may not be appealed to the Board prior to its consideration of the presiding officer's recommended decision, findings, and conclusions, except by special permission of the Board (12 CFR 263.10(e)). The aforesaid hearing is being conducted in accordance with the Board's Rules and with applicable provisions of law, including the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

The Administrative Procedure Act provides that "[s]ubject to published rules of the agency and within its powers, employees presiding at hearings may—* * * (5) regulate the course of the hearing * * * [and] (7) dispose of procedural requests or similar matters." 5 U.S.C. 556 (c) (5) & (7). The Board's Rules of Practice for Formal Hearings likewise grant to the presiding officer full discretion to regulate the course of the hearing by providing that he may "change the time or place for beginning such hearing and may continue or adjourn a hearing from time to time or from place to place." 12 CFR 263.6(f). The Board's Rules also provide that the presiding officer "shall have complete charge of the hearing * * * and * * * the duty * * * to take all necessary action to avoid delay in the disposition of proceedings" and that he shall have the power "[t]o regulate the course of the hearing and the conduct of the parties and their counsel." 12 CFR 263.6(b). It thus appears that the ruling from which Petitioner seeks special permission to appeal is a ruling on a matter that is committed to the presiding officer's discretion by both law and regulation. Accordingly, the Board has determined that Petitioner's request for special permission to appeal a ruling of the presiding officer should be and it hereby is, denied.

By order of the Board of Governors,[1]

November 18, 1975.

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

[FR Doc.75-32259 Filed 11-28-75;8:45 am]

CENTRAL MISSOURI BANCSHARES, INC.

Formation of Bank Holding Company

Central Missouri Bancshares, Inc., Smithton, Missouri, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 86.3 percent of the voting shares of Exchange Bank of New Franklin, New Franklin, Missouri, and 51.1 percent of the voting shares of The Smithton Bank, Smithton, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Central Missouri Bancshares, Inc. has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 183(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to engage in general insurance agency activities. Notice of the application was published on August 21 and 23, 1975, respectively, in the Sadalia Democrat and The Democratic Leader, newspaper circulated in Smithton and New Franklin, Missouri.

Applicant states that it proposes to sell general insurance from the premises of Exchange Bank of New Franklin and The Smithton Bank, in communities with populations not exceeding 5,000 persons. Applicant sttaes that such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 24, 1975.

Board of Governors of the Federal Reserve System, November 24, 1975.

[SEAL] GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.75-32261 Filed 11-28-75;8:45 am]

CENTRAL NATIONAL CORP.

Order Approving Acquisition of Bank

Central National Corporation, Richmond, Virginia, a bank holding company within the meaning of the Bank

[1] Voting for this action: Vice Chairman Mitchell and Governors Bucher, Holland, Wallich, Coldwell and Jackson. Absent and not voting: Chairman Burns.

Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares of the successor by merger to Cavalier Central Bank & Trust Company, Hopewell, Virginia ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the ninth largest banking organization in Virginia, controls six subsidiary banks with aggregate deposits of $362 million, representing approximately 2.8 percent of the total deposits in commercial banks in the State.[1] Applicant's acquisition of Bank would not result in a significant increase in the concentration of banking resources in Virginia, nor would it change Applicant's ranking among banking organizations in the State.

Bank (approximately $4 million in deposits) is the sixth largest of eight banking organizations operating in the Petersburg-Colonial Heights-Hopewell banking market, which is the relevant banking market for this proposal,[2] and controls approximately 2.4 percent of the total deposits in commercial banks in the market. One of Applicant's subsidiary banks operates five offices within the relevant banking market; the office closest to Bank is located in Petersburg, seven miles from Bank's Hopewell office. Through the offices of this subsidiary bank, Applicant controls approximately 11 percent of the total deposits in commercial banks in the market. Thus, it appears that consummation of this acquisition would result in the elimination of some existing competition in the relevant banking market. However, this situation is mitigated to a large extent by the presence of intervening banks, including offices of four of the largest banking organizations in the State; by the geographical separation of Petersburg and Hopewell; and by the close relationship between Bank and Applicant which presently exists, and which has existed ever since Bank's organization under the sponsorship of Applicant's lead bank. In addition, it does not appear likely that Applicant would establish a de novo office in the Hopewell area due to Virginia's restrictive branching law, the high costs involved, the demographic factors which make Hopewell appear relatively unattractive for de novo entry. Thus, while it appears that consummation of the proposed acquisition would result in some adverse effects on competition in the relevant banking market, the Board does not regard these adverse effects as significant.

The financial and managerial resources and future prospects of Applicant and its subsidiaries are regarded as satisfactory. Those of Bank are regarded as generally satisfactory and are expected to become more favorable as a result of Bank's affiliation with Applicant. Affiliation with Applicant will enable Bank to draw upon Applicant's financial and managerial resources to provide increased depth to Bank's management and to facilitate improvement and expansion of banking services. Accordingly, financial and managerial factors lend some weight toward approval of the application. Applicant states that new services proposed to be offered by Bank include data processing services, accounts receivable financing, and construction financing. In addition, affiliation with Applicant will enable Bank to serve the community with an increased ability to make large loans through participations arranged through the holding company. It is expected that Bank's offering of a broader range of services will enhance its ability to fulfill the various banking needs of the community. Accordingly, considerations relating to the convenience and needs of the community to be served lend weight toward approval of the application. The Board concludes that the financial and managerial considerations together with convenience and needs factors outweigh any slight adverse effects that might result from consummation of this acquisition. It is the Board's judgment that consummation of the proposed transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order nor (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Richmond, pursuant to delegated authority.

By order of the Board of Governors,[3] effective November 21, 1975.

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

[FR Doc.75-32358 Filed 11-28-75;8:45 am]

[1] Banking data are as of December 31, 1974.

[2] The relevant banking market is approximated by the Petersburg-Colonial Heights-Hopewell Ranally Metropolitan Area.

[3] Voting for this action: Vice Chairman Mitchell and Governors Holland, Wallich, Coldwell and Jackson. Absent and not voting: Chairman Burns and Governor Bucher.

NBG CO.

Formation of Bank Holding Company

NBG Company, Atlanta, Georgia, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 per cent of the voting shares (less directors' qualifying shares) of the successor by merger to The National Bank of Georgia, Atlanta, Georgia. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 18, 1975.

Board of Governors of the Federal Reserve System, November 24, 1975.

[SEAL] GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.75-32262 Filed 11-28-75;8:45 am]

INTERNATIONAL TRADE COMMISSION

BOLTS, NUTS, AND SCREWS MADE FROM IRON OR STEEL

USITC Finds by Divided Vote Industrial Fastener Industry Not Entitled to Relief

The United States International Trade Commission, after an extensive investigation, voted to turn down requests of United States producers for relief from imports of bolts, nuts, and screws made of iron or steel.

By divided vote, the Commission reported to the President that bolts, nuts, and screws made of iron and steel are not coming into the country in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing similar articles. The Commission was unanimous in denying import relief to the domestic producers of small screws. By divided vote, the majority (Chairman Will E. Leonard, Commissioner George M. Moore, and Commissioner Italo H. Ablondi) found the producers of bolt, nuts, and large screws not to be eligible for relief. Vice Chairman Daniel Minchew and Commissioner Catherine Bedell voted in the affirmative with respect to bolts, nuts, and large screws. Commissioner Joseph O. Parker abstained.

The Commission based its determination on extensive investigatory work by its staff, eight days of public hearings and hundreds of exhibits and statements. The articles covered in the investigation are produced domestically by more than 300 establishments and imported by about 100 firms. Approximately 100 domestic firms accounting for more than 85% of domestic sales, and 70 importers were involved in the study which involved $1.8 billion in domestic shipments and $450 million in imports in 1974. More than 29,000 employees are involved in domestic production of bolts, nuts and screws and are centered primarily in the states of Michigan, Illinois, Ohio and Pennsylvania. There are more than 4,000 distributors in the United States. Between 60 and 70 percent of im-

ports of bolts, nuts, and screws made of iron or steel originate in Japan with another 10 to 15 percent coming from Canada. Importers are generally located in the major ports of entry.

Copies of the Commission's report, *Bolts, Nuts, and Screws of Iron or Steel* (USITC Publication 747), containing the views of the Commissioners, and information developed during the course of the investigation may be obtained from the Office of the Secretary, United States International Trade Commission, 701 E Street, NW, Washington, D.C. 20436. (Phone: (202) 523-0161).

By order of the Commission.

Issued: November 25, 1975.

KENNETH R. MASON,
Secretary.

[FR Doc.75-32156 Filed 11-28-75;8:45 am]

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS

Meeting, Notice of Time Change

NOVEMBER 25, 1975.

The Thursday, December 11, 1975 meeting of the Board of Directors of the Legal Services Corporation will convene at 2:00 p.m. in the Auditorium of the D.C. Chapter of the American National Red Cross, 20th and E Streets, NW., Washington, D.C.

ROGER C. CRAMTON,
Chairman.

[FR Doc.75-32254 Filed 11-28-75;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on November 25, 1975 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Office of the Secretary: Questionnaires for Task Six, State of the Field Study of Services for Indian Children & their Families On and Off the Reservation, single-time Indian child welfare agencies, Human Resources Division, Sunderhauf, M. B., 395-3532.

Questionnaires for Surveying Services Available to Indian Children and Families In, On and Off-Reservation Settings and Interview Guides, single-time, Indian child welfare programs, Human Resources Division, Sunderhauf, M. B., 395-3532.

Office of Education: Questionnaires and Related Reports for a New England Guidance Survey Project, OE-460-L, Thru -4, single-time, students, parents, counsellors and faculty, Joan Turek.

Application for Federal Assistance (Nonconstruction Programs)—Dropout Prevention Program, OE-458, annually, LEA'S, Caywood, D. P., 395-3443.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs, Interview Questionnaire, NR-5-8241, single-time, indian clients of the FEAO, Natural Resources Division, Lowry, R. L., 395-6827.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration:

Security Clearances for Contractor Personnel SF-86, SF-87, on occasion, contractor employees, Lowrey, R. L., 395-3772.

Airport/Facility Directory Evaluation, FAA 7910-2, single-time, pilots, Lowry, R. L. 395-3772.

Federal Highway Administration, Questionnaire for a Study Cost Effectiveness of Small Highway Sign Supports, single-time, State and local highway departments, their contractors and consultant, Lowry, R. L., 395-3772.

REVISIONS

DEPARTMENT OF COMMERCE

Bureau of Census, 1980 Census: 1975 Income Pretest, SC-700, SC-701, SC-702, and SC-703, single-time, population of Travis County, Texas, Maria Gonzales, 395-6132.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Services Administration: Matching NHSC Assignees to Communities, HSABCHS 0612, annually, NHSC assignees and spouses, Harry B. Sheftel.

Health Resources Administration: Pretest of 1975 Master Facility Inventory Survey, HRANCHS 012, single-time, nursing homes and inpatient health facilities, Dick Eisinger, 395-6140.

Social Security Administration: Application to be Selected as Payee for a Supplemental Security Income Recipient, SSA 8040, on occasion, persons who wish to serve as REP payee for SSI recipients, Caywood, D. P., 395-3443.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration:

Fatal Accident Reporting System, HS 214, on occasion, state fatality file analyst, Strasser, A., 395-5867.

Pedestrian/Bicyclist Accident Report Supplement, HS-362, on occasion, police officers who investigate motor vehicle accidents, Strasser, A., 395-5867.

EXTENSIONS

NATIONAL GALLERY OF ART

A Special Extended Loan of Slide Lectures Frequency of Use Report, NGA-219, on occasion, teachers, art council heads and presidents of community groups, Marsha Traynham, 395-4529.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration:

Oceanic Gamefish Investigations Big Game Fishing Log, NOAA 88-90, on occasion, recreational fishermen and boat captains, Marsha Traynham, 395-4529.

Big Game Fishing Log, 88-904, on occasion, recreational fishermen and boat captains, Marsh Traynham, 395-4529.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration: Extended Care Facility Statement of Reimbursable Cost—Statistical and Other Data, SSA-1750, annually, skilled nursing facilities participating in medicare program, Marsha Traynham, 395-4529.

DEPARTMENT OF TRANSPORTATION

Coast Guard: Hazardous Materials Incident Report, CG-4752, on occasion, shipping firms, owners, agents, Marsha Traynham, 395-4529.

Federal Aviation Administration: Application for an Airman Certificate and/or Rating (General Aviation Pilots and Instructors), FAA8120-3, on occasion, pilots, flight and ground instructors, Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.75-32344 Filed 11-28-75;8:45 am]

NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

MEETING CHANGE

Notice is hereby given, pursuant to Pub. L. 92-463, that the meeting of the National Advisory Council on the Education of Disadvantaged Children scheduled to be held on December 5-6, 1975, has been rescheduled for December 12-13, 1975. The meeting on December 12, 1975, will be held from 9:00 a.m.-5:00 p.m.; and, the meeting on December 13 will be from 9:00 a.m.-4:00 p.m. The meeting will be held at 425 Thirteenth Street, NW., Suite 1012, Washington, D.C. 20004.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

Signed at Washington, D.C., on November 25, 1975.

ROBERTA LOVENHEIM,
Executive Director.

[FR Doc.75-32249 Filed 11-28-75;8:45 am]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313]

ARKANSAS POWER & LIGHT 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. 7 to Facility Operating License No. DPR-51, issued to Arkansas Power & Light Company (the licensee), which re-

vised Technical Specifications for operation of the Arkansas Nuclear One—Unit 1 (the facility) located in Pope County, Arkansas. The amendment is effective as of its date of issuance.

The amendment revises the frequency for surveillance of the tendons in the facility's prestressed concrete containment in a manner equivalent to Regulatory Guide 1.35, Revision 1—"Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containment Structures." The tendon test frequency is being changed from 1, 2 and 3 years after the initial containment structural test and every 5 years thereafter to 1, 3 and 5 years after the initial containment structural test and every 5 years thereafter.

That portion of the October 7, 1975 application for the amendment dealing with tendon surveillance 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 had 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 October 7, 1975, (2) Amendment No. 7 to License No. DPR–51, with Change No. 7 and (3) the Commission's concurrently issued 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 Arkansas Polytechnic College, Russellville, Arkansas 72801. 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 20th day of November, 1975.

For the Nuclear Regulatory Commission.

B. C. Buckley,
Acting Chief, Operating Reactors Branch #2, Division of Reactor Licensing.

[FR Doc.75-32272 Filed 11-28-75;8:45 am]

[Docket No. P–564–A]

PACIFIC GAS AND ELECTRIC CO.

Receipt of Partial Application for Construction Permits and Facility License: Time for Submission of Views on Antitrust Matters

Pacific Gas and Electric Company (the applicant), pursuant to section 103 of the Atomic Energy Act of 1954, as amended, has filed one part of an application, dated August 14, 1975, in connection with their plans to construct and operate two reactors in Stanislaus County, California. 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 portions of the application consisting of an Environmental Report and the Preliminary Safety Analysis Report (PSAR) pursuant to § 2.101 of Part 2, are expected to be filed in September 1976 and April 1977, respectively. 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 will be available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Local Public Document Room, Stanislaus County Free Library, 1500 I Street, Modesto, California 95345. Docket No. P–564–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 30, 1976.

Dated at Bethesda, Md., this 21 day of November 1975.

For the Nuclear Regulatory Commission.

A. Schwencer,
Chief, Light Water Reactors Branch 2–3, Division of Reactor Licensing.

[FR Doc.75-32094 Filed 11-28-75;8:45 am]

[Docket No. 50–344]

PORTLAND GENERAL ELECTRIC CO., PACIFIC POWER AND LIGHT CO.

Issuance of a Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF–1 to the applicants, The Portland General Electric Company, The City of Eugene, Oregon and Pacific Power and Light Company, authorizing operation of the Trojan Nuclear Plant at steady state reactor core power levels not in excess of 3411 megawatts thermal, in accordance with the provisions of the license and the Technical Specifications. A list of preoperational tests, startup tests and other items which must be completed in sequence is incorporated in the license as Enclosure 1. The Trojan Nuclear Plant is a pressurized water nuclear reactor located at the Portland General Electric Company's site on the left shore of the Columbia River in Columbia County, Oregon.

The Initial Decision issued by the Atomic Safety and Licensing Board on January 28, 1974, continued in effect Construction Permit No. CPPR–79 for the Trojan Nuclear Plant.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license. The application for the license complies with the standards and requirements of the Act and the Commission's rules and regulations.

The license is effective as of its date of issuance and shall expire on February 8, 2011.

A copy of (1) the Initial Decision, dated January 28, 1974; (2) Facility Operating License No. NPF–1 with a list of incomplete preoperational tests, startup tests and other items which must be completed and the Technical Specifications (Appendices "A" and "B"); (3) the report of the Advisory Committee on Reactor Safeguards, dated November 20, 1974; (4) the Commission's Safety Evaluation, dated October 1974; (5) Supplement No. 1 to the Safety Evaluation, dated November 21, 1975; (6) the Final Safety Analysis Report and amendments thereto; (7) the applicants' Environmental Report, dated May 29, 1970 and supplemented through July 24, 1972; (8) the Draft Environmental Statement, dated January 1973; and (9) the Final Environmental Statement, dated August 1973, are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. and at the local public document room in the Columbia County Courthouse, Law Library, Circuit Court Room, St. Helens, Oregon 97501.

Single copies of the Facility Operating License No. NPF–1, the Final Environmental Statement, and the Safety Evaluation and its Supplement 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 21st 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.75-32273 Filed 11-28-75;8:45 am]

[Docket No. 50–376]

PUERTO RICO WATER RESOURCES AUTHORITY (NORTH COAST NUCLEAR PLANT UNIT 1)

Schedule for Special Prehearing Conference

A special prehearing conference in the above matter will be held on Wednesday, January 7, 1976, at 10:00 A.M., local time. The location for this conference is:

National Labor Relations Board, Hearing Room, 7th Floor, Pan American Building, 255 Ponce de Leon Avenue, Hato Rey, Puerto Rico 00919.

The purpose of this conference is to discuss the status of the application which is the subject of this proceeding. Members of the public are invited to attend but no limited appearances will be received at this session.

It is so ordered.

For the Atomic Safety and Licensing Board.

JAMES R. YORE,
Chairman.

Dated at Bethesda, Maryland this 24th day of November 1975.

[FR Doc.75-32271 Filed 11-28-75;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, Md., 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]

[Dockets Nos. 50-280 and 50-281]

VIRGINIA ELECTRIC & POWER CO.

Issuance of Amendments to Facility Operating Licenses

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments No. 12 to Facility Operating Licenses Nos. DPR-32 and DPR-37 issued to Virginia Electric & Power Company which revised Technical Specifications for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia. The amendment is effective as of its date of issuance.

The amendments revise the provisions in the Technical Specifications relating to the heatup and cooldown limitations of the reactor coolant system.

The application for the 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 October 22, 1975, (2) Amendments No. 12 to Licenses Nos. DPR-32 and DPR-37, with Change No. 27 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 Swem Library, College of William and Mary, Williamsburg, Virginia.

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 21st day of November, 1975.

For the Nuclear Regulatory Commission.

VERNON L. ROONEY,
Acting Chief, Operating Reactors Branch 4, Division of Reactor Licensing.

[FR Doc.75-32274 Filed 11-28-75;8:45 am]

PRIVACY PROTECTION STUDY COMMISSION

MAILING LIST; INDIVIDUAL RIGHTS

Hearing Notice

The Privacy Protection Study Commission will hold hearings for the purpose of taking testimony at Room 2358, Rayburn House Office Building, Washington, D.C., on December 10 and 11, 1975, between 10 a.m. and 5:30 p.m. with a break for lunch.

Testimony will be taken in connection with the Commission's inquiry into the question of whether an individual should have the right to have his name removed from a mailing list. Any person wishing to testify at these hearings on this issue may contact the Commission at 2120 L Street, NW., Washington, D.C. 20506 (202-634-1477).

A copy of the Commission hearing rules may also be obtained at such address.

CAROLE W. PARSONS,
Executive Director, Privacy Protection Study Commission.

[FR Doc.75-32379 Filed 11-28-75;8:45 am]

PRIVACY

Meeting Notice

The Privacy Protection Study Commission will hold its regular monthly meeting open to the public at Room 2358, Rayburn House Office Building, Washington, D.C., on December 12, 1975, between 10 a.m. and 5 p.m. with a break for lunch.

Program activities being undertaken by the Commission will be the topics under discussion. Presentations may also be made by persons outside of the Commission concerning the privacy issue. For further information, contact John Barker, Public Information Officer, at (202) 634-1477.

CAROLE W. PARSONS,
Executive Director, Privacy Protection Study Commission.

[FR Doc.75-32378 Filed 11-28-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[811-2359]

APPLIED CONCEPTS, INC.

Filing of Application for Order Declaring Company Has Ceased To Be an Investment Company

NOVEMBER 21, 1975.

Notice is hereby given that Applied Concepts, Inc., 1345 Avenue of the Americas, New York, New York 10019 ("Applicant"), a Delaware corporation registered as a diversified, closed-end investment company under the Investment Company Act of 1940 (the "Act") filed an application on May 8, 1974, and amendments thereto on February 14, 1975 and August 1, 1975, pursuant to Section 8(f) of the Act for an order of the Commission declaring that the Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein, which are summarized below.

Applicant states that it was organized in 1969 for the purpose of changing, in substance, the jurisdiction of incorpora-

tion of Palm Developers, Ltd., ("Palm"), from the Bahamas to Delaware. In March 1969, following an exchange of all the issued and outstanding shares of capital stock of Palm for an equivalent number of shares of common stock of Applicant, Palm, the sole asset of which was a tract of real estate in the Bahamas, became a wholly-owned subsidiary of Applicant.

Applicant states that by Decembr, 1972, almost all of such real estate had been sold and a substantial portion of Applicant's assets then consisted of marketable securities. On February 23, 1973, Applicant filed a notification of registration as an investment company on Form N-8A.

At a shareholder meeting held in July 1973, a majority of Applicant's shareholders approved resolutions to change the nature of Applicant's business so that it would cease to be an investment company and authorized Applicant's board of directors, in their discretion, to take appropriate action to achieve that end. By March, 1974, Applicant sold its investment securities and deposited most of its assets in non-interest bearing bank accounts.

Between March 31, 1974, and January 22, 1975, Applicant sought an advantageous operational business acquisition, but was unable to find one, and on the latter date, the Board of Directors of Applicant determined to engage in the business of investing in commodity futures contracts, gold and silver bullion, and foreign currency. Applicant represents that it is presently engaged in such business and that it will continue to be engaged in such business in the future. Applicant further represents that in connection with its present business it purchased, on January 24, 1975, for cash and not on margin, 500 ounces of gold bullion for an aggregate of approximately $91,000, and 5 contracts to deliver a total of 500 ounces of gold bullion in February 1976 in the aggregate amount of $98,110.

Applicant states that it presently has approximately 250 shareholders and 400,000 shares of common stock outstanding, and that such shares are not actively traded in any securities market.

Applicant represents that it is not relying upon and will not in the future rely upon any external adviser in connection with its business. Applicant further represents that it will not at any time invest in or trade in options relating to commodities contracts. In addition, Applicant represents that it will not at any time own, hold, or trade in securities having an aggregate value of more than 40% of its total assets. For this purpose, the term "securities" includes foreign currency, foreign currency futures contracts, United States Government securities, and other securities.

Applicant states that as of August 1, 1975 its total assets consisted of the following:

Cash	$3,082
Income Tax Refund Receivable	3,597
Investment in Land Held for Resale	6,250
500 ounces of Gold Bullion (Long)	[1] 92,735
$45,000 p.a. U.S. Treasury Bills	[1] 44,376
	$150,040

[1] At cost.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than December 16, 1975, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the persons being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the Application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. 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 Investment Management Regulation pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.75-32198 Filed 11-28-75;8:45 am]

[70-5761]

MONONGAHELA POWER CO.

Proposed Transactions Related to Financing of Pollution Control Facilities and Request for Exception From Competitive Bidding

NOVEMBER 24, 1975.

Notice is hereby given that Monongahela Power Company, 1310 Fairmont Avenue, Fairmont, West Virginia 26554 ("Monongahela"), an electric utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed an application-declaration with this Commission designating sections 9, 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Monongahela states that in order to comply with West Virginia's air quality standards regarding particulate emissions, it must construct and install certain air pollution control equipment ("pollution control equipment") at Unit No. 5 of its Rivesville generating station, located in Marion County. The pollution control equipment, the total cost of which is estimated not to exceed $2,600,000, has already been substantially completed. As of September 30, 1975, Monongahela has incurred construction costs of about $2,000,000. Monongahela intends to recover these construction costs and to defray future completion costs by entering into certain contractual arrangements with the Marion County Commission ("County Commission"), which will provide financing by issuing one or more of its tax-exempt Pollution Control Revenue Bonds ("Bonds") to Pittsburgh National Bank ("PNB").

Monongahela proposes to enter into a Purchase Agreement with the County Commission whereby Monongahela will sell the pollution control equipment, as completed or still under construction, together with adjoining land (collectively, the "pollution control facilities") to the County Commission. In exchange, Monongahela will receive cash in an amount equal to the book cost at the closing date of the pollution control facilities so conveyed. In addition, to the extent the pollution control equipment is unfinished at the closing date, Monongahela will complete the construction on behalf of the County Commission and will be reimbursement for the costs of completion as they are incurred.

Although title to the pollution control facilities will be vested in the County Commission, Monongahela will retain the right to possess and operate them and will remain responsible for maintenance and taxes.

It is further intended that the County Commission will issue the Bonds to PNB, pursuant to a trust indenture ("Indenture") between the County Commission and PNB, as trustee, in an amount sufficient to cover the total cost of the completed pollution control facilities plus transaction costs. If the proceeds derived from the sale of the Bonds are insufficient to meet the total cost of the pollution control facilities, however, Monongahela will complete the construction at its own expense. It is contemplated that the Bonds will mature on December 31, 1985, and will bear interest payable monthly at a fluctuating rate ("Rate")

based on the prime rate (the rate in effect for 90 day loans to commercial borrowers of substantial size and highest credit standing) offered by PNB ("Prime Rate"). It is proposed that the Rate will be determined on the closing date and thereafter on a daily basis and will be 2% in excess of the tax-exempt equivalent (i.e., the reciprocal of the federal corporate tax rate, which reciprocal is currently 52%) of the Prime Rate. The proposed Indenture provides that the proceeds from the sale of the Bonds must be applied to purchase and complete construction of the pollution control facilities, which will secure payment of the Bonds.

It is further proposed that Monongahela will reacquire the pollution control facilities by paying a purchase price, in monthly installments equal to such amounts as are due from the County Commission to PND under the Indenture, sufficient to pay the interest on and principal of the Bonds due on each installment date and any reasonable transactional expenses incurred by the County Commission. Title to the pollution control facilities will vest in Monongahela after retirement of the Bonds and payment of all additional amounts due or to become due.

Monongahela states that it desires to consummate the proposed transactions because it has been advised that the cost of tax-exempt financings of this type will be substantially lower than that for similar financings which are not tax-exempt. Further, Monongahela requests that the execution of the Purchase Agreement be excepted from the competitive bidding requirements of Rule 50 on the basis that such requirement would be inappropriate and unnecessary in the public interest.

It is stated that the West Virginia Public Service Commission, the Air Pollution Control Board of West Virginia and the Ohio Public Utilities Commission have jurisdiction over the proposed transactions and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment.

Notice is further given that any interested person may, not later than December 16, 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 application-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 applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive 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.75-32199 Filed 11-28-75;8:45 am]

[70-5762]

POTOMAC EDISON CO.

Proposed Transactions Related to Financing of Pollution Control Facilities and Request for Exception From Competitive Bidding

NOVEMBER 24, 1975.

Notice is hereby given that The Potomac Edison Company, Downsville Pike, Hagerstown, Maryland 21740 ("Potomac"), an electric utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed an application-declaration with this Commission designating sections 9, 10 and 12 of the Public Utility Holding Compay Act of 1935 ("Act") and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Potomac states that in order to comply with West Virginia's air quality standards regarding particulate emissions, it must construct and install certain air pollution control equipment ("pollution control eqiupment") at Unit No. 1 of its Albright generating station, located in Preston County. The pollution control equipment, the total cost of which is estimated not to exceed $2,800,000, has already been substantially completed. As of September 30, 1975, Potomac has incurred construction costs of about $2,500,000. Potomac intends to recover these construction costs and to defray future completion costs by entering into certain contractual arrangements with the Preston County Commission ("County Commission"), which will provide financing by issuing one or more of its tax-exempt Pollution Control Revenue Bonds ("Bonds") to the Mercantile-Safe Deposit & Trust Company of Baltimore, Maryland ("Mercantile").

Potomac proposes to enter into a Purchase Agreement with the County Commission whereby Potomac will sell the pollution control equipment, as completed or still under construction, together with adjoining land (collectively, the "pollution control facilities") to the County Commission. In exchange, Potomac will receive cash in an amount equal to the book cost at the closing date of the pollution control facilities so conveyed. In addition, to the extent the pollution control equipment is unfinished at the closing date, Potomac will complete the construction on behalf of the County Commission and will be reimbured for the costs of completion as they are incurred.

Although title to the pollution control facilities will be vested in the County Commission, Potomac will retain the right to possess and operate them and will remain responsible for maintenance and taxes.

It is further intended that the County Commission will issue the Bonds to Mercantile, pursuant to a trust indenture ("Indenture") between the County Commission and Mercantile, as trustee, in an amount sufficient to cover the total cost of the completed pollution control facilities plus transaction costs. If the proceeds derived from the sale of the Bonds are insufficient to meet the total cost of the pollution control facilities, however, Potomac will complete the construction at its own expense. It is contemplated that the Bonds will mature on December 31, 1985, and will bear interest payable quarterly at a fluctuating rate ("Rate") based on the prime rate (the rate in effect for 90 day loans to commercial borrowers of substantial size and highest credit standing) offered by the Chemical Bank of New York ("Prime Rate"). It is proposed that the Rate, which will be determined on the closing date and thereafter, will be 5% when the Prime Rate is 7%, and will fluctuate each calendar month by one-half of any change in the Prime Rate from 7%. The proposed Indenture provides that the proceeds from the sale of the Bonds must be applied to purchase and complete construction of the pollution control facilities, which will secure payment of the Bonds.

It is further proposed that Potomac will reacquire the pollution control facilities by paying a purchase price, in quarterly installments equal to such amounts as are due from the County Commission to Mercantile under the Indenture, sufficient to pay the interest on and principal of the Bonds due on each installment date and any reasonable

transactional expenses incurred by the County Commission. Title to the pollution control facilities will vest in Potomac after retirement of the Bonds and payment of all additional amounts due or to become due.

Potomac states that it desires to consummate the proposed transactions because it has been advised that the cost of tax-exempt financings of this type will be substantially lower than that for similar financings which are not tax-exempt. Further, Potomac requests that the execution of the Purchase Agreement be excepted from the competitive bidding requirements of Rule 50 on the basis that such requirement would be inappropriate and unnecessary in the public interest.

It is stated that the West Virginia Public Service Commission, the Air Pollution Control Board of West Virginia and the Pennsylvania Public Utility Commission have jurisdiction over the proposed transactions and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment.

Notice is further given that any interested person may, not later than December 16, 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 application-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 applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive 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.75-32200 Filed 11-28-75;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0034]

CAPITAL FOR TECHNOLOGY CORP.

Filing of Application for Transfer of Control of Outstanding Stock

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.701 of the regulations governing small business investment companies (13 C.F.R. 107.701 (1975)), for the transfer of 49.33 percent of the outstanding stock of Capital for Technology Corporation (CTC), a Pennsylvania corporation with principal offices at 799 Main Street, Hartford, Connecticut 06103. CTC was licensed May 21, 1962, as a small business investment company under the Small Business Investment Act of 1958, as amended, (the Act).

Allied Management Corporation, a Delaware corporation, located at 2721 Park Street, Jacksonville, Florida proposes to purchase 49.33 percent of the outstanding stock of CTC presently owned by Hartford Financial Corporation. Mr. Larry David Barnette is the controlling stockholder of Allied Management Corporation and under the proposed plan anticipates moving the headquarters of CTC from Hartford, Connecticut to Jacksonville, Florida.

The officers and directors of Allied Management Corporation are:

Larry D. Barnette, Chairman of the Board, President, Treasurer & Director, 7134 Electra Drive, Jacksonville, Florida 32205.
Thomas F. Gibbs, Vice President, Secretary & Director, 2721 Park Street, Jacksonville, Florida 32205.
Kathleen Barnette, Director, 7134 Electra Drive, Jacksonville, Florida 32205.

Although the 49.33 percent is not in excess of 50 percent of the stock of CTC, SBA considers this a transfer of control since it represents the largest single block of stock outstanding owned by one entity. Its officers and directors are to remain as at present with the exception that Mr. Barnette will become a director of CTC upon approval of SBA.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new stockholder and the probability of a successful operation of the company, in accordance with the Act and Regulations.

Notice is further given that any person may submit comments under the proposed transfer of the stock to the Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416 on or before December 11, 1975.

A similar notice shall be published by CTC in a newspaper of general circulation in Hartford, Connecticut, Pittsburgh, Pennsylvania, and Jacksonville, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 20, 1975.

JAMES THOMAS PHELAN,
Deputy Associate Administrator for Investment.

[FR Doc.75-32193 Filed 11-28-75;8:45 am]

[License No. 02/02-0313]

VAN RIETSCHOTEN CAPITAL CORP.

Issuance of License To Operate as a Small Business Investment Company

On July 11, 1975, a Notice of Application for a license as a Small Business Investment Company was published in the FEDERAL REGISTER (40 FR 29365) stating that an Application had been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1975)) for a license as a small business investment company by Van Rietschoten Capital Corporation, 30 East 42nd Street, New York, New York 10017.

Interested parties were given until the close of business July 17, 1975, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information and the facts with regard thereto, SBA on November 17, 1975, issued License No. 02/02-0313 to Van Rietschoten Capital Corporation to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 21, 1975.

JAMES THOMAS PHELAN,
Deputy Associate Administrator for Investment.

[FR Doc.75-32194 Filed 11-28-75;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Rule 19; Ex Parte No. 241; 6th Rev. Exemption No. 90]

AKRON, CANTON AND YOUNGSTOWN RAILROAD CO. ET AL.

Exemption Under Provision of Mandatory Car Service Rules

It appearing, that the railroads named below own numerous 50-ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, I.C.C. R.E.R. No. 397, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1, 2(a), and 2(b).

The Akron, Canton & Youngstown Railroad Company, Reporting Marks: ACY.
Atlanta & Saint Andrews Bay Railway Company, Reporting Marks: ASAB.
The Baltimore and Ohio Railroad Company, Reporting Marks: BO.
The Chesapeake and Ohio Railway Company, Reporting Marks: CO-PM.
Chicago & Eastern Illinois Railroad Company, Reporting Marks: C&EI-CEI.
(* * *)[1]
Missouri-Illinois Railroad, Reporting Marks: MI.
Missouri-Kansas-Texas Railroad Company, Reporting Marks: BKTY-MKT.
Missouri Pacific Railroad Company, Reporting Marks: MP.
Norfolk and Western Railway Company, Reporting Marks: N&W-NKP-WAB.
The Pittsburgh and Lake Erie Railroad Company, Reporting Marks: P&LE.
Raritan River Rail Road Company, Reporting Marks: RR.
Sacramento Northern Railway, Reporting Marks: SN.
Sierra Railroad Company, Reporting Marks: SERA.
Soo Line Railroad Company, Reporting Marks: SOO.
The Texas and Pacific Railway Company, Reporting Marks: T&P.
Tidewater Southern Railway Company, Reporting Marks: TS.
WCTU Railway Company, Reporting Marks: WCTR.
Western Maryland Railway Company, Reporting Marks: WM.

Effective November 11, 1975, and continuing in effect until further order of this Commission.

[1] Delete: Elgin, Joliet and Eastern Railway Company.

Issued at Washington, D.C., November 11, 1975.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.75-32316 Filed 11-28-75;8:45 am]

[No. 36258]

ARKANSAS INTRASTATE FREIGHT RATES AND CHARGES—1975

Order. At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 14th day of November 1975.

It appearing, that by joint petition authorized under section 13(3) of the Interstate Commerce Act, filed October 9, 1975, petitioners, six common carriers by railroad[1] subject to Part I of the Inter-State Commerce Act, and also operating in intrastate commerce in the State of Arkansas, request that this Commission institute an investigation of their Arkansas intrastate freight rates and charges, under sections 13 and 15a of the Interstate Commerce Act, among others, wherein they will seek an order authorizing them to increase such rates and charges in the same amounts approved for interstate application by this Commission in Ex Parte No. 310, Increased Freight Rates and Charges, 1975, Nationwide, and Ex Parte No. 313, Increased Freight Rates and Charges—Labor Costs—1975, and further request special expedition to the hearing and decision pursuant to section 13(4) of the Act:

It further appearing, that by tariff filed with the Arkansas Transportation Commission, petitioners sought to make the increases in Ex Parte No. 310, *supra;* applicable on Arkansas intrastate traffic effective May 15, 1975, and sought to make the increases in Ex Parte 313, *supra;* likewise applicable to Arkansas intrastate traffic effective July 25, 1975 and October 1, 1975 or such other effective date as authorized for interstate application, and said Commission denied such increases by report and order entered September 24, 1975;

It further appearing, that petitioners contend that present interstate freight rates from, to, and within Arkansas are just and reasonable and that the proposed intrastate rates will not exceed a just and reasonable level; that transportation conditions for intrastate traffic in Arkansas are not more favorable than for interstate traffic; that traffic moving under present Arkansas intrastate rail freight rates and charges fail to provide its fair share of earnings; and, that the present Arkansas intrastate rail freight rates and charges create undue and unreasonable advantage, preference, and prejudice between persons and localities in intrastate commerce within Arkansas and interstate and foreign commerce, and result in undue, unreasonable, and unjust discrimination against and an undue burden on interstate commerce in violation of sections 13(4) and 15a of the Interstate Commerce Act, among others to the extent that they do not include the increases authorized in Ex Parte No. 310 and 313, *supra;*

And it further appearing, that under section 13(4) of the Interstate Commerce Act and judicial authority,[2] this Commission is directed to institute an investigation, and shall give special expedition to hearing and decision in such investigations, on the lawfulness of intrastate rail freight rates and charges, upon filing of a petition by the railroads pursuant to section 13(3) of the Act, whether or not theretofore considered by any State agency or authority;

Wherefore, and good cause appearing therefor:

It is ordered, That the petition be, and it is hereby, granted; and that an investigation, under sections 13 and 15a of the Interstate Commerce Act, be, and it is hereby, instituted to determine whether the Arkansas intrastate rail freight rates in any respect cause any unjust discrimination against or any undue burden on interstate or foreign commerce, or cause undue or unreasonable advantage, preference, or prejudice as between persons and localities in intrastate commerce and those in interstate or foreign commerce, or are otherwise unlawful, by reason of the failure of such rates and charges to include the full increases authorized for interstate application by this Commission in Ex Parte No. 310 and Ex Parte No. 313, *supra.;* and to determine if any rates or charges, or maximum or minimum charges, or both, shall be prescribed to remove any unlawful advantage, preference, discrimination, undue burden, or other violation of law, found to exist.

It is further ordered, That all common carriers by railroad operating in the State of Arkansas, subject to the jurisdiction of this Commission, be, and they are hereby, made respondents in this proceeding.

It is further ordered, That all persons who wish to actively participate in this

[1] Chicago, Rock Island and Pacific Railroad Company; The Kansas City Southern Railway Company; Louisiana and Arkansas Railway Company; St. Louis-San Francisco Railway Company; and St. Louis Southwestern Railway Company.

[2] See Intrastate Freight Rates and Charges, 1969, 339 I.C.C. 670 (1971), affirmed sub nom. State of N.C. ex rel North Carolina Utilities Com'n. v I.C.C. 347 F. Supp. 103 (E.D.N.C., 1972), affirmed sub nom. North Carolina Utilities Commission et al. v Interstate Commerce Commission et al., 410 U.S. 919 (1973).

proceeding and to file and receive copies of pleadings shall make known that fact by notifying the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423, on or before December 16, 1975. Although individual participation is not precluded, to conserve time and to avoid unnecessary expense, persons having common interests should endeavor to consolidate their presentations to the greatest extent possible. The Commission desires participation of only those who intend to take an active part in the proceeding.

It is further ordered, That as soon as practicable after the date of indicating a desire to participate in the proceeding has passed, the Commission will serve a list of names and addresses of all persons upon whom service of all pleadings must be made and that thereafter this proceeding will be assigned for oral hearing or handling under modified procedure.

And it is further ordered, That a copy of this order be served upon each of the petitioners herein; that the State of Arkansas be notified of the proceeding by sending copies of this order and of the instant petition by certified mail to the Governor of the State of Arkansas and the Arkansas Transportation Commission, Little Rock, Arkansas; and that further notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Interstate Commerce Commission of Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

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

By the Commission, Division 2.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-32313 Filed 11-28-75;8:45 am]

[Notice 922]

ASSIGNMENT OF HEARINGS

NOVEMBER 25, 1975.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 67450 Sub 52, Peterlin Cartage Co., now assigned December 9, 1975, at Chicago, Illinois, is cancelled and application dismissed.

MC 61592 Sub 353, Jenkins Truck Line, Inc., now assigned December 5, 1975, at Atlanta, Ga., is canceled and application dismissed.

No. 34822, Lake Carriers' Association, Et Al vs The New York Central Railroad Company, Et Al, and No. 34822 Sub 1, Lake Carriers' Association, Et Al vs The New York Central Railroad Company, Et Al, now being assigned for pre-hearing conference January 19, 1976, at the Offices of the Interstate Commerce Commission, Washington, D.C.

I & S 9079, Potatoes, From Origins in Minnesota and North Dakota, now being assigned February 9, 1976, at St. Paul, Minnesota, in a hearing room to be later designated.

MC 119741 Sub 52, Green Field Transport Company, Inc., now being assigned February 3, 1976, (1 day), at Omaha, Nebraska, in a hearing room to be later designated.

MC-F 12410, King Transfer—Purchase (Portion)—All-American, Inc. and directly related MC 127745 Sub 3, George B. King d/b/a King Transfer, now being assigned February 4, 1976, (3 days), at Lincoln, Nebraska, in a hearing room to be later designated.

Finance Docket No. 28002, Chicago, Milwaukee, St. Paul & Pacific Railroad Company—Discontinuance of Train Nos. 2118 and 2125—Between Walworth and Solon Mills, Illinois, now assigned December 11, 1975 at Walworth, Wisconsin, will be held in the *Big Foot High School Auditorium, Intersection of Devil Land & 5th Street*, instead of *Room 112, East End of Courthouse.*

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-32314 Filed 11-28-75;8:45 am]

[I.C.C. Order No. 149, Amdt. 2; Rev. S.O. 994]

ASSOCIATION OF AMERICAN RAILROADS

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 149 (WM), and good cause appearing therefor:

It is ordered, That: I.C.C. Order No. 149 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., May 15, 1976, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., November 15, 1975, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 11, 1975.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.75-32310 Filed 11-28-75;8:45 am]

[S.O. No. 1223; Exception No. 3]

DELAWARE AND HUDSON RAILWAY CO.

Car Service Order Exception

Exception under section (a), paragraph (4) of service order No. 1223.

It appearing, That the Delaware and Hudson Railway Company (D&H) owns sixty (60) jumbo covered hopper cars; that this ownership exceeds the number of cars needed to satisfy shipper requirements on the line of the D&H; that certain of these cars are used for unit-grain-train loadings originating on other lines; and that there is no need for such cars for shipments originating on the D&H.

It is ordered, That pursuant to the authority vested in the Railroad Service Board by section (a), paragraph (4) of service order No. 1223, the D&H is authorized to use forty-five (45) jumbo covered hopper cars for unit-grain-train service originating on other lines regardless of the provisions of section (a)(1) of the order.

Effective: November 14, 1975.

Issued at Washington, D.C., November 12, 1975.

[SEAL] R. D. PFAHLER,
Chairman, Railroad Service Board.

[FR Doc.75-32312 Filed 11-28-75;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 25, 1975.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before December 16, 1975.

FSA No. 43082—*Joint Water-Rail Container Rates—Yamashita-Shinnihon Steamship Company, Ltd.* Filed by Yamashita-Shinnihon Steamship Company, Ltd., (No. 9), for itself and interested rail carriers. Rates on general commodities, between ports in Burma, Hong Kong, Japan, Korea, The Peoples Republic of China, Taiwan, and rail stations on the U.S. Atlantic and Gulf Seaboard.

Grounds for relief—Water competition.

FSA No. 43083—*Cinders from Neuhardt, Arkansas.* Filed by Southwestern Freight Bureau, Agent, (No. B-568), for interested rail carriers. Rates on cinders, clay or shale, in open-top cars, as described in the application, from Neuhardt, Arkansas, to points in southern territory.

Grounds for relief—Market competition.

Tariff—Supplement 71 to Southwestern Freight Bureau, Agent, tariff 162-Y, I.C.C. No. 5103. Rates are published to become effective on January 1, 1976.

By the Commission.

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

[FR Doc.75-32317 Filed 11-28-75;8:45 am]

[Notice 129]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

DECEMBER 1, 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 22, 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-FC-75982. By order of November 24, 1975, the Motor Carrier Board approved the transfer to Tejas Lines, Inc., Canyon, Texas, of Certificates Nos. MC 136812 (Sub-No. 2 and Sub-No. 3), issued September 25, 1974, and June 4, 1974, to Clean Carder Truck Lines, Inc., Dodge City, Kansas, authorizing the transportation of anhydrous ammonia, from specified points in Oklahoma and Kansas, to points in Kansas, Colorado, Missouri, Arkansas, Louisiana, Texas, Nebraska, Wyoming, Oklahoma and Iowa. Clyde N. Christey, 641 Harrison, Topeka, Kansas 66603, attorney for applicants.

No. MC-FC-75991. By order of November 24, 1975, the Motor Carrier Board approved the transfer to Tejas Lines, Inc., Canyon, Texas, of that portion of Certificate No. MC 138181, issued May 15, 1973, to Transport Express, Inc., Holly, Colorado, authorizing the transportation of anhydrous ammonia, from the plant site of Hill Chemicals, Inc., located at or near Borger, Tex., to points in Colorado, Kansas and Oklahoma. Clyde N. Christey, 641 Harrison, Topeka, Kansas 66603, attorney for applicants.

No. MC-FC-76143. By order entered November 24, 1975, the Motor Carrier Board approved the transfer to Airport Bus Service, Inc., Jamaica, N.Y., of the operating rights set forth in Certificate No. MC-126916, issued March 22, 1973, to Brown's Limousine Service, Inc., Jamaica, N.Y., authorizing the transportation of passengers and their baggage, in the same vehicle with passengers, over specified routes, between specified points in Connecticut and New York. Incidental charter operations may be conducted under the authority approved for transfer. Samuel B. Zinder, 98 Cutter Mill Road, Great Neck, N.Y. 11021, attorney for applicants.

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

[FR Doc.75-32318 Filed 11-28-75;8:45 am]

[Notice 135]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 25, 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 111812 (Sub-No. 520 TA) (Correction), filed November 3, 1975, published in the FEDERAL REGISTER issue of November 19, 1975, and republished as corrected this issue. Applicant: MIDWEST COAST TRANSPORT, INC., 900 West Delaware, P.O. Box 1233, Sioux Falls, S. Dak. 57501. Applicant's representative: Ralph H. Jinks (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from the plantsite and warehouse facilities of Jeno's, Inc., in Sodus, Mich., to points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, for 180 days. Supporting shipper: Jeno's, Inc., 525 Lake Ave., South, Duluth, Minn. 55802. Send protests to: J. I. Hammond, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 369, Federal Bldg., Pierre, S. Dak. 57501. The purpose of this republication is to change docket number MC-111812 (Sub-No. 520 TA) in lieu of MC-111812 (Sub-No. 52 TA) which was previously published in error.

No. MC 112223 (Sub-No. 99 TA) (Correction), filed October 28, 1975, published in the FEDERAL REGISTER issue of November 13, 1975, and republished as corrected this issue. Applicant: QUICKIE TRANSPORT COMPANY, 1709 New Brighton Blvd., Minneapolis, Minn. 55413. Applicant's representative: Earl Hacking (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foundry slag*, from Waupaca, Wis., and points within 10 miles thereof, to Mankato, Minn., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Waupaca Foundry, Tower Road, Waupaca, Wis. 54981. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401. The purpose of this republication is to correct the territorial description, which was previously published in error.

No. MC 113843 (Sub-No. 225 TA), filed November 14, 1975. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer St., Boston, Mass. 02210. Applicant's representative: Francis P. Barrett, 60 Adams St., P.O. Box 238, Milton (Boston), Mass. 02187. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Canned foodstuffs*, (1) from Lewes, Del., to Chicago, LaGrange, North Lake, Elk Grove, Hodgkin, Ill.; Berkeley, Kansas City, and North Kansas City, Mo.; Terre Haute, Ind.; Milwaukee, Wis.; and Minneapolis, Minn.; (2) from New Church and Parksley, Va., to S. Portland, Maine and Louisville, Ky.; (3) from Elwood, Trappe, Andrews, Girdletree, Preston and Sewards, Md., to Milwaukee, Wis.; Nashua, N.H.; Somerville, Mass.; Norway, Mich.; and Lewiston, Maine; (4) from Preston, Md., to Everett, Woburn, Brockton, Lawrence, Mass.; Cumberland, R.I.; Norwich and Hartford, Conn.; Portland, Maine; Nashua, Manchester and Concord, N.H.; Burlington and Hartford, Vt.; Sioux Falls, S. Dak.; Milwaukee, Wis.; Indianapolis, Ind.; Covington, Ky.; Detroit and Grand Rapids, Mich.; Hodgkins and Chicago, Ill.; St. Louis and Kansas City, Mo.; Kansas City, Kans.; Omaha, Des Moines, Cedar Rapids and Davenport, Nebr.; St. Paul and Minneapolis, Minn.; (5) Hallwood, Va., to Canton and Boston, Mass.; Portland, Maine; Manchester and Salem, N.H.; White River Junction and Hartford, Vt.; Bridgeport and Hartford, Conn.; (6) Andrews, Princess Anne, Pocomoke City, Newark, Westover, Queen Anne and Preston, Md.; Milton, Del.; and Cheriton, Va.,

to Portland, Maine; Somerville and Woburn, Mass.; East Hartford, Conn.; Louisville, Ky.; Detroit, Mich.; and Indianapolis, Ind.; (B) *Frozen vegetables*, (1) from Ridgely, Md., to Chicago, Ill.; Austin, Ind.; Des Moines, Iowa; Boston, Mass.; Lake Odessa, Mich.; St. Paul, Minn.; Manchester, N.H.; Pittsburgh, Pa.; New York, N.Y.; Omaha, Nebr.; Memphis and Bells, Tenn.; Green Bay, Wis.; and Dallas, Tex., for 180 days. Supporting shippers: There are approximately 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: John B. Thomas, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 150 Causeway St., Boston, Mass. 02114.

No. MC 114608 (Sub-No. 29 TA) (Correction), filed October 22, 1975, published in the FEDERAL REGISTER issue of November 10, 1975, and republished as corrected this issue. Applicant: CAPITAL EXPRESS, INC., 5635 Clay Ave. SW., Grand Rapids, Mich. 49508. Applicant's representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, Mich. 48226. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dishwashers of cooling boxes and parts thereof* when transported at the same time and in the same vehicle with such dishwashers of cooling boxes, from Columbus, Ohio, to points in Wyoming, Mich., under a continuing contract with Kelvinator, Inc., Grand Rapids, Mich., for 180 days. Supporting shipper: Kelvinator, Inc., 1545 Clyde Park SW., Grand Rapids, Mich. 49509. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 225 Federal Bldg., Lansing, Mich. 48933. The purpose of this republication is to correct the requested authority in this proceeding.

No. MC 134219 (Sub-No. 8 TA), filed November 13, 1975. Applicant: GEORGE V. D'AGOSTINO, doing business as AIRLIN TRUCKING CO., Foot of Cutter Dock Road, Woodbridge, N.J. 07095. Applicant's representative: Thomas F. X. Foley, 744 Broad St., Newark, N.J. 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Artificial fireplace logs, materials and supplies* used in the manufacture of artificial fireplace logs for the account of Eastern Firelog Division of P & M Lumber Products Corp., between the plantsites and warehouses of Eastern Firelog, Division of P & M Lumber Products Corp., at Fairless Hills, Pa., Cornwells Heights (Commonwealth), Pa., Trenton, N.J., North North Brunswick, N.J., on the one hand, and, on the other, points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, the District of Columbia, and Nashua, N.H., under a continuing contract with Eastern Firelog, Division of P & M Lumber Products Corp., for 180 days. Supporting shipper: Eastern Firelog, Division of P & M Lumber Products Corp., 180 Canal Road, Fairless Hills, Pa. 19030. Send protests to: Robert S. H. Vance, District Supervisor, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 139193 (Sub-No. 29 TA), filed October 30, 1975. Applicant: ROBERTS & OAKE, INC., 208 S. La Salle St., Chicago, Ill. 60604. Applicant's representative: Jacob P. Billig, 1126 Sixteenth St. NW., Washington, D.C. 20036. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, meat by-products and articles* distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Lubbock, Tex., to points in Illinois, and (2) *Such commodities* as are used by meat packers, in the conduct of their business (except commodities in bulk), from points in Illinois to Lubbock, Tex., under a continuing contract with John Morrell & Co., for 180 days. Supporting shipper: John Morrell & Co., Robert W. Stehle, Manager, Rates & Services, 208 S. La Salle St., Chicago, Ill. 60604. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, Ill. 60604.

No. MC 140361 (Sub-No. 3 TA), filed November 14, 1975. Applicant: COLUMBUS PARCEL SERVICE, INC., 1009 Joyce Ave., Columbus, Ohio 43219. Applicant's representative: James Duvall, P.O. Box 97, Dublin, Ohio 43017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, limited to individual articles not exceeding 100 pounds in weight, moving as shipments not exceeding 500 pounds in weight from one consignor to one consignee in a single day, on Bills of Lading of surface, interstate freight forwarders, between Cincinnati, Columbus and Dayton, Ohio, on the one hand, and, on the other, points in Boone, Campbell and Kenton Counties, Ky., and Adams, Athens, Belmont, Brown, Butler, Champaign, Clark, Clermont, Clinton, Columbiana, Coshocton, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Hardin, Harrison, Highland, Hocking, Jackson, Jefferson, Knox, Lawrence, Licking, Logan, Madison, Marion, Meigs, Mercer, Miami, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Tuscarawas, Union, Vinton, Warren, Washington and Wyandot Counties, Ohio, restricted to operations conducted exclusively in two axle vehicles, for 180 days. Supporting shipper: American Delivery Systems, Inc., 300 East Seven Mile Road, Detroit, Mich. 48203. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Bldg., & U.S. Courthouse, 85 Marconi Blvd., Columbus, Ohio 43215.

No. MC 141211 (Sub-No. 1 TA), filed November 10, 1975. Applicant: RAY HOLLAND, 13101 El Road, Little Rock, Ark. 72206. Applicant's representative: Thomas J. Presson, P.O. Box 71, Redfield, Ark. 72132. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bananas and exempt agricultural commodities* when transported in the same vehicle with bananas, from Gulfport, Miss., and Galveston, Tex., to the warehouse of Affiliated Foods, Little Rock, Ark., under a continuing contract with Affiliated Foods Stores, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Affiliated Foods Stores, Inc., 10003 New Benton Highway, Little Rock, Ark. 72206. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201.

No. MC 141500 TA, filed November 12, 1975. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 35, Kewaskum, Wis. 53040. Applicant's representative: Richard C. Alexander, 710 North Plankinton Ave., Milwaukee, Wis. 53203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in dump trailer equipment, from Portage, Wis., to Winona, Minn., under a continuing contract with C. Reiss Coal Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: C. Reiss Coal Company, Sheboygan, Wis. 35081. Send protests to: John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 141502 TA, filed November 14, 1975. Applicant: MOVIN ON TRANSPORTATION, INC., G.P.O. Box 1774, New York, N.Y. 10001. Applicant's representative: Bruce J. Robbins, Suite 1515, One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Electrical goods and equipment, materials and supplies* used in the manufacture, production, distribution and repair of such commodities, between the facilities of Sony Corporation of America, at Moonachie, N.J., on the one hand, and, on the other, points in Westchester and Nassau Counties, N.Y., (except points in the New York, N.Y. Commercial Zone as defined by the Commission), under a continuing contract with Sony Corporation of America, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sony Corporation of America, One Sony Drive, Moonachie, N.J. 07074. Send protests to: Paul W. Assenza, District Supervisor, Interstate

Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 141505 TA, filed November 14, 1975. Applicant: INDEX GALENA CORPORATION, P.O. Box 237, Index, Wash. 98256. Applicant's representative: Michael D. Duppenthaler, 515 Lyon Bldg., 607 3rd Ave., Seattle, Wash. 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Alder wood products*, from Sultan and Tenino, Wash., to Oakland, Berkeley, San Francisco, Los Angeles, and Chula Vista, Calif., under a continuing contract with Tenino Wood Products, for 180 days. Supporting shipper: Tenino Wood Products, P.O. Box 546, Tenino, Wash. 98589. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 141506 TA, filed November 12, 1975. Applicant: STEVE COODY TRUCKING, INC., Route 3, Vienna, Ga. 31092. Applicant's representative: T. Baldwin Martin, Sr., P.O. Box 4987, Macon, Ga. 31208. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dolomitic limestone*, in dump type vehicles, from Southern Stone Company, at Auburn, Ala., to points in Dooley, Pulaski, Crisp, Dodge, Wilcox, Turner, Houston, Macon, Bleckley, Lee and Sumter Counties, Ga., over no fixed route, under a continuing contract with R. B. Coody, dba Coody Farms, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: R. B. Coody, dba Coody Farms, Route 3, Vienna, Ga. 31092. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

PASSENGER APPLICATION

No. MC 141507TA, filed November 1, 1975. Applicant: LAWRENCE W. GATES, doing business as ODYSSEY BUS LINES, INC., 17922 Strathern, Reseda, Calif. 91335. Applicant's representative: Larry Gates (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and baggge*, in round-trip charter service, from points in Los Angeles County, Calif., to points in Continental United States, for 180 days. Supporting shippers: There are approximately 13 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: Mildred I. Price, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

By the Commission.

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

[FR Doc.75-32319 Filed 11-28-75;8:45 am]

[AB 74]

PENNSYLVANIA-READING SEASHORE LINES

Abandonment Between Wildwood Junction and Wildwood Station, Cape May County, N.J.

Upon consideration of the record in the above-entitled proceeding, and of a staff-prepared environmental threshold assessment survey which is available to the public upon request; and

It appearing, that no environmental impact statement need be issued in this proceeding because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.; and good cause appearing therefor:

It is ordered, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Cape May County, New Jersey, on or before December 11, 1975, and certify to the Commission that this has been accomplished.

And it is further ordered, That notice of this finding shall be given to the general public by depositing a copy of this order and the attached 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 in the FEDERAL REGISTER as notice to interested persons.

Dated at Washington, D.C., this 18th day of November 1975.

By the Commission, Commissioner Brown.

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

[AB 74]

PENNSYLVANIA-READING SEASHORE LINES ABANDONMENT BETWEEN WILDWOOD JUNCTION AND WILDWOOD STATION, CAPE MAY COUNTY, NEW JERSEY

The Interstate Commerce Commission hereby gives notice that by order dated November 18, 1975, it has been determined that the proposed abandonment of the Pennsylvania-Reading Seashore Lines extending 3.99 miles between Wildwood Junction and Wildwood Station, in Cape May County, N.J., if approved by the Commission does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because traffic volume previously exhibited on the line was low and the amount of traffic permanently diverted to motor carrier is not anticipated to create any substantial alterations in existing air quality and fuel consumption. Also no land use plans of economic or industrial importance exist which would necessitate the continued operation of the line. Public interest has been expressed for purchase of the right-of-way, upon authorization of an abandonment, for use as an additional access corridor into Wildwood.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-7966.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C., 20423, on or before December 26, 1975.

This negative environmental determination shall become final unless good and sufficient reason demonstrating why an environmental impact statement should be prepared for this action is submitted to the Commission by the above-specified date.

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

[FR Doc.75-32315 Filed 11-28-75;8:45 am]

[I.C.C. Order No. 151; Rev. S.O. 994]

WESTERN MARYLAND RAILWAY CO.

Rerouting or Diversion of Traffic

In the opinion of R. D. Pfahler, Agent, the Western Maryland Railway Company (WM) is unable to transport traffic over its lines between Hanover, Pennsylvania, and Baltimore, Maryland, because of bridge damage.

It is ordered, That: (a) *Rerouting traffic.* The WM being unable to transport traffic over its lines between Hanover, Pennsylvania, and Baltimore, Maryland, that line is hereby authorized to reroute or divert such traffic via any available route. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing.

(b) *Concurrence of receiving roads to be obtained.* The railroad desiring to divert or reroute traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with

this order shall notify each shipper at and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said division shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 8:35 p.m., November 1, 1975.

(g) *Expiration date.* This order shall expire at 11:59 p.m., November 8, 1975, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., Novem-1, 1975.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.75-32311 Filed 11-28-75;8:45 am]

federal register

MONDAY, DECEMBER 1, 1975

PART II:

ENVIRONMENTAL PROTECTION AGENCY

■

SEAFOOD PROCESSING POINT SOURCE CATEGORY

Effluent Guidelines and Standards

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 460-5]

PART 408—CANNED AND PRESERVED SEAFOOD PROCESSING POINT SOURCE CATEGORY

On January 30, 1975, notice was published in the FEDERAL REGISTER (40 FR 4582), that the Environmental Protection Agency (EPA or Agency) set forth interim final effluent limitations guidelines for existing sources, proposed pretreatment standards for existing sources amending 40 CFR Part 408, and proposed standards of performance and pretreatment standards for new sources within the fish meal, Alaskan hand-butchered salmon, Alaskan mechanized salmon, West Coast hand-butchered salmon, West Coast mechanized salmon, Alaskan bottom fish, non-Alaskan conventional bottom fish, non-Alaskan mechanized bottom fish, hand-shucked clam, mechanized clam, Pacific Coast hand-shucked oyster, Atlantic and Gulf Coast hand-shucked oyster, steamed and canned oyster, sardine, Alaskan scallop, non-Alaskan scallop, Alaskan herring fillet, non-Alaskan herring fillet, and abalone processing subcategories of the canned and preserved seafood processing category of point sources. Concomitantly the Agency set forth interim final and proposed amendments to the regulations which were promulgated in the June 26, 1974, FEDERAL REGISTER (39 FR 23134) for the catfish, crab, shrimp, and tuna processing segment of the canned and preserved seafood processing category of point sources.

The purpose of this notice is to establish final effluent limitations and guidelines for existing sources and standards of performance and pretreatment standards for new sources in the canned and preserved seafood processing category of point sources by amending 40 CFR Chapter I, Subchapter N, Part 408 by revising § 408.10 of the farm-raised catfish processing subcategory (Subpart A), § 408.20 of the conventional blue crab processing subcategory (Subpart B), § 408.30 of the mechanized blue crab processing subcategory (Subpart C), § 408.40 of the non-remote Alaskan crab meat processing subcategory (Subpart D), § 408.50 of the remote Alaskan crab meat processing subcategory (Subpart E), § 408.60 of the non-remote Alaskan whole crab and crab section processing subcategory (Subpart F), § 408.70 of the remote Alaskan whole crab and crab section processing subcategory (Subpart G), § 408.80 of the dungeness and tanner crab processing in the contiguous States subcategory (Subpart H), § 408.90 of the non-remote Alaskan shrimp processing subcategory (Subpart I), § 408.100 of the remote Alaskan shrimp processing subcategory (Subpart J), § 408.110 of the northern shrimp processing in the contiguous States subcategory (Subpart K), § 408.120 of the southern non-breaded shrimp processing in the contiguous States subcategory (Subpart L), § 408.130 of the breaded shrimp processing subcategory (Subpart M), and § 408.140 of the tuna processing subcategory (Subpart N) to expand the applicability thereof; by revising § 408.55 of the remote Alaskan crab meat processing subcategory (Subpart E), § 408.75 of the remote Alaskan whole crab and crab section processing subcategory (Subpart G), and § 408.105 of the remote Alaskan shrimp processing subcategory (Subpart J) to change the standards of performance for new sources based on screening to standards based on comminutors or grinders; and by adding thereto the fish meal processing subcategory (Subpart O), Alaskan hand-butchered salmon processing subcategory (Subpart P), Alaskan mechanized salmon processing subcategory (Subpart Q), West Coast hand-butchered salmon processing subcategory (Subpart R), West Coast mechanized salmon processing subcategory (Subpart S), Alaskan bottom fish processing subcategory (Subpart T), non-Alaskan conventional bottom fish processing subcategory (Subpart U), non-Alaskan mechanized bottom fish processing subcategory (Subpart V), hand-shucked clam processing subcategory (Subpart W), mechanized clam processing subcategory (Subpart X), Pacific Coast hand-shucked oyster processing subcategory (Subpart Y), Atlantic and Gulf Coast hand-shucked oyster processing subcategory (Subpart Z), steamed and canned oyster processing subcategory (Subpart AA), sardine processing subcategory (Subpart AB), Alaskan scallop processing subcategory (Subpart AC), non-Alaskan scallop processing subcategory (Subpart AD), Alaskan herring fillet processing subcategory (Subpart AE), non-Alaskan herring fillet processing subcategory (Subpart AF), and abalone processing subcategory (Subpart AG). This final rulemaking is promulgated pursuant to sections 301, 304 (b) and (c), 306 (b) and (c) and 307(c) of the Federal Water Pollution Control Act, as amended, (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c) and 1317(c); 86 Stat. 816 et seq.; Pub. L. 92-500. A regulation regarding cooling water intake structures for all categories of point sources under section 316(b) of the Act will be promulgated in 40 CFR Part 402.

The legal basis, methodology and factual conclusions which support promulgation of this regulation were set forth in substantial detail in the notice of public review procedures published August 6, 1973 (38 FR 21202) and in the notice of interim final and proposed rulemaking for the fish meal, salmon, bottom fish, sardine, herring, clam, oyster, scallop, and abalone segment of the canned and preserved seafood processing point source category. In addition, the regulation as set forth was supported by two other documents: (1) The document entitled "Development Document for Interim Final Effluent Limitations Guidelines and Proposed New Source Performance Standards for the Fish Meal, Salmon, Bottom Fish, Sardine, Herring, Clam, Oyster, Scallop, and Abalone Segment of the Canned and Preserved Seafood Processing Point Source Category" (January 1975) and (2) the document entitled "Economic Analysis of Interim Final Effluent Guidelines, Seafood Processing Industry—Fish Meal, Salmon, Bottom Fish, Clams, Oysters, Sardines, Scallops, Herring, Abalone (February 1975). Both of these documents were made available to the public and circulated to interested persons at approximately the time of publication of the notice of proposed rulemaking.

Interested persons were invited to participate in the rulemaking by submitting written comments within 30 days from the date of the notice of availability (40 FR 15096). Prior public participation in the form of solicited comments and responses from the States, Federal agencies, and other interested parties were described in the preamble to the interim final regulation. The EPA has considered carefully all of the comments received and a discussion of these comments with the Agency's response thereto follows.

(a) *Summary of comments.* The following responded to the request for written comments contained in the preamble to the interim final and proposed regulation: National Canners Association; New England Fish Company; Peter Pan Seafoods, Inc.; East Point Seafood Company; Maine Sardine Packers Association, Inc.; Virginia Seafoods Inc.; Shellfish Institute of North America; American Shrimp Canners Association; U.S. Department of Commerce, National Marine Fisheries Service; Department of Health, Education, and Welfare; and U.S. Department of Interior.

Each of the comments received was carefully reviewed and analyzed. The following is a summary of the significant comments and the Agency's response to them.

(1) Several commenters cited section 102(d) of the Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. 92-532) which exempts from the ocean dumping permit requirements "the transportation for dumping or the dumping of fish wastes, except when deposited in harbors or other protected or enclosed coastal waters, or where the Administrator finds that such deposits could endanger health, the environment, or ecological systems in a specific location." The commenters then suggest that, contrary to section 306(b)(1)(A) of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500), the canned and preserved seafood processing point source discharges should be exempt from effluent limitations except in protected areas where tidal flushing action or stream flow is inadequate for assimilation or dispersal of the organic fish wastes.

The majority of the existing seafood processing facilities are located near bays, inlets, estuaries, rivers, harbors, or other areas which provide some refuge from the vagaries of adverse weather or sea conditions. The waste quantities from these plants can range from 30 to

80 percent or more of the weight of raw material which, in many cases, are discharged directly to adjacent receiving waters with little or no treatment.

The Agency has documented cases where water quality degradation resulted from the discharge of seafood processing effluents. For example, the effluents from 15 seafood processors in Kodiak, Alaska resulted in the formation of a sludge deposit covering nearly 51 acres. About 25 percent of the area was polluted to the extent that it was devoid of any macroscopic life. The presence of floating solids, floating sludge mats, and the evolution of hydrogen sulfide gas were noted during the survey. A subsequent study of 32 other Alaskan processors states that waste discharges from many seafood processors were causing environmental damage in receiving waters and violating Alaskan Water Quality Standards. The environmental damage was evidenced by: a) accumulations of seafood wastes resulting in sludge beds and, b) aesthetically degrading conditions such as bloody water, accumulations of seafood wastes on the beaches, and foam and floating seafood wastes on the water surface.

Canadian Environmental Protection Service study presented at the April 1974 Fish Processing Plant Effluent Treatment and Guidelines Seminar in St. Johns, Nfld. indicated that fish processing facilities can affect the biological ecosystem up to a distance of one mile. By evaluating several sediment and diversity indexes, the study found that seafood processing effluents have a definite effect upon the relative abundance of species in the receiving waters. One conclusion of the report suggests that the presence of large schools of fish feeding in the effluent from seafood processing facilities is not indicative of its non-toxic characteristics, because these pelagic or migratory fish do not reproduce, live or carry out normal life functions in the effluent stream. The report also states that "the fish processing industry may not be classed as an emitter of highly toxic waste, although there have been documented cases of fish kills in the Atlantic Provinces. The effluent is more sublethal in action tending to reduce the diversity and thereby affecting the stability of the community structure."

In sec. 101 of the Act, Congress declared its objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" and declared "the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985."

To achieve these ends, the Act adopts a coordinated state-federal program to initiate clean-up efforts. Water quality standards are no longer the primary control mechanism. Instead, Congress has directed federal officials to establish effluent limitations for categories and classes of individual point sources. Each polluter within a category or class of industrial sources must, at a minimum, thereafter meet these uniform effluent limitations (Congressional Research Service, Library of Congress, *A Legal History of the Water Pollution Control Act Amendments of 1972*, Vol. 1, p. 162 (Comm. Print, 1973) hereinafter referred to as Leg. Hist.). This shift from water quality standards to effluent limitations as the basic control mechanism was because of the great difficulty associated with establishing reliable and enforceable precise effluent limitations on the basis of a given stream quality (see Leg. Hist., Vol. 2, p. 1426). Water quality standards, in addition to their deficiencies in relying on the assimilative capacity of receiving waters, often cannot be translated into effluent limitations because of the imprecision of models for water quality and the effects of effluents in most waters.

Nevertheless, the water quality standards are not totally disregarded. The old water quality standards program of the Water Quality Act of 1965 is retained, substantially strengthened, and dovetailed with the new effluent limitations program of the new Act. Under section 303 of the Act water quality standards for interstate waters remain effective. States are to submit new water quality standards for intrastate waters to the Administrator for approval or necessary modifications, and all water quality standards are to be brought up to the requirements of the new Act over a period of time.

Both the States and the Administrator may go beyond the national effluent limitations of section 301 to require a greater reduction in discharge into specific receiving waters where the national effluent limitations are not stringent enough to meet applicable water quality standards for those particular waters (sections 303(d) and 302). Therefore, the technology-based section 301 national effluent limitations are a minimum which all plants must meet and local conditions may result in the imposition of more stringent (but not less stringent) effluent limitations.

(2) Several commenters stated that the selection of plants for sampling and the selection of data for subcategory averages resulted in inequitable and unattainable limitations. They also requested further explanation of the procedures used to decide whether plants in a subcategory were either typical or nontypical and the criteria used for inclusion or exclusion of data.

The time constraints imposed by the statutory deadlines precluded the Agency from conducting an exhaustive sampling program. Nevertheless in the time available, the contractor (a recognized authority on waste management in the seafood processing industry) carried out the first national scale empirical study of the industry's waste characteristics and treatment. Project consultants, industrial trade associations, individual companies, Universities, and State and Federal government contacts assisted in identifying representative seafood processing facilities. The following individuals were among those that provided information and advice: Mr. Russell Norris, Mr. Frank Riley, and Mr. Robert Hall of the Northeast Regional Office, National Marine Fisheries Service (NMFS); Mr. Hugh O'Rourk of the Massachusetts Seafood Council; Mr. Richard Reed of the Maine Sardine Council; Mr. Clarence Carlson of the Atlantic Fishery Products Technology Center; Mr. Roy Martin of the National Fisheries Institute; Mr. Steele Culbertson of the National Fish Meal and Oil Association; Mr. James Douglas, Jr. of the Virginia Marine Resources Commission; Mr. Jack Wright of the Virginia Seafood Council; Mr. Everett Tolley of the Shellfish Institute of North America; Mr. Jack Gehringer of the Southeast Regional Office, NMFS; Mr. Bobby J. Wood and Mr. Melvin Waters of the NMFS Pascagoula Laboratory; Mr. James Bybee of the Southwest Regional Office, NMFS; Mr. Richard Moore and Mr. Jerry Sprat of the State of California, Department of Fish and Game; Mr. Robert Patta, NMFS; Mr. Maynard Steinberg, Mr. John Dassow, Mr. Harold Barnett, and Mr. Richard Nelson of the NMFS Pacific Fishery Technology Laboratory; Mr. Walter Yonker and Mr. Roger DeCamp of the National Canners Association; Dr. Dave Crawford of the Oregon State University Seafood Laboratory; Mr. Jeffrey Collins and Mr. Richard Tenney of the NMFS Kodiak Fishery Products Technology Laboratory; Mr. Charles Perkins of the New England Fish Company and the Pacific Fisheries Technologists; and Mr. Charles Jensen of the Kodiak Seafood Processors Association.

After identifying representative processing facilities, one of the criteria for selecting a plant for detailed study was physical ease of collecting unit operation and end-of-pipe full shift flow proportioned composite samples. Some facilities would have required plumbing changes to facilitate a detailed sampling effort. Other considerations included individual plant cooperation, labor strikes, and seasonality. Because of the need to obtain the data as rapidly as possible, the sampling effort concentrated on plants which had indicated a willingness and ability to provide the requested data promptly. Even though many companies were very cooperative, labor strikes restricted sampling in some locations. Seasonality or availability of raw material also restricted the sampling effort in some parts of the country during the time frame of the study.

The available historical data which was compatible with the Agency's sampling and analytical procedures were included in the data base. The Agency's samples were screened prior to compositing to remove the larger solid particles which reduced the resultant "scatter" of the data points. This method is especially valuable in developing a precise base-line value for each parameter from a limited number of samples.

Several examples extracted from the "Subcategorization Rationale" portions of the Development Document illustrate the method of selecting typical plants for determining subcategory summary data. For salmon processing, 18 sets of summary data covering several process-

ing techniques were obtained from 12 processing facilities. Nine sets of summary data represented mechanized salmon processing; however, only the 4 plants which utilized butchering machines exclusively were included in the subdivision average. The other 5 plants, which were excluded, practiced a mixture of hand and mechanized butchering which resulted in lower raw waste loads. Partial or hybrid processes are not used in the subcategory summaries because the subcategory effluent limitations are intended to serve as "building blocks" for establishing total effluent limitations for multi-product plants. In the case of hand-butchered salmon 6 of the 9 available sets of plant summary data were used for calculating the subdivision average. The excluded summary data represented facilities with lower raw waste loads because the salmon were "troll dressed" or eviscerated at sea. For conventional bottom fish, 14 sets of data were available for use, however, one plant was omitted from the subcategory average because only a small number of fish were being handled in the round, whole, on the day the sample was taken. This situation was considered to be atypical and resulted in relatively low raw waste loads. In the case of mechanized bottom fish, 2 of the 5 sets of data were excluded from the subcategory summary data because the machinery was unique and resulted in much lower raw waste loads than the other mechanized processing facilities. However, the excluded plants are still considered a part of the mechanized bottom fish subcategory.

In general, the plant selection procedures resulted in higher, not lower, subcategory waste load summaries. With one exception, all BOD5, suspended solids, and grease and oil data points of the facilities selected were included in the calculation of subcategory summaries. (As discussed in item 18 below, the only exception involved the grease and oil parameter summary for herring fillet processing subcategories.) The outliers for these regulated parameters were not deleted from the subcategory data base. However, the flow ratios (not a regulated parameter) were eliminated from the summary data of 8 of the 60 plants utilized in subcategory summaries for the following reasons: (a) the poor water conservation practice of letting water run through butchering machines in between periods of operation, (b) allowing hoses to run even when not in use, (c) allowing water to flow through filleting stations even when not in use, (d) excessive overflow rates in oyster blow tanks, and (e) poor control of water flowing through spray washers.

(3) Several commenters stated that the use of an average subcategory raw waste load is inequitable because effluent limitations calculated from a mean value result in half of the plants having to do more to meet the limitations. They suggest that the Agency utilize a case-by-case basis to establish effluent limitations for each plant or utilize the highest waste load observed within a subcategory as the basis for the effluent limitations.

It is inherent in developing subcategory raw waste loads that some plants presently will fall above the average waste loads. However, by employing "good housekeeping" practices and developing an effective waste management program to optimize plant operation, many of these facilities may reduce their raw waste loads before 1977.

In developing effluent limitations, the Agency must be responsive to the requirements of the Act. The legal standards for 1977, like those for 1983 and for new sources, are delineated in Sections 304 and 306 of the Act as "best practicable control technology currently available" (1977), "best available technology economically achievable" (1983), and "best available demonstated technology" (new sources). As stated in the Senate Report (Leg. Hist., Vol. 2, p. 1468):

"The Administrator should establish the range of best practicable levels based upon the average of the best existing performance by plants of various sizes, ages, and unit processes within each industrial category."

The Agency is mandated to rely upon the most effective pollution control achieved in a particular industry subcategory in setting effluent limitations, and must require all point sources in the subcategory, by 1977, to meet this level of currently achieved control.

In enacting the Federal Water Pollution Control Act Amendments of 1972, Congress meant to do more than leave industry at status quo for another decade and reward environmentally laggard businesses by utilizing worst case waste loads as the basis for effluent limitations. Therefore, the sampling program covered plants identified by trade associations and industry experts as representative of the subcategories regulated.

(4) A number of commenters expressed concern about the use of the log normal distribution and suggested that its use was simply a device utilized to mask the variability of the collected data.

An analysis of the natural distribution of the major waste water parameters indicated that the standard normal distribution model was inadequate for most cases because the range of data was large and the data tended to be skewed with some relatively large values. Also, the normal distribution allowed for negative values which do not occur in actuality for the pollution parameters being examined. The log normal distribution was investigated and found to adequately describe the data collected from this industry segment. The log normal distribution is the distribution commonly used for only positive values which are skewed right to allow for some large values. The set of the logarithm of values in the distribution conforms to the normal distribution and standard statistical techniques can be employed. Because the log normal distribution model described the data distribution better than the normal distribution, the log normal distribution was used to establish subcategory summary waste loads.

If the standard normal distribution had been used, the extreme outliers could have been statistically eliminated from the calculated averages. Therefore, the subcategory raw waste load summaries might have been lower than those calculated from the log normal distribution.

(5) Many commenters suggest that the true causes of variability in raw waste loads were not adequately taken into consideration in the establishment of effluent guidelines.

As discussed in the Development Document, the contributing causes of raw waste variability include factors such as variety of the species being processed, variability in raw product supply, harvesting methods, condition of raw product on delivery to the processing plant, and in plant materials management practices. In general, the first four factors are beyond the immediate control of individual processing facilities.

The variety of species utilized in each commodity group is usually limited to those which are quite similar. In general, the processes which have the largest capacities and produce the most waste utilize the fewest species. Those which handle a large variety of species, such as conventional bottom fish processes, are typically smaller and utilize manual unit operations, which produce lower waste loads. The subcategorization rationale reflects a consideration for the variety of species when they are processed in a similar manner.

In the case of salmon processing the practical aspects of the problem precluded subcategorization by salmon species. For example, in Alaska production volumes for red and pink salmon are much greater than those for chum, king, and coho. Since all five species are many times processed during the same shift, sometimes intermingled with one another, obtaining full-shift flow proportioned composite samples for each species could not be practicably accomplished.

The variability in raw product supply and production is strongly correlated with the type of product being processed and occasionally with geographic location and production capacity. The subcategorization scheme and sampling program inherently includes the variability in raw material supply, because this factor influences all food processing facilities dependent on the vagaries of nature for raw material.

The harvesting methods are generally similar within a commodity group. However, it is recognized that different harvesting methods can affect the condition of the raw material or the degree of preprocessing. For example, salmon are harvested primarily by three different methods: trolling, purse seining, and gill netting. Larger vessels, called tenders, usually bring the salmon from the fishing grounds to the processing plants. Fishing boats coming into the port because of breakdowns and supply shortages also deliver fish to the plants. It is more common for trollers to deliver directly to plants than seiners and gill netters. Tenders using chilled brine can store fish up to four days without freezing, whereas

dry tenders, which are rapidly becoming obsolete, must return to the processing plants daily. A few tenders ice their fish. A plant may process on the same day, or from day to day, fish harvested by any permutation of the above methods.

The condition of the raw material on delivery to the processing facility is, perhaps, the major uncontrollable factor affecting plant raw waste loads. The raw material can be very fresh, only a few hours old, or it can be quite old and on the verge of spoilage. It is not uncommon for a processing facility to refuse raw material which has decomposed beyond the point of safe processing for human consumption. The data collected reflects a wide range in the condition of the raw material. In several cases the sampling program at some plants reflects high raw waste loads because the raw material was "older and softer than usual." In another case, due to a shortage of fish, a plant purchased a load of fish which would normally be rejected. The fish were reportably caught just after feeding which caused the bellies to bloat and soften the adjacent meat, thereby increasing the raw waste load.

In an attempt to account for the temporal variations in raw waste loads due to some of these factors, whenever possible a given plant was sampled over several weeks rather than for several consecutive days. In the case of salmon processing in Alaska, the major portion of the season falls from mid-June to mid-September. The Agency's sampling effort and the historical data covers the calendar months from mid-July to the early part of November. In the case of bottom fish processing, the Agency's sampling program generally covers the calendar months from July through October with historical data at one plant covering an 8 month period and at two other plants covering 5 month periods. In general the oyster processing data covers the calendar months of October and November.

As stated previously variations in raw material quality are normal and should be expected. Therefore, the waste management program should be designed with sufficient flexibility to handle the problems inherent in the industry due to expected raw material quality variations. It is also suggested that a processing plant attempt to work out an emergency plan to handle a situation where uncontrollable, significant deterioration in its raw material quality causes significantly high waste loads.

The fifth item listed above, plant materials management practices, directly affects the variability in raw waste loads. Many plants hose solids, which accumulate on the floor near the various unit operations, into drains or troughs. These solids could be removed by shovel and placed into dry bins for disposal or solids recovery. Many plants allow solids to accumulate in sumps which results in leaching of the soluble fractions. In general, any unnecessary water-solids contact increases the waste load of the effluent stream. Water use practices which affect raw waste loads are discussed separately in items 6, 7, and 8 below.

(6) According to many commenters, the Agency should not emphasize water use practices because the wide fluctuations in water use ratios are beyond the control of individual processors due to FDA and public health mandates.

The waste characterization studies indicate that water usage in the seafood processing industry varies widely and is not always a direct function of the needs of the various unit operations or of sanitation requirements. The large variations in water usage for the same process configuration among different plants and among different stations of the same unit operation in a single plant indicates that there is ample opportunity for the reduction of water usage without adversely affecting the quality of the product. Many plants keep the floors flooded at all times of processing. There is a general lack of controls to adjust water use with the volume of seafood processed. In many cases several valves control the entire plant water flow and these are adjusted at the start and turned off at the end of processing operations.

The following specific practices were observed during the Agency's sampling program. (a) In some plants hoses were used continuously during some shifts to wash down an area of waste build up, but were not used on every shift or day of operation; (b) Water was observed to run through many machines or stations even though they were not processing fish; (c) In many cases pumps were not flow regulated, therefore requiring large amounts of water to prevent the loss of vacuum; (d) Some plants did not shut off or reduce water flow during rest breaks; and (e) At one plant sampled the flows among 13 filleting stations ranged from 0.08 gpm to 2.70 gpm at the same point in time, a difference of over 3000 percent; and at another plant, the flows among 7 butchering stations ranged from 0.8 gpm to 3.5 gpm, a difference of over 300 percent.

The Agency believes it to be evident that a significant proportion of the observed water use variability does not result from public health mandates but rather from inefficient housekeeping and water management practices.

Again, it should be emphasized that water use is not a regulated parameter. However, in developing cost estimates of the end of pipe technology utilized as the basis of the 1977 effluent limitations, it was assumed that the flow ratios should be based on "good housekeeping" practices which are considered normal practice within the seafood processing industry. This includes turning off faucets and hoses when not in use or using spring-loaded hose nozzles.

The extensive discussions of water use in the Development Document is intended to illustrate the fact that hydraulic load is an important engineering design and cost factor. It would behoove a processor to evaluate the water flow in all unit operations to reduce unnecessary water-solid contact and indiscriminate water use because prolonged water-solid contact tends to increase raw waste load and unnecessary water use tends to increase the cost of end of pipe treatment.

(7) Several commenters suggest that there is no relationship between water use and waste load by referring to several plants with similar BOD5 ratios and considerably different flow ratios.

The study revealed two major facets of water use within the seafood industry. First, unnecessary flows through hoses and machinery or stations not in use increase water consumption without a noticeable effect on waste load ratios based on production volume. However, the concentration of the total plant effluent decreases due to the dilution effect of unnecessary water consumption. Second, any water-solids contact such as rinses or spray washes removes undesirable material from the surface of the product. Public health or product quality criteria determines some optimum water consumption level for the wash. Beyond this point unnecessary water-solids contact can affect the product surface which may increase suspended solids and induce additional leaching of soluble material. In this case, the additional water-solids contact may increase the waste load per unit of production while the total plant effluent concentration may actually decrease depending on the amount of excess water.

Some plans sweep or wash solids into drains while others utilize dry-capture techniques before cleaning equipment. This has a definite effect on waste load which is not directly related to water use. To be more precise, there is, in fact, a definite relationship between water-solids contact and waste load as illustrated by data presented in Section VII of the Development Document. When unnecessary and indiscriminate water use is eliminated, the water use to waste load relationship will be easier to detect in the processing plant situation.

In general, no comparison can be made of the water use and waste load ratios between different processing plants, unless the facilities have identical raw material, unit operations, and end products. For example, if one plant has a flume which is twice as wide as one in another plant, then with everything else being equal, the first plant will use twice the water volume to maintain the same velocity in the flume.

(8) The comment was made that the premise of water recycling and its part to play in setting guidelines is at present unattainable and consequently upsetting to the food processors treatment program planning.

The effluent limitations are not predicated upon water recycling or water reuse. The discussion presented in the Development Document includes water recycling or water reuse as one of many alternatives in a plant water management program.

(9) Several commenters considered the discussion of by-product recovery in the preamble and Development Document to be overly optimistic by stipulating that fish waste can be converted into mar-

ketable by-products. They state that "wherever, and more realistically whenever, the economics of such marketing are favorable, the industry has and will continue to produce and market such products."

It should be noted that neither the technical justification for the 1977, 1983, and new source effluent limitations nor the economic impact analysis utilize by-product recovery as the basis for the regulations. The purpose of the by-product recovery discussion is to outline several of the major developments that are currently in use, ready for use, or will be available within the next few years.

If the intent and objectives of the Act are to be met, the industry has a choice of treating the waste load at the end of the pipe or making in-plant modifications which may include recovery of secondary products. Because a company expects to sell a by-product, it may make a profit, break even, or recover only a fraction of the cost of production. However, it may be less expensive to sell a secondary product at a loss, than incur the cost of end-of-pipe disposal or treatment for that portion diverted to by-product recovery.

One example cited in the Development Document was the conversion of waste crustacean shells into protein and chitin and chitosan fractions. To quote the October 1974 Proceedings of the Sea Grant Association the following goals and objectives of the Chitin/Chitosan Shellfish Waste Utilization Program were met successfully: "beneficial utilization of a waste product, elimination of a major source of pollution, demonstration of methodology for technical assessment and thence utilization of the by-products of a primary objective, attract additional research in chitin and chitosan utilization, and develop commercial interest in establishment of shellfish waste conversion plants."

In addition to the Japanese production of chitin and chitosan, a U.S. commercial processing facility in Brownsville, Texas is presently producing chitin and is scheduled to commence full-scale production of chitosan in the near future. If a few of the myriad uses of chitin and chitosan attain commercial application, the demand for crustacean shell will increase in the foreseeable future. This may result in the construction of other processing plants and preprocessing or stabilization facilities, which could have a positive economic impact on the existing crustacean and fish meal plants in Alaska and other sources of raw or stabilized shell throughout the country. Notwithstanding the concern of several commenters who indicated that meal plants in Alaska are operating presently at a loss, an increase in demand for stabilized shell could improve the economic condition of the entire by-product operation of these plants. At present, the selling price for crustacean and fish meal is determined by the vacillating world wide supply and demand for protein. An increasing demand for chitin and chitosan in the chemical markets may tend to stabilize the fluctuating selling price of crustacean meal due to competitive markets for the same raw material.

(10) Several commenters state that they prefer to work with some other types of treatment systems than those utilized as the basis of effluent limitations and request that their options be left open accordingly.

The technologies which form the bases for the effluent limitations are used as a point of reference for evaluating the economic impact. The industry may select alternative methods such as those discussed in the Development Document or other sources to meet the published effluent limitations.

(11) Several commenters state that the Development Document indicates that the error in the BOD5 analysis can be as great as 30 percent. Therefore, they request that COD be substituted for the BOD5 parameter.

The discussion of the analytical quality control methods referred to in the Development Document states: "Five-day BOD was determined according to "Standard Methods". For samples with BOD5 of higher than 20 mg/l, at least three different dilutions were made for each sample. The results among the different dilutions were generally less than plus or minus 6 percent. The data reported were the average values of the different dilutions. For samples with BOD5 of less than 20 mg/l, one or two dilutions with two duplicate bottles were incubated. Most of replicate BOD5 in this low range were within plus or minus 5 percent, but some had as much as plus or minus 30 percent difference. Seed for the dilution water was a specially cultivated mixed culure in the laboratory using various fish wastes as the seed."

It should be noted that the lowest BOD5 concentration assumed for 1983 effluent limitations was 60 mg/l. Therefore, the relative error of the BOD5 test will not fall within the plus or minus 30 percent range as suggested by the commenter.

The BOD5 test is widely used to determine the pollutional strength of domestic and industrial wastes in terms of the oxygen these wastes will require if discharged into natural watercourses in which aerobic conditions exist. Furthermore, current engineering practice utilizes BOD5 as a principal design parameter, especially for biological waste treatment systems.

The possibility of substituting the COD parameter for the BOD5 parameter was investigated during this study. The BOD5 and corresponding COD data from industrial fish, finfish, and shellfish waste waters were analyzed to determine if COD is an adequate predictor of BOD5 for any or all of these groups of seafood. The analysis presented in Section VI of the Development Document indicates that the COD parameter is not a reliable predictor of BOD5.

The relationship between COD and BOD5 before treatment is not necessarily the same after treatment. Therefore, the effluent limitations guidelines will include the BOD5 parameter, since insufficient information is available on the COD effluent levels after treatment. However, with adequate data EPA and most States could probably allow the substitution of COD for BOD5 in the routine monitoring program.

(12) One commenter listed the antilogarithms of the log-normal mean and standard deviation of the summary data for conventional bottom fish processing and then suggested that contrary to the statements in the Development Document the waste loadings for bottom fish plants were not relatively low and uniform.

The commenters use of the log-normal data is mathematically incorrect. The log-normal distribution is a normal distribution of the logarithms of the numbers in the data set. Any comparisons between the log-normal mean and log-normal standard deviation should be as logarithms. A comparison of the real number antilog of the log-normal mean and real number antilog of the log-normal standard deviation results in mathematically invalid conclusions. The statement in the Development Document is correct when comparing the log-normal mean and log-normal standard deviation.

(13) One commenter stated that the dissolved air flotation removal efficiencies for salmon are too restrictive because the only DAF plant operational for salmon has shown actual BOD removal to be only in the range of 11 to 35 percent instead of the 75 percent that must be achieved for an average salmon cannery to avoid exceeding the guidelines. For total suspended solids the commercial plant was represented as removing only 18 to 48 percent instead of the assumed 90 percent.

The Fisheries Research Board of Canada and the Fisheries Association of British Columbia designed and erected a full-scale demonstration dissolved air flotation waste water treatment plant which accommodates salmon canning, herring roe recovery, and ground fish filleting effluents. The information available to the Agency indicates that this is the only full-scale DAF system treating salmon cannery effluents. The 1972 Canadian operating data using alum and an anionic polyelectrolyte on salmon canning effluent indicated that suspended solids removal averaged 86 percent and that COD reduction averaged 84 percent. The 1971 operating data using alum on salmon canning effluent indicated that suspended solids removal averaged 92 percent and that COD removal averaged 84 percent.

In view of the published operating data for a full scale salmon processing waste water treatment system, the Agency believes that dissolved air flotation without chemical optimization can achieve the assumed 40 percent reduction of BOD5 and 70 percent reduction of total suspended solids; and with chemical optimization, can achieve by 1983 the assumed 75 percent reduction of BOD5 and 90 percent reduction of total suspended solids.

(14) One commenter indicated that sardine plants with wet fluming systems could not meet the 1977 limitations with-

out in-plant changes because the summary data was based on dry conveying systems. Additional sardine processing waste characterization data was submitted for use in reevaluating the derivation of the effluent limitations.

The information indicated that several of the larger processing facilities employed dry conveying systems from the storage to the processing areas, but the other plants still relied on wet fluming. Therefore, the 1977 effluent limitations were revised by including two additional plants in the subcategory data summary for plants with dry conveying systems and establishing an allowance by use of historical data for plants without this in-process modification. However, the 1983 and new source effluent limitations are based on dry conveying systems.

(15) One commenter stated that the scallop subcategories have not been adequately discussed because there are significant differences between the two plants monitored (with one plant being sampled only once).

As disoussed in the Development Document, the bay, sea, and Alaskan scallops are shucked and eviscerated at sea to avoid deterioration. The unit operations at land-based processing plants are essentially washing and freezing. This results in a yield of nearly 100 percent of the raw material entering the plant since the only wastes produced are small scallop pieces not suitable for freezing, solid waste removed during inspection, and small amounts of dissolved organic matter. The observed washing methods were different at each plant sampled. One plant used a two stage continuous flow washing system, whereas, the other employed a non-flowing brine tank which was dumped approximately every eight hours. With the exception of flow ratios, the other waste parameters were considered similar. The available information did not warrant further subcategorization on the basis of the washing operation.

Although the two Alaskan plants were the only ones sampled, other facilities were observed in the middle Atlantic region using essentially the same process; therefore, it was assumed that the waste loads would be similar for similar "wash and freeze" operations.

It should be noted that, as stated in § 408.300, the calico scallop process which employs land-based machinery for shucking and eviscerating the scallops is not covered by the regulations set forth herein.

(16) Several commenters expressed concern about the accuracy of the development of the steamed and canned oyster effluent limitations and discussed the effects of the oyster beds and harvesting techniques on the processing waste loads. One Gulf Coast processor submitted data to support his statements.

A review of the data for steamed and canned oysters indicated that plant C01 data should not have been included in the subcategory average. Unlike the other plants, the raw material was prewashed before entering the processing facility, thus reducing the raw waste load due to partial processing. The revised subcategory average excludes plant CO1 data, and includes the Gulf Coast data.

(17) Several commenters objected to the establishment of two hand-shucked oyster subcategories with revised effluent limitations because the contractor's draft report originally recommended one hand-shucked oyster subcategory with higher effluent limitations.

One result of the review of the contractor's draft report and evaluation of the public comments, prompted further subcategorization of the original Hand-Shucked Oyster Subcategory into the Pacific Coast Hand-Shucked Oyster Subcategory and the East and Gulf Coast Hand-Shucked Oyster Subcategory with data based on the specific species processed in the two geographic areas. The contractor's draft report presents hand-shucked oyster data for ten processing plants—four located on the West Coast and six, on the East Coast. Utilizing Total Suspended Solids (TSS) as an example, it can be seen that the TSS arithmetic average for the West Coast plants processing the Japanese or Pacific oyster is 25.7 kg/kkg of shucked oyster produced; the TSS arithmetic average for the East Coast plants processing the American, Eastern, or Virginia oyster is 10.8 kg/kkg. However, as noted in the contractor's draft report, the Hand-Shucked Oysters Process Summary was based on the four West Coast plants alone.

Another result of the review, as explained in the preamble to the FEDERAL REGISTER notice (40 CFR 4582) and the Interim Final Development Document, prompted the use of the logarithmetic—normal frequency distribution to determine subcategory summary data. Again using TSS as an example, the log-normal transform increases the Pacific Coast Hand-Shucked Oyster Subcategory TSS average from 25.7 to 34.2 kg/kkg of product, and the East and Gulf Coast Hand-Shucked Oyster Subcategory TSS average from 10.8 to 13.6 kg/kkg of product.

The Agency believes that effluent limitations based on these revisions are equitable because they present a more accurate reflection of the characteristics of the hand-shucked oyster industry.

(18) One commenter suggests that the herring fillet subcategories have not been adequately characterized because no remote Alaskan herring fillet plant was sampled and only one day of production was monitored at a non-remote Alaskan plant.

As stated in the Development Document, two herring filleting plants were sampled during August, 1973, one in New England and one in Alaska. In addition, historical data were obtained from a plant operating in Canada. The sampling interval was during a period of peak production for New England, however, due to a poor harvest in 1973, the plants were operating on an intermittent basis. The sampling interval in Alaska was during a slack season, therefore, only one day of operation was observed.

In general, the waste characteristics for all three plants were similar. One difference was the relatively high flow ratio observed at the Alaskan plant. This high ratio is not considered to be typical because only a few fish were being processed and the flow through the filleting machines at the plant monitored tends to be independent of the production rate.

One relatively high grease and oil data point at the Alaskan processing facility, resulted in a distorted log normal projection for the grease and oil daily maximum of 86.6 kg per kkg of raw material, i.e., over 8 percent of the weight of raw material. Since the typical fat composition of herring ranges from 2 up to 11 percent of body weight, it would be unlikely for 78 percent or more of this fat to reach the waste water effluent stream because a major proportion of the fat is contained in the food product and waste solids. A comparison of the mechanically butchered salmon processing raw waste load to the mechanized herring filleting raw waste load indicates that TSS averages are virtually identical, 20.3 kg/kkg for salmon and 20.9 kg/kkg for herring filleting; the salmon GOD5 waste load is higher, 50.8 kg/kkg for salmon versus 32.2 kg/kkg for herring filleting; the salmon grease and oil average is also virtually identical to the average for the New England herring filleting plant, 6.49 kg/kkg for salmon versus 6.11 kg/kkg for New England herring filleting. Because the one data point at the Alaskan herring filleting plant appeared to be abnormally high in comparison to the other available information, it was not used to determine a subcategory average. Instead, the mechanized salmon process grease and oil data was utilized to derive conclusions regarding effluent limitations for the herring fillet processing plants.

Since the herring filleting process is essentially the same from plant to plant, geographic location was considered to be the only factor requiring further attention in the subcategorization process. As explained in the Development Document and preamble to the interim final effluent limitations, subcategorization based on geographic regions (Alaska versus non-Alaska, and remote Alaska versus non-remote Alaska), was developed to account for the differences in the relative costs of business and treatment technologies, not for differences in raw waste loads, treatability of wastes or other technical factors.

(19) Several commenters criticized the fact that the log-normal transform was used in most cases to determine parameter averages while in some cases an arithmetic average was used.

In reviewing the data base, it was decided to use the log-normal distribution exclusively instead of the standard normal distribution for the reasons previously cited in item 4. However, the weighing factors were deleted from the log-normal transform, even though this results generally in higher subcategory averages, in order to supplement the data base with historical data or available plant data which does not include temporal variability for the regulated parameters.

(20) Questions have been raised concerning the availability of standards or guidelines applicable to the disposal of solid wastes resulting from the operation of pollution control systems.

The principles set forth in "Land Disposal of Solid Wastes Guidelines" (40 CFR Part 241) may be used as guidance for acceptable land disposal techniques. Potentially hazardous wastes may require special considerations to ensure their proper disposal. Additionally, state and local guidelines and regulations should be considered wherever applicable.

(21) One commenter observed that EPA did not take into account the economic impact from regulations imposed by other regulatory agencies.

The Agency realizes that there will be an economic impact from regulations set by other regulatory agencies. In its economic impact analysis, EPA included costs incurred as a result of pre-1972 regulations.

It is difficult to estimate what other costs will be incurred in the years ahead as there is no way to determine what other agencies will propose. However, it is valid to assume that these agencies, when considering the economic impact of their proposed regulations, will consider the costs incurred as a result of previously imposed EPA regulations.

(22) Several comments stated that the new source and 1983 effluent limitations based on extended aeration for the hand shucked oyster industry will have a severe economic impact.

As part of the Agency's overall reassessment of the economic impact, the above comment was carefully evaluated. In this analysis, the impact was investigated over a range for several variables (e.g. cost of capital, operating and maintenance cost). Because the review indicated that the comment was generally valid, the Agency rejected extended aeration as the basis of the 1983 effluent limitations. The Agency believes that extended aeration still represents a technically feasible alternative for hand-shucked oyster processing. Nevertheless, the 1983 limitations and new source performance standards have been revised so that the best available technology economically achievable and the best available demonstrated control technology consists of "good housekeeping" practices which are considered normal practice within the seafood processing industry such as turning off faucets and hoses when not in use or using spring-loaded hose nozzles, by-product recovery or ultimate disposal of solids, and treatment of the waste water effluent by screening.

The provisions of section 301(d) of the Act require that the effluent limitations based on the best available technology economically achievable shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under section 301(b)(2). The Agency has initiated a study to identify alternative economically viable technology applicable to hand-shucked oyster processing. Therefore, the 1983 limitations may be revised in the future pursuant to section 301(d) of the Act to reflect a higher level of technology than screening.

(23) Several commenters were concerned that monitoring costs were excluded from the Agency's cost calculations.

The Agency did not include monitoring costs in its calculations because in many cases they prove to be an insignificant amount of the cost of compliance with the effluent limitations.

Laboratory analyses were estimated to cost about $25 per sample. Some permits are written which require only one sample per season. For example, using the cost figures for a medium-size East Coast hand shucked oyster plant, that amounts to approximately 0.8 percent of the total annual costs of $3,000. Even if once per month sampling was required during the operating season (7 months), monitoring cost would amount to approximately 6 percent of the total annual cost.

Most processors are currently required to (and do) monitor their discharges; the effluent limitations may not require any additional monitoring. Therefore, no additional monitoring costs are incurred as a result of these effluent limitations.

(24) Comments were received which said that dissolved air flotation (DAF) was not economically feasible for the West Coast canned salmon industry.

The Agency reevaluated the cost of DAF technology, and the potential economic impact on the West Coast canned salmon industry. Based on this evaluation, EPA is revising the effluent limitations so that (1) DAF is no longer the basis for the 1977 limitations; however (2) DAF will be retained as the basis for the 1983 and new source standards.

The Agency considered the cost of the technology, the economic history and status of the industry, and its future prospects. The West Coast canned salmon industry has been in a depressed state during 1973 and 1974. However, the industry has a cycle of about four years; usually the first two years are profitable, while the last two years are not. Historically, the profits have covered the losses. However, in the last cycle, 1971–1974, losses exceeded profits.

The economic outlook for the immediate future is uncertain. Landings for June 1975 were several times gretater than landings in June 1974. There are indications that a new cycle is starting, but whether the cycle will be profitable (net positive cash flow) still remains to be seen. The DAF basis for the 1983 and new source standards is retained because the industry may, in fact, prove profitable. However, section 301(c) of the Act provides for modification of the effluent limitations with respect to any point source which is based on the best available technology economically achievable, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants. Furthermore, section 301(d) of the Act states that the effluent limitations based on the best available technology economically achievable shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under section 301(b)(2). If adverse economic conditions are found to exist at a later time, there is ample opportunity to revise the regulations.

(25) Several commenters stated that dissolved air flotation was not economically feasible for the Alaskan non-remote fresh and frozen salmon processors and the Alaskan canned salmon processors.

The Agency reevaluated the cost of DAF technology, and the potential economic impact on the Alaskan fresh and frozen and canned salmon industries. Based on this evaluation DAF was shown to be economically feasible and, therefore, will be retained as the basis for the 1983 effluent limitations.

EPA considered the cost of the technology, the economic history and status of the industry, and its future prospects. The salmon industry in Alaska has been hampered by a steady and continuous decline in landings (due in large part to foreign fishing offshore) and, concomitantly, rising exvessel prices for the raw product. The industry has not been profitable in the last few years.

If the future profitability is the same as over the most recent cycle, EPA realizes that there could be a great impact on this industry if DAF is retained as the basis for the 1983 effluent limitations. However, the outlook for this industry is subject to great uncertainty. The DAF basis for 1983 regulations is retained because this industry may, in fact, prove profitable. However, section 301(c) of the Act provides for modification of the effluent limitations guidelines with respect to any point source which is based on the best available technology economically achievable, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represents the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants. Furthermore, section 301(d) of the Act states that the effluent limitations guidelines based on the best available technology economically achievable shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under section 301(b)(2). If adverse economic conditions are found to exist at a later time, there is ample opportunity to revise the regulations.

(b) *Revision of the interim final and proposed regulations prior to promulgation.* As a result of public comments and continuing review and evaluation of the proposed regulation by the EPA, the following changes have been made in the regulation:

(1) The use of the unweighted log normal distribution resulted in the following changes:

(i) generally higher effluent limitations for the Alaskan bottom fish (Subpart T), scallop (Subparts AC and AD), and hand-shucked clam (Subpart W) processing subcategories; and

(ii) higher effluent limitations within the herring fillet (Subparts AE and AF), sardine (Subpart AB), and abalone (Subpart AG) processing subcategories because of expansion of the respective subcategory data bases to include plant data without the temporal variability weighing factor.

(2) The revised technology basis for the sardine processing 1977 effluent limitations (Subpart AB) accounts for separation of those plants with dry conveying systems to the processing area from those plants with wet fluming transportation systems. The 1983 and new source effluent limitations are based on dry conveying systems alone.

(3) The mechanized clam processing subcategory effluent limitations increased because one plant which utilized a "partial process" was deleted from the subcategory summary.

(4) The steamed and canned oyster processing subcategory effluent limitations increased because of the addition of historical data received during the comment period and the deletion of one plant which utilized a "partial process."

(5) A reassessment of the economic impact of the interim final effluent limitations for the West Coast Mechanized Salmon Processing Subcategory indicates that dissolved air flotation is not an economically feasible technology basis for the 1977 limitations. The promulgated effluent limitations have been revised to eliminate this impact. The best practicable control technology currently available involves "good housekeeping" practices which are considered normal practice within the seafood processing industry such as turning off faucets and hoses when not in use or using spring-loaded hose nozzles, by-product recovery or ultimate disposal of solids, and treatment of the waste water effluent by screening. The best available technology economically achievable and the best available demonstrated control technology, processes, operating methods or other alternatives for new sources consist, of, in addition to the aforementioned treatment, dissolved air flotation and appropriate processed design to provide more efficient in-plant water use which reduces leaching of solubles and entrainment of solids in the contact process water.

(6) A reassessment of the economic impact of the effluent limitation for the Pacific Coast Hand Shucked Oyster and East and Gulf Coast Hand Shucked Oyster Processing Subcategories indicates that extended aeration is not an economically feasible technology basis for the new source and the 1983 limitations. The promulgated effluent limitations have been revised to eliminate this impact. The best available technology economically achievable and the best available demonstrated control technology, processes, operating methods or other alternatives for new sources consist of "good housekeeping" practices which are considered normal practice within the seafood processing industry such as turning off faucets and hoses when not in use or using spring-loaded hose nozzles, by-product recovery or ultimate disposal of solids, and treatment of the waste water effluent by screening.

(c) *Economic and inflationary impact.* The Agency considered the economic impact of the internal and external costs of the effluent limitations. Internal costs are defined as investment and annual cost (operating costs plus the cost of capital and depreciation) for a typical plant. External cost deals basically with the assessment of the economic impact of the internal costs in terms of price increases, production curtailments or plant closures, resultant unemployment, community and regional impacts, international trade, and future industry growth.

In its reassessment of the economic impact, the Agency made a concerted and serious effort to contact new sources and obtain new data. Inquiries were made to government agencies, private companies, and trade associations. The Agency re-evaluated previous data and evaluated new data furnished to the Agency.

There were certain, mostly minor, changes due to this reassessment. These include the following:

(1) The total internal cost of the 1977 effluent limitations is $6.2 million investment (previous figure: $6.1 million) with $1.3 million annual cost (same as the previously published figure).

(2) An additional $5.9 million investment is required for the 1983 standards (previous figure: $8.2 million) plus $1.4 million annually (previous figure: $1.7 million).

(3) As discussed in the Comments (item (b) 24, above) there was concern that the economic impact of the 1977 effluent limitations would be too severe for the West Coast canned salmon industry. Based on the review of the economic history and status of the industry, the Agency concluded that a revision of the previously published effluent limitation was warranted. As such, the basis for the 1977 limitation was changed from air flotation systems to screening systems.

(4) The economic impact statement for the interim final regulation expressed concern about a potentially severe economic impact on the Alaskan fresh and frozen salmon industry. It was also stated that the severity could have been overestimated due to several factors. Based on a review of permit registrations, it was found that a number of the "affected" plans were not processors, but packers and wholesalers that are entirely unaffected by the effluent limitations. Based on this review, the Agency concluded that the previously stated impact is overstated and no revisions of the effluent limitations are necessary.

(5) As discussed in the comments (item (b) 22, above) there was concern that the economic impact of the 1983 and new source performance standards would be too severe for the hand-shucked oyster processors. Based on a review of the economic history and status of the industry, the Agency concluded that a revision of the previously published effluent limitations was warranted. As such, the bases for the 1983 and new source performance standards for the hand-shucked oyster processing subcategories were changed from extended aeration systems to screening systems.

The effluent limitations for 1977 will have a minor effect on prices as price increases generally in the range of 0.3 to 0.5 percent are projected. Although price increases in this industry will, of course, be affected by foreign competition, the generally small magnitude of the projected price increases is not expected to cause any important international trade effects. A number of small plants are projected to be adversely affected by the effluent limitations, but the domestic industry capacity is not expected to be affected by the potential closure of these particular small plants.

The 1983 standards are projected to result in price increases typically in the range 0.5 to 1.5 percent (including the 1977 increase). An additional number of generally small plants are projected to be adversely affected by these 1983 guidelines, but again, the domestic industry capacity is not anticipated to be affected by the potential closure of these small plants. No significant international trade effects of the 1983 guidelines are projected.

Executive Order 11821 (November 27, 1974) requires that major proposals for legislation and promulgation of regulations and rules by Agencies of the executive branch be accompanied by a statement certifying that the inflationary impact of the proposal has been evaluated.

OBM Circular A-107 (January 28, 1975) prescribes guidelines for the identification and evaluation of major proposals requiring preparation of inflationary impact certifications. The circular provides that during the interim period prior to final approval by OMB of criteria developed by each Agency, the Administrator is responsible for identifying those regulations which require evaluation and certification. The Administrator has directed that all regulatory actions which are likely to result in capital investment exceeding $100 million or annualized costs in excess of $50 million will require certification. Since the estimated total capital investment and annualized cost are below the designated limits, certification of the inflationary impact statement is not necessary.

(d) *Cost-benefit analysis.* The detrimental effects of the constituents of waste waters now discharged by point sources within the fish meal, salmon, bottom fish, sardine, herring, clam, oyster, scallop, and abalone segment of the canned and preserved seafood processing point source category are discussed in Section VI of the report entitled "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Fish Meal, Salmon, Bottom Fish, Sardine, Herring, Clam, Oyster, Scallop, and Abalone Segment of the Canned and Preserved Seafood Processing Point Source

Category" (August 1975). It is not feasible to quantify in economic terms, particularly on a national basis, the costs resulting from the discharge of these pollutants to our Nation's waterways. Nevertheless, as indicated in Section VI, the pollutants discharged have substantial and damaging impacts on the quality of water and therefore on its capacity to support healthy populations of wildlife, fish and other aquatic wildlife and on its suitability for industrial, recreational and drinking water supply uses.

The total cost of implementing the effluent limitations includes the direct capital and operating costs of the pollution control technology employed to achieve compliance and the indirect economic and environmental costs identified in Section VIII and in the supplementary report entitled "Economic Analysis of Effluent Guidelines—Seafood Processing Industry" (August 1975). Implementing the limitations will substantially reduce the environmental harm which would otherwise be attributable to the continued discharge of polluted waste waters from existing and newly constructed plants in the canned and preserved seafood processing industry. The Agency believes that the benefits of thus reducing the pollutants discharged justify the associated costs.

(e) Publication of information on processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants.

In conformance with the requirements of section 304(c) of the Act, a manual entitled, "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Fish Meal, Salmon, Bottom Fish, Sardine, Herring, Clam, Oyster, Scallop, and Abalone Segment of the Canned and Preserved Seafood Processing Point Source Category," will be published as soon as practicable and will be available for purchase from the Government Printing Office, Washington, D.C. 20402 for a nominal fee.

Copies of the economic analysis document previously cited will be available from the National Technical Information Service, Springfield, VA 22151.

A copy of all public comments is available for inspection and copying at the EPA Public Information Reference Unit, Room 2404, Waterside Mall, 401 M St. SW., Washington, D.C. 20460. A copy of the preliminary draft contractors reports, the Development Document (cite the appropriate reports) and economic study referred above, and certain supplementary materials supporting the study of the industry concerned, is also at this location for public review and copying, etc.

(f) *Final rulemaking.* In consideration of the foregoing, 40 CFR Chapter I, Subchapter N, Part 408, Canned and Preserved Seafood Processing Point Source Category, is hereby amended by revising Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, and N; and by adding additional subparts O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AB, AC, AD, AE, AF, and AG to read as set forth below.

This regulation is being promulgated pursuant to an order of the Federal District Court for the District of Columbia entered in Natural Resources Defense Council, Inc. v. Train (Cv. No. 1609-73). That order requires that effluent limitations requiring the application of the best practicable control technology currently available for this industry be effective upon publication. Accordingly, good cause is found for the final regulation promulgated below establishing best practicable control technology currently available for each subpart to be effective on December 1, 1975.

The final regulation promulgated below which establishes effluent limitations based on the best available technology economically achievable; new source standards based on the best available demonstrated control technology; and new source and existing source pretreatment standards shall become effective December 31, 1975.

Dated: November 13, 1975.

JOHN QUARLES,
Acting Administrator.

Subpart O—Fish Meal Processing Subcategory

Sec.
408.150 Applicability; description of the fish meal processing subcategory.
408.151 Specialized definitions.
408.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
408.153 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
408.154 Pretreatment standards for existing sources.
408.155 Standards of performance for new sources.
408.156 Pretreatment standards for new sources.

Subpart P—Alaskan Hand-Butchered Salmon Processing Subcategory

408.160 Applicability; description of the Alaskan hand-butchered salmon processing subcategory.
408.161 Specialized definitions.
408.162 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
408.163 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
408.164 Pretreatment standards for existing sources.
408.165 Standards of performance for new sources.
408.166 Pretreatment standards for new sources.

Subpart Q—Alaskan Mechanized Salmon Processing Subcategory

408.170 Applicability; description of the Alaskan mechanized salmon processing subcategory.
408.171 Specialized definitions.
408.172 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
408.173 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
408.174 Pretreatment standards for existing sources.
408.175 Standards of performance for new sources.
408.176 Pretreatment standards for new sources.

Subpart R—West Coast Hand Butchered Salmon Processing Subcategory

408.180 Applicability; description of the West Coast hand-butchered salmon processing subcategory.
408.181 Specialized definitions.
408.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
408.183 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
408.184 Pretreatment standards for existing sources.
408.185 Standards of performance for new sources.
408.186 Pretreatment standards for new sources.

Subpart S—West Coast Mechanized Salmon Processing Subcategory

408.190 Applicability; description of the West Coast mechanized salmon processing subcategory.
408.191 Specialized definitions.
408.192 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
408.193 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
408.194 Pretreatment standards for existing sources.
408.195 Standards of performance for new sources.
408.196 Pretreatment standards for new sources.

Subpart T—Alaskan Bottom Fish Processing Subcategory

408.200 Applicability; description of the Alaskan bottom fish processing subcategory.
408.201 Specialized definitions.
408.202 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
408.203 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

AUTHORITY: Secs. 301, 304 (b) and (c), 306 (b) and (c), Federal Water Pollution Control Act, as amended, (the Act); (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c)); 86 Stat. 816 et seq.; Pub. L. 92-500.

Subpart A—Farm Raised Catfish Processing Subcategory

Subpart A—The farm raised catfish processing subcategory is amended by revising § 408.10 to read as follows:

§ 408.10 Applicability; description of the farm raised catfish processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of farm-raised catfish by existing facilities which process more than 1362 kg (3000 lbs) of raw material per day on any day during a calendar year and all new sources.

Subpart B—Conventional Blue Crab Processing Subcategory

Subpart B—The conventional blue crab processing subcategory is amended by revising § 408.20 to read as follows:

§ 408.20 Applicability; description of the conventional blue crab processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of blue crab in which manual picking or separation of crab meat from the shell is utilized. The effluent limitations contained in this Subpart B are applicable to existing facilities processing more than 1362 kg (3000 lbs) of raw material per day on any day during a calendar year and all new sources.

Subpart C—Mechanized Blue Crab Processing Subcategory

Subpart C—The mechanized blue crab processing subcategory is amended by revising § 408.30 to read as follows:

§ 408.30 Applicability; description of the mechanized blue crab processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of blue crab in which mechanical picking or separation of crab meat from the shell is utilized.

Subpart D—Non-Remote Alaskan Crab Meat Processing Subcategory

Subpart D—The non-remote Alaskan crab meat processing subcategory is amended by revising § 408.40 to read as follows:

§ 408.40 Applicability; description of the non-remote Alaskan crab meat processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing, in non-remote Alaska, of dungeness, tanner, and king crab meat. The effluent limitations contained in this Subpart D are applicable to facilities located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg.

Subpart E—Remote Alaskan Crab Meat Processing Subcategory

Subpart E—The remote Alaskan crab meat processing subcategory is amended by revising §§ 408.50 and 408.55 to read as follows:

§ 408.50 Applicability; description of the remote Alaskan crab meat processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing, in remote Alaska, of dungeness, tanner, and king crab meat. The effluent limitations contained in Subpart E are applicable to facilities not covered under Subpart D.

§ 408.55 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

Subpart F—Non-Remote Alaskan Whole Crab and Crab Section Processing Subcategory

Subpart F—The non-remote Alaskan whole crab and crab section processing subcategory is amended by revising § 408.60 to read as follows:

§ 408.60 Applicability; description of the non-remote Alaskan whole crab and crab section processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing, in non-remote Alaska, of dungeness, tanner and king whole crab and crab sections. The effluent limitations contained in this Subpart F are applicable to facilities located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg.

Subpart G—Remote Alaskan Whole Crab and Crab Section Processing Subcategory

Subpart G—The remote Alaskan whole crab and crab section processing subcategory is amended by revising §§ 408.70 and 408.75 to read as follows:

§ 408.70 Applicability; description of the remote Alaskan whole crab and crab section processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing, in remote Alaska, of dungeness, tanner, and king whole crab and crab sections. The effluent limitations contained in this Subpart G are applicable to facilities not covered under Subpart F of this part.

§ 408.75 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

Subpart H—Dungeness and Tanner Crab Processing in the Contiguous States Subcategory

Subpart H—The dungeness and tanner crab processing in the contiguous States subcategory is amended by revising section 408.80 to read as follows:

§ 408.80 Applicability; description of the dungeness and tanner crab processing in the contiguous States subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of dungeness and tanner crab in the contiguous States.

Subpart I—Non-Remote Alaskan Shrimp Processing Subcategory

Subpart I—The non-remote Alaskan shrimp processing subcategory is amended by revising § 408.90 to read as follows:

§ 408.90 Applicability; description of the non-remote Alaskan shrimp processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of shrimp in non-remote Alaska. The effluent limitations contained in this Subpart I are applicable to facilities located in population or processing centers including but not limited

to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg.

Subpart J—Remote Alaskan Shrimp Processing Subcategory

Subpart J—The remote Alaskan shrimp processing subcategory is amended by revising §§ 408.100 and 408.105 to read as follows:

§ 408.100 Applicability; description of the remote Alaskan shrimp processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of shrimp in remote Alaska. The effluent limitations contained in this Subpart J are applicable to facilities not covered under Subpart I of this part.

§ 408.105 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

Subpart K—Northern Shrimp Processing in the Contiguous States Subcategory

Subpart K—The northern shrimp processing in the contiguous States subcategory is amended by revising § 408.110 to read as follows:

§ 408.110 Applicability; description of the Northern shrimp processing in the contiguous States subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of shrimp in the Northern contiguous States, including Washington, Oregon, California, Maine, New Hampshire, and Massachusetts. The effluent limitations contained in this Subpart K are applicable to existing facilities processing more than 908 kg (2000 lbs) of raw material per day on any day during a calendar year and all new sources.

Subpart L—Southern Non-Breaded Shrimp Processing in the Contiguous States Subcategory

Subpart L—The Southern non-breaded shrimp processing in the contiguous States subcategory is amended by revising § 408.120 to read as follows:

§ 408.120 Applicability; description of the Southern non-breaded shrimp processing in the contiguous States subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of non-breaded shrimp in the Southern contiguous States, including North and South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas. The effluent limitations contained in this Subpart L are applicable to existing facilities processing more than 908 kg (2000 lbs) of raw material per day on any day during a calendar year and all new sources.

Subpart M—Breaded Shrimp Processing in the Contiguous States Subcategory

Subpart M—The breaded shrimp processing in the contiguous States subcategory is amended by revising § 408.130 to read as follows:

§ 408.130 Applicability; description of the breaded shrimp processing in the contiguous States subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of breaded shrimp in the contiguous States by existing facilities processing more than 908 kg (2000 lbs) of raw material per day on any day during a calendar year and all new sources.

Subpart N—Tuna Processing Subcategory

Subpart N—The tuna processing subcategory is amended by revising § 408.140 to read as follows:

§ 408.140 Applicability; description of the tuna processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of tuna.

Subpart O—Fish Meal Processing Subcategory

§ 408.150 Applicability; description of the fish meal processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of menhaden on the Gulf and Atlantic Coasts and the processing of anchovy on the West Coast into fish meal, oil and solubles.

§ 408.151 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(1) Any menhaden or anchovy fish meal reduction facility which utilizes a solubles plant to process stick water or bail water shall meet the following limitations.

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	4.7	3.5
TSS	2.3	1.3
Oil and grease	0.80	0.63
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	4.7	3.5
TSS	2.3	1.3
Oil and grease	0.80	0.63
pH	Within the range 6.0 to 9.0.	

(2) Any menhaden or anchovy fish meal reduction facility not covered under § 408.152(b)(1) shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	3.5	2.8
TSS	2.6	1.7
Oil and grease	3.2	1.4
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	3.5	2.8
TSS	2.6	1.7
Oil and grease	3.2	1.4
pH	Within the range 6.0 to 9.0.	

§ 408.153 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	4.0	2.9
TSS	2.3	1.3
Oil and Grease	0.80	0.63
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	4.0	2.9
TSS	2.3	1.3
Oil and grease	0.80	0.63
pH	Within the range 6.0 to 9.0.	

§ 408.154 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the fish meal processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	Pretreatment standard
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.155 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	4.0	2.9
TSS	2.3	1.3
Oil and grease	0.80	0.63
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	4.0	2.9
TSS	2.3	1.3
Oil and grease	0.80	0.63
pH	Within the range 6.0 to 9.0.	

§ 408.156 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the fish meal processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	Pretreatment standard
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart P—Alaskan Hand-Butchered Salmon Processing Subcategory

§ 408.160 Applicability; description of the Alaskan hand-butchered salmon processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the hand-butchering of salmon in Alaska.

§ 408.161 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shell fish, to be processed, in the form in which it is received at the processing plant.

§ 408.162 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this section, which may be discharged by a

point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(1) Any hand-butchered salmon processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	1.7	1.4
Oil and grease	0.20	0.17
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	1.7	1.4
Oil and grease	0.20	0.17
pH	Within the range 6.0 to 9.0.	

(2) Any hand-butchered salmon processing facility not covered under § 408.162(b)(1) shall meet the following limitations: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

§ 408.163 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	1.5	1.2
Oil and grease	0.18	0.15
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	1.5	1.2
Oil and grease	0.18	0.15
pH	Within the range 6.0 to 9.0.	

§ 408.164 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the Alaskan hand-butchered salmon processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.165 Standards of performance for new sources.

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

(1) Any hand-butchered salmon processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	1.5	1.2
Oil and grease	0.18	0.15
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	1.5	1.2
Oil and grease	0.18	0.15
pH	Within the range 6.0 to 9.0.	

(2) Any hand-butchered salmon processing facility not covered under § 408.165(a)(1) shall meet the following limitations: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

§ 408.166 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the Alaskan hand-butchered salmon processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart Q—Alaskan Mechanized Salmon Processing Subcategory

§ 408.170 Applicability; description of the Alaskan mechanized salmon processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the mechanized butchering of salmon in Alaska.

§ 408.171 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.172 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such funda-

mentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(1) Any mechanized salmon processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	27	22
Oil and grease	27	10
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	27	22
Oil and grease	27	10
pH	Within the range 6.0 to 9.0.	

(2) Any mechanized salmon processing facility not covered under § 408.172 (b) (1) shall meet the following limitations: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

§ 408.173 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

(1) Any mechanized salmon processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	16	13
TSS	2.6	2.2
Oil and grease	2.6	1.0
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	16	13
TSS	2.6	2.2
Oil and grease	2.6	1.0
pH	Within the range 6.0 to 9.0.	

(2) Any mechanized salmon processing facility not covered under § 408.173(a) (1) shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	26	21
Oil and grease	26	10
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	26	21
Oil and grease	26	10
pH	Within the range 6.0 to 9.0.	

§ 408.174 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the Alaskan mechanized salmon processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.175 Standards of performance for new sources.

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

(1) Any mechanized salmon processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	26	21
Oil and grease	26	10
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	26	21
Oil and grease	26	10
pH	Within the range 6.0 to 9.0.	

(2) Any mechanized salmon processing facility not covered under § 408.175(a) (1) shall meet the following limitations: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

§ 408.176 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the Alaskan mechanized salmon processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters, shall be the same standards as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart R—West Coast Hand-Butchered Salmon Processing Subcategory

§ 408.180 Applicability; description of the West Coast hand-butchered salmon processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the

hand-butchering of salmon on the West Coast.

§ 408.181 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate procedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	1.7	1.4
Oil and grease	0.20	0.17
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	1.7	1.4
Oil and grease	0.20	0.17
pH	Within the range 6.0 to 9.0.	

§ 408.183 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	1.2	1.0
TSS	0.15	0.12
Oil and grease	0.045	0.018
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	1.2	1.0
TSS	0.15	0.12
Oil and grease	0.045	0.018
pH	Within the range 6.0 to 9.0.	

§ 408.184 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the West Coast hand-butchered salmon processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.185 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	1.7	1.4
TSS	0.46	0.37
Oil and grease	0.058	0.023
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	1.7	1.4
TSS	0.46	0.37
Oil and grease	0.058	0.023
pH	Within the range 6.0 to 9.0.	

§ 408.186 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the West Coast hand-butchered salmon processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart S—West Coast Mechanized Salmon Processing Subcategory

§ 408.190 Applicability; description of the West Coast mechanized salmon processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the mechanized butchering of salmon on the West Coast.

§ 408.191 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.192 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	27	22
Oil and grease	27	10
pH	Within the range 6.0 to 9.0.	
(English units) lb/1000 lb of seafood		
TSS	27	22
Oil and grease	27	10
pH	Within the range 6.0 to 9.0.	

§ 408.193 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	16	13
TSS	2.6	2.2
Oil and grease	2.6	1.0
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	16	13
TSS	2.6	2.2
Oil and grease	2.6	1.0
pH	Within the range 6.0 to 9.0.	

§ 408.194 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the West Coast mechanized salmon processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this Chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this Chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this Chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.195 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	39	32
TSS	7.9	6.5
Oil and grease	3.8	1.5
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	39	32
TSS	7.9	6.5
Oil and grease	3.8	1.5
pH	Within the range 6.0 to 9.0.	

§ 408.196 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the West Coast mechanized salmon processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this Chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this Chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this Chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart T—Alaskan Bottom Fish Processing Subcategory

§ 408.200 Applicability; description of the Alaskan bottom fish processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of bottom fish such as halibut in Alaska.

§ 408.201 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this Chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.202 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(1) Any Alaskan bottom fish processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	3.1	1.9
Oil and grease	4.3	0.56
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	3.1	1.9
Oil and grease	4.3	0.56
pH	Within the range 6.0 to 9.0.	

(2) Any Alaskan bottom-fish processing facility not covered under § 408.202 (b) (1) shall meet the following limitations: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

§ 408.203 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	1.9	1.1
Oil and grease	2.6	0.34
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	1.9	1.1
Oil and grease	2.6	0.34
pH	Within the range 6.0 to 9.0.	

§ 408.204 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the Alaskan bottom fish processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.205 Standards of performance for new sources.

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

(1) Any Alaskan bottom fish processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	1.9	1.1
Oil and grease	2.6	0.34
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	1.9	1.1
Oil and grease	2.6	0.34
pH	Within the range 6.0 to 9.0.	

(2) Any Alaskan bottom-fish processing facility not covered under § 408.205 (a) (1) shall meet the following limitations: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

§ 408.206 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the Alaskan bottom fish processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which

would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart U—Non-Alaskan Conventional Bottom Fish Processing Subcategory

§ 408.210 Applicability; description of the non-Alaskan conventional bottom fish processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of bottom fish outside of Alaska in which the unit operations are carried out predominately through manual methods. However, the use of scaling machines and/or skinning machines are considered to be normal practice within this subcategory. The provisions of this subpart apply to the processing of currently, commercially processed species of bottom fish such as flounder, ocean perch, haddock, cod, sea catfish, sole, halibut, and rockfish. These provisions apply to existing facilities processing more than 1816 kg (4000 lbs) of raw material per day on any day during a calendar year and all new sources.

§ 408.211 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.212 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	2.1	1.6
Oil and grease	0.55	0.40
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
Tss	2.1	1.6
Oil and grease	0.55	0.40
pH	Within the range 6.0 to 9.0.	

§ 408.213 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg1 of seafood		
BOD5	0.73	0.58
TSS	1.5	0.73
Oil and grease	0.04	0.03
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	0.73	0.58
TSS	1.5	0.73
Oil and grease	0.04	0.03
pH	Within the range 6.0 to 9.0.	

§ 408.214 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the non-Alaskan conventional bottom fish processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.215 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of

pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	0.73	0.58
TSS	1.5	0.73
Oil and grease	0.04	0.03
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	0.73	0.58
TSS	1.5	0.73
Oil and grease	0.04	0.03
pH	Within the range 6.0 to 9.0.	

§ 408.216 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the non-Alaskan conventional bottom fish processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this Chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this Chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart V—Non-Alaskan Mechanized Bottom Fish Processing Subcategory

§ 408.220 Applicability; description of the non-Alaskan mechanized bottom fish processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of bottom fish outside of Alaska in which the unit operations (particularly the butchering and/or filleting operations) are carried out predominately through mechanized methods. The provisions of this subpart apply to the processing of bottom fish such as whiting and croaker.

§ 408.221 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this Chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	14	10
Oil and grease	5.7	3.3
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	14	10
Oil and grease	5.7	3.3
pH	Within the range 6.0 to 9.0.	

§ 408.223 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	6.5	5.3
TSS	1.1	0.82
Oil and grease	0.46	0.26
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	6.5	5.3
TSS	1.1	0.82
Oil and grease	0.46	0.26
pH	Within the range 6.0 to 9.0.	

§ 408.224 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the non-Alaskan mechanized bottom fish processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The fol-

lowing pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.225 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	9.1	7.4
TSS	3.3	2.5
Oil and grease	0.68	0.39
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	9.1	7.4
TSS	3.3	2.5
Oil and grease	0.68	0.39
pH	Within the range 6.0 to 9.0.	

§ 408.226 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the non-Alaskan mechanized bottom fish processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

The pretreatment standard under section 307(c) of the Act for a new source within the non-Alaskan mechanized bottom fish processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart W—Hand-Shucked Clam Processing Subcategory

§ 408.230 Applicability; description of the hand-shucked clam processing subcategory.

The provisions of this subpart are applicable to discharges resulting from existing hand-shucked clam processing facilities which process more than 1816 kg (4000 lbs) of raw material per day on any day during a calendar year and all new sources.

§ 408.231 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.232 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	50	18
Oil and grease	0.60	0.23
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	50	18
Oil and grease	0.60	0.23
pH	Within the range 6.0 to 9.0.	

§ 408.233 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	55	17
Oil and grease	0.56	0.21
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	55	17
Oil and grease	0.56	0.21
pH	Within the range 6.0 to 9.0.	

§ 408.234 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the hand-shucked clam processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this

chapter, shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.235 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	55	17
Oil and grease	0.56	0.21
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	55	17
Oil and grease	0.56	0.21
pH	Within the range 6.0 to 9.0.	

§ 408.236 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the hand-shucked clam processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart X—Mechanized Clam Processing Subcategory

§ 408.240 Applicability; description of the mechanized clam processing subcategory.

The provisions of this subpart are applicable to discharges resulting from mechanized clam processing.

§ 408.241 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwatwer fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.242 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	90	15
Oil and grease	4.2	0.07
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	90	15
Oil and grease	4.2	0.07
pH	Within the range 6.0 to 9.0.	

§ 408.243 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	15	5.7
TSS	26	4.4
Oil and grease	0.40	0.002
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	15	5.7
TSS	26	4.4
Oil and grease	0.40	0.002
pH	Within the range 6.0 to 9.0.	

§ 408.244 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the mechanized clam processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the

purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.245 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	15	5.7
TSS	26	4.4
Oil and grease	0.40	0.092
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	15	5.7
TSS	26	4.4
Oil and grease	0.40	0.092
pH	Within the range 6.0 to 9.0.	

§ 408.246 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the mechanized clam processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart Y—Pacific Coast Hand Shucked Oyster Processing Subcategory

§ 408.250 Applicability; description of the Pacific Coast hand shucked oyster processing subcategory.

The provisions of this subpart are applicable to discharges resulting from existing Pacific Coast handshucked oyster processing facilities which process more than 454 kg (1000 lbs) of product per day on any day during a calendar year and all new sources.

§ 408.251 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean the weight of the oyster meat after shucking.

§ 408.252 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	37	35
Oil and grease	1.7	1.6
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	37	35
Oil and grease	1.7	1.6
pH	Within the range 6.0 to 9.0.	

§ 408.253 Effluen. limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants, or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	37	35
Oil and grease	1.7	1.6
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	37	35
Oil and grease	1.7	1.6
pH	Within the range 6.0 to 9.0.	

§ 408.254 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the Pacific Coast hand-shucked oyster processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121,

128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.255 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	37	25
Oil and grease	1.7	1.6
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	37	25
Oil and grease	1.7	1.6
pH	Within the range 6.0 to 9.0.	

§ 408.256 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the Pacific Coast hand-shucked oyster processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart Z—Atlantic and Gulf Coast Hand-Shucked Oyster Processing Subcategory

§ 408.260 Applicability; description of the Atlantic and Gulf Coast hand-shucked oyster processing subcategory.

The provisions of this subpart are applicable to discharge resulting from existing hand-shucked oyster processing facilities on the Atlantic and Gulf Coasts which process more than 454 kg (1000 lbs) of product per day on any day during a calendar year and all new sources.

§ 408.261 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean the weight of the oyster meat after shucking.

§ 408.262 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	19	15
Oil and grease	0.77	0.70
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	19	15
Oil and grease	0.77	0.70
pH	Within the range 6.0 to 9.0.	

§ 408.263 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	19	15
Oil and grease	0.77	0.70
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	19	15
Oil and grease	0.77	0.70
pH	Within the range 6.0 to 9.0.	

§ 408.264 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the Atlantic and Gulf Coast hand-shucked oyster processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose

of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.265 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	19	15
Oil and grease	0.77	0.70
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	19	15
Oil and grease	0.77	0.70
pH	Within the range 6.0 to 9.0.	

§ 408.266 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the Atlantic and Gulf Coast hand-shucked oyster processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128, of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment Standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart AA—Steamed and Canned Oyster Processing Subcategory

§ 408.270 Applicability; description of the steamed and canned oyster processing subcategory.

The provisions of this subpart are applicable to discharges resulting from oysters which are mechanically shucked.

§ 408.271 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean the weight of the oyster meat after shucking.

§ 408.272 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	270	190
Oil and grease	2.3	1.7
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	270	190
Oil and grease	2.3	1.7
pH	Within the range 6.0 to 9.0.	

§ 408.273 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
BOD5	67	17
TSS	56	39
Oil and grease	0.84	0.42
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
BOD5	67	17
TSS	56	39
Oil and grease	0.84	0.42
pH	Within the range 6.0 to 9.0.	

§ 408.274 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the steamed and canned oyster processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment

works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	Pretreatment standard
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.275 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharge by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
BOD5	67	17
TSS	56	39
Oil and grease	0.84	0.42
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
BOD5	67	17
TSS	56	39
Oil and grease	0.84	0.42
pH	Within the range 6.0 to 9.0.	

§ 408.276 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the steamed and canned oyster processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132, and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	Pretreatment standard
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart AB—Sardine Processing Subcategory

§ 408.280 Applicability; description of the sardine processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the canning of sardines or sea herring for sardines. These provisions, however, do not cover the relatively new steaking operation in which cutting machines are used for preparing fish steaks.

§ 408.281 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analyses set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.282 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(1) Any sardine processing facility which utilizes dry transportation systems from the fish storage area to the fish processing area shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	36	10
Oil and grease	3.5	1.4
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	36	10
Oil and grease	3.5	1.4
pH	Within the range 6.0 to 9.0.	

(2) Any sardine processing facility not covered under § 408.282(b)(1) shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	48	16
Oil and grease	6.3	2.8
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	48	16
Oil and grease	6.3	2.8
pH	Within the range 6.0 to 9.0.	

§ 408.283 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	36	10
Oil and grease	1.3	0.52
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	36	10
Oil and grease	1.3	0.52
pH	Within the range 6.0 to 9.0.	

§ 408.284 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the sardine processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.285 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	36	10
Oil and grease	1.4	0.57
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	36	10
Oil and grease	1.4	0.57
pH	Within the range 6.0 to 9.0.	

§ 408.286 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the sardine processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart AC—Alaskan Scallop Processing Subcategory

§ 408.290 Applicability; description of the Alaskan scallop processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of scallops in Alaska.

§ 408.291 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean the weight of the scallop meat after processing.

§ 408.292 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(1) Any Alaskan scallop processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	6.0	1.4
Oil and grease	7.7	0.24
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	6.0	1.4
Oil and grease	7.7	0.24
pH	Within the range 6.0 to 9.0.	

(2) any Alaskan scallop processing facility not covered under § 408.292(b)(1) shall meet the following limitations: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

§ 408.293 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	5.7	1.4
Oil and grease	7.3	0.23
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	5.7	1.4
Oil and grease	7.3	0.23
pH	Within the range 6.0 to 9.0.	

§ 408.294 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the Alaskan scallop processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.295 Standards of performance for new sources.

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

(1) Any Alaskan scallop processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	5.7	1.4
Oil and grease	7.3	0.23
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	5.7	1.4
Oil and grease	7.3	0.23
pH	Within the range 6.0 to 9.0.	

(2) Any Alaskan scallop processing facility not covered under § 408.295(a)(1) shall meet the following limitations: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

§ 408.296 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the Alaskan scallop processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart AD—Non-Alaskan Scallop Processing Subcategory

§ 408.300 Applicability; description of the non-Alaskan scallop processing subcategory.

With the exception of land-based processing of calico scallops, the provisions of this subpart are applicable to discharges resulting from the processing of scallops outside of Alaska.

§ 408.301 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean the weight of the scallop meat after processing.

§ 408.302 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	6.0	1.4
Oil and grease	7.7	0.24
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	6.0	1.4
Oil and grease	7.7	0.24
pH	Within the range 6.0 to 9.0.	

§ 408.303 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	5.7	1.4
Oil and grease	7.3	0.23
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	5.7	1.4
Oil and grease	7.3	0.23
pH	Within the range 6.0 to 9.0.	

§ 408.304 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the non-Alaskan scallop processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.305 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of product		
TSS	5.7	1.4
Oil and grease	7.3	0.23
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of product		
TSS	5.7	1.4
Oil and grease	7.3	0.23
pH	Within the range 6.0 to 9.0.	

§ 408.306 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the non-Alaskan scallop processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart AE—Alaskan Herring Fillet Processing Subcategory

§ 408.310 Applicability; description of the Alaskan herring fillet processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of herring fillets in Alaska.

§ 408.311 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.312 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

(1) any herring fillet processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	32	24
Oil and grease	27	10
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	32	24
Oil and grease	27	10
pH	Within the range 6.0 to 9.0.	

(2) any Alaskan herring fillet processing facility not covered under § 408.312 (b)(1) shall meet the following limitations: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

§ 408.313 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

(1) any herring fillet processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	6.8	6.2
TSS	2.3	1.8
Oil and grease	2.0	0.73
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	6.8	6.2
TSS	2.3	1.8
Oil and grease	2.0	0.73
pH	Within the range 6.0 to 9.0.	

(2) Any Alaskan herring fillet processing facility not covered under Sec. 408.313(a)(1) shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	23	18
Oil and grease	20	7.3
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	23	18
Oil and grease	20	7.3
pH	Within the range 6.0 to 9.0.	

§ 408.314 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the Alaskan herring fillet processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.315 Standards of performance for new sources.

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

(1) any herring fillet processing facility located in population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	23	18
Oil and grease	20	7.3
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	23	18
Oil and grease	20	7.3
pH	Within the range 6.0 to 9.0.	

(2) Any Alaskan herring fillet processing facility not covered under § 408.315 (a)(1) shall meet the following limitations: No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

§ 408.316 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the Alaskan herring fillet processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart AF—Non-Alaskan Herring Fillet Processing Subcategory

§ 408.320 Applicability; description of the non-Alaskan herring fillet processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of herring fillets outside of Alaska.

§ 408.321 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.322 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The

Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	32	24
Oil and grease	27	10
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	32	24
Oil and grease	27	10
pH	Within the range 6.0 to 9.0.	

§ 408.323 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	6.8	6.2
TSS	2.3	1.8
Oil and grease	2.0	0.73
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	6.8	6.2
TSS	2.3	1.8
Oil and grease	2.0	0.73
pH	Within the range 6.0 to 9.0.	

§ 408.324 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the non-Alaskan herring fillet processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this Chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this Chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this Chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.325 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
BOD5	16	15
TSS	7.0	5.2
Oil and grease	2.9	1.1
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
BOD5	16	15
TSS	7.0	5.2
Oil and grease	2.9	1.1
pH	Within the range 6.0 to 9.0.	

§ 408.326 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the non-Alaskan herring fillet processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Subpart AG—Abalone Processing Subcategory

§ 408.330 Applicability; descriptions of the abalone processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of abalone in the contiguous states.

§ 408.331 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "seafood" shall mean the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

§ 408.332 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to

such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	27	15
Oil and grease	2.2	1.4
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	27	15
Oil and grease	2.2	1.4
pH	Within the range 6.0 to 9.0.	

§ 408.333 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	26	14
Oil and grease	2.1	1.3
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	26	14
Oil and grease	2.1	1.3
pH	Within the range 6.0 to 9.0.	

§ 408.334 Pretreatment standards for existing sources.

The pretreatment standard under section 307(b) of the Act for a source within the abalone processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be an existing point source subject to section 301 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

§ 408.335 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
(Metric units) kg/kkg of seafood		
TSS	26	14
Oil and grease	2.1	1.3
pH	Within the range 6.0 to 9.0.	
(English units) lb/1,000 lb of seafood		
TSS	26	14
Oil and grease	2.1	1.3
pH	Within the range 6.0 to 9.0.	

§ 408.336 Pretreatment standards for new sources.

The pretreatment standard under section 307(c) of the Act for a new source within the abalone processing subcategory which is a user of a publicly owned treatment works and a major contributing industry as defined in Part 128 of this chapter (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the same standard as set forth in Part 128 of this chapter, for existing sources, except that, for the purpose of this section, §§ 128.121, 128.122, 128.132 and 128.133 of this chapter shall not apply. The following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart.

Pollutant or pollutant property	*Pretreatment standard*
BOD5	No limitation.
TSS	Do.
pH	Do.
Oil and grease	Do.

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federal register

MONDAY, DECEMBER 1, 1975

PART III:

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

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OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES IN TERRITORIAL AND INLAND NAVIGABLE WATERS AND WETLANDS

Adoption of Guidelines

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES IN TERRITORIAL AND INLAND NAVIGABLE WATERS AND WETLANDS

Adoption of Guidelines

On July 16, 1975, the Department of the Interior, acting through the Director, Fish and Wildlife Service, published proposed guidelines for interim use by Service employees. These proposed guidelines prescribed the objectives, policies, and procedures to be followed in the review of Federal and federally permitted or assisted work and activities for oil and gas exploration and development activities to be conducted in territorial and inland navigable waters and wetlands.

These review functions delegated to the Service by the Secretary of the Interior are prescribed by the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e; 48 Stat. 401, as amended), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347; 83 Stat. 852), the Estuary Protection Act (16 U.S.C. 1224; 82 Stat. 627), the Department of Transportation Act (49 U.S.C. 1653(f); 82 Stat. 825), and the Endangered Species Act of 1973 (16 U.S.C. 1536; 87 Stat. 892). The Service also has advisory and consulting roles under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451) and the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401), as well as basic and other authorities.

The Department of the Interior, acting through the Fish and Wildlife Service, is publishing herewith the final guidelines which prescribe the objectives, policies, and procedures to be followed in the review of proposals for oil and gas exploration and development activities in or affecting navigable waters that are sanctioned, permitted, assisted, or conducted by the Federal Government.

The public comment period for these guidelines expired on August 15, 1975. These guidelines have been revised, based on comments received from the general public, State agencies, and other Federal agencies as well as interpretative guidance received from recent judicial decisions. We wish to take this opportunity to express appreciation for these comments and suggestions.

The following analysis summarizes comments of particular significance which were received on the cited sections of the proposed guidelines and discusses the basis for the decisions which were made.

These guidelines are effective on December 1, 1975.

Section 4.2B.(2). Several comments were received concerning the necessity for this section since the guidelines are applicable to all activities, works, or structures for which Federal permits are required. We agree that any expansion of contraction in the area of Federal regulatory authority will automatically be subject to any consideration stipulated in the guidelines. Therefore, this section, which appeared in the July 16, 1975, FEDERAL REGISTER, has been deleted.

Section 5.1A. A number of comments pointed out that the guidelines provide for the Service to solicit directly from each permit applicant rather than the regulatory agency, certain information which, if not furnished, may result in the recommendation that a permit be denied. It was further pointed out that in conformity with other time frames for energy related items, the Service should notify the regulatory agency and the applicant of informational needs within 15 days following receipt of an application.

It is agreed that the proper method to seek items of relevant project information is through the regulatory agency. It also is agreed that the regulatory agency and the applicant should be notified of project related informational needs within 15 days of receipt of an application. Accordingly, this section of the guidelines has been modified to conform with established Federal permitting procedures.

Section 6.1A.(2). Concerns were raised that this section, as presented in the July 16, 1975, FEDERAL REGISTER, required the applicant to develop detailed information concerning threatened and/or endangered species which is properly the function of the Fish and Wildlife Service. In response, this was not the intent of this provision of the guidelines. The intent was to have an applicant, at the time of application, provide any known information concerning threatened and/or endangered species in the area of project influence. This is consistent with provisions of the Endangered Species Act of 1973.

Section 6.1A.(4)(b). Several comments raised concerns that the provisions of this section of the July 16, 1975, FEDERAL REGISTER publication are clearly outside the purview of the guidelines. We agree that these provisions are adequately covered in regulations that have been promulgated by Federal Regulatory agencies. Accordingly, this section has been deleted.

Dated: November 21, 1975.

LYNN A. GREENWALT,
Director,
U.S. Fish and Wildlife Service.

1. *Introduction.* 1.1 The U.S. Fish and Wildlife Service recognizes that an adequate and dependable supply of petroleum products is essential to meet the economic and standard of living needs of this Nation. The Service also recognizes the need for a strong, uniform policy for planning, evaluating, and reporting on oil and gas exploration and production activities affecting navigable waters and related natural resources. This pamphlet is directed toward meeting and satisfying the Nation's environmental and energy needs by presenting the Service's guidelines for geophysical, drilling and completion operations, pipeline construction, onshore facilities, and other associated exploration and development activities. These guidelines discourage the exploitation of one resource at the expense of another and encourage the use of environmentally sound planning criteria. Basically, these guidelines focus on the conservation, development, and improvement of fish and wildlife, their habitats, naturally functioning ecosystems, other environmental values, and related human uses of the Nation's waters and wetlands.

2. *Basis.* 2.1A. Federal permits are required for works proposed in the Nation's navigable waters and associated wetlands. Placing of any structure in or over such waters and wetland areas or excavating from or depositing material in such areas is unlawful unless a permit has been issued by the Department of the Army, Corps of Engineers, under authority of Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403). The U.S. Coast Guard, Department of Transportation, has special authority to regulate the location and clearances of bridges and causeways over navigable waters of the United States under Section 9 of the 1899 Act (33 U.S.C. 401) and the Department of Transportation Act (49 U.S.C. 1653).

B. Permits issued by the Environmental Protection Agency (EPA) or by a State agency under EPA overview also are required under Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251) for pollutant discharges into navigable waters. This Act also provides for certification by EPA or the State, that activities otherwise federally permitted will not abridge water quality requirements (Section 401), for permitting by the Corps of Engineers (Corps) of the placement of dredged and fill materials in defined disposal areas (Section 404), and for regulation by EPA of the disposal of sewage sludge which would result in pollutants entering navigable waters (Section 405).

C. Applications for permits described in the preceding paragraphs are made, as appropriate, to the District Engineer, Corps of Engineers; the District Commander, U.S. Coast Guard; or the Regional Administrator, Environmental Protection Agency (or the State water quality agency) for the District or Region in which the work or activity is proposed. *All persons or other entities, including Federal and other government agencies, are required to obtain the appropriate permits prior to commencing any construction or other activity in navigable waters.*

D. All of the above described Federal regulatory programs are subject to the provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321) which mandate, respectively, full consideration of fish and wildlife and environmental values in weighing the balance of the public interest in deciding whether a permit should be issued for a proposed activity.

3. *Authorities and responsibilities of the Department of the Interior.* 3.1A. The Secretary of the Interior, acting through the Bureau of Land Management, the U.S. Geological Survey, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, the National Park Service,

and the Bureau of Outdoor Recreation, has broad authority in the administration of public lands, reservations, and the mineral resources of such lands held in trust, and in providing consultation and advice on the protection of the Nation's fish, wildlife, scenic, natural, historic, recreational, and other environmental resources.

B. One such law administered for the Department of the Interior by the U.S. Fish and Wildlife Service is the Fish and Wildlife Coordination Act. This Act specifically requires (16 U.S.C. 662): "* * * *whenever the waters of any stream or body of water are proposed or authorized to be* impounded, diverted, the channel deepened, or the stream or other body of water otherwise *controlled or modified for any purpose whatever,* including navigation and drainage, by any department or agency of the United States, *or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service,* Department of the Interior, and *with the head of the agency exercising administration over the wildlife resources of the particular State* * * * with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof * * *."[1] (Similar responsibilities under the Fish and Wildlife Coordination Act are administered by the National Marine Fisheries Service for the Department of Commerce.)

C. Additional authorities mandating the concern of the Department of the Interior for environmental values include the Migratory Bird Conservation Act (16 U.S.C. 701), the National Historic Preservation Act of 1966 (16 U.S.C. 470), the Fish and Wildlife Act of 1956 (16 U.S.C. 742a), the Wilderness Act (16 U.S.C. 1131), the Anadromous Fish Conservation Act (16 U.S.C. 757a), the Estuary Protection Act (16 U.S.C. 1221), the Wild and Scenic Rivers Act (16 U.S.C. 1271), the Endangered Species Act of 1973 (16 U.S.C. 1361), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

The U.S. Fish and Wildlife Service also has advisory and consultative roles under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451) and the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401), and shares the mandates of the Fish and Wildlife Coordination Act with the States.

4. *Objectives and policies of the Fish and Wildlife Service concerning the usage and development of the Nation's waters and wetlands.* 4.1 The following outline presents the overall objectives and polices of the Fish and Wildlife Service in its advisory, consultive, and review role regarding works and activities in the Nation's waters and associated wetlands.

4.2 *Objectives.* 4.2A. The objectives of the U.S. Fish and Wildlife Service in relation to oil and gas exploration, development, and production activities are to prevent or minimize damages to fish and wildlife resources, their associated habitat, and other environmental resources, and to preserve public trust rights of use and enjoyment of such resources in and associated with navigable and other waters of the United States. The Service strives to meet these objectives by encouraging the industry to use every practical means, method, and alternative to prevent harmful environmental impacts and degradations.

B. More specifically the Service has the following long-range objectives respecting navigable waters, their tributaries, and related wetlands:

(1) Providing assistance to other Federal agencies in their enforcement of regulatory programs to prevent unauthorized activities from occurring, damaging, or posing a threat of damage to the naturally functioning aquatic and wetland ecosystems and other environmental resources, values, and uses.

(2) Ensuring that all authorized works, structures, and activities are (a) judged to be the least ecologically damaging alternative or combination of alternatives (e.g., all appropriate means have been adopted to minimize environmental losses and degradations) and (b) in the public's interest in safeguarding the environment from loss and degradation. Water dependency of a work, structure, or activity will be considered when criterion (a) above has not been met.

In determining whether criteria (a) and (b) have been met, the Service will always consider: (1) The long-term effects of the proposed work, structure, or activity; (2) its cumulative effects, when viewed in the context of other already existing or foreseeable works, structures, or activities of the same kind; and/or (3) its cumulative effects, when viewed in the context of other already existing or foreseeable works, structures, or activities of different kinds.

4.3A. *Policies.* (1) The U.S. Fish and Wildlife Service exercises and encourages all efforts to preserve, restore, and improve fish and wildlife resources and associated aquatic and wetland ecosystems, and supports State actions designed to protect areas of special biological significance.

(2) The Service opposes activities and developments in or affecting the Nation's waters and wetlands which would individually, or cumulatively with other developments on a waterway or group of related waterways, needlessly destroy, damage, or degrade fish and wildlife resources, associated aquatic and wetland ecosystems, and the human satisfactions dependent thereon.

(3) The Service places special emphasis on the protection of vegetated and other productive shallow waters and wetlands and on fish and wildlife species for which the Secretary of the Interior has delegated and specifically mandated responsibilities. These include:

(a) Wetlands as described in Wetlands of the United States, Circular 39 of the U.S. Fish and Wildlife Service, published in 1956, republished in 1971.

(b) Estuarine and Great Lakes area as defined in the Estuary Protection Act, the Coastal Zone Management Act of 1972, and Sec. 104(n) of the Federal Water Pollution Control Act.

(c) Migratory birds, anadromous and Great Lakes fishes, and endangered species as defined respectively in the Migratory Bird Treaty Act, Anadromous Fish Conservation Act, and the Endangered Species Act of 1973, respectively.

5. *Procedures for review of permit applications.* 5.1A. The U.S. Fish and Wildlife Service considers that each notice of application should demonstrate that the proposed works are water-oriented or water-dependent, served a recognized public need, and minimize environmental damages as set forth in item 4.2B.(2). In instances where this is not demonstrated and/or additional items of information are needed to determine project impacts on fish and wildlife resources (ref. Sections 6.1A. (1)–(4)), the Service will immediately advise the applicant of informational needs or at least within 15 days following receipt of a notice of application (public notice or letter of permission). Such requests will be promptly confirmed by letter to the regulatory agency with a copy being provided the applicant.

However, if Service investigations and reviews indicate avoidable fish and wildlife losses, the Service will recommend to the Corps of Engineers, the Environmental Protection Agency, or the U.S. Coast Guard, as appropriate, that the permit be denied. In cases where denial is recommended to the Corps of Engineers, the July 13, 1967, Memorandum of Understanding between the Secretaries of the Departments of the Army and the Interior provides that the applicant will be notified, and an effort will be made to reach a solution at the District and Regional levels, respectively. If resolution at that level fails, the case will be forwarded for the consideration of the Chief of Engineers, Department of the Army, and Under Secretary, Department of the Interior. The final administrative decision in such cases rests with the Secretary of the Army. It must be emphasized that the Service does not have the responsibility, as do the regulatory agencies, of making the final determination of the overall acceptability of a proposal, all factors considered. These guidelines are not intended nor should they be interpreted to be addressed to such a final decision. They are intended to reflect the Service's responsibility to contend for the special public interest in fish and wildlife resources, their related and associated habitats and ecosystems, and the environmental values dependent thereon; and to be compatible and reasonably consistent with relevant provisions of Federal laws, decisions of Federal courts, and the rules, regulations, and administrative practices of Federal regulatory agencies.

[1] Wildlife and wildlife resources are defined by the Act to include: "birds, fishes, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent."

B. The Department of the Interior has no similar agreements with the Environmental Protection Agency or the Department of Transportation (U.S. Coast Guard), but envisions that referral of unresolved issues from those agencies will be handled under procedures similar to those set forth in the agreement with the Department of the Army, with the final decision resting with the Secretary or the Administrator of the regulatory agency.

6. *Information necessary to assess fish and wildlife effects of proposed works and activities requiring Federal permit.* 6.1A. The U.S. Fish and Wildlife Service assists and promotes an orderly and expeditious review of Federal permit applications. Toward this goal, the following items of information may be requested, if applicable, in conjunction with an application.

(1) Overall map (based on a U.S. Coast and Geodetic navigation chart or Geological Survey quadrangle map) showing project location in relation to:

(a) Water depths at and in the vicinity of the proposed project.

(b) Direction of sheetflow in wetland areas and of water currents in river and coastline areas, and duration and amplitude of ebb and flood tides in estuarine and bay areas.

(c) Location of freshwater outflows, including surface drainageways, streams, aquifers, and springs where known or identified within the area of project influence.

(d) Location of shellfish lease areas within the area of project influence.

(2) Aerial photograph of project area, if available.

(3) Scale drawings and project area maps showing proposed works in relation to ordinary high water, mean high or mean of the higher high water, and ordinary low water, mean low or mean of the lower low water elevations and lines (as locally proper and where technologically possible), and the following detailed information:

(a) A description of methods and kinds of equipment to be used, means of access to activity sites, proposed geophysical operations, and duration and season of activities.

(b) Types, locations, and dimensions, including vertical cross sections of shallow water and wetland areas to be excavated and/or filled (e.g., canals, channels, roadways, fill and spoil areas, and dikes).

(c) Details of all planned facilities where construction or operation could alter or disturb shallow waters and wetlands.

(4) For purposes of environmental protection:

(a) Information known by an applicant concerning known threatened and/or endangered species, including their associated habitats in the area of project influence, should be provided.

(b) Plans for maintenance of natural drainage patterns and freshwater-saltwater exchanges in waters and wetlands (prevention of unnatural saltwater or freshwater intrusion and dewatering of wetlands).

(c) Plans for minimization of erosion, sedimentation, and turbidity, including stabilization of construction sites.

(d) Other plans or measures to prevent or minimize losses of fish and wildlife and public utilization, and other environmental values, including special construction and operation procedures.

(5) Names, addresses, and telephone numbers of the applicant's liaison.

7. *General guidelines.* 7.1A. Permits issued for oil and gas exploration and development operations in territorial waters and wetlands should be limited to a reasonable time period essential to the work proposed. These permits also should provide such explicit conditions as will minimize damages to fish and wildlife resources.

B. Proposals for other associated activities and works involved in mineral exploration and developments should meet the applicable general provisions to minimize environmental degradation particularly from: The spillage of oil; release of refuse including polluting substances and solid wastes; spoiling on productive wetlands; dredging of productive shallows; alteration of current patterns, tidal exchanges, and freshwater outflow, and erosion and sedimentation.

C. The U.S. Fish and Wildlife Service will consider the following criteria to ascertain if works requiring a Federal permit in shallow waters and wetlands can be implemented without significant damages to fish, wildlife, and the environment:

(1) In instances where proposed structures, facilities, or activities will utilize land fill procedures which involve the adverse alteration or destruction of estuarine or wetland areas, the applicant should demonstrate that practicable alternate upland sites are not available for proposed works.

(2) Permit applications for an unauthorized existing excavation, fill, structure, facility, or building will be examined on an individual basis. The condition, present use, and future potential of a particular work, and alternatives to its continued existence will be considered in determining whether or not to recommend denial of the permit, removal of the unauthorized work, and possible restoration.

D. This Service will recommend denial of Federal permits for proposed projects as follows:

(1) Projects which needlessly degrade or destroy wetland types identified in the Fish and Wildlife Service's Circular 39, Wetlands of the United States, published 1956, republished 1971. The decision whether a project needlessly degrades or destroys wetland types will be made with reference to the three criteria set forth in item 4.2B.(2).

(2) Projects not designed to prevent or minimize significant fish, wildlife and environmental damages.

(3) Projects which do not utilize practicable, suitable, and available upland sites as alternatives to wetland areas.

(4) Projects located on upland which do not assure the protection of adjacent wetland areas.

8. *Specific project guidelines.* 8.1A. The Service will utilize the following specific project guidelines when reviewing permit applications:

(1) *Geophysical operations.* (a) Gas or airguns, sparkers, vibrators, and other electromechanical and mechanical transducers should be used where practicable.

(b) When explosive charges must be used, the smallest charge consistent with acceptable recording should be used.

(c) Use of explosives should be avoided in important fish and wildlife spawning, nesting, nursery, and rearing areas during periods of high concentration or intense activity by the fish and/or wildlife of concern.

(d) All explosive charges should be fired in compliance with applicable State and Federal regulations.

(2) *Docks and piers.* (a) The size and extension of a dock or pier should be limited to that required for the intended use.

(b) Project proposals should include transfer facilities for the proper handling of litter, wastes, refuse, spoil drilling mud, and petroleum products.

(c) Piers and catwalks will be encouraged in preference to solid fills to provide needed access across biologically productive shallows and marshes to navigable water.

(3) *Bulkheads or seawalls.* Construction of bulkheads, seawalls, or the use of riprapping generally will be acceptable in areas having unstable shorelines. Except in special circumstances such as eroding shorelines, structures should be located no further waterward than the mean or normal high water line, and designated so that reflected wave energy does not destroy stable marine bottoms or constitute a safety hazard. In areas which have undergone extensive development, applications for bulkheads will be acceptable that esthetically and/or ecologically enhance the aquatic environment.

However, denial of permits for the construction of bulkheads on barrier and sand islands, where such will adversely affect the natural transport and deposition of sand materials, will normally be recommended.

(4) *Cables and transmission lines.* Installation of aerial or submerged cables and transmission lines located and designed to provide maximum compatibility with the environment will be acceptable. Particular emphasis will be placed on measures to protect fish and wildlife resources, esthetics, and unique natural areas. In operational areas, routes should make maximum use of existing rights-of-ways.

(5) *Access roads.* (a) Existing roadways should be utilized.

(b) Timber, other matting, or special low impact vehicles should be utilized where possible when temporary access is required in shallows and wetlands.

(c) When access roads to a drilling site must be constructed, the roads should be minimal in size and number.

(d) Selection of location and design of proposed roadways should be based on wet-season conditions to minimize dis-

ruption of normal sheetflow, waterflow, and drainage patterns or systems.

(e) Adequate culverts must be placed in all roadways to minimize disruption of natural sheetflow, waterflow, and drainage patterns or systems.

(f) Shoulder and slope surfaces should be stabilized with natural vegetation plantings or by seeding of native species, where possible, or by riprapping.

(g) Upon abandonment of a project site, temporary access roads will be evaluated for their wildlife potential and will be recommended for their retention or removal.

(6) *Bridges.* (a) Designs and alignments should minimize disruption of sheetflow, waterflow, and drainage patterns or systems.

(b) Approaches to permanent structures in wetland areas should be located, to the maximum extent possible, on pilings rather than solid fill causeways.

(7) *Jetties, groins, and breakwaters.* Jetties, groins, and breakwaters that do not create adverse sand transportation patterns or unduly disturb the aquatic ecosystem will be acceptable.

(8) *Levees and dikes.* (a) Designs and alignments should minimize disruption of natural sheetflow, waterflow, and drainage patterns or systems.

(b) Shoulder and slope surface should be stabilized following construction with natural vegetation plantings or by seeding of native species, where possible, or by riprapping.

(c) Upon abandonment of a project site, levees and dikes will be evaluated for their wildlife potential and will be recommended for their retention or removal.

(9) *Lagoons, impoundments, waste pits, and emergency pits.* (a) Construction should minimize disruption of natural sheetflow, waterflow, and drainage patterns or systems.

(b) Areas should be excavated to an impermeable soil formation at the time of construction, or lined or scaled.

(c) Operation and use must be in strict compliance with applicable local, State, and Federal regulations.

(10) *Navigation channels and access canals.* (a) Designs and alignments should minimize disruption or natural sheetflow, waterflow, and drainage patterns or systems.

(b) Designs should meet demonstrated navigational needs.

(c) Designs should prevent the creation of pockets or other hydraulic conditions which would cause stagnant water problems.

(d) Designs should minimize shoreline or other erosion problems and interference with natural sand and sediment transport processes.

(e) Designs, where recommended, should use temporary dams or plugs in the seaward ends of canals or waterways until excavation has been completed.

(f) Designs should minimize changes in tidal circulation patterns, salinity regimes, or related nutrient and aquatic life distribution patterns.

(g) Alignments will be recommended by the Service that avoid or minimize damages to shellfish grounds, beds of productive aquatic vegetation, coral reefs, and other shallow water and wetland areas of value to fish and wildlife resources.

(h) Alignments should make maximum use of existing natural channels.

(i) Construction should be conducted in a manner that minimizes turbidity and dispersal of dredged material.

(j) Construction should follow schedules, which may be recommended by the Service. These schedules will aim at minimizing interference with fish and wildlife migrations, spawning, and nesting or the public's enjoyment and utilization of these resources.

(11) *Excavation of fill material.* Excavation and dredging in shallow waters and wetlands will be discouraged and the Service will recommend that any permit issued contains conditions to minimize adverse effects and activities in important fish and wildlife spawning, nesting, nursery, and rearing areas, and prohibit construction during critical periods of migration, spawning, and nesting activity.

(12) *Disposal of spoil and refuse material.* In-bay, open-water, and deep-water disposal generally will be considered acceptable by the Service only after all upland and other alternative disposal sites have been explored and rejected for good cause. Deep-water disposal will be acceptable only at sites specifically selected, including those selected for deposit of suitable material for habitat improvement, where agreed upon by all concerned agencies.

(13) *Drilling and injection wells, and production facilities.* (a) Directional drilling techniques should be used where practicable.

(b) Drilling and production facilities should utilize equipment that prevents or controls, to the maximum extent practicable, the discharge of pollutants.

(c) All drilling muds should be stored in tanks or diked non-wetland areas.

(d) Upon abandonment of a project site, pertinent facilities will be evaluated for their wildlife potential and will be recommended for retention or removal.

(14) *Pipelines.* (a) Pipeline routes that avoid or minimize damages to important spawning, nesting, nursery, or rearing areas will be encouraged by the Service.

(b) In established operational areas, pipeline routes should make maximum use of existing rights-of-way.

(c) In all areas, pipelines should be confined to areas which will minimize environmental impact; special care should be taken in unaltered areas.

(d) Where recommended, pipeline access canals should be immediately plugged at the seaward end and subsequently maintained to prevent freshwater or saltwater intrusion.

(e) Where recommended, bulkheads, plugs, or dams should be installed and maintained at all stream, bay, lake, or other waterway or water body crossings.

(f) Pipeline placement should be designed with a wide margin of safety against breakage from mud slides, currents, earthquakes, or other causes. In areas of high natural seismic activity, pipelines should be designed and situated, to the maximum extent possible, to be "earthquake proof."

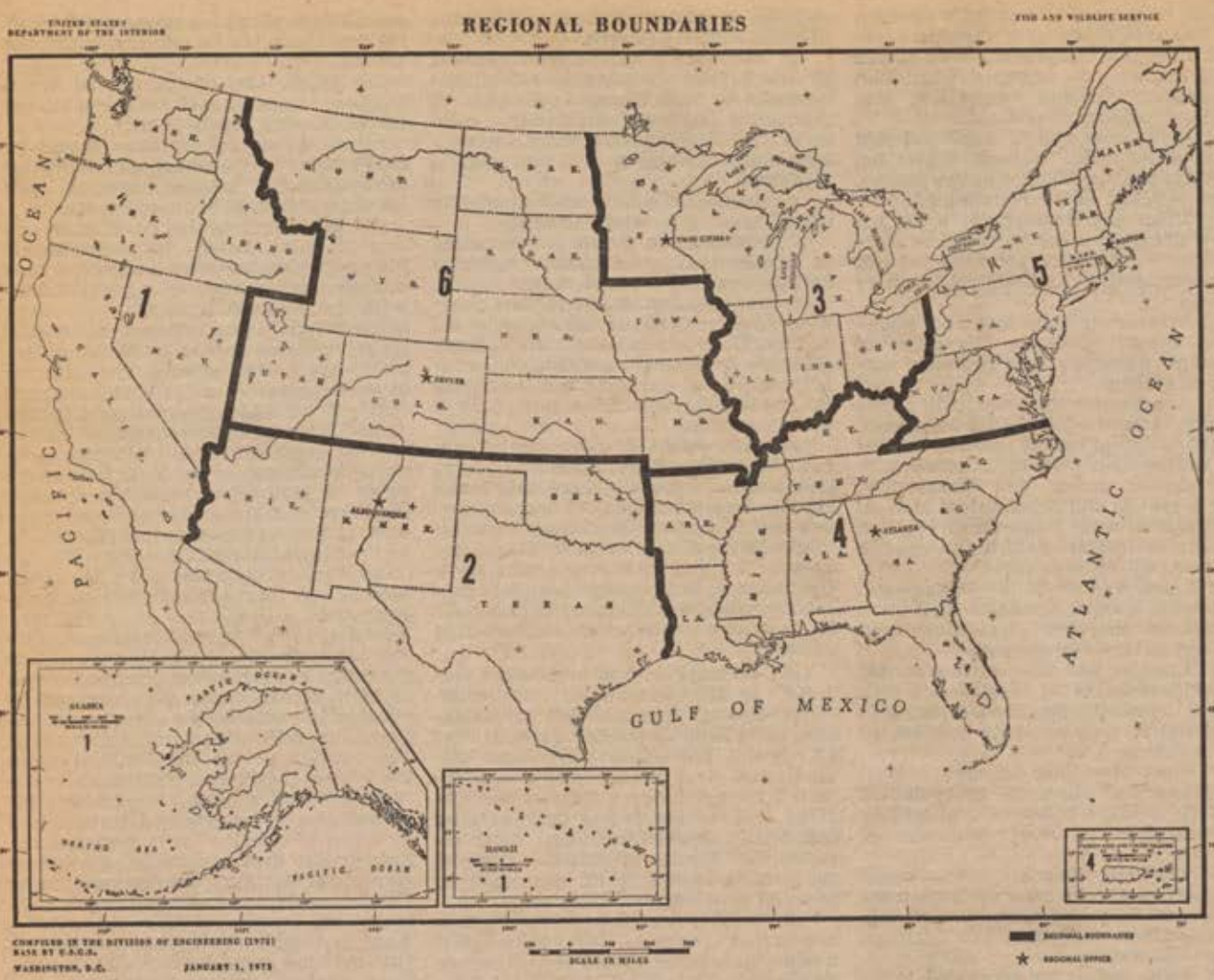
(g) Pipeline placement by the push method in marshlands will be encouraged.

9. *Assistantce to applicants and prospective applicants.* 9.1A. All applications for works or activities subject to Federal jurisdiction over navigable waters will be considered within the framework of foregoing policies and guidelines. It is the position of the Service that these guidelines, if followed, will facilitate the orderly review of permit applications for oil and gas exploration and development activities. Protection is a national responsibility that cannot be shirked or comprised if future generations are to enjoy a satisfying and healthy environment. The Service considers that adherance to these guidelines is requisite to this national responsibility and the Nation's goal of environmental quality.

B. The Service stands ready at all times to assist permit applicants in formulating environmentally sound proposals and in avoiding unnecessary delays in developing environmentally compatible plans. Contacts should be made through the appropriate Regional Office of the Fish and Wildlife Service. The addresses and telephone numbers of the Service's Regional Offices and a map of the States each Region covers are contained, respectively, in Appendices 1 and 2 below.

Recional directors' addresses and phone numbers

Region	Address	Phone No.
1	Fish and Wildlife Service, Department of the Interior, P.O. Box 3737, Portland, Oreg. 97208.	503-234-4050
2	Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, N. Mex. 87103.	505-766-2321
3	Fish and Wildlife Service, Department of the Interior, Federal Bldg., Fort Snelling, Twin Cities, Minn. 55111.	612-725-2500
4	Fish and Wildlife Service, Department of the Interior, Executive Park Dr. NE., Atlanta, Ga. 30329.	404-526-4671
5	Fish and Wildlife Service, Department of the Interior, John W. McCormack Post Office and Courthouse, Boston, Mass. 02109.	617-223-2961
6	Fish and Wildlife Service, Department of the Interior, P.O. Box 25486, Denver Federal Center, Denver, Colo. 80225.	303-234-2209
Alaska	Fish and Wildlife Service, Department of the Interior, 813 D St., Anchorage, Alaska 99501.	907-265-4864



APPENDIX 2

[FR Doc.75-31975 Filed 11-28-75;8:45 am]

federal register

MONDAY, DECEMBER 1, 1975

PART IV:

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

■

REVIEW OF FISH AND WILDLIFE ASPECTS OF PROPOSALS IN OR AFFECTING NAVIGABLE WATERS

Adoption of Guidelines

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

REVIEW OF FISH AND WILDLIFE ASPECTS OF PROPOSALS IN OR AFFECTING NAVIGABLE WATERS

Adoption of Guidelines

On August 15, 1974, the Department of the Interior, acting through the Director, Fish and Wildlife Service, published proposed guidelines for interim use by Service employees. These proposed guidelines prescribed the objectives, policies, and procedures to be followed in the review of proposals for work and activities in or affecting navigable waters that are sanctioned, permitted, assisted, or conducted by the Federal Government. These review functions delegated to the Service by the Secretary of the Interior are prescribed by the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e; 48 Stat. 401, as amended), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347; 83 Stat. 852), the Estuary Protection Act (16 U.S.C. 1224; 82 Stat. 627), the Department of Transportation Act (49 U.S.C. 1653(f); 82 Stat. 825), the Federal Aid Highway Act (23 U.S.C. 138; 82 Stat. 823), the Airport and Airway Development Act of 1970 (49 U.S.C. 1712 (c) and (f), 1716(c)(4); 84 Stat. 222, 227), the Watershed Protection and Flood Prevention Act (16 U.S.C. 1008; 72 Stat. 567), and the Endangered Species Act of 1973 (16 U.S.C. 1536; 87 Stat. 892). The Service also has advisory and consulting roles under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451) and the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401), as well as basic and other authorities.

The Department of the Interior, acting through the Fish and Wildlife Service, is publishing herewith the final guidelines which prescribe the objectives, policies, and procedures to be followed in the review of proposals for works and activities in or affecting navigable waters that are sanctioned, permitted, assisted, or conducted by the Federal Government.

Notice also is made of the availability for public inspection of the Service's complete Navigable Waters Handbook, including the main text, published herein, and the Appendices A through I which are not published but are referenced in the main text. The complete handbook may be inspected at any of the following listed offices of the Service during the hours indicated Monday through Friday of each week excepting Federal holidays:

Office location	Street address	Room No.	Business hours
Portland, Oreg. 97208	1500 Northeast Irving St	264	7:30–4:15
Albuquerque, N. Mex. 87103	500 Gold Ave. SW	10102	8–4:30
Twin Cities, Minn. 55111	Federal Bldg., Fort Snelling	658	7:30–4
Atlanta, Ga. 30323	17 Executive Park Dr., NE	342	7:15–3:45
Boston, Mass. 02109	U.S. Post Office and Courthouse, Devonshire and Water Sts.	809	8–4:30
Denver, Colo. 80215	10597 West 6th Ave	None	7:30–4
Anchorage, Alaska 99501	813 D St	None	7:45 4:30
Washington, D.C. 20240	Interior Bldg., 18th and C Sts. NW	2543	7:45–4:15

The public comment period for these guidelines expired on September 23, 1974. These guidelines have been revised, based on comments received from the general public, State agencies, and other Federal agencies as well as interpretative guidance received from recent judicial decisions. We wish to take this opportunity to express appreciation for these comments and suggestions.

The following analysis summarizes comments of particular significance which were received on the cited sections of the proposed guidelines and discusses the basis for the decisions which were made.

Section 2.2B(1). Several comments were received concerning the Service's policy with regard to the proper scope of Federal jurisdiction in navigable waters. Accordingly, this paragraph has been rewritten to more accurately reflect current Federal jurisdictional limits.

Sections 2.2B(1)(a), 2.2B(1)(b), and 2.2B(4). A number of comments pointed out that the use of the term "public interest" needed clarification since the term denotes an intricate complex of interests that are often difficult to perceive or evaluate accurately. To clarify this matter, the term "public interest" as used in these guidelines refers to factors related to fish and wildlife resources as outlined in the Fish and Wildlife Coordination Act, unless otherwise specified. The purpose of this Act as stated in section 661 is "Recognizing the vital contributions of our wildlife resources to the Nation, the increasing public interest and significance thereof due to expansion of our national economy and other factors, and to provide that wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation * * * in the United States, its Territories and possessions * * *" by providing assistance to, and cooperating with "* * * Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife resources thereof, and their habitat * * *"

In Section 662, this Act specifically requires that "whenever the waters of any stream or body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency shall first consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State * * * with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof * * *" (underlining added.) For the purposes of this Act, wildlife and wildlife resources are defined as "birds, fishes, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent."

Sections 5.3I. (1) and (2). Concerns were raised that these sections preclude the consideration and balancing of project costs and benefits, and thus do not comply with provisions of the National Environmental Policy Act. To clarify this matter, the Service's role in the permit review process is to evaluate and comment on the effects of a proposal on fish and wildlife resources. It is the function of the regulatory agency rather than the Fish and Wildlife Service to balance all factors, including anticipated costs and benefits, and decide which type of activity will be permitted.

Sections 5.3N(1) and 5.3N(3)(c)(i). Several comments were received expressing concern with regard to the Service's possible rigid position against "once-through" cooling systems. However, as the first sentence in this section implies and as it is clearly stated in section 5.1D, an evaluation of each cooling system will be made on a case-by-case basis and each proposal will be weighed on its individual merits. Furthermore, sections 5.3N(3)(a) through 5.3N(3)(c)(iv) provide the criteria under which "once-through" cooling systems will be considered environmentally acceptable. It was further suggested that the Service consider and balance all the costs and benefits of the various cooling and power generating technologies during our permit review process. As explained in our previous response to sections 5.3(I)(1) and (2), such an evaluation is not the role of the Service.

These guidelines are effective on December 1, 1975.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

NOVEMBER 21, 1975.

NAVIGABLE WATERS HANDBOOK

1. *Introduction.*

1.1 *Purpose and arrangement of material.* A. This brings together the policy and procedural guidelines and pertinent reference materials applicable to the program of the Division of Ecological Services, Fish and Wildlife Service, regarding dredge, fill, materials discharge and disposal and related Federal and federally permitted work and activities conducted in and adjoining the Nation's waters.

B. The guidelines are presented in this 10-section main part of the handbook, and the reference materials are organized in 9 appendixes: A through I. Appendixes A, B, and C include, respectively, form letters and reports, recording forms and other procedural aids, and standard recommendations. Appendix D contains legal and related references; Appendix E, official policy statements of Interior; Appendix F, official policy statements of other entities; Appendix G, technical references; Appendix H, general educational material; and Appendix I, procedural references, including definitions of terms.

1.2 *Developments and activities covered*—A. *Summary of coverage.* These guidelines are applicable to all works and dredge, fill and other activities affecting navigable waters that are sanctioned, permitted, assisted, or conducted by the Federal Government. The central focus of the handbook is on the navigation permit program of the Corps (Corps of Engineers, U.S. Department of the Army) conducted under the Act of March 3, 1899, and related Acts (App. D–2a), but the coverage includes:

(1) Works and activities in navigable waters, federally permitted by the Corps under Sec. 10 of the Act of March 3, 1899, App. D–2a. These include various works and activities secondarily permitted by the Corps such as: Mineral exploration and development on outer continental shelf and other public lands for which leasing and certain basic permitting authority rests with the Secretary of the Interior; rights of way on public lands for which authority rests in a number of Federal land administering agencies including several bureaus of Interior, the Forest Service and others; and use, occupancy, and filling of and removal of sand, gravel, and coral from tidelands, submerged lands, and filled lands in or adjacent to Guam, the Virgin Islands, and American Samoa which is permitted by the Secretary of the Interior under Sec. 2 of the Act of November 20, 1963, App. D–2w.

(2) Discharges of pollutants and the disposal of materials in navigable waters and the transportation for and dumping of materials in ocean waters will be the subject of a separate handbook, but they are covered in summary here because of their relation to the fully covered activities:

(a) Discharge of pollutants into navigable waters, federally permitted by the EPA (Environmental Protection Agency) or by the State with oversight by the EPA under Sec. 402 of the FWPCA (Federal Water Pollution Control Act, as amended by Pub. L. 92–500)—the NPDES Permits (National Pollutant Discharge Elimination System Permits), App. D–2s.

(b) Disposal of dredged and fill material in navigable waters and transportation of dredged material for ocean dumping, federally permitted by the Corps with oversight (and veto power) by the EPA under Sec. 404 of the FWPCA, App. D–2s and under Sec. 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), App. D–2x.

(c) Transportation of materials other than dredged material for dumping in ocean waters and dumping of such materials in the territorial sea federally permitted by EPA under Sec. 102 of the MPRSA, App. D–2x.

(d) Disposal of sewage sludge which would result in any pollutant entering navigable waters, federally permitted by the EPA or by a State with oversight by the EPA under Sec. 405 of the FWPCA, App. D–2s.

(3) Bridges and causeways over navigable waters federally permitted by the U.S. Coast Guard (Coast Guard) under Pub. L. 89–670, App. D–2m, and basically under Sec. 9 of the 1899 Act, App. D–2a.

(7) Other federally conducted or sanctioned work such as channels, highways, airports, transmission lines, etc.

(8) Steam electric plants and other facilities using natural waters for cooling will be the subject of a separate handbook. They are covered here in summary fashion because they frequently require a permit from the Corps under Sec. 10 of the 1899 Act and a NPDES permit under Sec. 402 of the FWPCA as well as a construction permit and operating license from the NRC (Nuclear Regulatory Commission) if nuclear fueled.

B. *Corps, EPA, and Coast Guard permits.* (1) The Secretary of the Army is authorized by the Act of March 3, 1899, to issue permits to construct piers, jetties, or similar structures, or to dredge and fill in the navigable waters of the United States. This authority is assigned to the Corps, except that the Coast Guard, Department of Transportation, issues permits for construction of bridges and causeways over navigable waters as provided in Pub. L. 89–670, the Department of Transportation Act.

(2) The 1899 Act makes it unlawful for anyone to conduct any work or activity in navigable waters of the U.S. without a Federal permit. Government agencies, Federal, State, and local, as well as persons, corporations, and other entities must apply for a permit when they propose works or an activity in such waters, and they must obtain a permit prior to commencing the construction or other activity.

(3) Dikes, dams, and similar obstructions to navigation require the consent of the Congress as well as approval of plans by the Chief of Engineers and the Secretary of the Army (see App. D–4a, Sec. 9) unless the navigable portions of the involved water body lie wholly in one State. In the latter case the structure may be built under authority of the State legislature but the plans and any modification thereof must still be approved by the Chief and the Secretary.

(4) When the District Engineer (CE) or District Commander (CG) receives an application for a permit, he routinely issues a public notice given the details of the work to be performed under the permit. These notices are distributed to the appropriate Service regional and area offices and to other bureaus of Interior, the EPA, the National Oceanic and Atmospheric Administration (NOAA), and other Federal or State agencies and interested individuals, usually with a 30-day deadline for receipt of any comments and recommendations.

(5) The authority of the Corps to issue permits for the discharge of refuse into or affecting navigable waters under section 13 of the Act of March 3, 1899, was greatly modified by the Federal Water Pollution Control Act Amendments of 1972 (Sec. 2 of Pub. L. 92–500, October 18, 1972).

No Section 13 permits may be issued henceforth by the Corps for the discharge of pollutants into navigable waters from point sources. Section 13 permits in existence and pending applications for such permits for point sources were made one with the NPDES permit system administered by EPA or the State with EPA oversight under Section 402 of the FWPCA. Section 13 remains a viable prohibition against any type of unauthorized discharge or deposit covered by this section for which application for permit has not been made and against certain other violations. Permits for disposal or deposit of dredged or fill material in navigable waters, issued by the Corps under Section 10 of the 1899 Act, now require approval of EPA under provisions of the FWPCA relating to these permits and those for disposal of sewage sludge. Note also that under Section 403 of the FWPCA, special provision is made for control of ocean discharges, through NPDES permits. Transportation for and dumping of materials in ocean waters are controlled by EPA and the Corps under provisions of the Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. 92–532, October 23, 1972; App. D–2x).

(6) The Coast Guard processes applications for bridges and causeways much the same as the Corps does applications for other work (see flow chart App. B–4a). Service review and reporting on CG applications is similar to those for the Corps, with the substitution of proper agency references.

(7) The processing of NPDES permit applications by the EPA or the States and of ocean dumping permits by EPA will provide for review and comment by the Service at the Regional Office level much the same as with applications handled by the Corps. Each Regional Office must assure itself that it is properly notified of permit applications and apprised of actions related to the Service interest in these new programs approved in 1972 (see App. D–2s and D–2x).

(8) The Department has no interagency agreement with the Department of Transportation (Coast Guard) or with the EPA on procedures for Secretarial review as it has with the Department of the Army (Memorandum of Understanding of July 13, 1967, see App. E–3) so that any issues that cannot be resolved at the Regional Office must be submitted to the Central Office for resolution on a case-by-case basis.

C. *Permits involving both Federal public lands or other Federal responsibility and navigable waters.* (1) Various private works and activities are permitted

on Federal public lands, e.g., mineral exploration and development, canal and transmission line crossings, hydroelectric power development, etc. Other works involve federally assigned responsibility, e.g., nuclear steam-electric powerplants. These works and activities when they impinge on navigable waters also require a permit under Section 10 of the 1899 Act. They also may require other permits for discharges or materials dumping and water quality certifications and marine sanctuary certifications under the FWPCA or the MPRSA.

(2) Construction, operation, and maintenance of physical structures of hydroelectric projects licensed under the Federal Power Act do not require such separate permits because all public interest aspects including navigation are provided for under the Act. However, plans for any dam or other structure of the FPC project that affects navigation must have the approval of the Chief of Engineers and the Secretary of the Army. Also, any dredging, filling, discharge, or disposal related to an FPC project but not constituting construction, operation, or maintenance of the project's physical structures does require Federal permits of the Army. Some FPC licensed works and related activities also may require an NPDES permit and water quality certification.

(3) Outer continental shelf and other public land leases for oil and minerals exploration and development are executed by the Secretary of the Interior through the Bureau of Land Management and permits for drilling and other mineral developments are issued by the Geological Survey with the advice of other Interior bureaus.

Also Interior bureaus, the Forest Service, and other Federal land management agencies issue rights-of-way and other permits which, in particular cases, involve navigable waters. It is apparent, therefore, that related navigation permits issued by the Corps and Coast Guard and NPDES permits issued by EPA or a State to cover these may involve two separate Service reviews.

(a) Any Service review of inhouse Interior leasing and permitting actions, excepting rights-of-way, usually has taken place at the Washington level. Procedures for interbureau coordination within Interior on the selection of areas to be offered for lease sales and as to conditions to be included in drilling and other exploration and development permits to be issued by GS are the subject of an interbureau memorandum of understanding (App. E–2) and detailed procedural guidelines are being developed.

(b) Rights-of-way applications made to Interior bureaus and the Forest Service are normally reviewed by the Service at Regional Office level on a case-by-case basis under somewhat loosely defined procedures similar to those for Federal projects.

(c) Dr. King's September 23, 1971, instructional memorandum and enclosures on outer continental shelf lands (App. E–9) explain the procedures with respect to applications for Section 10 permits of the Corps on these Interior approved activities. Essentially, District Engineers of the Corps review applications for permit on outer continental shelf activities only from the standpoint of navigation and national security.

The Secretary of the Army desires and has asked Interior to provide the District Engineer with assurance in writing for each application related to outer continental shelf lands "that fish and wildlife and other environmental matters were reviewed and that there is no objection * * *" to the issuance of a permit. Interior has agreed to this procedure based on the fact that the Secretary has adequate authority to protect the environment through leasing and regulatory authorities on the outer continental shelf lands. No doubt the Corps will want similar assurance on other applications where the primary approval is given by Interior. Likewise, the Coast Guard will want such assurance in similar situations.

(4) No definite arrangements have been made for interbureau review in Interior of the permits for use, occupancy, filling, and excavation of tidelands and submerged lands of Guam, the Virgin Islands, and American Samoa issued by the Secretary although those related to the Virgin Islands have been informally conducted at regional level. Efforts are underway to develop suitable comprehensive procedures.

(5) As noted above, activities primarily approved by Interior may also require a Corps permit, processed at regional level. In these cases the Corps permit is issued subsequent to the Interior permit and, as noted, is only addressed to navigation and national security with Interior having full responsibility for environmental matters. Other permits and certifications under the FWPCA and the MPRSA also may be involved.

In all of these cases where two or more Federal permits are required for a particular works or activity, great care must be observed that the Service position is consistent. If it is found impossible to be consistent due to change of circumstances as between separate reviews, the change of position should be reviewed within the Department and clearly explained to the Corps of Engineers. Similar care should be taken with review of environmental impact statements which may be handled at a different time or by a different reviewer than the related permit or license.

D. *Federal and other dredge and fill activities.* (1) The Corps itself conducts dredge and fill activities both by contract and with its own equipment largely in relation to its responsibilities for flood control and maintaining navigation channels, harbors, and beaches and other civil and military works. These activities and works are subject to provisions of the FWPCA and MPRSA as well as NEPA and the Coordination Act. Public notices of intention to conduct such work usually are distributed in the same way as notices of permit application and deadlines for response are similarly short.

Dredge and fill work conducted in relation to original construction or major modification of Federal or federally assisted navigation and flood control projects normally is known to the Service long in advance, and reviews of proposals for such work are programmed, budgeted, and scheduled in consonance with the lead agency reporting schedules.

(2) As to dredge and fill activities conducted on non-navigable waters in relation to transmission and pipeline crossings and other riparian installations, the Service may not receive adequate early notice. Belated notice may be received through circulation and review of environmental impact statements prepared under NEPA. Notice on highway and airport projects should be received from the Department of Transportation under provision of Sec. 4(f) of the Department of Transportation Act (App. D–2m) and Sec. 16(c)(4) of the Airport and Airway Development Act (App. D–2t). Notice may also come in certain cases from applications to the Bureau of Land Management or other land management bureaus of the Department, including the Service, or the Forest Service for rights-of-way across Federal lands.

(3) Dredge, fill, and other activities conducted in or so as to affect navigable waters by Federal agencies in relation to their land management and other functions also are subject to provisions of Sec. 10 of the 1899 Act and to those of the Federal Water Polution Control Act. Thus, for example, the Service's activities in improving tidal marshlands on its coastal refuges require a Federal permit if they involve navigable waters and wetlands. Similarly, the Service's facilities on navigable waters require a NPDES permit from EPA. The Service, as well as other Interior bureaus and other Federal agencies, must be especially vigilant to avoid real or apparent violations of the law lest their sincerity and dedication to environmental preservation and restoration become suspect.

E. *Detection of violations of the Interstate Land Sales Full Disclosure Act.* (1) The Department of Housing and Urban Development (HUD), Office of Interstate Land Sales Registration (OILSR) has requested and the Service has agreed to cooperate through its permit review activities in the detection of violations of the Interstate Land Sales Full Disclosure Act (App. D–2u). Essentially the Service has agreed to provide all practicable cooperation and specifically to provide to the Administrator of OILSR copies of all reports to the Corps on suspected unauthorized activities and of all comments on major permit applications.

(2) Detailed procedural guidelines on this coordination are provided in Instructional Memorandum RB–46 (App. E–23).

1.3 *Ecological services activities involved.* Sec. 2 of this handbook presents an overview of the objectives and policies of the Service applicable to the activities covered in the handbook. Detailed policy guidelines are presented in Sec. 5 and detailed procedural guidelines are presented in other sections as follows:

2. *Objectives and policies.*

2.1 *Objectives* of the Department and Service in relation to dredge and fill and other water-related activities are to protect and preserve fish and wildlife habitat, conserve fish and wildlife resources, and protect public trust rights of use and enjoyment in and associated with navigable and other waters of the United States.

A. The Service strives to meet these objectives by encouraging developers to use every possible means, method, and alternative (including non-development) to prevent harmful environmental impacts and degradations, to restore habitat, and increase opportunities for public use through proper development and land use control.

B. The Service also assists, within the limits of its resources, the programs of other agencies, and especially those of other Interior bureaus dedicated to the public interest in man's environment.

C. More specifically the Service, through taking of every appropriate, useful action, has the following long-range objectives or goals:

(1) Respecting navigable waters, their tributaries and related wetlands of the United States:

(a) Stopping and remedying all illegal activities which are damaging or posing a threat of damage to the naturally functioning aquatic and wetland ecosystems or the dependent human uses and satisfaction, and assisting the actions of other bureaus in protection of environmental resources, values, and uses for which they and the Department of the Interior have responsibilities, including natural, cultural, and general recreational resources, values, and uses, and the water quality aspects of such values and uses.

(b) Ensuring that all authorized works, structures, and activities are (1) judged to be the least ecologically damaging alternative or combination of alternatives (e.g., all appropriate means have been adopted to minimize environmental losses and degradations) and (2) in the public's interest in safeguarding the environment from loss and degradation. Water dependency of a work, structure, or activity will be considered when criterion (1) above has not been met.

In determining whether criteria (1) and (2) have been met, the Service will always consider: (a) The long-term effects of the proposed work, structure, or activity; (b) its cumulative effects when viewed in the context of other already existing or forseeable works, structures, or activities of the same kind; and/or (c) its cumulative effects, when viewed in the context of other already existing or forseeable works, structures, or activities of different kinds.

(2) Respecting all other waters and wetlands of the Nation not determined to be navigable waters in the context of Federal law, particularly with respect to proposals, activities, and sanctioning actions of the Federal Government and where the concerned resources involve a national interest: long-range objectives or goals are identical to those abovestated for navigable waters, insofar as legally possible.

2.2 *Policies.* A. The Service exercises and encourages all efforts to preserve, restore, and improve the fish, wildlife, and naturally functioning aquatic and wetland ecosystems and assists in the preservation of other environmental resources of the Nation, for the benefit of man.

(1) The Service reviews, investigates, and cooperates fully in providing ecological advice on formulation of Federal and federally permitted, assisted, and sanctioned plans for activities and developments in the Nation's waters and wetlands under provisions of the Fish and Wildlife Coordination Act, App. D–2e.

(2) The Service prepares comments and recommendations on proposals for Federal and federally permitted, assisted, and sanctioned activities and developments in the Nation's waters and wetlands.

(3) The Service provides technical guidance and assistance to government agencies and concerned citizens on environmental aspects of management of waters and wetlands. It encourages development and adoption of comprehensive regional and statewide plans for the management of such waters and lands as anticipated by the Water Resources Planning Act, the Estuary Protection Act, the Coastal Zone Management Act of 1972, as provided by certain State and local zoning actions, and as may be provided by any comprehensive national land-use act.

(4) The Service encourages and provides technical guidance and assistance to local and State programs, symposia, and other organized efforts designed to further public education and awareness of environmental values and actions to abate threats to waters and wetlands of the Nation.

(5) The Service assists all Federal agencies involved in planning construction or permitting and licensing activities in the Nation's waters and wetlands to meet their responsibilities under Section 7 of the Endangered Species Act of 1973. This includes helping to ensure that the continued existence of an endangered or threatened species is not further jeopardized nor will the actions to be taken result in the destruction or modification of such species habitat that is determined critical. Such assistance should enable these agencies to avoid initiation of proposals which could place such species or their critical habitat in jeopardy.

(6) The Service assists particularly other bureaus of the Department of the Interior in meeting their special responsibilities for the Nation's environmental values, including cultural and natural values, general recreation values, and water quality, among others.

B. The Service actively discourges activities and developments in or affecting the Nation's waters and wetlands which would individually or cumulatively with other developments on a waterway or group of related waterways unnecessarily destroy, damage, or degrade fish, wildlife, naturally functioning aquatic and wetland ecosystems, and/or the dependent human satisfactions. In this, the Service assists other Interior bureaus and seeks their aid in protecting all environmental resources under the purview of the Department of the Interior.

(1) The Service considers navigable waters to include all waters, water bodies, and wetlands subject to Federal jurisdiction under provisions of the River and Harbor Act of 1899 and the Federal Water Pollution Control Act Amendments of 1972, as clarified by Federal regulations and court decisions or as modified by Federal law.

(a) For nonwater-dependent works, particularly where biologically productive wetlands are involved and alternative upland sites are available (as may be suggested from field appraisal—see Sec. 4.1A—by a Service biologist), the Service usually recommends denial of a permit unless the public interest requires further consideration. Further consideration may be indicated by an approved land use plan (see Sec. 5.2A(2)) or in the absence of such a master plan, from the determination made by the responsible Federal regulatory agency after carefully weighing all factors relevant to the public interest and reflecting the national concerns for both protection and utilization of important resources (see paragraphs (f) and (g)(3) of 33 CFR 209.120, App. D–4a(2)).

(b) For water-dependent works, the Service discourages the occupation and destruction of biologically productive wetlands and shallows. The Service usually recommends that the site occupied involve the least loss of area on the least valuable of the alternative sites; that avoidable loss or damage to such productive wetlands and shallows, their fish and wildlife, and their human uses be prevented; and that any damages or losses of such resources, proved unavoidable, be reasonably mitigated or compensated.

(2) The Service places special emphasis on vegetated and other productive shallow waters and wetlands and on fish and wildlife species for which the Secretary of the Interior has delegated and specifically mandated responsibilities:

(a) Wetlands as described in "Wetlands of the United States," Circular 39 of the U.S. Fish and Wildlife Service, published in 1956, republished in 1971.

(b) Estuarine and Great Lakes areas as defined in the Estuary Protection Act, the Coastal Zone Management Act of 1972, and Sec. 104(n) of the Federal Water Pollution Control Act, App. D–2o, D–2v, and D–2s.

(c) Migratory birds, anadromous and Great Lakes fishes, and endangered species as defined respectively in the Migratory Bird Treaty Act, Anadromous Fish

Conservation Act and the Endangered Species Act of 1973, App. D–2b, D–2l, and D–2q.

(3) The Service alerts NMFS and State wildlife agencies and consults with them on all matters related to their interest and responsibilities in keeping with provisions of the Fish and Wildlife Coordination Act, App. D–2E. In like manner, the Service alerts and consults with the NPS on potential degradations of cultural and natural values, the BOR on recreational aspects, and other agencies, particularly Interior bureaus, on any special environmental or other involvements of the proposed work in their special interest such as BR and GS on water quality and BLM and BIA as well as NPS on involved lands and resources under their jurisdiction (Section 6—Coordination, Liaison, and negotiation).

(4) The Service discourages exclusionary occupation of navigable waters and their shorelines by riparian owners or by anchored boats (see Rec. XVIII of House Report 91–1433, App. D–6) and other cumulatively harmful uses of such waters and shorelines.

(5) The Service requests guarantees that the authorized work is actually carried out as promised and as required by conditions of the permit, provisions of law, or agreements formalized in writing. In appropriate cases, a performance bond may be requested of a private permittee as a condition of the permit. With a Federal project the Service will strive to have important fish and wildlife provisions specifically mentioned in the authorizing act.

(6) The Service conducts and urges surveillance of unauthorized activities and developments in navigable waters; identifies and investigates illegal dredging, filling, other work and installations in such waters; reports the illegal work to the Corps or Coast Guard; and otherwise supports Federal actions against violators of Federal law in cooperation with the Solicitor and U.S. Attorneys.

(7) The Service assists and promotes surveillance of navigable waters for unauthorized discharges of harmful pollutants, escape of harmful pollutants from non-point, fixed and deposited sources on upland, spills of oil and hazardous substances, dumping of materials in ocean waters and other water pollution sources endangering fish and wildlife or their uses in cooperation with the EPA, Corps, NMFS, and Coast Guard; reports water pollution situations harmful to environmental and human-use values to the responsible regulatory agency; and otherwise assists and supports Federal actions against violators of the Federal Water Pollution Control Act and the Marine Protection, Research, and Sanctuaries Act of 1972.

Authorities and references supporting the foregoing Objectives and Policies are included in App. D, E, F, and G.

3. *Preliminary screening of proposals.*

3.1 *General outline of screening procedure.* A. Upon receipt of notice of permit application or initiation of a study, the proposed work project or activity is first logged and scheduled for investigations and reporting if appropriate. (The logging form presented in App. B–1 is to be used by all offices.)

It is absolutely essential to maintain complete, up-to-date records to assure timely actions and afford an accurate basis for summarizing accomplishments. A flow chart showing action sequence in review of permit applications is given in App. B–4a.

B. All public notices of applications for permits received from the Corps, EPA, or Coast Guard are then screened to exclude from further consideration those where the proposal obviously will have no impact or at most an inconsequential impact on fish and wildlife resources. Such "no-interest" notices are to be appropriately marked to show determination, initialed by the reviewer, its log entry completed, and the notice filed. A response usually is advisable on such notices (see below).

(1) On the basis of notice received, the Ecological Services biologist screens each proposal in his office preliminary to further action so as to determine:

(a) The adequacy of the information supplied and aavilable for proper review.

(b) The apparent environmental significance—what resources would be affected and how seriously? Is the impact of the proposal significant in view of its anticipated direct and secondary effects and in light of existing or potential cumulative effects of similar or other developments affecting the same resources?

(c) The apparent social and economic significance—who would benefit and in what way?

(d) The degree of water dependency.

(e) The apparent need for the work in terms of public health, safety, and welfare.

(f) Whether an environmental statement has been prepared and whether one is necessary or advisable.

(g) The desirability of and apparent opportunities for modifying the design, construction methods, and operating procedures of the proposal and/or selecting an alternative site to minimize environmental damages or restore and improve environmental and social values.

(2) It is the Service position that it is proper to assess the total impact of the total development, including any part to be located on uplands and any secondary effects. The totality of existing and projected cumulative impact of all developments effecting a waterway or group of related waterways and the dependent resources thereof also must be considered.

(3) With Federal proposals for study or work, both new and maintenance, there normally is water dependency and a presumption of Service interest. Excepting periodic maintenance work, the Service activity normally will have been scheduled and budgeted in program documents.

(4) There may appear to be no necessity to respond to notices having no Service interest, but it is usually desirable for a number of reasons to record the lack of interest particularly if response is requested by the lead or regulatory agency. (See App. A–1 for suggested form letters for no action cases.)

(5) It is essential to respond within the set time especially where there is Service interest even if the response is only a request for more time. Such timely response will assure that the Corps, EPA, Coast Guard or planning agency will not have cause to act prior to receipt of the Service report.

C. If the applicant has failed to supply needed information this fact is promptly conveyed to the regulatory agency together with a request that the permit application be held in abeyance until the information (including an EIS if found necessary) has been received or otherwise obtained by the Service and adequate opportunity has been afforded for review, consultation, and presentation of recommendations. (See suggested form letter in App. A–2 and information required of applicants by Corps regulation in paragraph (h) of 33 CFR 209.120, App. D–4a(2).)

(1) The Service makes every effort to assist applicants and other project sponsors in a timely manner in formulating environmentally acceptable plans and resolving related problems, but it cannot cooperate or act in the absence of needed information nor without adequate time. The Service will request extensions of time as required to effect a proper investigation and to consummate necessary coordination and negotiations. (See App. A–3 for suggested form letter.)

(2) Where biologically productive wetlands or other ecologically important resources and values are involved, it is the Service position that the burden of proof is on the applicant to demonstrate that his proposal is environmentally sound and in the public interest (see paragraphs (g)(3)(iv) and (h)(3) of 33 CFR 209.120, App. D–4a(2).) Consequently, any delay occasioned by the Service's request for necessary information may derive from the applicant's failure to properly prepare his proposal for consideration of its acceptability. (See the reverse side of the information request form, App. A–2, and information checklist, App. B–3).

3.2 *Suggested aids to screening.* It is of great assistance to expeditious screening of applications for permits in navigable waters, as well as to reporting on them, to prepare and maintain in each field office habitat type maps, with related notes and data descriptive of each type, for all waters and wetlands under the purview of that office. The maps should be of sufficient scale and detail to permit ready and certain decisions as to the likelihood of damage and the kinds of habitat and associated species expected to be affected based on the information on, and keyed to, the map.

Useful source books and maps should be kept at hand organized for ready reference. Good general sources include:

A. "The National Atlas" (U.S.G.S. 1970) provides physical data on coastal areas of the United States, pp. 78–84, which although gross for our purposes provide useful checks on landforms, shoreline characteristics, bottom sediments, surface currents, tidal types and

ranges, surface sea temperatures and salinities, and wave heights. Similarly, publications on national and local distribution of plans and animals frequently include maps showing general distribution by species that can serve as gross checks. (See Sec. 9.2D for additional sources.)

B. Many States are now collecting detailed data on their wetlands and most of them have habitat type data published in their files, or in the knowledge of their field personnel and research people. These and other data should be collated and entered on the field office's habitat type maps. Intensive studies on especially critical areas can often be conducted in cooperation with NMFS, State, and university personnel. The latter may be encouraged to involve students in special cases to add to the data base.

4. *Field investigations.* The depth and detail of field investigations varies considerably, mainly in relation to the apparent severity of the anticipated environmental impact and the available Service resources, but also with whether the proposal is Federal or non-Federal.

Normally appropriate studies are programmed, budgeted, and scheduled in advance for Federal proposals while field studies for non-Federal proposals must be done on an ad hoc basis.

Service personnel will at all times act and promote actions by others to achieve an orderly processing of Federal permit applications and planning of federally assisted and Federal projects.

4.1 *Non-Federal proposals—permit applications.* The Service position of the burden of proof being on the applicant to demonstrate the environmental soundess and public interest merit of his proposal implies that the applicant must arrange for any needed detailed field investigations. (See paragraphs (h)(2) and (h)(3), particularly paragraph (h)(2)(vi), of 33 CFR 209.120, App. D–4a(2).) This position certainly must be maintained with respect to planning, design and monitoring studies, but certain investigations must nevertheless be conducted by the Service and others in support of the environmental interests.

A. A reconnaissance of the project area must be made by the responsible Service biologist to provide a first-hand viewpoint and appreciation of the site values and potentials. A field surveillance and appraisal report form (App. B–2) will be completed at the time of the reconnaissance investigation for each permit application which proves to have Service interest to assure that all significant factors are considered. The form should be reviewed prior to taking to the field and partly filled in with the required information that is only obtainable from the permit application and other off-site sources. This completed form is made a part of the permit file.

(1) The field investigator will accomplish the following items of work on-site:

(a) Assess the relative environmental significance of the selected site in contrast to apparent alternative sites.

(b) Assess any possibilities for modifying the proposal to lessen environmental impacts (see Sec. 5 for review guidelines).

(c) Obtain information from knowledgeable local persons on species distribution and diversity, resource uses and values, and public interest relative to private interest.

(d) Determine if work has been started and, if so, its apparent legality.

(e) Document the on-site observations through map notations, photographs, records of interviews, sampling data, physical measurements, and completion of the standard field surveillance and appraisal report form (App. B–2).

(f) Note any potential involvements of other Interior bureaus particularly NPS (cultural and natural values), BOR (wild and scenic rivers, scenic values, general recreation values), BIA and BLM (lands and resources), and BR and GS (water and water quality) and later alert and consult with these agencies.

(2) The appraisal form is designed as both a checklist and a record of the on-site investigation; it must be completed in the field in appropriate part to avoid errors of recall.

(a) Although the field appraisal form may appear to be tedious in detail, the worth of the conscientiously completed form is invaluable to preparation of Service comments and recommendations and to any negotiations that may ensue. Therefore, it is essential that the form be completed as fully as possible in every case selected for field investigation and substantive comment.

(b) Since the details required to be completed are a function of the environmental significance of the proposal, relatively less consequential proposals will involve completion of fewer details of the form.

(c) Where appropriate, the Ecological Services biologists may find it efficient to arrange a joint reconnaissance of the project site with the applicant and representatives of appropriate State agencies, NMFS, EPA, the Corps, or others.

B. *Need for detailed field studies.* (1) Where the reconnaissance appraisal indicates that highly productive habitat would be degraded or lost if the proposal were carried out as planned, it may be necessary for the Service to conduct or arrange for more detailed studies to support its position and to:

(a) Affirm conclusion of species diversity and resource value.

(b) Provide a firmer basis for negotiation with the applicant on project modifications.

(c) Justify recommendations of permit conditions or denial of permit.

(d) Provide data required for administrative or judicial review.

(2) It is the Service position that there exists a national recognition that wetland and shallow water habitats have such high ecological and social values as to admit of their destruction or degradation only where there is no question that the public interest demands it.[1]

(3) Widespread national recognition is very helpful to the necessarily expedited review of permit applications since it is not reasonably possible for the Service to conduct field studies sufficient to provide unequivocal ecological answers. A useful discussion of study limitations and values as well as methods is included in App. G–1, taken from a publication of the Atomic Energy Commission.

(4) In view of the national recognition of wetlands values and the inherent limitations of time and resources, the Service will not normally attempt to prove its case in relation to permit applications by assembling detailed, on-site ecological or use data. On-site reconnaissance, as discussed above, will nevertheless be detailed enough to generally and accurately define the resource conditions and values. Proof normally will be supported by reference to indepth studies such as those of ecologist, Dr. Eugene Odum and others (App. G–4 and G–5), the logic of universal dependence of marine and estuarine ecosystems and related resource values on shallows and wetlands, and the great body of long-standing law recognizing the public trust rights in the lands involved (App. D–1b and D–3b).

(5) Permit applications involving steam-electric, steel, paper, petroleum, chemical, and other industrial plants having thermal and other pollutant effects on natural waters often require pre- and post-project studies, monitoring of environmental changes, and mathematical and hydraulic model studies. The predictive studies should be conducted on-site where possible, and control studies for the monitoring should be conducted at the site pre-project and at an appropriate nearby site post-project.

Certain dredge and fill projects and many Federal navigation, hurricane protection, and beach erosion-control projects also should be subjected to model and monitoring studies to predict and measure environmental impacts—all with a view to improving designs in the interest of the environment.

(6) Detailed studies are generally the responsibility of the project sponsor. The Service has neither the fiscal and manpower resources nor the responsibility to conduct model, monitoring or other detailed studies, but it does have the responsibility to insist not only that they be conducted but that they be done in a scientific, objective manner.

Nevertheless, detailed field investigations by the Service are required in support of testimony in judicial and quasi-

[1] As evidenced in Federal law, App. D-2f, o, and v; in Federal regulations, see paragraph (g)(3) of 33 CFR 209.120, App. D-4a(2); by the President's Environmental Message of February 8, 1972, App. D-4a; and otherwise in executive policy, particularly EPA's wetlands policy, App. F-2a, b, and c; as well as in wetlands laws of many States. See also App. G, especially G-4 and G-5, for the scientific basis of this recognition.

judicial hearings and occasionally for other purposes, as outlined above. Guidelines for such detailed investigations are outlined in Sec. 10.2 of this handbook.

4.2 *Federal Surveys and Project Proposals*—A. *Programmed work.* (1) The Service has the responsibility under the Fish and Wildlife Coordination Act, the Anadromous Fish Conservation Act, the Estuary Protection Act, the Fish and Wildlife Act of 1956, the Watershed Protection and Flood Prevention Act, and other authorities to conduct field investigations related to Federal and federally assisted water development surveys and project studies. These investigations are normally programmed, budgeted, and scheduled in harmony with the schedule of the lead Federal agency.

(2) The investigations conducted by the Service in relation to studies of Federal agencies are generally of greater depth and detail than those described above for non-Federal proposals. They should be of comparable detail to those conducted by the lead agency. Principles and guidelines for these investigations are presented in the Division Manual, Secs. 2.300 through 2.999.

B. *Maintenance and emergency work.* Certain types of Federal work such as the maintenance dredging of navigation channels conducted by the Corps and emergency flood disaster activities in streams conducted by the Corps, Bureau of Reclamation, and the Soil Conservation Service must be investigated and reported upon on an ad hoc basis and in a manner similar to that described above for non-Federal proposals, except that responsibility for needed fish and wildlife studies largely devolves on the Service, NMFS, and the State fish and game agency. Consequently, the Ecological Services field supervisor must maintain liaison with the Federal and State agencies and their personnel responsible for these kinds of activities to assure himself that proper notice is afforded and opportunity provided to make field investigations and timely recommendations.

4.3 *Investigations of unauthorized work and activities.* A. Service personnel must maintain continuous surveillance of navigable waters of their area of responsibility to detect any unauthorized work in a timely manner (see also Secs. 5.2B, 6.3, 7.3 and 8 and App. B–4b and B–5).

(1) Offices of the Division should make necessary arrangements to serve as clearinghouses for alerts from Service personnel and cooperating NMFS and State personnel who detect unauthorized work and Division personnel must investigate and report on each such alert.

(2) Service personnel should arrange for all possible assistance from and cooperation with NMFS and State personnel as well as others with like interests to increase their effectiveness.

(3) Service personnel should cooperate fully with the Corps, Coast Guard, and the EPA in such surveillance and with the Department of Justice in any subsequent enforcement actions.

B. Field surveillance investigations of an apparently unauthorized work or activity must be circumspect on site and confined to making as complete an assessment of the facts as possible. In no event should the investigating biologist voice any allegations of illegality, accuse a person of improper action, or take any other direct action to stop or alter the observed ongoing activity.

C. A field surveillance and appraisal report form (App. B–2) is completed on site as fully as possible keeping in mind the items outlined in Sec. 4.1A, above. Particular attention must be given to obtaining full coverage of the activity site and area of influence with good photographs and to obtaining other evidence (water and biological samples) demonstrating the kind, location, and effects of the observed activity. If possible, the investigating biologist should use a camera providing positive prints directly upon exposure (Polaroid) or take care that the photographic as well as other evidence submitted to other persons for processing is properly certified by use of a "transfer of evidence" form (see note on the back of the first page of App. B–2 form).

D. Following discovery and appraisal of an apparently illegal activity, the regulatory agency will be immediately contacted to determine if the work is being done lawfully. If it is not, the Regional Director will promptly request the regulatory agency to issue a cease and desist order. A flow chart of surveillance actions is given in App. B–4b, and related guidelines are presented in sections 5.2B, 6.3, 7.3, and 8.

5. *Policy guidelines for Review of proposals.*

5.1 *Basis.* A. In discussing a proposal with its sponsor and in developing written comments and recommendations to assure that the proposal can be implemented without significant damages to fish, wildlife, and related environmental resources under purview of the Service and the Department (being alert for potential adverse environmental effects in the province of other Interior bureaus so as to coordinate and exploit mutual concerns), Service personnel will observe the policy guidelines set out in this handbook. (App. D, E, and F provide legal references and official policy statements relevant to these guidelines.) In a like manner, the Service will maintain close cooperation and coordination with other State and Federal agencies (Section 6—Coordination, Liaison, and Negotiation).

B. To account for local or regional peculiarities of geography, resources, and social, political, institutional and economic constraints, special adaptations and modifications of these guidelines may be proposed for approval and may be subsequently adopted. Also, more detailed guidelines covering particular situations may be proposed in the future and adopted as required, such as for mineral exploration and development, powerplants, high marsh areas, etc.

C. The Service's policy and procedural guidelines expressed in this handbook are intended to be compatible and reasonably consistent with relevant provisions of law, decisions of the courts, and rules, regulations, and administrative practices of Federal regulatory agencies. But the Service does not have the responsibility, as do the regulatory agencies, of making the final determination of the overall acceptability of a proposal, all factors considered. These guidelines are not intended nor should they be interpreted to be addressed to such final decision. They are intended to reflect the Service responsibility to contend for the special public interests in fish and wildlife, their related habitats and ecosystems, and the human uses and environmental values dependent on such resources.

D. Service personnel must critically note that each guideline is qualified to admit of reasoned interpretation on the merits of a particular proposal in its particular ecosystem setting and must be so interpreted in each case. Blanket, absolute opposition to any specific type of development or site situation must not be construed from the language of any policy or policy guideline of this handbook. Each proposal must be weighed on its individual merits not only in the light of the main thrust of applicable guidelines but in light of the qualifications of these guidelines, the specific biological and environmental conditions of the proposal site, and the particular expected environmental impacts of the proposal.

5.2 *General policy guidelines*—A. *New work proposals.* (1) Encroachments into navigable waters and wetlands will be discouraged where such encroachments would significantly damage biologically productive shallows and wetlands or unreasonably infringe on public rights of access, use, and enjoyment.

(2) Sites and design will be encouraged to be in compliance with any applicable comprehensive regional or statewide plan for land use and/or shoreline development which properly balances public needs and properly accommodates site and upland drainage, waste discharges, and erosion forces (as indicated by plans developed by the State under the Coastal Zone Management Act of 1972 and by a State under any State land use act that may be applicable).

(3) A proposal which in combination with other developments would, due to cumulative effects, unreasonably degrade environmental resources or diminish the human satisfactions dependent on such resources on a waterway or group of related waterways will not be acceptable to the Service and will be strongly discouraged.

(4) Nonwater-dependent structures, facilities, or activities generally will be considered by the Service to be unacceptable uses of public waters unless it has been demonstrated that the proposed use is required in the public interest (see Sec. 2.2B(1)) and no alternative site mutually acceptable to the Service and the applicant is available.

Although in many cases a restaurant, motel, trailer park, golf course, or other service facility may be more attractive to its customers if it has water frontage, this attraction does not necessarily re-

quire encroachment into navigable waters and wetlands. A set-back location that preserves public access to the water usually can provide as good or better water view, assure greater safety from storm hazards, and otherwise accord more fully with both the private and public interest.

(5) Proposals to fill ecologically valuable wetlands or site sewage lagoons or other treatment works on them will be discouraged, and where no feasible upland site for such works is available, the Service will urge adoption of tertiary treatment processes which do not require lagoons or other extensive works with consequent destruction of wetlands (see EPA's wetlands policy, App. F–2a, b, and c).

(6) The Service will object to or request denial of Federal permit for any proposed project not properly designed or located to avoid preventable significant damages to fish, wildlife, and/or other environmental values.

B. *Unauthorized work and activity in navigable waters and applications for after-the-fact permits therefor.* Unauthorized excavation, fill, structure, facility, building, or ongoing activity in or affecting navigable waters will be considered to be in violation of the law as prescribed in the River and Harbor Act of 1899, App. D–2a; the Federal Water Pollution Control Act (Sec. 301), App. D–2s; and the Marine Protection, Research, and Sanctuaries Act (Sec. 101), App. D–2x. See also Secs. 4.3, 6.3, 7.3, and 8 of this handbook for other aspects of unauthorized work.

(1) Where necessary to achieve removal of unauthorized harmful works and/or obtain other appropriate remedy, the Service will request the responsible Federal regulatory agency to institute enforcement action, including judicial procedures through the Justice Department if required.

(2) The Service may, where immediate action is warranted to avert great loss of fish and wildlife or their habitat, request the Solicitor, Department of the Interior, to take any appropriate steps to speed legal action.

(3) Where after-the-fact application is made for existing work which resulted in significant environmental damage, the Service will confer with the responsible Federal regulatory agency to assist it in determining the need and the possibilities for restoration and compensation of damages to fish and wildlife, their habitat, and related human use values.

(4) If legal action is not taken or is taken and fails adequately to remedy the damage, the Service will continue to aid negotiations with the applicant, seek appropriate conditioning of any permit, and take such other remedial measures as are available.

(5) Where satisfactory means and measures for restoration and compensation have been imposed upon or negotiated with the applicant, Service personnel will urge that the permit include conditions to assure their implementation.

(6) The Service may ask that the applicant be required to furnish a performance bond when there appears to be substantial risk of non-performance.

(7) In case of judicial action, Service personnel must expect to testify with appropriate Departmental clearances required and to have developed substantial evidence in support of the environmental aspects of the case. In such event, expert opinion is only a feeble substitute for firsthand testimony based on in-depth investigation (see Sec. 10).

C. *Proposals determined to be acceptable.* (1) The Service will urge that the applicant be required to provide assurances, through acceptance of permit conditions, that the works will be built and operated in such a way as to minimize the impact on fish and wildlife and the detriments to the public interst in the lands and waters affected.

(2) In cases where compensational measures are developed with the applicant to protect the resources, the natural functioning ecosystem, and other environmental values, Service personnel may recommend that a performance bond be required of the applicant to guarantee implementation of the compensational measures.

(3) Assurances for Federal projects will be obtained by the Service through clear and specific inclusion of means and measures in project authorizing documents and diligent follow-up during construction and operation.

5.3 *Detailed policy guidelines.* Service personnel will observe additional detailed guidelines in screening and reviewing permit applications and Federal proposals as indicated below for particular types of projects (Note that where excavation of fill or deposition of spoil are involved in a proposal, the guidelines of items I or J are applicable in addition to the guidelines listed for the specific main proposed works or activity):

A. *Docks, moorages, piers, and platform structures.* (1) In crowed areas, individual single-purpose docks will be discouraged, and multiple-use facilities common to several property interests providing common pollution control works and minimizing occupation of public waters will be actively encouraged.

(2) Joint-use moorage facilities will be encouraged for subdivisions, motels, and multiple dwellings in preference to individual moorage.

(3) The size of docks and piers and their extension beyond the normal high water line will be recommended to be restricted to that required for the intended use.

(4) Anchor buoys will be encouraged in preference to docks.

(5) Piers or catwalks will be encouraged in preference to fills to provide needed access to navigable water.

(6) Dry storage on upland will be encouraged for small boats in preference to water moorage in crowded areas.

(7) Removal of docks, piers, or platform structures in existence without a Federal permit will be recommended where practicable and especially where the particular structure is found to interfere with or preclude preservation, management, or utilization of fish and wildlife resources and other environmental values.

(8) Removal will also be recommended of all piers and similar structures receiving little use, in a state of disrepair, and/or serving no demonstrated public purpose.

(9) Overwater location of apartments, shops, restaurants, and other nonwater-dependent facilities on pile structures or fills will generally be viewed by the Service as destructure intrusions upon the aquatic environment. Denial of a permit for a structure intended solely for such uses will be recommended unless it is clearly shown that the particular structure is required in the public interest (see Sec. 2.2B(1)(a) and Sec. 5.2A) and no alternative site mutually acceptable to the Service and the applicant is available.

(10) Permits for docks, piers, and other overwater structures will be recommended to be conditioned to require removal once the structure no longer serves the purpose for which it was originally permitted.

(11) Houseboat anchorage and moorage in public waters outside of publicly established harbor areas for more than 30 days will be discouraged.

(12) Service review of applications for the repair or replacement of previously permitted docks, piers, and moorages will be expedited.

B. *Marinas and port facilities.* (1) Designs that minimize disruption of currents, restriction of the tidal prism, excavation in shallow waters and wetlands, removal of barrier beaches, and filling of shallow waters and wetlands that do not occupy waters with poor flushing characteristics or sites with high siltation rates; and that preserve environmental values in general will be strongly encouraged.

(2) Facilities for the proper handling of boat and site-generated sewage, litter, other wastes and refuse, petroleum products, and precipitation runoff will be insisted upon with all marina and port proposals, including modifications to existing facilities, insofar as required by law.

(3) Regional and statewide planning for balanced land use and specifically to locate suitable spoil disposal sites, reduce unneeded dredging, and properly locate any new or expanded port, other necessary navigation and other water-dependent facilities will be encouraged. Shipping and support facilities including marine railways and launching ramps will be encouraged to make full utilization of developed areas to forestall disturbing new areas of high environmental value.

C. *Bulkheads and seawalls.* (1) Bulkheads and seawalls generally will be acceptable in areas having unstable shorelines, but their construction will be discouraged where marsh, mangrove, or other naturally protective and productive areas would be disturbed. In the latter situations, any necessary bulkhead should not reflect wave energy so as to destroy productive wetlands. In rapidly eroding situations where natural, pro-

tective vegetation or other controls are inadequate, bulkheads placed in navigable waters may be acceptable if properly designed to mitigate but not aggravate natural forces and processes.

(2) In extensively developed areas, rip-rap and/or designs utilizing natural vegetation will be encouraged in lieu of bulkheads of wood, concrete, or metal. Bulkheads will be acceptable that esthetically and/or ecologically enhance the aquatic environment.

(3) On barrier and sand islands and sand beaches, bulkheads which would adversely affect the littoral drift and natural deposition of sand materials will not be acceptable.

D. *Cables, pipelines, transmission lines, bridges and causeways.* (1) The Service will encourage the establishment of transportation-utility access corridors crossing navigable and other waters and wetlands at sites that localize and minimize environmental impact by limiting the encroachments to least valuable and productive areas.

(2) To be acceptable, aerial or submerged cables, pipelines, and transmission lines must be located and designed for maximum compatibility with the environment. In assessing environmental compatibility, Service personnel will give particular emphasis to the provisions made to protect water quality, fish and wildlife resources (notably, interference with migration routes) and to prevent interference with fishing and other public uses. Where unique natural areas, cultural sites, or significant impacts on scenic beauty or public access appear to be involved, Service personnel will alert and cooperate with concerned Interior bureaus and other agencies.

(3) Alteration of the natural water flow circulation patterns or salinity regimes through improper design or alignment will be discouraged.

(4) Enhancement of public access by the installation of fishermen catwalks, boat launching ramps, or other structural features will be encouraged.

(5) Bridge approaches required to be located in wetland areas will be recommended to be placed on pilings rather than constructed as solid fill causeways.

E. *Jetties, groins, and breakwaters.* Jetties, groins, and breakwaters that do not interfere with or, preferably, that enhance public access, and do not create adverse sand transportation patterns or unduly disturb the aquatic ecosystem will be acceptable. Service personnel will place particular emphasis on preventing project-related erosion and other harmful impacts caused by the installation—such as destruction of sand dunes and beaches and filling of shallows and tidal wetlands due to changes in littoral currents and drift—as well as on protecting fish and wildlife resources and uses.

F. *Lagoons and impoundments.* Lagoons or impoundments for waste treatment, cooling, or aquaculture which would occupy or damage significant wetlands or other ecologically productive areas in navigable waters will be unacceptable to the Service and denial of permit normally will be recommended. (A NPDES permit is required to discharge from these; see EPA's wetlands policy, App. F-2a, b, and c.)

G. *Navigation channels and access canals.* (1) Construction or extension of canals primarily to obtain fill material will be discouraged or opposed as appropriate.

(2) Designs and alignments should adequately serve the needs of commercial and sport fisheries and other water recreation as well as other demonstrated public needs.

(3) Designs should not create pockets, interior channels, or other hydraulic conditions which would cause stagnant water problems.

(4) Designs should not create or aggravate shoreline erosion problems or interfere with natural processes of beach nourishment.

(5) Channel alignments and spoil sites should avoid shellfish grounds, eelgrass beds, beds of other productive aquatic vegetation, coral reefs, fish spawning and nursery areas, fish and wildlife feeding areas, and other shallow water and wetland areas of value to fish and wildlife resources and uses.

(6) Alignments should make maximum use of natural or existing deep water channels.

(7) Designs should include temporary dams or plugs in the seaward ends of canals or waterways and competent confining dikes around spoiling sites to serve until excavation has been completed and all sediment has settled out.

(8) Designs should not alter tidal circulation patterns adversely, create change in salinity regimes, or change related nutrient and aquatic life distribution patterns.

(9) Construction should be conducted in a manner that minimizes turbidity and dispersal of dredged material into productive areas and on schedules that minimize interference with fish and wildlife migrations, spawning, nesting, or human uses.

(10) In addition, the Service will recomend that the applicant or permittee be required to supply the Service with a schedule of the dredging anticipated during the life of the permit (frequency, duration, type of dredge, amounts of material, etc.) and where appropriate give a two-week notification prior to the commencement of work at each location or phase of construction. Recommendation also will be made to require Service notification when work is completed and the amount of materials removed. Similar advice and notice will be requested for previously coordinated Federal projects.

H. *Drainage canals and ditches.* Construction of canals and ditches that would drain or facilitate drainage of any of the wetland types identified in the Fish and Wildlife Service's Circular 39, "Wetlands of the United States," will be discouraged, and denial of permit usually will be recommended by the Service. Channels draining such wetlands will be acceptable to the Service only where the following situation has been conclusively demonstrated: Insect vector control or some other public health, safety, or welfare measure is required as a public necessity and drainage would be the least damaging or only practicable means of accomplishment. But in these instances, the quantity and quality of any discharged waters should be controlled as required by the FWPCA and so as not to adversely affect the aquatic ecosystem unduly (a NPDES permit covering such discharges may be required).

I. *Excavation of fill material.* (1) Excavation and dredging in shallow waters and wetlands will be discouraged and any permits issued or Federal work approved will be recommended to be conditioned to prohibitt activities in fish and wildlife nursery areas and during periods of migration, spawning, and nesting activity.

(2) Whenever the excavation of fill materials from productive submerged or intertidal wetland areas or from wetland types identified in Circular 39 (see Sec. 2.2B(2)) is considered detrimental to fish and wildlife resources and unacceptable, permit denial for such work will be recommended by the Service.

(3) Uncontrolled stockpiling of dredged material in shallow water or on wetlands to achieve full bucket loads will not be aceptable. Unloading barges should be employed wherever possible to avoid such stockpiling of materials. Where stockpiling is required, the use of competently diked upland areas usually will be recommended.

(4) Excavations should not create stagnant sumps or cul de sacs that trap and kill aquatic life.

(5) Dredging operations should be conducted so as to prevent petroleum spill, deposit of refuse, and avoidable dispersal of silt or other fines or other discharges of harmful materials (a NPDES permit may be required).

J. *Filling and deposition of spoil and refuse materials.* (1) Filling in navigable waters generally will be discouraged and will be strongly objected to where the proposed development is nonwater dependent or would not serve a demonstrated public need.

(2) Whenever the filling of waters and wetlands is considered detrimental to fish and wildlife resources and unacceptable, permit denial for such work will be recommended by the Service.

(3) Spoil confinement works should be properly designed, constructed, and maintained to avoid discharge of fines, other particulates, or harmful material to natural waters and be located on dry upland. The location of outlets and other means of control of the effluent from the spoil retention area should yield water quality that will preserve the aquatic ecosystem (a NPDES permit may be required).

(4) Toxic, oxidizable organic, and other highly harmful materials must be disposed on dry upland areas behind impervious dikes or by other safe and environmentally protective means.

(5) Dikes should be vegetated immediately to prevent erosion.

(6) In-bay, open-water, and deep-water disposal generally will be considered acceptable by the Service only after all upland and other alternative disposal sites have been explored and rejected for good cause. Deep-water disposal will be acceptable only at sites designated under State or Federal regulations or at sites specifically selected, including those selected for deposit of clean material for habitat improvement, where agreed upon by all concerned agencies.

(7) Sediment and/or effluent analysis will be recommended to be required in cases where there is suspected contamination by heavy metals or other toxicants. In cases where contaminant levels are high, the Service will either urge disposal on fully confined impervious upland sites or by other safe and approved means, or recommend denial of permit application.

(8) Turbidity and dispersal of dredged material will be recommended to be controlled in relation to open water dredging and disposal by means of fine-meshed curtains or other effective means.

(9) The foregoing guidelines on spoil deposition are also particularly applicable to Federal channel excavation and maintenance.

K. *Mineral exploration and development, territorial waters.* (1) To be acceptable, blanket permits issued for mineral exploration and development (including oil, gravel, sand, fossil shell, phosphates, sulfur, salt, placer metals, etc.) must be limited to the shortest time period essential to the work proposed and should provide by explicit conditions of the permits for such of the following that can be utilized to minimize environmental degradation: Areal exclusions; special exploration and development procedures (e.g. slant drilling); use of special equipment (e.g. use of shallow draft barges and low-impact swamp vehicles on wetlands); and limitations on dredging, filling, and spoiling (i.e. use of existing channels wherever possible rather than new ones, avoidance of productive wetlands and shallows for filling and spoiling, etc.).

(2) To be acceptable, proposed activities and works must be described as fully as possible in the original permit application, and to the extent that these cannot be described for the entire extent of the work and period of the permit, the undescribed extension and modifications when known and proposed must be subject to provision of adequate notice and opportunity for on-site assessment of potential environmental impact by the Service or its designee, and the permit must be further conditioned as may be required to protect environmental resources on the basis of such recommendations as the Service may make.

(3) To be acceptable, proposals must meet the applicable general and detailed guidelines set out hereinabove for other particular activities and works involved in the proposed mineral exploration and development.

(4) To be acceptable, proposals must make adequate provisions to keep environmental degradation to the minimum, particularly that from spillage of oil; release of refuse including polluting substances and solid wastes; spoiling on productive wetlands; dredging of productive shallows; and alteration of current patterns, tidal exchanges, freshwater outflow, erosion and sedimentation.

L. *Mineral and other developments, including rights of way, on public lands.* (1) As discussed more fully in Section 1, Interior bureaus and other Federal land management agencies are involved variously in leasing lands and granting permits for rights of way, mineral exploration and development, hydroelectric power development, and other activities on public lands of the United States. To the extent that these activities would involve identifiable effects on navigable waters they also require a permit from the Corps or Coast Guard under the 1899 Act and/or the Federal Water Pollution Control Act Amendments of 1972, and in certain cases a NPDES permit from EPA or the State.

(2) These guidelines do not cover procedures for the intra-Interior review of outer continental shelf and other public lands, mineral leases, and permits nor rights-of-way permits, but it is expected that Service personnel will apply any of the pertinent policy guidelines of this handbook as are appropriate.

(3) Corps, Coast Guard, and EPA permit applications covering such activities should be reviewed in the field for potential site-specific impacts as with any other permit, keeping in mind, however, that general protective conditions are included in the Interior permits which are deemed adequate for all known situations and contingencies and that known highly damageable areas have been excluded from the lease offers and use permits for lands of the Territories.

(4) If a particular case appears to the reviewing biologist to involve substantial impacts of a nature not certainly covered by conditions of the Interior permit, he should initiate action to so notify the district or regional office of the concerned regulatory agency and the responsible office of the concerned Interior bureau or for the Territory. If the responsible local Interior office cannot satisfy the Service concern, the matter should be referred to the Central Office for resolution and the district or regional office of the regulatory agency should be so apprised.

M. *Log handling, moorage, and storage.* (1) Log handling, moorage, and storage sites proposed to be located on salmon-spawning and other fish productive streams, shellfish grounds, or shallow water and wetland areas of value to fish and wildlife resources and uses will not be acceptable to the Service.

(2) Log handling, moorage, and storage in public waters will be discouraged, particularly where such activities would obstruct or impede public access, fishing, hunting, and other legitimate public uses of the water body; degrade and destroy fish and wildlife resources; or otherwise degrade environmental values.

(3) Environmentally sound practices of log handling will be encouraged through recommendations for conditioning of any required Federal permit or contract and otherwise, as follows:

(a) Use of positive controls over bark, other debris, and leachates, including proper confinement, collection and disposal of all floatable, soluble, and settleable refuse. Rapidly flowing water, steep shores or other sites must be avoided for log dumping where positive controls cannot be effected.

(b) Use of easy let-down devices for placing logs in water to avoid safety and environmental hazards of violent free-fall dumping.

(c) Limiting the quantity of logs and the duration of their moorage and storage in public waters to the minimum required for efficiency.

(d) Use of upland sites for bundling of logs and disassembling the bundles.

N. *Steam electric powerplants and other facilities using navigable waters for cooling.* Although these facilities will be treated in detail in a separate Steam Electric Powerplant and Cooling Facilities Handbook, broad, general guidelines are included here:

(1) As a general rule, once-through cooling systems will be discouraged and closed-cycle cooling will be encouraged where the facility is proposed to be sited on or so as to affect biologically productive navigable waters. In particular, any facility will be strongly discouraged which would significantly change the environment and values of an estuarine area or other biologically productive navigable water by withdrawal and discharge of large volumes of water—thereby depleting aquatic life by entrainment and impingement; altering the natural or existing regime of salinity, temperature, and dissolved oxygen and the patterns of water currents, tidal exchange, volume, tidal excursion, and freshwater flow; disturbing the populations, dynamics, and distribution of aquatic life; scouring productive water bottoms or otherwise endangering the viability and productivity of the ecosystem; and lessening the human satisfactions dependent thereon.

(2) A facility to divert water from and release heated water to navigable waters where proposed to be sited so as to affect harmfully salmonid spawning, rearing, or migration waters or any water or wetland supporting highly sensitive and/or highly valued species of fish or wildlife will not be acceptable to the Service unless such facility is fitted with a closed-cycle cooling system and otherwise incorporates protective features that insure against any significant harm to such species at all times and under all foreseeable conditions.

(3) To be acceptable any facility incorporating once-through cooling involving navigable waters must:

(a) Be sited where wetland destruction, other habitat damage, interference with fish and wildlife and their uses, and overall environmental harm will be at the minimum compared to other possible sites in the region;

(b) Involve a plan layout based on preoperational baseline studies defining current, temperature, salinity, tidal, migratory fish or wildlife, and other pat-

terns sufficient to select the smallest and most desirable heat mixing zone, providing adequate zone of passage, and other plan arrangements, including those of the transmission lines and other appurtenant facilities, that will minimize harmful impacts on fish and wildlife, their habitats and uses as well as overall environmental damages;

(c) Incorporate design features and operating programs and rules to avoid all avoidable harm to fish and wildlife, habitats, and uses as well as other environmental resources and uses; specifically:

(i) Incorporate a cooling system design employing the best available technology and combination of facilities to minimize harmful effects on the environment, including: Mechanical rather than chemical scale and algae controls; intake-outlet arrangements which minimize impingement, and entrainment, and damage to productive bottoms; fish bypasses and other saving devices as well as screens at intakes;

(ii) Schedule shutdowns to avoid harm to aquatic life as fully as possible;

(iii) Meet all applicable water quality requirements and goals; and

(iv) Adequately monitor the operations to satisfy the burden of proof upon the permittee or licensee that the foregoing and other appropriate environmental standards are met.

6. *Coordination, liaison, and negotiation.* It is difficult to overemphasize the value of taking steps at the earliest possible time to gain participation in the planning process to permit offering suggestions of modifications and alternatives and discouraging selection of naturally productive sites or harmful methods of development. This is difficult with piecemeal private developments, but even with these, publicizing Service concerns in the media, assisting concerned citizens who responsibly involve themselves in surveillance, accepting speaking engagements, arranging symposia, educating local planning, zoning, and administrative boards, and other means can be of help in the long run.

With Federal activities close liaison by the Division Field Supervisor with the Federal planning agencies usually leads to early notice of actions and invitation to informal consultation during formulation of plans. This early consultation can be the most productive effort made by Division personnel in relation to Federal activities. If possible the consultation should be between the Division biologist and the lead agency planner assigned to the specific survey or project.

The Ecological Services biologist also must maintain early and continuing liaison and coordination with NMFS and State biologists in connection with each assignment. Summary coordination guidelines follow:

6.1 *Coordination with the State, NMFS, EPA, Corps, other Interior bureaus, and other concerned governmental agencies.* A. Early in his review of a proposal, the Division biologist consults with his counterparts in other agencies to:

(1) Gather information from knowledgeable experts.

(2) Identify mutual interests and information sources and obtain useful data and views.

(3) Transmit project data to cooperating entities not otherwise supplied.

(4) Arrange any appropriate joint field studies.

B. As his preliminary assessment and field reconnaissance are completed and he prepares his draft report and recommendations the Division biologist continues coordination and liaison with agencies having coordinate and related responsibilities to:

(1) Assess the public interest and other professional opinion on the merits of the proposal and consider proper means of resolving any environmental issues.

(2) Alert other agencies, particularly other Interior bureaus, to any special environmental concerns in their interest discovered in the Service assessment or reconnaissance and explore any mutual environmental involvements of the proposal with such agencies.

(3) Formulate any appropriate joint position on the proposal among agencies having coordinate responsibilities.

6.2 *Coordination with the applicant or Federal Lead Agency.* A. Early consultation with the Federal lead planning agency can often forestall wasteful efforts addressed to environmentally unsound design or site; yet this advantage is normally long past with permit applicants. Improvement in the latter situation may result from educational efforts by concerned entities and court decisions favorable to the environment which encourage prospective applicants to seek early consultation.

B. Negotiation with the applicant or lead agency planner is conducted as appropriate throughout the Service review process.

(1) If the field appraisal has confirmed that the proposal will have adverse effects on fish and wildlife, their habitat or the naturally functioning ecosystem, efforts must be made either through the regulatory agency (in permit applications) or by direct contact with the applicant or lead agency planners, to have the plan modified to minimize damage to the resource base.

(2) The posture to be maintained by the Service representative in negotiating with applicants or lead agency planners should:

(a) Encourage acceptance of the validity of the national recognition of intrinsic high public value of shallow water and wetlands habitats through citation of Zabel 1 Tabb, other Federal case and statutory law, local law (statutory wetlands and zoning laws and related case law), and findings of the Reuss Committee and ecologists (see App. D and G.)

(b) Avoid acceptance of monetary value as the full measure of significance of ecological and other environmental impacts.

(c) Avoid expedient resolution of issues with the sponsor of the work or activity which do not satisfactorily resolve the environmental issues.

C. If the applicant or sponsor rejects suggestions for making his plans environmentally acceptable, it must be made clear that the burden of proof is on him to demonstrate that such suggestions are infeasible and that his proposal is of overriding public interest. Without such demonstration the Service policy requires that denial of the application be requested or objection to the project be raised as otherwise proper.

D. The assistance of other governmental agencies having coordinate responsibilities and interest should be requested, even urged, in direct participation and support of negotiations. Also, interested private conservation groups should be advised of the Service position.

E. Following successful negotiations, the agreed upon plan modifications for environmental purposes can be handled by:

(1) The applicant submitting a new application with acceptable plan to the permitting authority, which is then specifically comprehended by the permit and its conditions, or

(2) The applicant submitting in writing to the permitting authority his intention to adopt specific plan modifications, thus amending the application, which is then specifically comprehended by the permit and its conditions, or

(3) The Service and Department recommending and the permitting authority adopting the necessary specific conditions or stipulations as part of the permit which fully and specifically comprehend the plan modifications required for environmental and fish and wildlife protection and conservation purposes.

6.3 *Coordination on unauthorized work and activities.* A. The conduct of Service personnel in exercising surveillance investigations must be cautious and above reproach. Their on-site actions must be limited to gathering information on suspected unauthorized work without unduly exciting workmen or the sponsors of the work. (See Sec. 4.3.)

B. Enforcement actions are generally the prerogative of the Corps, EPA, Coast Guard, and Justice. Once Service personnel have obtained the pertinent biological and other information necessary for action on the case and the Regional Director has alerted and formally notified the Corps, EPA, or the Coast Guard, as appropriate, with copy to the Regional Solicitor and to the appropriate U.S. Attorney, the Service should normally defer to the regulatory agency for further action. Where NMFS interests are involved, a copy of the formal notification or report on a violation should be sent to NMFS when the regulatory agencies are informed. Where expedited action is justified by immediacy of the threat to highly valued resources, the Regional Director may seek assistance from the Office of the Solicitor. (See also Secs. 5.2B, 7.3, and 8.)

7. *Reporting procedures.*

7.1 *Reports and correspondence.* A. Guidelines for preparation and transmis-

sion of routine letters and reports are included in Secs. 3.000–3.999 of the Division Manual. The manual guidelines cover all kinds of river basin activities and should be followed where applicable.

B. Special letter and report formats applicable to review of permit applications are included in App. A. Standard Forms, checklists, and flow charts are included in App. B, and commonly appropriate standard recommendations for permit applications are included in App. C.

C. *General guidelines on report conclusions and recommendations.* Any of the following situations may serve as a basis for Service recommendation of denial of a Federal permit or objection to the authorization of a Federal project for similar work in navigable water. (More detailed general and specific guidelines for determining acceptability of plans are included in Sec. 5, above):

(1) The project or activity will directly destroy, damage, or degrade fish and wildlife, their habitat, or other significant environmental values, including part or all of a natural functioning ecosystem.

(2) The project will lead to, encourage, or make possible the destruction, damage or degradation of fish and wildlife, habitat, or other significant environmental values, including part or all of a natural functioning ecosystem.

(3) Public use of a natural or other environmental resource will be restricted or curtailed.

(4) Public benefits will not clearly exceed public losses, ignoring any private gains not clearly related to health, safety, or protection of property.

(5) The project purposes are not water related or dependent.

(6)) Alternative upland sites are available for the proposal which would involve less environmental costs and generally better satisfy the public interest.

D. *Format and disposition of reports.* (1) Service reports on NPDES permits are submitted by the Regional Director directly to the EPA or the State. Those on nuclear steam-electric plants are submitted through the Director to the Departmental Office of Environmental Project Review for inclusion in the Departmental report.

(2) Service reports on Federal and federally assisted projects are submitted directly to the appropriate office of the sponsoring Federal agency by the Regional Director.

(3) Procedures for review, submission of comments, and resolution of issues on navigation permit applications made to the Corps of Engineers, Department of the Army, are prescribed for all bureaus and offices of the Department of the Interior in 503 DM 1. This Departmental Manual release implements the July 13, 1967, Memorandum of Understanding between the Departments of the Army and the Interior with respect to review of applications for permits for dredging, filling, excavation, and other related work in the navigable waters of the United States issued by the Corps of Engineers. This release assigns responsibility regarding such review to the Director, Fish and Wildlife Service, and delegates responsibility for coordination among Departmental field offices and for submission of formal Departmental communications with District and Division Engineers of the Corps to the Service's Regional Directors.

(4) A different procedure is to be followed where both the permit application and the related draft environmental impact statements are to be reviewed concurrently as described in Sec. 7.2, below.

(5) Under 503 DM 1 the Service normally has a dual role: providing the consultation and review functions mandated by the Fish and Wildlife Coordination Act and coordination and consolidation of views and recommendations of all Departmental bureaus and offices, including those of the Service, into a formal Departmental letter of comment under Fish and Wildlife Service letterhead.

(6) Informal communications with the Corps by the bureaus and offices are not precluded by 503 DM 1; in fact, each bureau and office is directed to make its own arrangements for receipt of public notices and is encouraged to conduct any necessary informal discussions with Corps personnel.

(7)(a) The role of the Service Regional Directors under 503 DM 1 is to coordinate, collate, and transmit all formal Department communications, including requests for extension of time to respond or for more information and the formal Departmental letters of comment (and/or reports) on navigation permits to District Engineers and where appropriate, to Division Engineers.

(b) The Service Regional Director must assure himself that all interested bureaus and offices of the Department have had adequate opportunity to offer comments and that all substantive comments, timely received, are reflected in the formal Departmental response to the Corps on each permit application.

(c) Any unresolved cases of disagreement among field offices of Interior bureaus will necessarily be submitted promptly to headquarters as will any other case which the Corps has indicated it will refer to Washington under the Memorandum of Understanding or which has become so controversial that either the Corps or the applicant is likely to refer it to Washington (see Sec. 7.1E (3)–(6), below).

(8) The Service does not have the above-outlined coordinating function with respect to EPA or the Coast Guard. Nor does it have such function with any other regulatory agency or in relation to review of any Federal or federally assisted project proposals.

(9) The Regional Director's coordinated letter to the responsible Corps officer prepared under 503 DM 1, although on FWS letterhead, is the official Departmental report on a permit application and is to be so identified in the text of the letter.

(a) The first sentence of the letter report stating the Departmental position should include the Public Notice number and date, the Corps District, the waterway or other locational references, and the State.

(b) Service surveys and investigations on permits, prepared in accordance with provisions of the Fish and Wildlife Coordination Act, are to be incorporated in the letter report to the District Engineer.

(c) In the common case where the substantive comments are limited to those of the Service and any compatible views of other Interior bureaus and offices, the letter will incorporate the Service report and the other comments and views and will state that its content represents the Departmental position, or reflects fully the Departmental views and findings on the identified permit application.

(d) Service letters on such matters as unauthorized activities, failure of a permittee to abide by permit conditions, requests for extension of time, etc., may also note Departmental sanction of the concern or request.

(10) Service letters of comment and reports on other than Corps permits do not necessarily represent the Departmental position and should not so indicate unless Departmental sanction has been determined.

(11) The Departmental letter and/or Service report may be released to cooperating State and Federal agencies and the general public once the Departmental or Service letter has reached the District or Division Engineer of the Corps, Regional Administrator of EPA, or District Commander, Coast Guard.

E. *Recording permit actions and filing of reports.* (1) Records must be maintained in the area and regional offices of the disposition of each public notice received, actions taken, reports filed, and any required follow-up activity accomplished.

(a) Regional offices must maintain records of both Service and Departmental actions in keeping with the role of the Regional Directors as Departmental coordinators for Corps permits.

(b) In addition to maintaining a comprehensive log of permit actions, each public notice received should be filed bearing a notation of its disposition and a reference keying it to the entries made on it in the log (public notices deemed not to involve a Departmental or Service interest are nevertheless logged to assure completeness of records and ease of retrieval in event of later action).

(2) Central Office files must not be burdened. As instructed in Dr. King's memorandum of November 14, 1972 (App. E–16) only those file materials on permits specifically requested by the Central Office should normally be submitted. Exceptions are noted in par. 7.1E(5), below.

(3) The Director should be promptly alerted to permit applications and violations involving properties administered by the Service or another bureau of the Department (i.e. refuges, hatcheries, parks, recreation areas, etc.) and to situations involving policy and other significant Departmental or Service interest.

(4) Alerts on permit involvements of other bureaus of the Department should be forwarded through the Director to the

Assistant Secretary for Fish and Wildlife and Parks only where the other bureau so requests, or where after notification of the other bureau that bureau agrees that inadequate attention was accorded an environmental problem.

(5) The Director should be promptly alerted to controversial permit situations which the Corps has indicated it will refer to Washington under the Memorandum of Understanding or where the applicant or the regulatory agency has so clearly objected to the Service or another bureau's recommendations that the matter will likely be referred to Washington for resolution. Where referral to Washington is deemed to be imminent the alert, in exception to par. 7.1E(2), above, should be accompanied by essential file materials and a concise summary of the case and the Department's involvements (see 503 DM 1).

(6) In cases defined above where file materials are submitted to the Central Office, only single copies of the following are required: The Public Notice and any fact sheet, a project location map (with site superimposed on quadrangle sheet or navigation chart), the completed Field Appraisal form, the Service report, any other pertinent correspondence or hearing records, and the Departmental report.

F. *Resolution of issues following report release.* (1) Follow-up with the regulatory agency is to be made on a continuing basis to determine the disposition of cases of concern to the Service and the Department. Copies of permits issued are to be obtained for Service files, with copy to the Central Office if appropriate.

(2) Every effort is to be made to resolve problems at the field level. However, if this is not possible, the Corps in accordance with the July 13, 1967, Memorandum of Understanding, will refer the controversial permit matters to the Under Secretary. The following procedure is followed after Interior's report is filed with the District Engineer:

The District Engineer, in deciding whether a permit should be issued, shall weigh all relevant factors in reaching his decision. In any case where Directors of the Secretary of the Interior advise the District Engineers that proposed work will impair the water quality in violation of applicable water quality standards or unreasonably impair the natural resources or the related environment, he shall, within the limits of his responsibility, encourage the applicant to take steps that will resolve the objections to the work. Failing in this respect, the District Engineer shall forward the case for the consideration of the Chief of Engineers and the appropriate Regional Director of the Secretary of the Interior shall submit his views and recommendations to his agency's Washington Headquarters.

The Chief of Engineers shall refer to the Under Secretary of the Interior all those cases referred to him containing unresolved substantive differences of views and shall include his analysis thereof, for the purpose of obtaining the Department of the Interior's comments prior to final determination of the issues.

In those cases where the Chief of Engineers and the Under Secretary are unable to resolve the remaining issues, the cases will be referred to the Secretary of the Army for decision in consultation with the Secretary of the Interior.

(3) The Associate Director—Environment and Research is to represent the Service on a review committee to advise the Secretariat of the course of action to be followed in the efforts at resolution.

(4) Although procedures have not been agreed upon with regulatory agencies other than the Corps for cases of failure or resolution in the field, any such cases should be referred promptly to the Director with full particulars so that he may attempt resolution of the controversial matters at Washington level.

7.2 *Environmental impact statements.* A. Federal agencies have a responsibility to seek consultation with the Service in relation to their preparation of environmental statements required by Sec. 102(2)(C) and other provisions of the NEPA (National Environmental Policy Act) and the Service has a responsibility by law and expertise to advise such agencies.

B. The Service also has a responsibility to review draft environmental statements and to prepare comments thereon as a part of the Departmental comments made in response to requests for official review and comment on prepared draft environmental impact statements.

C. Distinction must be maintained between these two types of responsibility, as follows:

In the first, the Service should provide such advice as it considers appropriate directly to the Federal agency at field level upon its request. Where Service responsibilities are known or suspected of being involved the Service may offer any appropriate advice or remind the agency of its responsibility to consult with the Service and other environmentally expert and responsible bureaus and agencies.

In the second, the Service must make its contribution through the Department's Office of Environmental Project Review. It should comment on the accuracy of the statement with respect to fish and wildlife and related matters, on the completeness and comprehensiveness of the statement in relation to these matters, and on the compliance with the requirements of the NEPA and the guidelines of the Council on Environmental Quality.

D. Consistency must be observed as fully as possible by Service personnel not only in meeting these responsibilities but in reporting on the one or more Federal permits required for the proposal at issue. This will require some considerable care and attention in cases particularly where different persons or different times are involved in the several actions. Concurrent actions by different individuals must be closely coordinated. But in many cases, earlier action on review of a permit application must be carefully reviewed and accounted for in preparation of comments on a subsequent permit application or draft environmental statement.

If circumstances have changed so that current comment necessarily must differ from an earlier comment, a full explanation of such circumstances must be given and a persuasive justification made for the current position taken. In no case should the reviewer fail to search out and thoroughly consider the validity of earlier actions before taking a different position. On the other hand, a faulty earlier position cannot be ignored, it must be forthrightly addressed and disposed with minimum embarrassment to the Service and Department. It is expected that the problems of non-consistency will be less likely to occur in the future in that coordination among regulatory and review agencies will encourage if not demand concurrent review actions on related permit applications and environmental impact statements.

E. Regional offices of the Service should expect to receive documents and requests for concurrent review of permit applications and draft environmental impact statements to come to them from the Office of Environmental Project Review in Washington, particularly those involving major and extensive proposals. In these cases, the procedure described in paragraph 1.4D of 503 DM 1 will be followed, but in addition, the Service report mandated by the Fish and Wildlife Coordination Act will either be incorporated into the official Departmental comments as an identified section or where appropriate because of the length of the report or other reason, a summary of the report thus incorporated and the report itself filed directly by the Service with the appropriate office of the responsible Federal regulatory agency.

7.3 *Reporting unauthorized work or activity.* A. Although a detailed report is usually not prepared on unauthorized work, complete records must be maintained (see App. B–5), a field surveillance and appraisal report prepared (App. B–2), and a request made to the regulatory agency by the Regional Director for enforcement action if it is determined that the work or activity is in fact being conducted unlawfully (i.e. without permit or in violation of the permit). It usually will be found more effective for the Regional Director to transmit his request by certified mail (see App. A–5 and A–6).

B. If action is not taken in a reasonably timely manner, the Regional or Field Solicitor should be requested to intercede to elicit any essential expedited action. See the flow chart of actions on apparent illegal activities, App. B–4b. If court action ensues the investigating biologist is likely to be called to testify; see Sec. 10 for advice on such participation.

8. *Follow-up of permit work and surveillance of illegal work.* Successful achievement of the Service objectives and goals in relation to dredge and fill activities requires continuing, consistently diligent surveillance of waters and wetlands throughout the Nation by Service biologists in coordination with responsible Federal regulatory agencies to maintain a comprehensive monitoring of all activities conducted in waters under their purview.

8.1 A variety of techniques have been suggested and used to intensify surveillance coverage with the limited Service resources. These include:

A. Intensive, complete coverage of critical areas—preferably periodic (biweekly, monthly, or as resources permit) but varied as to timing to avoid strict regularity.

B. Comprehensive, semi-intensive coverage of an entire length of coast, river, or lake—periodic as under Sec. 8.1A, above.

C. Random, occasional coverage of a critical area or length of coast, river, or lake incidental to field reconnaissance of permit applications and other field studies.

D. Comprehensive coverage with assistance of NMFS, district biologists of the State, and/or concerned citizens, and/or Service personnel of other divisions LE, Refuges, Technical Assistance—periodic (quarterly, semiannual, or as resources permit).

8.2 Assistance in surveillance and in intensifying regulatory agency monitoring can be furthered in a number of ways:

A. Sponsoring work shops and symposia.

B. Issuing special reports documenting the value of shallow waters and wetlands in key areas, such as estuaries, and otherwise supporting the need for regional, environmentally sensitive land management planning and control.

C. Eliciting support from government agencies with coordinate interests, conservation groups, and other influential entities in urging intensified surveillance for illegal work and monitoring of permitted activities by the regulatory agency.

9. *Education of the public.*

9.1 *Basis.* Informing the general public and decisionmakers of the ecological, hydrological, and legal bases of the concepts underlying the Service's intensified efforts to save the naturally functioning aquatic and related terrestrial ecosystems of shallow waters and wetlands of the Nation is essential to attaining Service goals.

This is as true for the potholes of the Midwest "duck factory" as it is for the bottomland hardwoods of the Southeast, the extensive estuarine complexes of the Atlantic, Gulf, and Alaska Coasts, the discrete estuaries of Maine and Pacific Coasts, the bays and shoreline marshes of the Great Lakes, and the oxbows and islands of our major rivers.

9.2 *Means.* A. The Ecological Services biologist must take every opportunity to inform the public of the scientific and legal bases and assist others who are concerned to do so. But he should not merely react to opportunities, for many times these will only permit restatement of the facts to those who already are informed or are at least environmentally oriented and sympathetic. The facts of wetland and other environmental values should be brought to local governments and others who may encourage environmentally damaging development.

B. The legal references of App. D and the technical references of App. G should be perused and frequently consulted in this regard by every Division biologist, and App. H and I are useful aids to the biologists and to his efforts of educating the public and public officials.

C. To be effective in educating others, the biologist must first fully educate himself and continually renew and add breadth and depth to his vision and understanding. The involved ecosystems are in no way simple nor well-understood by even those physical and biological scientists in the forefront of research on these matters. Nevertheless, much is known and the literature is extensive, particularly on coastal and estuarine ecosystems.

D. The following items of literature cover much of the basic knowledge which must be comprehended by all Division biologists involved in dredge and fill activities:

Annon., 1956. *Wetlands of the United States.* Circ. 39, USFWS (Repub. 1971).

Leopold, L. B. and W. B. Langbein, 1960. *A Primer on Water.* USGS.

Swenson, H. A. and H. L. Baldwin, 1965. *A Primer on Water Quality.* USGS.

Teal, J. M. and M. Teal, 1969. *Life and Death of the Salt Marsh.* Audubon/Ballantine (Paperback Ed.).

Annon., 1970. *National Estuary Study.* USFWS. 7 Vols. (especially App. A, Vol. 2; App. B, Vol. 3; and App. I, Vol. 6).

Annon., 1970. *Our Waters and Wetlands: How the Corps of Engineers Can Prevent Their Destruction and Pollution.* U.S. Congress, House Report 91-917 (see App. D-6).

Wharton, C. H., 1970. *The Southern River Swamp—A Multiple-Use Environment.* Georgia State University.

Annon., 1972. *Increasing Protection for Our Waters, Wetlands and Shorelines: The Corps of Engineers.* U.S. Congress, House Report 92-1323 (see App. D-6).

Clark, John, 1974. *Coastal Ecosystems, Ecological Considerations for Management of the Coastal Zone.* The Conservation Foundation.

Many other citations could be listed, of course, but the above, mainly written for the general reader, provide a basic essential overview from which the biologist can branch out to more definitive works. Additional technical sources are cited in the above-listed references and in the App. G-4 and G-5 articles.

E. Many methods and techniques can be used to educate the public, some of which have been noted above in relation to follow-up and surveillance activities:

(1) The media should be utilized as fully as possible to inform the public of ecological principles through articles on locally newsworthy, current situations. Contacts can be made through concerned citizens or directly with news media to properly present the environmental viewpoint of dredge and fill issues. Discretion must be used, however, to avoid jeopardizing any ongoing negotiations with the applicant or lead agency.

(2) Participation in school programs can be helpful in furthering the education of the public on ecological principles. Here are some of the ways:

(a) Lectures and slide talks to primary, secondary, and college-level classes.

(b) Show-me field trips and summer field study classes made in cooperation with schools and summer camps organized by charitable groups, churches, etc.

(c) Field investigations, particularly inventory studies of important habitats, organized with schools to utilize student classes in ecology or field biology for the collection and identification of species, mapping of habitat types, etc.

(3) Lectures, slide talks, and show-me fields trips can be profitably arranged with adult groups, especially with organizations of adults such as Rotary, Kiwanis, religious groups, etc.

F. In connection with the foregoing direct involvements with the public, further publicity can be arranged with news media and the education success can be heightened by distribution of printed material.

Such printed material is available in the Service's popular pamphlets on estuaries, endangered species, and the like, as well as from State sources, Sierra Club, Soil Conservation Service, local conservation groups, and many others.

Also, special publications can be prepared by the Service such as those prepared by the Northeast Region on the Long Island wetlands, by the Pacific Region on Southern California estuaries and coastal wetlands, and by the Southeastern Region on guideline for permit applications.

10. *Participation in judicial and other hearings.*

10.1. *Basis.* A. Involvements with navigation permits frequently requires participation by Service personnel in the resolution of issues through hearings.

B. Participation in judicial hearings, and presumably in those quasi-judicial hearings and proceedings of regulatory agencies such as the Corps, EPA, AEC, and FPC, must be authorized in writing by the Regional Director (see Service Manual 6 AM-3.1). If the Director on advice of the Regional Director decides that participation is not proper, the Solicitor, acting for the Secretary, reviews the decisions and provides counsel on related legal actions.

C. The Office of the Solicitor should be kept advised of any judicial involvements of the Service; his office should be called upon to serve as liaison with U.S. and other attorneys and to provide any other needed counsel. Any publicity of hearing matters must be restricted to that approved by counsel.

D. This section is addressed to participation by Service personnel on matters of fact or expert opinion in hearings in relation to Government business and records. Participation by Service employees as expert witnesses in proceedings between private litigants is normally prohibited. Yet an employee may be permitted to testify as an expert on his own time at his own expense if he clearly avoids representing his testimony as in any way stating official position.

10.2 *Gathering information in support of testimony at hearings.* A. On-site, first-hand observations and data usually will provide far more persuasive evidence in judicial hearings than evidence from the literature, although familiarity with

the literature and other sources of information is also essential to well rounded testimony.

B. In preparation for cases to be brought to court or other formal hearing the Service biologist must not only search out all available knowledge from cooperators and other sources, but he must also make as detailed and comprehensive field studies as time and his resources of manpower and equipment will permit.

C. Field investigations on-site ideally include:

(1) An inventory (population estimates by species) and delineation on maps of the distribution of all important species of plants and animals in the impact area;

(2) Determination of the salient physical and chemical characteristics of impact area waters—temperatures, salinities, current patterns, tidal ranges, sediment transport and shoaling patterns, turbidity, dissolved oxygen, degree of pollution, stream discharge rates, turnover or flushing rates, etc.;

(3) Estimation of human uses and satisfactions including sport and commercial harvests;

(4) Comparison of topographic and other data furnished by the project sponsor with that observed on-site to detect any discrepancies;

(5) Assessment of the physical, biological, and esthetic impacts of the proposed works from on-site observations made while visualizing and imagining the planned works in place and noting the agreement of plan orientation points, borrow areas, fill areas, roads, etc., to observed physical, biological, and other environmental features of the site, including tide marks, vegetation lines (by species), depth lines, water current lines, etc.; and

(6) Documentation by written field notes, photographs, map notations, instrument readings, biological samples, records of interviews, etc., including completed field appraisal forms for each significantly different instance of field observation (see App. B–2 and B–3).

10.3 *Preparation of material for legal briefs or submission for the record.* A. The witness must prepare his testimony and record material in the closest possible harmony with his attorney.

B. Since each hearing officer or judge has wide latitude in laying down requirements of format, time of submittal, number of copies, and other matters related to presentation of record material within the differing guidelines of the several regulatory or judicial forums, only a few general guiding principles can be set forth here:

(1) The points of fact or opinion to be developed must be jointly selected by the attorney and witness, seeking those that can be presented most persuasively and eschewing weak points and those on which the attorney and witness are not both fully conversant.

(2) The points selected must be thoroughly researched by the witness and explored fully with the attorney to reach common understanding and develop the proper means of presentation.

(3) The points selected must also be critically examined with help of counsel to discover potential weaknesses and develop rebuttal answers to questions that may be posed by opposing attorneys.

(4) With guidance from his attorney, the witness must prepare his brief and record material strictly in accordance with the standards and requirements of the hearing officer or court.

10.4 *Oral testimony.* A. Advice on this point is given in the Service Manual (6 Am 3.1B) as follows:

> In an appearance on the witness stand, an employee should keep this advice in mind:
> (1) Be sure the question is understood before giving an answer.
> (2) Do not be rushed into answering; stay calm and deliberate.
> (3) Be as courteous and responsive as possible.
> (4) Stick to facts and do not venture into hearsay and opinion. (An exception might be in the case of expert opinions.)

B. The Manual advice is good. However, the Ecological Services biologist usually will be testifying as an expert witness and need not hesitate to express opinion he believes to be well founded on his training and experience.

C. Some additional advice particularly related to adversary proceedings follows:

(1) Avoid involved answers which open up debatable points or burden the proceedings. Yet do not assume the hearing officer knows or already understands the facts of the situation or the basic ecological principles; give simple, concise, and fully intelligible answers that form a complete record.

(2) Be alert for questions which permit fuller development of your position.

(3) Do not try to answer unanswerable questions or those for which you do not know the factual answer, unless the question admits of developing your position in a tangential way.

(4) Shun belligerency; it is never helpful to your credibility or position.

(5) Avoid evasive, counter-punching, or "cute" answers which can only alienate the hearing officer or judge; such answers will not help your position.

[FR Doc.75-31976 Filed 11-28-75;8:45 am]

federal register

MONDAY, DECEMBER 1, 1975

PART V:

FEDERAL ELECTION COMMISSION

■

ADVISORY OPINION REQUESTS

FEDERAL ELECTION COMMISSION

[Notice 1975-85, AOR 1975-107—AOR 1975-109]

ADVISORY OPINION REQUESTS

In accordance with the procedures set forth in the Commission's Notice 1975-4, published on June 24, 1975 (40 FR 26660), Advisory Opinion Requests 1975-107 through 1975-109 are published today.

Interested persons wishing to comment on the subject matter of any Advisory Opinion Request may submit written views with respect to such requests on or before December 11, 1975. Such submission should be sent to the Federal Election Commission, Office of General Counsel, Advisory Opinion Section, 1324 K Street, NW., Washington, D.C. 20463. Persons requiring additional time in which to respond to any Advisory Opinion Request will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered by the Commission before it issues an advisory opinion. The Commission recommends that comments on pending Advisory Opinion Requests refer to specific AOR number of the Request commented upon, and that statutory references be to the United States Code citations, rather than to the Public Law Citations.

AOR 1975-107: PAYMENT FOR CONGRESSMAN'S TELEVISED NEWSLETTER (REQUEST EDITED BY THE COMMISSION)

Dear Chairman Curtis:

In the very near future, I plan to present on Providence television stations a news letter of the air, which will serve as a vehicle for indicating what I have done during the past year in the Congress. In essence, it is a report to the people of my district of my efforts on their behalf. I would appreciate it if you could advise me whether it is necessary to use campaign funds for payment at this time.

* * * * *

EDWARD P. BEARD,
Member of Congress.

Source: Honorable Edward P. Beard, House of Representatives, 131 Cannon House Office Bldg., (October 30, 1975.)

AOR 1975-108: ACTIVITIES OF CHAIRMAN OF U.S. LABOR PARTY SEEKING PRESIDENTIAL NOMINATION AND PAYMENTS TO OR BY NON-POLITICAL ORANIZATIONS (REQUEST EDITED BY THE COMMISSION)

Gentlemen: I am writing to you on behalf of the U.S. Labor Party and its affiliated State Party organizations, and on behalf of the Committee to Elect Lyndon LaRouche, of which I am Treasurer.

I [request an advisory opinion] on a number of questions which relate generally to two circumstances: (1) The first is the existence of a U.S. Labor Party policy program supported by all U.S. Labor Party and State Labor Party candidates regardless of office sought. These candidates seek individually to further this program by means additional to their own election, including attempts to influence public opinion through public appearances and support for groups other than political committees as defined in 2 U.S.C. 431(d). (2) The second circumstance is Mr. Lyndon H. LaRouche, Jr.'s position as National Chairman of the U.S. Labor Party while he is simultaneously seeking U.S. Labor Party nomination to candidacy for the office of President of the United States. Mr. LaRouche is financing his Primary Period electoral activity through his own principle campaign committee, the Committee to Elect Lyndon LaRouche.

Thus, Mr. LaRouche and various other candidates for Federal and local office affiliated with the U.S. Labor Party, or its State party organizations, will from time to time make public appearances on behalf of causes not directly concerned with their electoral campaigns. They may at such appearances make appeals for contributions to organizations other than the U.S. Labor Party, or their respective principal campaign committees, with which they also happen to be individually affiliated or whose causes they individually support. Such appearances may indirectly affect voting patterns, particularly if the causes for which such individuals are speaking or the organizations they are endorsing have political goals similar to those of the U.S. Labor Party in the general realm of influencing public opinion or current legislation.

(1) Under what circumstances are the expenses incurred by the individuals in making such appearances to be accounted as campaign expenditures? That is, is there any reasonable means by which any potential influence on voting behavior can be computed?

(2) If the Commission rules that the expenses incurred by the individual candidates in such events are to be attributed to the U.S. Labor Party (or the candidates' respective principal campaign committees), must contributions obtained at such events for some other organization be considered as contributions by the U.S. Labor Party (or principal campaign committee) to that organization, thus transforming that organization into a political committee by its acceptance of a transfer of funds from a political committee (assuming the amount to be in excess of $1,000.00)? I refer here specifically to organizations which otherwise would not be political committees, which do not receive contributions or make expenditures on behalf of influencing elections, and may be non-profit or even governmental agencies (e.g., chambers of commerce; university-based clubs or associations; legal defense and public interest groups; voluntary special interest associations).

(3) If such an organization itself pays for an appearance by Mr. LaRouche or a U.S. Labor Party candidate for other Federal office, for purposes of the financial or other benefit accruing to itself from the value of Mr. LaRouche's personal expertise in some matter of public interest, or from the general influence of the U.S. Labor Party, must such expenditures be considered as made on behalf of the LaRouche primary campaign (or some U.S. Labor Party General Election campaign if some other candidate is appearing), if his appearance at such an event has the effect of influencing subsequent voting behavior? As in Question (1), how in such a case would we compute the influence of the event in determining future voting?

(4) If Mr. LaRouche makes an appearance as principal spokesman for the U.S. Labor Party in his capacity as Chairman, paid for by the U.S. Labor Party for the furtherance of its general program, must the expenses incurred by the U.S. Labor Party in organizing such an event be considered as a contribution to Mr. LaRouche's own Primary Period campaign for nomination, notwithstanding that he has not yet been nominated by the U.S. Labor Party and is otherwise financing his Primary campaign through a principle campaign committee other than the U.S. Labor Party or any of its affiliated committees?

RICHARD E. WELSH,
Treasurer.

Source: Richard E. Welsh, Treasurer, Committee to Elect Lyndon LaRouche, U.S. Labor Party, P.O. Box 1972, GPO, New York, New York 10001. (October 25, 1975.)

AOR 1975-109: PAYMENT BY AN ORGANIZATION COVERED IN 18 U.S.C. §§ 610, 611 FOR A MEMBER'S TRAVEL TO HOME STATE IN CARRYING OUT HIS DUTIES (REQUEST EDITED BY THE COMMISSION)

Dear Commissioners: On behalf of the National Republican Senatorial Committee and the National Democratic Senatorial Committee, we would like the Federal Election Commission to make an advisory legal opinion * * * on the following issue. AO 1975-8 says, in part:

Accordingly, once an individual (including an officeholder) becomes a candidate for federal office, all speeches made before substantial numbers of people * * * are presumably for the purpose of enhancing the candidacy * * * (40 FR 36747).

The question we would like to ask the Commission is whether an incumbent U.S. Senator, who has in writing authorized a committee, which is encouraging him to again seek the nomination, to raise funds, but who has not made a decision to seek re-election and has taken no steps to qualify on the ballot of his or her state, may accept travel expenses from organizations covered in 18 U.S.C. 610 and 611, to and from events or speaking engagements in his home state that are clearly within his duties as U.S. Senator and are not partisan political activities?

Two examples of this type of event are: a hearing on a specific topic which is under the jurisdiction of a subcommittee on which a Senator sits, or to participate in a round of public discussions on the role of the Federal government in providing inner cities with urban renewal funds.

* * * * *

Hon. J. Bennett Johnston
Hon. Ted Stevens

Source: Honorable J. Bennett Johnston, Chairman, Democratic Senatorial Campaign Committee, Room: 130 Russell Senate Office Bldg., Washington, D.C. 20510 and Honorable Ted Stevens, Chairman, National Republican Senatorial Committee, Room: 445 Russell Senate Office Bldg., Washington, D.C. 20510. (November 7, 1975.)

Dated: November 24, 1975.

THOMAS B. CURTIS,
Chairman for the Federal Election Commission.

[FR Doc.75-32184 Filed 11-28-75;8:45 am]

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